



National Discrimination Tribunal of Finland  
Annual Report 2008

SYRJINTÄLAUTAKUNTA

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NATIONELLA DISKRIMINERINGSNÄMNDEN

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NATIONAL DISCRIMINATION TRIBUNAL OF FINLAND

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TRIBUNAL FINLANDAIS DE LA DISCRIMINATION

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Национальный Комитет по Дискриминации Финляндии

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## 1. National Discrimination Tribunal of Finland as a judicial body

The National Discrimination Tribunal of Finland was set up with the passing of the Non-Discrimination Act in 2004. It is an expert authority that monitors compliance with the Non-Discrimination Act and discharges its supervisory duties and functions in its consideration of the petitions submitted to it in its capacity as an independent judicial body. The National Discrimination Tribunal of Finland is a means of legal protection that acts as an alternative to the first instance court procedure and its powers are subsidiary to other judicial bodies.

The objectives of Council Directive 2000/43/EC were implemented in Finland on 1 February 2004 with the entry into force of the Non-Discrimination Act and the Act on the Ombudsman for Minorities and the National Discrimination Tribunal. The Tribunal's competence relates to ethnic discrimination. In its interpretation of the concept of discrimination, the Tribunal acts with reference not only to the Non-Discrimination Act but also the Constitution of Finland, international human rights conventions and EU legal norms.

The UN Convention on the Elimination of All Forms of Racial Discrimination prohibits any distinction based on race, colour, descent, or national or ethnic origin.

The Member States of the European Union have ratified the main international human rights conventions that prohibit discrimination broadly and unequivocally.

Under the principle of loyalty, the Member States implement all the general and special measures that are necessary to ensure the fulfilment of their obligations under the EU Treaty or legislative acts of the Community institutions and facilitate achievement of the Community's objective. The Member States of the EU refrain from any action that would be likely to endanger the achievement of the objectives of the European Union under the EU Treaty.

The interpretation of the Non-Discrimination Act is tied to the European Community directives implemented by it, in such a way that that the provisions of the Act must be interpreted as referred to in the directives, even if the wording, written as it is in a form that reflects the national judicial system, might not correspond in every detail to that in the directives. Interpretations of the Act's provisions are in line with the judgments of the Court of Justice of the European Communities on the interpretation of the provisions in the directives referred to.

## 1.1 Composition of the National Discrimination Tribunal of Finland

The National Discrimination Tribunal has a chairperson and six members and their personal deputy members. The Tribunal also has a full-time secretary and a rapporteur as well as an assistant. The chairperson and members are part-time elected officials and their term lasts for four years.

The chairperson of the Tribunal, at least three members and their deputies, as well as the secretary, must be eligible for the office of judge. In addition, the members of the Tribunal and their deputies as well as the rapporteur must be familiar with the work of the Tribunal.

Members and rapporteurs have liability for acts in office, and the provisions in the Finnish Code of Judicial Procedure on disqualification on the part of judges apply to them.

The Finnish Government appointed the second National Discrimination Tribunal for the period 19 February 2008 to 18 February 2012.

### Chairperson

Mr Jukka Rainio, District Court Judge, trained on the bench

### Members

Ms Vilja Kutvonen, District Prosecutor, trained on the bench, vice-chair

Mr Markku Fredman, Advocate, trained on the bench

Ms Thea Lång, Senior Secretary of the Court of Appeal, trained on the bench

Mr Juhani Kortteinen, Master of Laws

Ms Inga Jasinskaja-Lahti, Doctor of Social Sciences

Mr Adrián Soto, MA, journalist

### Deputy members

Ms Susanna Kuosmanen, District Prosecutor, trained on the bench

Ms Kirsi Tarvainen, Advocate, trained on the bench

Mr Hannu Kiuru, Licentiate of Laws, trained on the bench

Professor Tuomas Ojanen, Doctor of Laws<sup>1</sup>

Professor Karmela Liebkind, Doctor of Social Sciences

Mr Ahmed Akar, Licentiate of Philosophy

### Secretary of the Tribunal

Mr Tapio Susi, trained on the bench, Master of Social Sciences

### Rapporteur, part-time

Mr Juhani Kortteinen, Master of Laws

### Assistant

Mr Pasi Ontermä, Departmental Secretary

<sup>1</sup> Timo Makkonen, Master of Laws, was Deputy Member until July 2008, and, following his resignation, Tuomas Ojanen was appointed to take his place.

