

2006

**Annual Report
of the Ombudsman for Minorities**

Annual Report 2006 of the Ombudsman for Minorities

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Facing new opportunities

The ending of the fifth operating year of the Ombudsman for Minorities marked a turning point. Last year, the old administrative structure was still in place, and the Ombudsman for Minorities was an authority linked to the Ministry of Labour. In April 2007, a decision was made under the Programme of the new Government to rearrange the administrative sector of the Ministry of Labour, and in this context to move the Ombudsman for Minorities to work in connection with the Ministry of the Interior.

The co-operation with the Ministry of Labour needed to be developed. This was mainly about sufficient resources and the practical implementation of independence in administrative procedures.

The Ombudsman's independence was not under threat, but the operative resources remained modest. The operating appropriations, for example, were meagre.

Credibility consists of factors both at the level of the principle and the practical level. Administratively, the position of the Ombudsman must be clearly separated from the line organisation of the Ministry, and it must be possible for the Ombudsman to draft decisions and policies free from external and inappropriate influences. The resources and authorities also must be adequate for the independence to have a practical meaning. In the final analysis, the test for the Ombudsman's credibility is in the trust felt by the customers and the results achieved for them.

It is possible to implement the Ombudsman's move to the Ministry of the Interior without losing the current independence. This would also offer an opportunity of improving the prerequisites for practical work, which would enable the full implementation of tasks imposed in the Act on the Ombudsman for Minorities. The customer work currently dominates the total work input. For example, the Act specifies as one of the Ombudsman's tasks "reporting on the implementation of equality for various ethnic groups and on the conditions and position in the society of various ethnic groups." So far, the Ombudsman has had little opportunity for this type of work.

The last five years have been spent working to increase the awareness of the customers of the Ombudsman for Minorities as an authority, its tasks and the services offered to the customers. An attempt has been made to build trust on fundamental independence and the possibility of genuinely promoting and safeguarding the position of the customers. It is obvious that in the future administrative rearrangements, the preservation of credibility in the eyes of the customers must be carefully monitored.

The efforts to reform equality legislation launched by the Ministry of Justice will also include an evaluation of the position of the Ombudsman for Minorities in the administration. The minimum target is to arrange it in a manner that is sustainable over long term and that supports credibility. This work is intended to be completed during the current Government period.

In his work, the Ombudsman for Minorities has gathered experience of the status of ethnic equality and the position of foreigners in the Finnish society. Based on these experiences, which were also accumulated in customer work, the Ombudsman for Minorities expressed his views for the drafting of the Government Programme of Prime Minister Vanhanen's second Government. The comments highlighted the need to reinforce the work to safeguard equality, making anti-racism work more efficient, implementing the basic rights of the Roma and the Sami and the need for a comprehensive immigration policy that is based on equality and non-discrimination. For the whole text of this opinion, please visit the website of the Ombudsman for Minorities (www.vahemmistovaltuutettu.fi).

According to Section 6 of the Decree on the Ombudsman for Minorities (661/2001), the Ombudsman submits an annual report on his sphere of activities to the Ministry of Labour. This report on the Ombudsman's sphere of activities also covers the activities of the Office of the Ombudsman for Minorities.

Helsinki 7 May 2007

Respectfully,

Mikko Puumalainen
Ombudsman for Minorities



ACTIVITIES IN 2006

The essential strategy of the Ombudsman for Minorities was to intervene in discrimination emerging in customer contacts and other problems in the lives of ethnic minorities and foreigners. In addition to the personal situations of the customers, the Ombudsman may also react to topical problems emerging in the legislation and service structures.

Share of discrimination and inappropriate treatment in customer cases went up

It is the task of the Ombudsman for Minorities to supervise the implementation of the ethnic non-discrimination principle based on equality legislation and to promote the position and rights of foreigners in Finland. In particular, the Ombudsman intervenes in any ethnic discrimination that is uncovered. More than one half of the personnel resources of the Office are targeted at responding to customer contacts and the detailed examination of problem situations emerging through them.

The nature of the customer contracts has changed since the institution of the Ombudsman for Minorities, an increasing share of the contacts concerning discrimination and other inappropriate treatment based on ethnic origin. In 2006, nearly one half of the contacts with the Ombudsman for Minorities already concerned this area, whereas this figure for 2003 was 27%. Similarly, the number of contacts relevant to other sectors of supervision - the application of the Aliens Act and more general questions associated with integration - has gone down so that both of these account for a quarter of the reasons for contacting the Ombudsman. The number of cases that emerged and were examined based on customer contacts remained more or less unchanged: the Office processed a total of 645 customer cases.

Operating methods

The customers are served by providing them information and support in problematic situations. In addition to advice, some of these contacts result in a request for information and later an opinion of the Ombudsman for Minorities sent to the other party or competent authority in the customer case. In 2006, part of the cases were taken further either to the National Discrimination Tribunal, police investigation, for a decision to prosecute by the Prosecutor General, or the customer was directed to a legal aid.

The discrimination cases emerging through customer work make visible the most common structural problems in such as the legislation or offer of services by the society. Experts and stakeholders also act as important contacts when mapping current problems and larger wholes. The Ombudsman for Minorities makes an effort to exert influence in problems emerging this way e.g. by public addresses in the media and discussion events, and by issuing opinions in order to develop such as the legislation or the authorities' activities.

Targets and results

In 2006, as particular targets had been set fighting ethnic discrimination associated with the availability of housing and offer of restaurant services to the Roma people. Interventions in discrimination against the Roma in housing

matters were made e.g. by contacting housing companies, co-operating with authorities responsible for housing and taking the most serious cases of discrimination to the National Discrimination Tribunal. The cases of customers who had experienced discrimination in restaurants were mainly referred to police investigation. In addition, a brochure addressed to restaurants to combat discrimination was produced in co-operation with the Human Rights League, Ministry of the Interior and social partners in the sector.

As another goal was set intervening in racism occurring on the Internet. Incidents of racists writings on the Internet that became known to the Ombudsman were taken further for investigation by the Central Criminal Police.

Equality was promoted by supporting the capacities of other authorities, such as the police and the Occupational Safety and Health Inspectorates. The Ombudsman for Minorities has made long-term efforts to reinforce the activities of various bodies, such as immigrant advisory services, in advisory activities against ethnic discrimination. This also encompasses enhancing the responsibility of the Directorate of Immigration for advising their customers. The capacities of the municipalities to support those having experienced discrimination and to intervene in discrimination were enhanced in the EurEquality project, in which material was produced to develop anti-discrimination advisory services.

