

The background of the page is a large, semi-transparent blue seal of the National Discrimination Tribunal. The seal features a central scale of justice with a sword above it. The text 'SYRJINTÄLAUTAKUNTA' is written in a circular path at the top, and 'NATIONAL DISCRIMINATION TRIBUNAL' is written at the bottom. There are also stars on the right side of the seal.

**National Discrimination Tribunal
Annual Report 2009**

CONTENTS

1. National Discrimination Tribunal as a judicial body	2
1.1 Composition of the National Discrimination Tribunal	3
1.2 Functions of the National Discrimination Tribunal	4
1.3 Consideration of petitions by the National Discrimination Tribunal	6
2. Decisions of the National Discrimination Tribunal	7
3. Opinions by the National Discrimination Tribunal	9
4. Other decisions	13
4.1 Tribunal's decision of 26 March 2009 on the use of the Sámi language in filing an application	13
5. Other activities	14
Cases brought before the National Discrimination Tribunal and decisions 2008-2009	16

1. National Discrimination Tribunal as a judicial body

The National Discrimination Tribunal 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 in its consideration of the petitions submitted to it in its capacity as an independent judicial body. The Tribunal serves to safeguard legal rights and acts as an alternative to the first instance court procedure. Its powers are subsidiary to other judicial bodies.

The objectives of Council Directive 2000/43/EC were realised 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's actions are informed not only by the Non-Discrimination Act but also by 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 comprehensively 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 EU institutions and facilitate the achievement of the EU'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 Union directives it implements in such a way that the provisions of the Act must be interpreted as set out 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 Union on the interpretation of the provisions of the relevant directives.

1.1 Composition of the National Discrimination Tribunal

The National Discrimination Tribunal has a chairperson, six members and their personal deputy members. The Tribunal also has a full-time secretary, a rapporteur and assisting personnel. The chairperson and members of the Tribunal are part-time elected officials, and their term lasts for four years.

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, Master of Laws with court training

Members:

Ms Vilja Kutvonen, District Court Judge, Master of Laws with court training, vice-chair
Mr Markku Fredman, Advocate, Master of Laws with court training
Ms Thea Lång, Senior Secretary of the Court of Appeal, Master of Laws with court training
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, Master of Laws with court training
Ms Kirsi Tarvainen, Advocate, Master of Laws with court training
Mr Hannu Kiuru, Licentiate of Laws, with court training
Professor Tuomas Ojanen, Doctor of Laws
Professor Karmela Liebkind, Doctor of Social Sciences
Mr Ahmed Akar, Licentiate of Philosophy

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, their deputies and the rapporteur must be familiar with the work of the Tribunal.

The members and the rapporteur have liability for acts in office, and the provisions on disqualification of a judge in the Finnish Code of Judicial Procedure apply to them.

Secretary of the Tribunal:

(Until 30 September 2009) Mr Tapio Susi, Master of Laws with court training, Master of Social Sciences

Rapporteur, part-time:

(Since 16 November 2009 the temporary secretary of the Tribunal) Mr Juhani Kortteinen, Master of Laws

Assisting personnel:

Mr Pasi Ontermä, Departmental Secretary

(1 June 2009 to 31 December 2009) Mr Magnus Nyström, temporary Planning Officer

1.2 Functions of the National Discrimination Tribunal

The National Discrimination Tribunal is an impartial and independent judicial body established under the Non-Discrimination Act and appointed by the Government. It deals with petitions concerning ethnic discrimination and, along with the district courts and administrative courts, gives legally binding decisions in matters relating to discrimination. Its decisions may be appealed to the Administrative Court (Non-Discrimination Act 21/2004, Act on the Ombudsman for Minorities and the National Discrimination Tribunal 666/2001 and 22/2004). The Tribunal does not replace existing remedies or review tribunals.