## 1.2 Functions of the National Discrimination Tribunal of Finland

The National Discrimination Tribunal of Finland is an impartial and independent judicial body established by the Finnish Non-Discrimination Act and appointed by the Government to promote legal protection. It deals with petitions concerning ethnic discrimination and, along with the District Courts and Administrative Courts, gives legally-binding decisions in matters concerning discrimination. Its decisions may be appealed in the Administrative Court (Non-Discrimination Act 21/2004, Act on the Ombudsman for Minorities and the National Discrimination Tribunal 660/2001 and 22/2004). The Tribunal does not replace existing remedies or review tribunals.

The Tribunal's function is to give legal protection to those who consider they have been discriminated against or have been a victim of adverse treatment prohibited in association with discrimination. The prohibition of adverse treatment means that no one may be put at a disadvantage because they have complained or taken steps to ensure equality.

The National Discrimination Tribunal may prohibit continued or repeated discrimination based on ethnic origin and impose conditional fines to enforce compliance with its decisions and order payment of such fines. It may also endorse settlements between parties. A court of law, the Ombudsman for Minorities, other public authorities or associations may request an opinion from the Tribunal on the application of the Non-Discrimination Act.

The Tribunal applies the Non-Discrimination Act to all natural and legal persons within Finnish jurisdiction and in private and public activities. The public organisations that fall within the scope of application of the Act include the state, the local authorities, joint municipal authorities, the Evangelical Lutheran Church and the Orthodox Church.

The National Discrimination Tribunal has the right to acquire from the authorities and those who run businesses and their staff included in the scope of application of the Non-Discrimination Act the

information required to monitor compliance with the prohibition on discrimination based on ethnic origin and to assess how well measures to promote ethnic equality have been planned and implemented. The Tribunal may impose a conditional fine to enforce compliance with this obligation to furnish information.

The Tribunal has the right to consult experts, seek opinions, obtain information and arrange inspections.

Discrimination based on ethnic origin falls within the competence of the National Discrimination Tribunal when the matter relates to:

- Conditions for self-employment or means of livelihood or support for business activities
- Access to training or vocational guidance
- Membership of, or involvement in, an employee or employer organisation or other organisation whose members practise a particular profession, or benefits afforded by such organisation
- Social welfare and health care services
- Social security benefits or other forms of support, discount, advantage granted on social grounds
- Compulsory military service, women's voluntary military service or non-military service
- Provision of, or access to, housing or movable or immovable property or services offered or available to the general public other than in respect of relationships between private individuals.

The National Discrimination Tribunal does not handle employment issues that are the business of the labour protection authorities. In this area, therefore, the functions of the Tribunal differ from those of many judicial bodies in the EU Member States.

The Tribunal may refer a petition to the European Court of Justice for a preliminary ruling if that is necessary to determine what the correct interpretation of Community law is.

## 1.3 Consideration of petitions by the National Discrimination Tribunal of Finland

A matter may be brought before the National Discrimination Tribunal of Finland by any party who claims they have been discriminated against, or by the Ombudsman for Minorities. The petition submitted to the Tribunal may be in hard copy or electronic format.

The Tribunal handles petitions free of charge, and all of its documents, including a copy of the judgment, are also free. The parties are themselves liable for other legal costs.

Petitions are dealt with by the Tribunal in writing. The petition may be in Finnish, Swedish, Sami, or English. The Tribunal's decisions are given in Finnish, Swedish or Sami.