The independent organisational and co-operation activities of immigrant communities were supported in 2006. The Ombudsman acted in co-operation in particular with associations representing the largest immigrant groups, the Russian speakers and those with a Somali background. In addition, several years of preparatory work culminated in the establishment of the Islamic Council in Finland in November 2006. The establishment of the Council was based on a project by the Muslim co-operation organs active in Finland, which received significant support from the Ombudsman for Minorities.

“An increasing share of the contacts concerning discrimination and other inappropriate treatment based on ethnic origin.”

In the supervision of equality legislation, discriminatory terms and conditions of service contracts emerged as a new theme. The practices of certain banks, insurance companies and tele-operators were found discriminatory. Based on individual customer contacts, the terms and conditions of contracts were assessed comprehensively, also looking at the terms and conditions of other companies in the sector.

In issues relevant to foreigners, the Ombudsman for Minorities exercised his right to be heard in the application of the Aliens Act and gave opinions on the proposed deportations of Somalis. In the reporting year, the Ombudsman for Minorities paid particular attention on the interpretation of the conditions for granting permits of residence, such as meeting the requirements for means of support.

For a more exhaustive description of the Ombudsman's actions, customer cases and opinions, please refer to the section on "Discrimination and inappropriate treatment" and "Position and rights of foreigners" of this Annual Report.

Customer work

In 2006, the Office of the Ombudsman for Minorities handled 645 customer cases. The Ombudsman was contacted a total of 1,325 times. Compared to the year before, the number of contacts and customer cases to be processed went down by approx. 10%. This can at least in part be estimated to be due to the fact that the contacts were directed elsewhere, as the responsibilities of processing cases have been made more clear-cut between the Ombudsman for

The proportions calculated based on measures, or the volume of work annually

	2003	2004	2005	2006
Issues relevant to the Aliens Act	59%	34%	19%	23%
Discrimination and other inappropriate treatment	27%	33%	43%	48%
Issues relevant to integration/ housingt	14%	33%	38%	29%

The contents of contacts by subject

Issues relevant to the Aliens Act	Discrimination and other inappropriate treatment	Issues relevant to integration/ housing
permit of residence	discrimination	housing
asylum/need for protection	defamation of character	education
visas	violence	social services
citizenship	ethnic agitation	health
passports	other inappropriate treatment	working life
taking in custody		ethnic relations
refusal of entry/deportation		family life

Minorities and other authorities - also in the perspective of the customer. In cases of discrimination, the objective has thus been initially discussing the customer's experiences directly with the organisation suspected of discrimination, or with the assistance of such as an advisory service point for immigrants.

The most common response to the customers consisted of advice and the Ombudsman's opinion on the matter under scrutiny. Based on this, the customer was able to make an independent decision on further measures. In addition to advice, part of these contacts resulted in a request for information and later an opinion of the Ombudsman

for Minorities sent to the other party or competent authority in the customer case. Part of the cases were taken further either to the National Discrimination Tribunal, police investigation, for a decision to prosecute by the Prosecutor General, or the customer was directed to a legal aid.

On the authority granted to him by legislation, the Ombudsman for Minorities can refer a matter for processing by an authority under his own name. The Ombudsman for Minorities took three cases to the National Discrimination Tribunal, in addition to which he advised several persons in bringing cases before the Tribunal.

Subject areas of customer cases

Approximately one half of the customer cases (48%) dealt with discrimination or inappropriate treatment, less than one fourth (23%) problem situations in the Aliens legislation and more than one fourth (29%) others, such as problems with integration. The share of customer cases relevant to discrimination and other inappropriate treatment in the customer contacts has been

“The most common response to the customers consisted of advice and the Ombudsman's opinion on the matter under scrutiny.”

increasing during the whole existence of the Office of the Ombudsman for Minorities, and it also grew in 2006.

In the light of statistics describing the measures, too, issues to do with discrimination and inappropriate treatment resulted in the greatest number of further measures. The contacts relevant to the position of foreigners, on the other hand, resulted in the least number of measures, as most of these only required guiding the customer to take their case further e.g. by filing a complaint assisted by a legal aid.

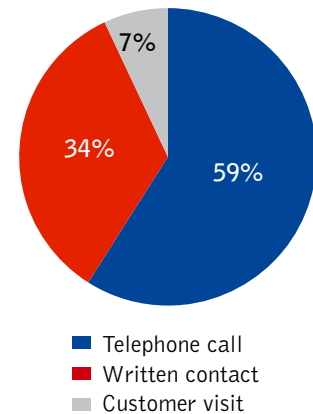
The change in the matters coming up is also seen when looking at the adverse or other party in customer cases. Even if the Directorate of Immigration remains the most common adverse party to the customers, its share in the processed cases keeps declining yearly. In more than 60% of all contacts, the other party is an authority, and only less than 10% of cases are about private people. One of the most important reasons for this is likely to be the fact that the Non-discrimination Act does

“In more than 60% of all contacts, the other party is an authority, and only less than 10% of cases are about private people.”

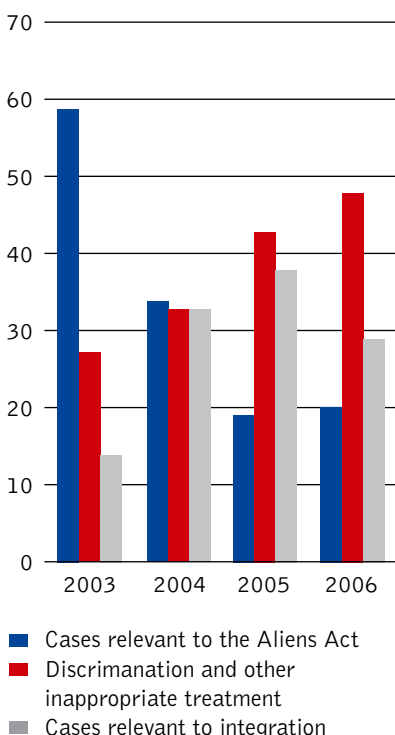
not extend to interpersonal relationships.