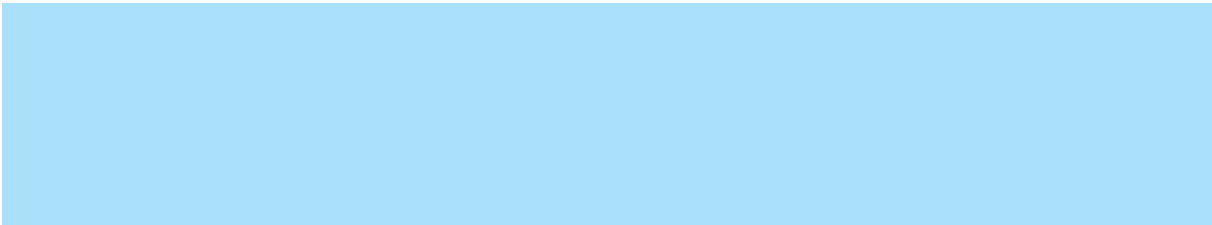
The Tribunal's function is to give legal protection to those who consider they have been discriminated against or victimised. Victimisation means putting someone at a disadvantage because they have complained or taken steps to secure equal treatment.

The Tribunal may prohibit continued or repeated discrimination or victimisation based on ethnicity and impose conditional fines to enforce compliance with its decisions and order payment of such fines. It may also endorse settlements between parties. The courts, 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 bodies under public law that fall within the scope of application of the Act include the State, municipalities, 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 ethnicity 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 provide information.

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



Discrimination based on ethnicity falls within the competence of the Tribunal when the matter relates to:

- the basis on which a profession or trade is carried on or support for business activities is given
- 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 organisations
- social welfare and health care services
- social security benefits or other forms of support, discount or 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 deal with those employment issues that are the business of the labour protection authorities.

In this respect, therefore, the functions of the Tribunal differ from those of judicial bodies in many other EU Member States.

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

1.3 Consideration of petitions by the National Discrimination Tribunal

A matter may be brought before the National Discrimination Tribunal by any party who claims to 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 deals with petitions free of charge, and all documents, including a copy of the judgment, are also free. The parties themselves are liable for other costs.

The Tribunal deals with petitions in writing. These may be in Finnish, Swedish, Sámi or English. The Tribunal's decisions are given in Finnish, Swedish or Sámi.

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

When the Tribunal receives a petition, the party accused of discrimination (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 further statement 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 under section 6 of the Act has been infringed, the defendant must demonstrate that the prohibition has not been infringed.

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

2. Decisions of the National Discrimination Tribunal

In 2009, the National Discrimination Tribunal convened six times.

The Tribunal gave, for the first time, decisions on cases of alleged discrimination by providers of vocational education and cases of alleged discrimination in the granting of social assistance and the processing of housing applications.

The Administrative Courts of Oulu and Helsinki upheld two of the Tribunal's decisions that had been appealed against. One was an injunction and the other a decision to reject a petition. In both cases, the decision was further appealed to the Supreme Administrative Court. The Tribunal's injunctions concerning discrimination against Sámi people were appealed to the Administrative Court of Rovaniemi where the appeals are still pending. Furthermore, an appeal against an injunction issued by the Tribunal in 2007 is pending before the Administrative Court of Vaasa. So far none of the Tribunal's decisions have been altered on the basis of an appeal to the Administrative Court.

In 2009, the National Discrimination Tribunal rejected four petitions, and 11 petitions were not investigated as they were deemed by the chairperson to fall outside the competence of the Tribunal. Three decisions were appealed to the Administrative Court. With injunctions served in 2008, a conditional fine was imposed, though none have been enforced yet.

What follows is a brief description of four key cases.