A petition cannot be based on sheer allegation: anyone who has suffered discrimination must produce concrete evidence from which it may be presumed that he or she has been a victim of discrimination.

When a petition arrives at the Tribunal, the applicant's opposite party, the party accused of discrimination (hereafter the defendant), is asked to give a written reply within a set period of time.

When the defendant has replied to the Tribunal, the petitioner is asked to issue a comment in which he or she may respond to the arguments put forward by the defendant.

When a case is being dealt with, the provision on burden of proof in section 17 of the Non-Discrimination Act is applied. If the petitioner provides information from which it may be presumed that the prohibition on discrimination referred to in section 6 of the Act has been infringed, the defendant must demonstrate that the prohibition has not been infringed.

On the basis of the written information received, the Tribunal decides the case, acting on a proposal by the rapporteur. The Tribunal may also arrange a hearing if it is necessary for further clarification of the matter. When the Tribunal has given its decision, a copy of the decision is sent to the parties concerned along with instructions for appeal.

## 2. Cases considered by the National Discrimination Tribunal of Finland and injunctions served

In 2008 the National Discrimination Tribunal of Finland convened 10 times.

Petitions concerned discrimination by the authorities, the social services, in training and education, and aspects of harassment in broadcast programmes. Most related to alleged discrimination on the part of the authorities.

In 2008 the National Discrimination Tribunal served two injunctions and rejected three petitions. Two petitions were not investigated as they were deemed

by the Tribunal to be outside its competence. Ten were not investigated as they were deemed by the Chairperson to be outside the competence of the Tribunal. Three decisions were appealed in the Administrative Court. With injunctions served in 2007 and 2008, a conditional fine was imposed in all cases, though not one was ordered to be paid.

What follows is a brief description of four key cases. More detailed accounts of cases can be found on the National Discrimination Tribunal's website at [www.syrjintalautakunta.fi](http://www.syrjintalautakunta.fi).

### Injunction against the City of Rovaniemi

The Ombudsman for Minorities asked the National Discrimination Tribunal of Finland to investigate whether the City of Rovaniemi had discriminated against the Sami population in its arrangements for children's day care and, if necessary, to prohibit the City from continuing or repeating acts of discrimination against Sami residents there, under penalty of fine. The Tribunal took the view that Sami children were entitled to day care in their mother tongue under the law in the same way that Finnish-speaking children are. The City of Rovaniemi failed

to show that it had taken adequate steps to fulfil its statutory obligations to provide day care services for the Sami people as deemed appropriate. It was the Tribunal's opinion that the City of Rovaniemi's day care arrangements discriminated against Sami-speaking children on the basis of their ethnic background and it imposed a conditional fine to enforce compliance with the injunction.

[Decision ref 2008-25/Pe-2](#)

### Injunction against the municipality of Enontekiö

The Ombudsman for Minorities asked the National Discrimination Tribunal of Finland to investigate whether the municipality of Enontekiö had acted contrary to the prohibition on discrimination in the Non-Discrimination Act and other special laws in its arrangements for children's day care, public health care services, services for the elderly and basic education, and to prohibit the municipality from continuing or repeating acts of discrimination against Sami residents there, under conditional

fine. The Tribunal stated that the municipality of Enontekiö is a 'Sami domicile area', meaning the authorities have a special duty under the Sami Language Act to ensure that public services are available in the Sami language. The Tribunal took the view that Sami children were entitled to day care in their mother tongue under the law in the same way that Finnish-speaking children are. Furthermore, the Tribunal was of the opinion that the Sami people were entitled to health care services, services for

the elderly and basic education in their language. The municipality of Enontekiö failed to show that it had taken adequate steps to provide these statutory services for the Sami people as deemed appropriate. It was the Tribunal's opinion that the municipality of Enontekiö had discriminated against

the Sami-speaking population on the basis of ethnic background and imposed a conditional fine to enforce compliance with the injunction.