15% of contacts associated with discrimination and inappropriate treatment also involved defamation of character, violence or ethnic agitation. As regards issues relevant to the aliens legislation, the most common reasons for contacting the Ombudsman were permits of residence (41%) and asylum procedures (19%). Contacts associated with integration were about needs for advice as regards housing, social services, working life, education and training, family life and health care (in the order of frequency).

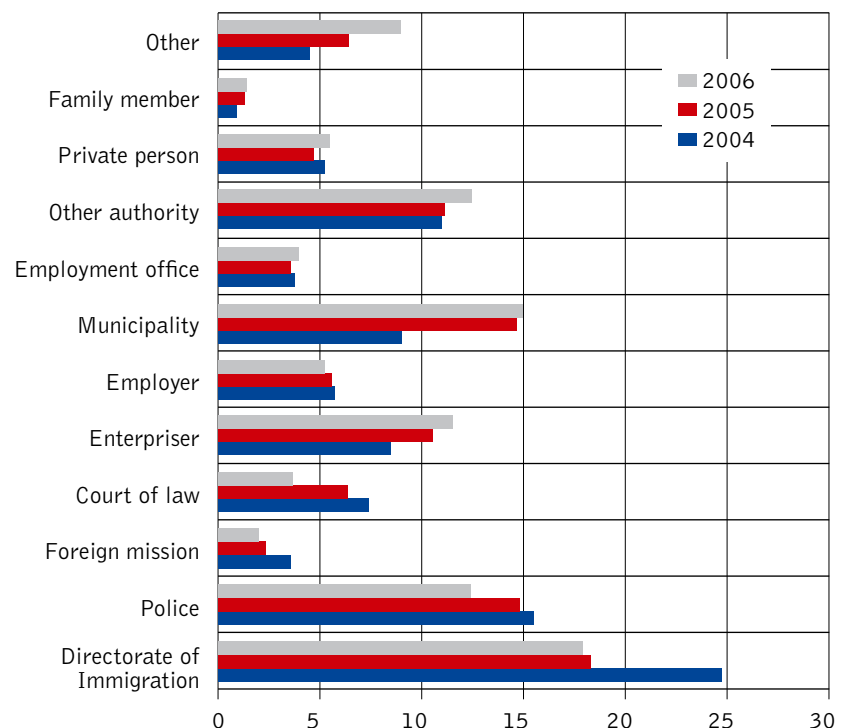
Customer contacts with the office (1,325 in total)



Change in the emphasis of customer case contents 2003–2006 (%)



The other party in customer cases processed by the Ombudsman (%)



Finances and Staff

In addition to the Ombudsman, the Office of the Ombudsman for Minorities is staffed by five Senior Officers, a Planning Officer and a Special Secretary. In view of this, the scope of the Ombudsman's tasks is considerably large, and the meagre personnel resources and appropriations did not allow for work covering the entire spectrum. In the day-to-day work, the personnel resources are mainly targeted at responding to customer contacts and examining problems emerging in these.

The appropriations did not permit engaging in information activities and studies to the required extent. The operating appropriations also are scarce in comparison with those of the Office of the Equality Ombudsman, similar in size but with operating appropriations approx. three times larger than the operating costs of the Office of the Ombudsman for Minorities, or with the Office of the Ombudsman for Children with only half the staff, the operating appropriations of which were twice in 2006 and three times in 2007 the corresponding appropriations of the Ombudsman for Minorities.

Personnel

Mr Mikko Puumalainen, Ombudsman for Minorities
(on leave of absence 3 Jan–31 Aug 2006)
Mr Rainer Hiltunen, Senior Officer, Deputy of the Ombudsman for Minorities
(Ombudsman 3 Jan–31 Aug 2006)
Ms Yrsa Korkman, Senior Officer
Ms Pirjo Takalo, Senior Officer (on leave of absence 1 Sep–31 Dec 2006)
Ms Annika Parsons, Senior Officer (on leave of absence 1 Jan–31 Jul 2006)
Mr Kari Kananen, Senior Officer (on leave of absence 1 Feb–31 Dec 2006)
Mr Massimo Zanasi, Special Secretary
Ms Päivi Okugome, Planning Officer (on leave of absence 5 Dec–31 Dec 2006)

During the Senior Officers' leaves of absence, their substitutes were:

Ms Hanna Välimaa (1 Jan–31 Jul 2006)
Mr Valtteri Nieminen (3 Jan–31 Aug and 4 Sept–31 Dec 2006)
Mr Ahmed Khalil (1 Mar–30 Nov 2006)
Ms Riikka Tella (1 Jan–31 Dec 2006, from 1 Sep on as Project Manager in the EurEquality project)

Substitute for the Planning Officer
Mr Tuomas Kilpi (27 Nov–31 Dec 2006)

Finances in Figures / by Item of Expenditure (€)

	y. 2006	y. 2005
Ombudsman for Minorities		
Allocation granted for operations	48,000	40,000
The operating expenditure	49,374	54,726
The largest items in the expenditure of the Ombudsman for Minorities		
Equipment and materials	10,937	8,870
Training services	1,843	4,053
Travel services	4,294	13,974
Printing services	15,384	10,766
Advertising services	4,246	4,509
External services	10,535	7,517
Expenditure on wages		
Allocated	405,495	357,976
Used	434,768	341,054
The Advisory Board on Minorities		
Allocation granted	3,500	1,200
Expenditure on wages/fees	415	573
Expenditure on other activities	780	1,142
The EurEquality project		
Allocation granted	40,120	20,950
Expenditure on wages	21,480	17,067
Expenditure on other activities	12,073	3,100

(these figures are ex VAT, the wages include overheads)

Establishment of the Islamic Council in Finland

Work started in 2005 to establish a co-operation body for Muslims living in Finland continued in 2006. The Ombudsman for Minorities continued to co-ordinate the project as requested in the previous meeting arranged in December 2005. The draft regulations prepared under the direction of large mosques were used as a foundation for further work; they were edited following the comments and wishes put forward, at the same time ensuring their compliance with the associations legislation. The goals of the association to be established included a representative nature and wide coverage. It had to accommodate equally the representatives of small and large communities, the capital area and other regions, the various main divisions of Islam and both women and men. To ensure the association's ability to function, it was important to make the rules as clear as possible.