More detailed accounts of cases are available in Finnish on the National Discrimination Tribunal's website at

<http://www.syrjintalautakunta.fi>

Rejection of a petition concerning access to a restaurant

A citizen of Senegal (hereafter referred to as 'A') wanted to go to a restaurant in Helsinki together with his wife B and friends C, D, E, F and G. Security steward H denied A access to the restaurant because this was wearing cargo trousers. The National Discrimination Tribunal took the view that, under section 5 of the Act on Accommodation and Food Service Operations, restaurant T had the right to lay down certain such conditions for access to the restaurant that are based on its operating principles and relate to its dress code. These conditions must be in line with the instructions issued by the restaurant, and they are not discriminatory as such. A was wearing cargo trousers which were excluded under the restaurant's dress code, and he also failed to show that the restaurant had accepted any other people wearing cargo trousers as their customers. Therefore, the conduct of restaurant T could not be regarded as discriminatory. In egregious cases, deviating from the generally applicable conditions also means serving a customer in a humiliating way that shows contempt, or in some other offensive manner. Making a decision whether to accept someone as a customer, and the procedure followed in connection with this, are part of any restaurant's normal service activities. The exchange of words, claimed to be offensive by the petitioner, took place between B and the restaurant after the whole group had already left the restaurant because A was not accepted as a customer. Because B had returned to the restaurant afterwards to get the contact details of the restaurant manager for the purpose of further clarifying the situation, without her or any other people from the group wanting to access the restaurant, the Tribunal was of the opinion that the case was no longer about enforcing the decision to deny access to the restaurant. The Tribunal did not consider it established that the doormen of restaurant T would have discriminated against the petitioner.

Decision of 11 May 2009,
ref. 2009/595

Dismissal of a petition as inadmissible

After the entrepreneur in question, operating a business under a trade name, changed into another entrepreneur, the Tribunal considered that under the circumstances it was not able to issue an injunction against the business which was now run by a new entrepreneur.

Decision of 11 May 2009,
ref. 2008-1347/Pe-2

Rejection of a petition concerning provision of social services

Person A claimed to have been discriminated against on the grounds of his immigrant background when his application for social assistance and housing application were processed. The Tribunal considered it established that requesting further clarification from A and the delay in the processing of his application for social assistance did not deviate from the standard procedure followed by city C's social and health authorities. The Tribunal took the view that A was not discriminated against when he applied for social assistance and housing from city C.

Decision of 10 August 2009,
ref. 2009/1081

Rejection of a petition concerning access to education

Petitioner A claimed to have been discriminated against on the grounds of being from an immigrant background when she attended a course on social welfare and health care at educational institution X. A took part in a training programme on social welfare and health care that was intended for immigrants and organised by X. The programme was part of labour market training for adults made available through an employment office. It was the Tribunal's opinion that institution X had showed in the documents provided that the evaluation of the petitioner and the procedure followed by the institution in matters concerning the petitioner's training were based on relevant and acceptable factors. The Tribunal was of the opinion that the petitioner was not discriminated against in relation to the training organised by the institution, and the Tribunal thus rejected the petition.

Decision of 15 December 2009,
ref. 2009/2266

3. Opinions by the National Discrimination Tribunal

Under section 14 of the Non-Discrimination Act, the courts, the Ombudsman for Minorities, other authorities or 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 is not binding on the party requesting it.

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 it is drawing up or updating an equality plan. The Tribunal's powers, however, do not extend to the supervision of equality plans.

The most important opinions by the Tribunal are available in Finnish at the Tribunal's website at

<http://www.syrjintalautakunta.fi>

3.1.1 Opinion for the Administrative Court of Rovaniemi in a case concerning the City of Rovaniemi

The Administrative Court of Rovaniemi has requested an opinion from the National Discrimination Tribunal on the appeal made by the City of Rovaniemi against the Tribunal's decision of 27 November 2008 (Ministry of the Interior ref. 2008-25/pe-2) on day care for Sámi children.

In its opinion, the Tribunal states the following:

1) Cancellation of a conditional fine

On the grounds stated in its decision, the Tribunal considers it necessary to impose a conditional fine in order to ensure immediate compliance with its injunction. The City of Rovaniemi has put forward no arguments in support of its claim that would give reason to cancel the conditional fine imposed.

2) What is the City of Rovaniemi obliged to do?

Under section 13(1) of the Non-Discrimination Act, the National Discrimination Tribunal is empowered to issue an injunction against discrimination.