[Decision ref 2008-367/Pe-2](#)

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## Decision to reject a petition concerning the Finnish Broadcasting Company

In their petition, an association (X) representing the Roma population and a group of private individuals belonging to the Roma population asked the National Discrimination Tribunal of Finland to ban the rebroadcast of a series produced by Oy Yleisradio Ab, the Finnish Broadcasting Company, as it was discriminatory, or to ban the images of harassment contained in the programme, or, alternatively, to issue an opinion on the matter in accordance with the Non-Discrimination Act. Oy Yleisradio Ab was of the view that neither the company nor anyone employed by it could be

regarded as guilty of any kind of wrongdoing. The Tribunal was of the opinion that the association was not eligible to act as a petitioner in the case by virtue of section 15 of the Non-Discrimination Act. The Tribunal did not consider what Oy Yleisradio Ab had done to be so serious that it should be regarded as harassment within the meaning of the Non-Discrimination Act.

[Decision ref 2193/66/2007](#)

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## Decision to reject a petition concerning the Finnish Tax Administration

The petitioner had asked the National Discrimination Tribunal of Finland to verify that the tax administration authorities had drawn up an equality plan within the meaning of section 4(2) of the Non-Discrimination Act, and if they had, to check how the plan aimed to develop their office services, especially with regard to their Russian-

speaking clients. The Tribunal took the view that its powers did not extend to the supervision of the equality plans required of the authorities and rejected the petitioner's requests.

[Decision ref 1561/66/2007](#)

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### 3. Opinions by the National Discrimination Tribunal of Finland

Under section 14 of the Non-Discrimination Act, the courts, the Ombudsman for Minorities, other authorities and associations may request an opinion from the National Discrimination Tribunal on the application of the Act in cases of ethnic discrimination.

An opinion by the Tribunal does not put the party requesting it under any obligation.

A court may request an opinion when considering an action for compensation or other action relating to discrimination.

An authority may also request an opinion when is it drawing up or updating an equality plan. The Tribunal's powers, however, do not extend to the supervision of equality plans.

#### 3.1 Opinion on the application of the Non-Discrimination Act

The State Provincial Office of Eastern Finland asked the National Discrimination Tribunal of Finland to give its opinion concerning whether the Local Education and Culture Committee of Kitee was in compliance with the Non-Discrimination Act in its decision regarding where the education of an immigrant pupil was to take place.

The Tribunal stated that, under section 6(1) of the Non-Discrimination Act, nobody may be discriminated against on the basis of age, ethnic or national origin, nationality, language, religion, conviction or for any other reason.

Direct discrimination means that someone is being treated less favourably than someone else is being, has been or would be treated in a comparable situation.

Indirect discrimination is considered to be a situation where a seemingly impartial provision, criterion or practice places someone in an especially unfavourable position compared to other relevant parties, except if the provision, criterion or practice is a legitimate aim and the means used to achieve the aim are relevant and necessary.

Section 6(2) of the Constitution of Finland states the following: no one shall, without an acceptable reason, be treated differently from other persons on

the grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

The concept of 'treating someone differently' in the Constitution is a somewhat broader one than 'discrimination'. The provision on discrimination also concerns differential treatment as such, i.e. segregation. Therefore even the supply of identical services separately to different population groups on any of the grounds mentioned in the prohibition on discrimination is forbidden, unless it might be considered to constitute a legitimate reason under specific circumstances.

When interpreting the concept of discrimination, it is necessary to take into consideration not only the Non-Discrimination Act but also the Constitution of Finland, international human rights conventions and EU legal norms.

It is the view of the National Discrimination Tribunal that a question relating to differential treatment (segregation) must also be decided according to how the burden of proof is shared, as provided under the Non-Discrimination Act, inasmuch as the defendant must demonstrate that the prohibition on discrimination has not been infringed if it can be assumed that discrimination has taken place on the basis of the information presented by the petitioner.