The founding meeting of the association summoned and chaired by the Ombudsman for Minorities took place on 11 November 2006. All 22 religious communities, associations and foundations that were presents announced that they wanted to establish an association called the Islamic Council in Finland. As the chairperson of the Council, Ahmedani Mohamed from the Islamic Association of Turku was elected, and as the chairperson of the Board, Anas Hajjar from the Finnish Islam Society.

The Advisory Board on Minorities

In accordance with the Decree on the Ombudsman for Minorities, the Ombudsman is assisted in the prevention of ethnic discrimination and the development of co-operation between various authorities by the Advisory Board on Minorities. The members of the Advisory Board represent various Ministries, NGOs and social partners.

The Advisory Board met twice during the reporting year to discuss such as the equality plan of the Ombudsman for Minorities, the activities of the National Discrimination Tribunal and the plan prepared by the Office of the Ombudsman for Minorities to reinforce the role of municipalities in intervention in ethnic discrimination.

Composition of the Advisory Board on Minorities in 2006

CHAIRPERSON

Mr Mikko Puumalainen, Ombudsman for Minorities

VICE CHAIRPERSON

Mr Ilkka Rentola, Counsellor, Ministry for Foreign Affairs

MEMBERS AND THEIR PERSONAL DEPUTIES

Ms Sinikka Keskinen, Senior Planning Officer, Ministry of Labour
(**Ms Tarja Rantala**, ESF Coordinator, Ministry of Labour)

Mr Antti Janas, Senior Officer, Ministry of Social Affairs and Health
(**Ms Heidi Manns-Haatanen**, Senior Officer, Ministry of Social Affairs and Health)

Mr Eero J. Aarnio, Counsellor of Legislation, Ministry of Justice
(**Ms Anna-Elina Pohjolainen**, Ministerial Advisor, Ministry of Justice)

Mr Mikko Cortéz Téllez, Planning Officer, Ministry of Education
(**Ms Tarja Koskimäki**, Senior Advisor, Ministry of Education)

Ms Jaana Vuorio, Director, Directorate of Immigration
(**Ms Arja Kekkonen**, Divisional Director, Directorate of Immigration)

Ms Erja Horttanainen, Director of EU Affairs, Association of the Finnish Regional and Local Authorities
(**Mr Keijo Sahrman**, Director of Regional and Industrial Affairs, Association of the Finnish Regional and Local Authorities)

Ms Leena-Kaisa Åberg, Director of Refugee and Immigration Work, Finnish Red Cross
(**Mr Vesa Kukkamaa**, Planning Officer of Immigrant Work, Finnish Red Cross)

Mr Aysu Shakir, Project Manager, Finnish League for Human Rights
(**Mr Mikko Joronen**, Research Officer, Finnish League for Human Rights)

Ms Päivi Rask-Helin, Romano Mission
(**Ms Maria Sofia Aikio**, Secretary, Suomen Sámiid Guovuddássearvi ry - Same Council in Finland)

Ms Anna Leskinen, Executive Director, Federation of Russian Associations in Finland
(**Ms Tatiana Konovalova** - Union of Russian Associations in Finland)

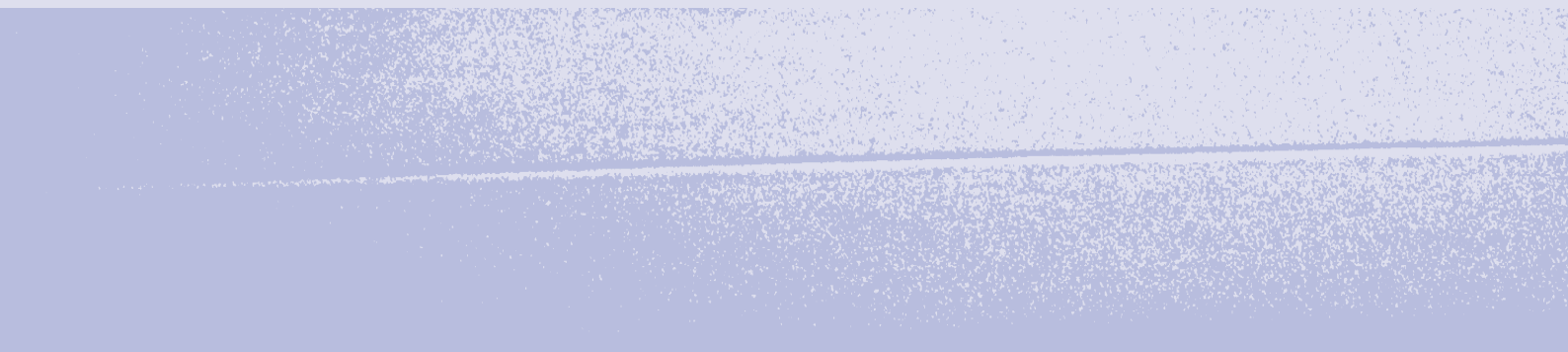
Mr Dahir Nur Faisal - Somali League in Finland
(**Mr Ali Mohamed Osman** - Somali League in Finland)

Mr Mika Ojanen, Lawyer, Service Union United PAM
(**Ms Anu-Tuija Lehto**, Lawyer, Central Organization of Finnish Trade Unions SAK)

Ms Riitta Wärn, Specialist, Confederation of Finnish Industries EK
(**Mr Mikko Räisänen**, Specialist, Confederation of Finnish Industries EK)

Mr Kaj Wahlman, Chief Inspector, Ministry of the Interior until 28 Feb 2006
Ms Pia Holm, Chief Inspector, Ministry of the Interior from 28 Feb 2006
(**Ms Riitta Koponen**, Senior Advisor, Ministry of the Interior)

Ms Päivi Romanov, Ombudsman for Equality
(**Ms Anja Nummijärvi**, Senior Officer, Office of the Ombudsman for Equality)



INTERVENING IN DISCRIMINATION AND INAPPROPRIATE TREATMENT

Foreigners and ethnic minorities living in Finland experience discrimination and inappropriate treatment arising from their background in many areas of life. The Non-Discrimination Act, which entered into force in 2004, made it possible to intervene in ethnic discrimination and inappropriate treatment in public and private services. Under the new Act, the Ombudsman for Minorities has been informed of discrimination cases in such as the educational sector, housing and offer of services. Customer cases involving the housing and offer of services for the Roma increased considerably in 2006.