The Tribunal's decision concerned the City of Rovaniemi's arrangements for day care services for Sámi children. The decision clearly states what kinds of procedures the Tribunal's injunction applies to. The Tribunal is empowered to issue injunctions against discrimination but it cannot determine how the City of Rovaniemi should arrange the day care services for Sámi children.

3) Setting a time limit

The Tribunal has not considered it necessary to set a separate time limit for compliance with the injunction, because the City of Rovaniemi has not

submitted a statement requesting more time to do so.

Under section 10 of the Act on Conditional Fines, the Tribunal may order a conditional fine to be paid if the injunction is not complied with and there is no justifiable reason for not doing so.

When considering whether to impose a conditional fine, the Tribunal has the possibility of not imposing it if the City of Rovaniemi gives a justifiable reason for not complying with the Tribunal's injunction. The Tribunal is obliged, under section 22 of the Act on Conditional Fines, to hear the City of Rovaniemi before imposing the fine.

Moreover, under section 11 of the Act, the conditional fine imposed on the City of Rovaniemi may be reduced if the City succeeds in showing during the hearing conducted under section 22 of the Act that it has essentially complied with the Tribunal's injunction or there is another well-founded reason for reducing the amount of the fine.

4) Proportionality of a conditional fine

The National Discrimination Tribunal has imposed a conditional fine on a municipality, which is a body under public law. Under section 22 of the Constitution of Finland, public authorities have a specific obligation to guarantee the observance of fundamental rights and freedoms and human rights.

In 2008, conditional fines amounting to up to EUR 2 million were imposed on bodies under public law so that they would fulfil the obligations set out in the Act Amending the Primary Health Care Act. The amount of a fine imposed by the Tribunal on a body under public law is fairly small.

On the grounds mentioned above and those stated in the Tribunal's decision, the conditional fine imposed cannot be considered unreasonable.

Decision of 9 February 2009,
ref. 2008-25/Pe-2

3.1.2 Opinion for the Ombudsman for Minorities on the application of the Non-Discrimination Act

The Ombudsman for Minorities requested the National Discrimination Tribunal to submit an opinion under section 14 of the Non-Discrimination Act on the application of the Act, more precisely on the content and scope of application of section 2(1)(1), in a case concerning ethnic discrimination.

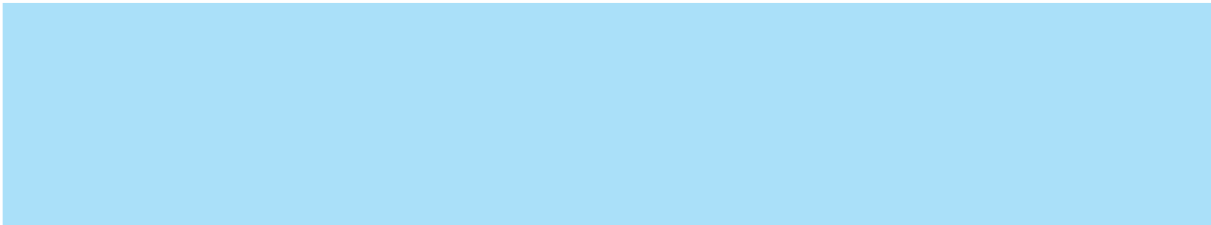
In its opinion, the Tribunal stated that under section 2(1) of the Non-Discrimination Act, the Act applies to both public and private activities when the question is one of the basis on which a profession or trade is carried on or support for business activities is given.

Under the Government proposal, the Act should be applied to all natural and legal persons in private and public activities, and discrimination should also be prohibited when making agreements between those carrying on a trade. In addition, when concluding contracts for the completion of a specified task and contracts for services, municipalities cannot select their contracting partners on a discriminatory basis. The grounds for evaluating the suitability, reliability, reputation, solvency and evident capability of a person carrying on a trade may not be discriminatory. (Government proposal 44/2003, p. 34)

In the context of a statement in the Government proposal that municipalities may not select their contracting partners on a discriminatory basis when concluding contracts for the completion of a specified task and contracts for services, it becomes clear that those carrying on a trade may not act in a discriminatory manner in similar situations either – whether acting in a capacity of a natural or legal person.