In the case relating to the schooling of the immigrant pupil being considered by the State Provincial Office of Eastern Finland, the petitioner had referred to an injunction served by the National Discrimination Tribunal to the City of Helsinki on 31 January 2006 which prohibited the establishment of classes based on the mother tongue of immigrant pupils. The Helsinki Administrative Court upheld the Tribunal's decision with its own legally binding decision of 15 June 2007 (07/0838/2).

The Tribunal's injunction was based on the fact that the City of Helsinki had not tested the Finnish language skills of immigrant pupils, as required under the rules of the City's Finnish as a Second Language curriculum, and the placing of pupils in language study groups was not based on their Finnish language skills as required in the curriculum. The Finnish as a Second Language course at Aurinkolahti Comprehensive School was not taught by a qualified teacher in the subject, again as required in the curriculum, so immigrant pupils were being treated unfavourably as regards their Finnish as a Second Language tuition.

According to the town of Kitee's basic school curriculum, the education of immigrant children must be in both Finnish and their own mother tongue. According to the curriculum, the education

of immigrants mainly takes place in Arppe School, where immigrant pupils are given the opportunity to grow as members of Finnish society and their own cultural community.

According to the information provided by the Local Education and Culture Committee of Kitee, an assessment of the language skills of the pupil in question indicated that he required a lot of support for the education he would be given in the Finnish language. This was taken into account when the pupil was recommended to attend Arppe School in Ruppovaara, near, but not in, Kitee.

The National Discrimination Tribunal took the view that this could be considered an acceptable reason for placing the pupil in the school in question, provided that his language skills had been tested properly and that his progress in Finnish was monitored so that he could transfer to his local school when he no longer was in need of the special support given to immigrant pupils. The municipality had arranged school transport for the pupil, so in this respect the decision on his school placement could not be regarded as unfair or discriminatory.

Decision of 22 September 2008  
ref SMDno/2008/863

## 3.2 Other opinions

The Chairperson of the National Discrimination Tribunal of Finland issued an opinion on the Tribunal's behalf on the interim report by the committee drafting the reform of the Non-Discrimination Act and issued an opinion to the Chancellor of Justice regarding the Tribunal's

position. Mr Juhani Kortteinen, a Member of the National Discrimination Tribunal, issued an opinion on the Tribunal's behalf to the Ministry of Justice's Non-Discrimination Act working group on the reform of section 2 of the Act.

## 4. Other activities

In connection with the changes to ministerial responsibilities at the start of 2008, the National Discrimination Tribunal of Finland was transferred from the Ministry of Labour to the Ministry of the Interior's Legal Affairs Unit, with the Tribunal's work premises moving to Kirkkokatu.

On 15 August 2008 Mr Juhani Kortteinen, Senior Officer, Master of Laws, took up the position of part-time rapporteur for the Tribunal. He was responsible for presenting cases to the Tribunal for the latter part of the year. He attended the Legal Seminar on the Implementation of EU Law on Equal Opportunities and Anti-Discrimination, held in Brussels on 24-25 November 2008.

The National Discrimination Tribunal's website has been developed and case reports going back to 2005 have been added to it. These are drafted in accordance with the Administrative Court's model and are available to the public. They feature a case abstract and the official decision, with the privacy information omitted. The website also now has a section in the Sami language.

Work has started on the development of the Tribunal's referencing system. The tribunal will have its own reference code in 2009.

The National Discrimination Tribunal of Finland's new Rules of Procedure came into force on 17 December 2008.

### Cases brought before the National Discrimination Tribunal of Finland and decisions 2007-2008

	2007	2008	Total 07-08
Cases	25	11	36
Decisions issued by the Tribunal	7	12	19
Decision issued by the chairperson	15	10	25
Injunctions	4 (conditional fine imposed)	2 (conditional fine imposed)	6
Requests for an opinion by Administrative Courts		2	2
Requests for an opinion by authorities		3	3

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