Discrimination takes many forms, and it can be quite direct or hidden. Direct discrimination involves treating a person differently only because of his or her ethnic background, for example in case a shop refuses to serve a person wearing the traditional Roma dress because of his or her Roma background. Discrimination may also be indirect, in which case a person is treated differently or discriminated against based on a seemingly neutral rule or ground. An example of this is various discriminating contractual terms. A de facto offence against a person or group of people or even an order to discriminate may constitute discrimination.

An experience of discrimination and inappropriate treatment is always insulting, humiliating and real for the victim. Discrimination may make a person's every-day life more difficult and at its worse, it can emerge as a violation of basic rights, for example if a municipality declines to give Roma people in need of housing an unoccupied rented flat because of their ethnic origin.

Discrimination in the offer of services

Discriminating contractual terms

In customer contacts, several cases emerged concerning discriminatory contractual terms when taking out an insurance or getting a mobile phone

Section 6 of the Finnish Constitution (731/1999) lays down provisions on the equality of all people. No-one may without a justifiable cause be treated differently because of such as their language or ethnic origin. The Non-Discrimination Act prohibits discrimination in the offer or accessibility of services because of ethnic origin (Non-Discrimination Act 21/2004, Section 2). The Finnish Penal Code prohibits discrimination because of national or ethnic origin and makes it punishable (Penal Code 39/1889, Section 11.9).

The prohibition of discrimination concerns the private exercising of a trade or profession with the associated services. Services must be offered equally to all, and a person may not be placed in an unequal or essentially inferior position because of their ethnic origin or nationality. The Non-Discrimination Act also bans the type of discrimination where a rule or a justification that appears neutral in fact places a person in an inferior position than others (indirect discrimination).

subscription. This is why the Ombudsman for Minorities also started independently supervising the services and contractual terms offered by both insurance companies and teleoperators. This supervision will continue in 2007.

In line with the freedom of contract, the supplier of services has the right to reject a contract, but the decision or contractual terms may not be discriminatory and in breach of the Non-Discrimination Act. Discriminatory contractual terms refer to a situation where an applicant for services is, without a justifiable reason, subjected to different requirements or obligations to provide information in order to conclude the contract, or if the application is turned down because of the applicant's nationality or ethnic origin.

The National Discrimination Tribunal's decision concerning an insurance company

The National Discrimination Tribunal issued its decision to an application submitted by the Ombudsman for Minorities in 2005. Before granting health insurance policies, an insurance company asked foreign nationals to submit information on the duration of their stay in Finland and a copy of their SII card. Finnish citizens were not, however, required to provide information on whether or not they had lived abroad or if they were covered by the Social Insurance Institution's health insurance. In practice, this can lead to a situation in which Finnish citizens who have lived abroad for

decades, or all their lives, can get a health insurance policy without providing information on the length of their stay. A foreign national, however, is obliged to provide information on the length of their stay even after living in the country for decades, and if this information is not supplied, the person in question will not be issued a health insurance policy.

The practice of only requiring this information of foreigners put them in a particularly disadvantaged position. An application could be rejected based on the fact that the foreigner did not submit the requested information. According to the Ombudsman's interpretation, the practices of the insurance company in this respect constituted indirect discrimination prohibited in the Non-Discrimination Act.

The Ombudsman for Minorities asked the National Discrimination Tribunal to investigate if the prohibition of discrimination contained in Section 6 of the Non-Discrimination Act (21/2004) was violated in the consideration of granting a health insurance. The Discrimination Tribunal issued its decision on 28 August 2006, according to which the practices of the insurance company regarding foreign applicants for an insurance policy did constitute indirect discrimination. The Discrimination Tribunal prohibited the insurance company from processing applications for a health insurance policy in a manner that puts foreigners in a disadvantaged position compared to Finnish citizens.

Section 6.2 of the Non-Discrimination Act (20.1.2004/21)

Discrimination means:

- 1) the treatment of a person less favourably than the way another person is treated, has been treated or would be treated in a comparable situation (direct discrimination);
- 2) that an apparently neutral provision, criterion or practice puts a person at a particular disadvantage compared to other persons, unless said provision, criterion or practice has an acceptable aim and the means used are appropriate and necessary for achieving this aim (indirect discrimination);
- 3) the deliberate or de facto infringement of the dignity and integrity of a person or a group of people by the creation of an intimidating, hostile, degrading, humiliating or offensive atmosphere (harassment);
- 4) an instruction or order to discriminate.

According to the decision, equality should be ensured in enquiries concerning the length of time the applicant had resided in Finland and whether or not they had an SII card.

The insurance company changed its insurance conditions to ensure their equality in 2006.

Mobile phone operator's contractual terms for foreigners

Before opening a mobile phone connection, the mobile phone operator automatically checked the address data of foreign customers in the Population Information System. In addition, information was required on how long the customer had been living in Finland, in case the Population Information System showed that the customer had been living at their current address for less than two years. In case the customer did not provide information on the length of time they had been living in Finland, a deposit was required, otherwise the operator refused to grant a mobile phone subscription to the customer. The mobile phone operator did not check the address data of Finnish customers, nor make enquiries about how permanently they were living in Finland, whether they had lived abroad or whether their address had changed.

In practice, this can lead into a situation in which a Finnish citizen who has been living abroad all his or her life and in Finland for less than two years

can get a mobile phone subscription without submitting this information. For foreigners, on the other hand, the length of time they had been living in the country was checked, even if they had been resident in Finland for years. A written certificate of being resident in Finland was also required of a foreigner who had been living in Finland for more than two years but who had moved within the country during the last two years.

If this information was not provided, a foreign citizen was asked to pay a deposit. In addition, the foreigner was asked to pay a deposit in any case, if he or she had been living in Finland for less than two years. Those Finnish citizens who had been living in Finland for less than two years were only required to pay this deposit in case they themselves announced that they did not have a permanent address in the country.

The operator had equal possibilities of checking the address data in the Population Information System as well as asking how long the customer had been living in Finland or whether they had been absent from the country in the case of both foreigners and Finnish citizens. If the intention was, however, to enable the operator to establish the creditworthiness and possibilities of recovering outstanding payments from the customer, the time of residence conditions and the duty to provide information should have concerned Finnish

and foreign customers equally.