The Government proposal does not specifically go into the concept of a person carrying on a trade; assistance with interpretation may, therefore, be gleaned from other relevant pieces of legislation and their explanatory memoranda. The nearest comparable provisions are those in the Act on the Regulation of Contract Terms between Businesses (1062/1993). Under section 1(1) of the Act, businesses are, when concluding contracts with other businesses, prohibited to use a contract term which is unfair to the other contracting party, taking account of the latter's need for protection due to its weaker position and other related aspects. According to the Government proposal (39/1993), the concept of a person carrying on a trade must have a broad interpretation.

If a person carrying on a trade chooses a contracting partner on the basis of discrimination, this has an impact on the basis on which a trade is carried on and means discrimination prohibited in the Non-Discrimination Act.



The Tribunal thus took the view that section 2(1) (1) of the Non-Discrimination Act applies to a case where the parties to the contract are persons carrying on a trade with different statuses – one is a private person from an ethnic background carrying on a trade and the other a public limited company. The Tribunal considers that this kind of contract on running a post office franchise or other postal delivery services is a contract between those carrying on a trade under the Government proposal.

When assessing the significance of the legal form of the businesses run by the contracting parties to the applicability of the Non-Discrimination Act, similarities between the businesses in question and the legal form or size of the businesses do not seem to be significant, according to the explanatory memorandum to the Non-Discrimination Act. What is essential is how quickly a person from an ethnic background carrying on a trade can identify themselves with the business and its operation. This affects how the situation is to be evaluated, i.e. whether it is a case of discrimination against and the legal protection of an individual person carrying on a trade. The fundamental rights of legal persons are also protected, but not as strongly as those of individuals. The further away legal persons are from individuals and the more minor and indirect the impact of measures is on the concrete benefits of individuals, the more unlikely it is that the measure targeted at the legal person is in conflict with the fundamental rights of individuals (Statement of the Constitutional Law Committee 45/1997).

The above mentioned factors may, however, play a role in assessing whether someone is put at a disadvantage. Persons carrying on a trade who are on an equal footing with each other must be able to arrange their contractual relations as they wish without anyone from outside intervening in the contract terms to be used.

Decision of 15 December 2009,
ref. 2009/3384

4. Other decisions

4.1 Tribunal's decision of 26 March 2009 on the use of the Sámi language in filing an application

The National Discrimination Tribunal had earlier issued guidelines stating that applications could be submitted to the Tribunal in Finnish, Swedish or English.

The Tribunal is not listed in the Sámi Language Act as an authority to which the Act is applied, whereas the Ombudsman for Minorities, the Chancellor of Justice, the Parliamentary Ombudsman and the Consumer Complaints Board are. Section 2(1)(2) of the Act states, however, that the courts whose jurisdiction covers the municipalities of Enontekiö, Inari, Sodankylä and Utsjoki (the Sámi homeland) in full or in part fall within the scope of application of the Act.

Accordingly, a situation could arise where a petition may not be submitted to the Tribunal in the Sámi language; however, people living in the Sámi homeland may appeal against the Tribunal's decision to the Administrative Court of Rovaniemi in the Sámi language.

The Tribunal took the view that as for the scope of application of the Sámi Language Act, the Tribunal should be considered a court whose jurisdiction (the whole Finland) covers the municipalities of the Sámi homeland.

The National Discrimination Tribunal decided that petitions could be submitted to the Tribunal in the Sámi language.

5. Other activities

On 16 November 2009, Mr Juhani Kortteinen, Senior Officer, Master of Laws, took up the position of temporary secretary of the National Discrimination Tribunal. Prior to that, he was a part-time rapporteur for the Tribunal.

On 26 March 2009, the Tribunal approved instructions on the processing and publicity of the Tribunal's documents. On 10 August 2009, it approved instructions on archiving documents, and the retention period for documents. In addition, the secretary of the Tribunal drew up written instructions on translating the Tribunal's documents into Swedish. Reports of the cases brought before the Tribunal in 2009 were translated into Swedish, but they will be published in 2010 as it takes a lot of time to revise and correct the translations.