According to the Ombudsman's interpretation, the duty to provide information on the time of residence and requiring a deposit only from foreigners was indirect discrimination prohibited by the Non-Discrimination Act. The mobile phone operator finally announced having changed their conditions so that the provision of information on the time of residence and requirement of deposits will in the future follow harmonised terms and conditions.

Getting a home insurance

In autumn 2006, the Ombudsman for Minorities submitted an application to the National Discrimination Tribunal requesting the Tribunal to establish if an insurance company had violated the prohibition of discrimination pursuant to the Non-Discrimination Act and, if this was the case, to prohibit the company under penalty from continuing or renewing the discriminatory procedure in the offer of insurance services.

A social worker had asked for a home insurance quotation on behalf of a refugee family, but the representative of the insurance company had said they were not interested in refugees as customers. In the information provided by the adverse party on the case, they denied having said this. E.g. an interpreter had been present when the social worker telephoned the insurance company. The Ombudsman felt that a suspicion of discrimination had arisen in the matter and referred it to the National Discrimination Tribunal. At the end of the year, the Tribunal was still processing this case.

Granting of insurance policies associated with a mortgage

A customer contacting the Ombudsman for Minorities suspected that they had been discriminated against because of their immigrant background or ethnic origin when applying for an insurance associated with a mortgage with a bank. The customer and his spouse had taken a mortgage out of a bank, in which context they had enquired about the mortgage protection insurance

offered by the bank. The customer claimed that they were initially refused all insurance offers on the basis that they do not speak Finnish fluently. They felt that the language issue was an excuse not to grant an insurance.

According to the customer, the bank had also told them that they could not be granted an insurance against serious illness, because the health data of the applicants was not available. The bank had also informed them that they could not be issued an unemployment insurance, because the applicants did not have permanent jobs. The couple had lived and worked in Finland for over six years.

The bank explained to the Ombudsman for Minorities their practices concerning requests for information from foreign applicants for insurance. The bank did not, however, require similar information from Finnish citizens, even if they had been living abroad just before taking out the insurance. In case of the requirement of having sufficient understanding of the contract language, which was acceptable as such, the bank had not clearly informed the customer of the possibility of avoiding the language problem by having the text of the contract translated at the customer's expense and by using an interpreter.

The bank also referred to possible taxation problems arising in case of foreigners. The Ombudsman responded, however, that Finnish citizens may also have taxation links abroad and that articles can be included in the insurance conditions that prevent such problems, concern all insured persons equally and impose the duty of giving notification of any changes that affect the liability of the insurer.

The Ombudsman felt that the practices and requirements of the bank were partly in breach of the Non-Discrimination Act. The bank changed its practices as recommended by the Ombudsman and announced that they were going to remove those conditions for issuing an insurance that constituted indirect discrimination.

Discrimination in shops and restaurants

The actions of shops and restaurants are a significant area of the Ombudsman's customer work. During the year 2006, the Office of the Ombudsman for Minorities was contacted by a number of customers about the refusal of restaurants and shops to serve foreigners and Roma people. The discriminatory actions of shops, in particular, make the every-day life of victims particularly difficult. The discrimination is not limited to preventing access to premises, but the actions of shops and companies may also have the essential elements of harassment. This is the case when the customer is deliberately followed, interrogated or examined in front of all other customers because of nothing else but the ethnic origin of the customer.

Discrimination in restaurant services

Such as practices associated with dress code applied to the selection and serving of customers by restaurants may be acceptable grounds, but in case these are only applied to a person representing an ethnic minority, they constitute discrimination. In case the restaurant expects the customers to dress up, customers wearing runners should be treated equally despite their ethnic origin.

As part of its co-operation and influencing activities, the Office of the Ombudsman for Minorities took part in a project co-ordinated by the Finnish League for Human Rights together with the Finnish Hotel and Restaurant Association, the Service Union and the Police Department of the Ministry of the Interior, as a result of which the brochure "Equality in customer service" was published. This brochure aims at increasing awareness of the requirements of non-discriminating treatment and promoting the equal treatment of the customers. The brochure was mainly distributed to the shop stewards of hotel and restaurant workers and restaurant owners.

A discrimination case in Helsinki:

In 2005, the Ombudsman for Minorities asked the National Discrimination Tribunal to establish if a restaurant had

violated the Non-Discrimination Act by refusing entry to a black person whose shoes were of the wrong type. Other customers of the restaurant had been wearing runners similar to the person who was refused entry.

According to the decision of the National Discrimination Tribunal, the doorman had refused the customer entry to the restaurant because of the customer's ethnic background. The Discrimination Tribunal prohibited the doorman from continuing discrimination intended in Section 6 of the Non-Discrimination Act based on ethnic background, preventing the customer in question from entering the restaurant and refusing to offer him services.

Discrimination case in Oulu:

The Ombudsman for Minorities asked the National Discrimination Tribunal in 2005 to establish if a restaurant had violated the prohibition of discrimination in the Non-Discrimination Act. The restaurant manager had forbidden the employees to serve foreigners. The manager had used a degrading expression of the customer group.

The Discrimination Tribunal agreed that the expression used by the restaurant manager was insulting to the customers and created an atmosphere that was derogatory to them in the restaurant. The instructions given by the restaurant manager also matched the definition of discrimination as an order not to serve customers based on their ethnic origin. Further, the company owning the restaurant should have taken measures to prevent unlawful actions in the selection of the restaurant's customers. The National Discrimination Tribunal prohibited the restaurant manager and the company that owns the restaurant from discriminating against the customers based on their ethnic origin.

Discrimination in a clothing shop

A factory shop located in Turku had refused to serve four Roma women because of their ethnic origin. The company had been asked to leave the shop as soon as they had arrived. In its response the shop made appeal to the

fact that no groups larger than three people are allowed in the shop at any one time. At the time, the group was not informed of any restrictions in the number of persons on the premises. Neither did the shop suggest that the group could divide into smaller groups so that they could be served. In addition, those who remained on the premises were not served even after two of them had left.

The woman who brought the matter up and her group felt that their treatment was insulting and humiliating also for the reason that at the time, there was another customer representing the main population in the shop. The group was threatened by the arrival of the security guard, in case they would not leave, and they had been asked to leave the shop because of their ethnic origin in presence of other customers. This is an intentional or factual violation of the dignity and integrity of both the group in question and the Roma population.

In the light of the details that came out, the actions of the shop seemed discriminatory and at least partly matched the definition of harassment. The Ombudsman for Minorities asked the Discrimination Tribunal to set a conditional fine to ensure compliance with the prohibitive decision. The Discrimination Tribunal has not issued a decision in the matter as yet.

Housing issues of the Roma

Discrimination associated with housing has proved a problem that specifically concerns the Roma minority. During the reporting year, some 40 different cases of discrimination relevant to the housing issues of Roma people were reported to the Ombudsman. Many contacts concerned the considerably long waiting times to which Roma candidates had been subjected. Sometimes information and commitments are required of the Roma as conditions for getting a contract of lease that are not required of other applicants for rented flats.

Contacts with the Ombudsman were mainly about discrimination experienced

“Discrimination associated with housing has proved a problem that specifically concerns the Roma minority.”

in the selection of residents for state-subsidised rented housing. The customers often report they do not even try to find a rented flat at the private market, as the owners regularly refuse to rent the flat once the Roma background of the applicant is revealed.

In 2006, the Ombudsman submitted to the National Discrimination Tribunal a case involving the customer selection for rented flats. The Tribunal was requested to impose a conditional fine on the municipality to ensure that it will not continue or renew the discrimination based on ethnic origin. As grounds for ignoring a Roma family in the customer selection were given e.g. that the municipality in question was not “the best possible alternative” for Roma people, and it was recommended that the applicants move to another municipality.

The Discrimination Tribunal found that this constituted discrimination based

on ethnic origin prohibited in the Non-Discrimination Act, and the Tribunal prohibited the municipality from continuing or renewing the procedure that was found discriminatory. On request of the Ombudsman, the Tribunal imposed a conditional fine of EUR 4,000 to ensure that the prohibition is not violated.

The Ombudsman also looked into a case where a Roma couple were expected to provide a subletting agreement to ensure rent payment as a condition for concluding a rental agreement, while this condition was not applied to applicants that were part of the main population but in a similar financial position. The Ombudsman issued an opinion on the case and urged the municipality responsible for supervising the resident selection to take measures ensuring that the resident selection procedure would comply with the requirements of the Non-Discrimination Act.

Stakeholder activities in housing matters

In addition to investigating individual cases, an effort was made to intervene in housing-related discrimination by means of interadministrative co-operation, training and information. A joint meeting of the Secretary-General of the Advisory Board on Romani Affairs, the Planning Officers of Regional Advisory Boards on Romani Affairs and the Ombudsman’s Office was arranged in the Office of the Ombudsman for Minorities, during which a wide-ranging discussion was had on discrimination experienced by the Roma especially in housing matters and the needs for anti-discrimination advice.

The Advisory Board on Romani Affairs, on the other hand, organised a meeting on the housing issues of the

Discrimination at the housing market is a serious form of discrimination, in which more efficient intervention is needed. The exclusion risk of the homeless is high, and a home that meets the minimum requirements is a basic precondition for a dignified life. In order to rectify the situation, the openness of resident selection should be improved, and in the supervision of resident selections, attention should be paid to the equal treatment of applicants. In addition, the municipalities could in their equality planning also pay attention on promoting and implementing equality in housing matters. Discrimination at the housing market may prevent individuals from using their right to select their place of residence guaranteed by the Constitution.

Roma, in which not only a representative of the Ombudsman for Minorities but also the representatives of the Ministry of the Environment, the Ministry of Social Affairs and Health, the State's Housing Fund, the Association of Finnish Local and Regional Authorities and the Regional Advisory Board on Romani Affairs in Southern Finland took part.

The educational sector

The Office of the Ombudsman for Minorities receives relatively few contacts concerning the world of education. Children, young people and parents probably are not very familiar with the possibility of turning to the Ombudsman in educational matters. This is why the activities in the educational sector mainly consist of measures to promote equality, and less of handling discrimination cases. Consequently as part of measures to promote equality, an effort will be made to increase the customers' awareness of their rights.

Segregation in forming teaching groups

On the application of the Ombudsman for Minorities, the National Discrimination Tribunal prohibited on 31 January 2005 the City of Helsinki and a certain comprehensive school from forming classes based on the native language of immigrant pupils. This case was about the division of classes and teaching groups in comprehensive school and segregation (separate treatment). The term segregation refers to offering equal services separately to different population groups. According to the customer, there had been two streams in the first class of comprehensive school, with all immigrant children being placed in one stream, whereas only native Finnish children had been placed in the other.

The application referred to indirect discrimination cited in Section 6.2 paragraph 2 of the Non-Discrimination Act. According to the drafting documents of the Act (HE 44/2003 vp, page 6) "the essential question is if the segregation can be justified in a manner that is acceptable in terms of the system of

basic rights. The requirements set for such a justification especially in case of prohibited grounds of segregation specifically listed in the regulation are high. Segregation, or separate treatment, is also prohibited, unless it can in a specific situation be considered justified due to an acceptable reason."

The Ombudsman for Minorities referred to the authorities' duty to promote ethnic equality and the recommendation of the ECRI (European Commission against Racism and Intolerance) working under the European Council (Nr 7), according to which segregation should in national legislation be regarded as a form of discrimination. Only in extremely rare cases can there be a justified reason for special treatment, and the "justified reason" should as a concept be interpreted in as narrow a sense as possible. The definition of discrimination, on the other hand, should according to this recommendation be interpreted in a wide sense.

In its decision, the National Discrimination Tribunal referred to such as the preliminary work on Section 6 of the Constitution (the relevant Government Report Section 5, HE 309/1993 vp), according to which the discrimination provision also concerns segregation only. Consequently, offering even equal services separately to various population groups on a basis cited in the prohibition of discrimination would be prohibited, unless it could, based on an acceptable reason, be considered justified in a certain situation.

The matter was still being heard by the Administrative Court of Helsinki at the end of the year 2006.

Providing services in the Sami language

The Annual Report for 2005 described the opinion issued by the Ombudsman for Minorities to the City of Rovaniemi on day care in the Sami language. In 2006, the City announced that it intended to organise day care in the Sami language from August on, depending on the number of children applying for this service.