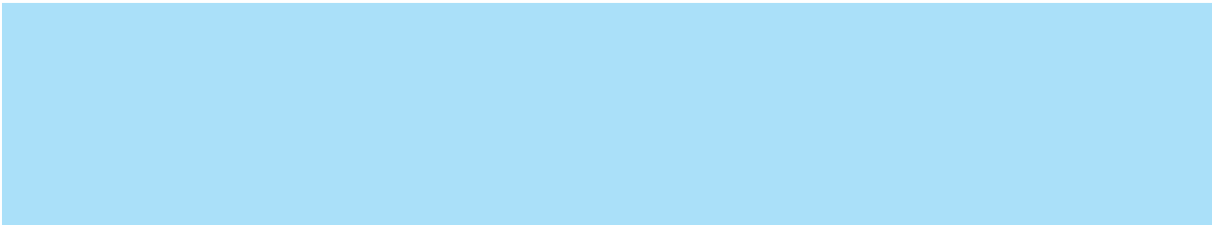
The role of the Tribunal and its secretary were clarified when, on 15 April 2009, the Chancellor of Justice gave its decision pursuant to a complaint. It strengthens the Tribunal's status as an independent judicial body whose decision-making is independent and impartial. The secretary is an official assisting the Tribunal in its decision-making work; the secretary does not, however, take part in the actual decision-making so his status is not comparable to that of the members of the Tribunal. The secretary has a public-service relationship with the Ministry of the Interior, which means that the ministry may include public service provisions on the secretary in its rules of procedure.

The website of the National Discrimination Tribunal was further developed, and case reports, going back to 2005 and drafted on the model of those of the Administrative Court, were made available to the public on the website. They feature a case abstract and the actual decision, with the private information omitted. The website now also has a section in the Sámi language, and a completely new section where the Tribunal's most important opinions are published. Furthermore, in connection with case reports, the Tribunal now publishes decisions of the relevant Administrative Court on appeals against the Tribunal's decisions.

The Tribunal submitted to the Ministry for Foreign Affairs a report on its work for the purpose of drawing up the sixth periodic report under the UN Covenant on Civil and Political Rights.

The Tribunal's first annual report was published in Finnish, Swedish, Sámi, Russian and English. The annual report and the different language versions were also published on the Tribunal's website, and the report was distributed in a way intended to reach those in potential need of legal protection.

The secretary of the Tribunal talked about the Non-Discrimination Act and the Tribunal's work in training events for immigrants held in Oulu, Seinäjoki and Helsinki.



The secretary attended, as an invited expert and as a guest of the Commission, a legal seminar on the implementation of EU law on equal opportunities and anti-discrimination held in Brussels. He also took part in a Nordic seminar on constitutional law relating to the role of courts in the interpretation of fundamental rights held in Turku, and a seminar on empirical research on law held in Joensuu. In addition, he spent five days learning more about the work of district courts under the guidance of the District Court of Tuusula, and one day acquainting himself with the work of administrative courts at the Administrative Court of Helsinki.

The departmental secretary of the Tribunal attended a Swedish language course and a course on using the desktop publishing software purchased for the Tribunal.

The appropriations allocated for the Tribunal's operations proved insufficient. This was mainly due to the additional expenses arising from the publication of the different language versions of the annual report and the call for applications for the post of secretary. These were not included in the budget. Due to lack of sufficient funds, a decision was made to postpone the publication of the Tribunal's brochure until 2010.

Cases brought before the National Discrimination Tribunal and decisions 2008-2009

	2008	2009	Yht. 08-09
Cases	15	23	38
Decisions issued by the Tribunal	12	10	22
Decisions issued by the chairperson	11	13	24
Injunctions	2 (conditional fine imposed)	0	2
Requests for an opinion by administrative courts	3	5	8
Requests for an opinion by authorities	2	3	5



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