Sami speaking persons had informed the Ombudsman for Minorities about problems associated with services in the Sami language in the municipality of Enontekiö. The Ombudsman requested information on how the municipality safeguards the implementation of the cultural and linguistic rights of the Sami people in the care of the elderly and children's day care for the Sami. The municipality submitted this information, but the processing of the issue had not been completed at the Office of the Ombudsman for Minorities by the end of the year 2006.

The Ombudsman for Minorities has been concerned about the small amount of native language teaching and day care available in the Sami language. Additionally, the providers of education do not have a statutory duty to arrange native language teaching outside the Sami homeland, even if state subsidies were available for this purpose. What makes availing of teaching in their native language even more difficult for Sami speaking children is that 70% of Sami children aged less than 10 are living outside the Sami homeland. The right of the Sami speakers to their own language is not in the current circumstances safeguarded adequately, and on the other hand, the rights of the Sami speakers to use their own language when dealing with such as the authorities of the homeland are endangered, in case there are not enough Sami speakers. According to the Ministerial Committee of the Council of Europe (2004), the Inari and Koltta dialects are facing the risk of dying out. In addition, the Northern dialect is under threat according to Unesco classifications. n luokitusten mukaan uhanalainen.

Ethnic agitation

Ethnic agitation, limits of the freedom of speech, respect for religion and islamophobia were particularly topical issues in Finland in the beginning of 2006. In the background of this was the public debate sparked by the so-called Danish cartoon controversy. Representatives of the Office of

the Ombudsman for Minorities were asked to give talks on ethnic agitation, islamophobia and discrimination in various seminars and events. The Ombudsman also engaged in a wide-reaching co-operation with Islamic communities, associations and foundations.

Chapter 11 Section 8 of the Penal Code (21.4.1995/578)

Ethnic agitation

A person who spreads statements or other information among the public where a certain race, a national, ethnic or religious group or a comparable group is threatened, defamed or insulted shall be sentenced for ethnic agitation to a fine or imprisonment for at most two years.

Racism on the Internet

Since the Ombudsman for Minorities was instituted in Finland and until October 2006, only two verdicts have been given for ethnic agitation. In one instance, the case was dismissed because of lack of evidence, and in the other the decision of the Court of Appeal was not yet legally valid at the end of 2006. Because of the limited case law, the boundary between what is tolerated and what is criminal is unclear. The inappropriate messages on the Internet which became known to the Ombudsman for Minorities often were, however, so gross that there was no difficulty in drawing the line.

What is more problematic that it is easy to write anonymously on the Internet, and it is not always possible to find out the identity of the perpetrator. In addition, the offensive material cannot always be removed from the Internet, for example if the server is located in the United States, where the freedom of speech is particularly extensive. It would, however, be important to show that it is possible to intervene in the spreading of racist messages by means of criminal law.

Racist propaganda must not be spread on the Internet, as the same restrictions

“It is easy to write anonymously on the Internet, and it is not always possible to find out the identity of the perpetrator.”

apply to the Internet as to e.g. newspapers and the television. Due to our international obligations, as an example of which can be mentioned the UN Convention on the Elimination of All Forms of Racial Discrimination, Finland has the duty to intervene in racist propaganda. The Ombudsman for Minorities feels that spreading racist messages on the Internet gives cause to concern.

On request of the Central Criminal Police, the Ombudsman for Minorities issued opinions on two websites and the material posted on them. According to the Ombudsman’s opinion, spreading the material in question among the public had the elements of the crime of ethnic agitation. In addition, the Ombudsman requested the Central Criminal Police to investigate some forty different racist blogs/websites. Preliminary investigations in all these cases remained incomplete at the end of 2006.

Responsibility of the Internet service’s administrator

In 2005 (see Annual Report 2005), a request for information was sent to a company administrating a chatroom concerning the messages posted in the room. In his opinion in 2006, the Ombudsman noted it as positive development that the administrator and the owner had cleaned up their chatrooms more carefully and added supervision of both statements that violate good practice and the Non-Discrimination Act and those involving ethnic agitation.

Subsequently, attention was also focused on the name-calling occurring in these chat rooms. Calling a private person a “nigger”, for example, constitutes the crime of defamation. This

is why in the supervision of websites attention should be focused on the use of such words. Using these words to describe groups, on the other hand, may match the definition of ethnic agitation. When assessing whether or not a case constitutes a crime, the use of these words can be regarded as evidence of premeditation and intention to insult. The use of these words makes the act more grievous and constitutes harassment intended in the Non-Discrimination Act.

The author of a racist message always bears the main responsibility for spreading his or her message. The identity of the authors of messages spread through the Internet often remains unclear, however, and the author consequently cannot be made answer for his or her actions. This is why the role and responsibility of the administrators of the website is emphasised in preventing and stopping the spread of racist messages. The administrator of the site is the party who enables the spreading of messages.

Displaying a Nazi flag

The Ombudsman asked the police to investigate whether hanging up a large flag displaying a Nazi symbol in the window had the elements of the crime of ethnic agitation. The police did not consider this a crime. In the preliminary investigation, however, this opinion was justified by the formulation of Chapter 11 Section 8 of the Penal Code, which was not part of the currently valid legislation. The Ombudsman submitted a request to prosecute in the matter, suggesting e.g. that the definition of the Penal Code provision 11.8 was met regardless of the fact if the ethnic

agitation that the perpetrator aims at is achieved or not. In other words, there is no requirement of consequences. In addition, the police was asked to train its staff in the contents, application and interpretation of this provision.

The request to prosecute was processed by the Prosecutor General's Office. The Deputy Prosecutor General considered that even if it is possible as such that displaying the flag in the described manner meets the criteria for spreading in the Penal Code, there was no reason to suspect that this case involved a crime. As justifications for the decision, e.g. the following was given: "The fact that a certain element of agitation is required of the act narrows the criteria from what they would be if the case was examined based on the wording alone." In addition, the justifications stated that the word 'agitation' is contained in the title of the provision. In the Ombudsman's view, however, the title of the characteristics of a crime should not undermine the legal protection under the Penal Code.

Racist writings in media

During the reporting year, the Ombudsman focused attention on writings published in the press, which were assessed as being insulting to foreigners and reinforcing prejudices and negative attitudes to immigrants. Intervention in writings encouraging discrimination is not always possible, however, because the threshold for prosecuting for ethnic agitation has been set rather high. Additionally, not all publications are committed to the journalistic guidelines confirmed by the Council of Mass Media in Finland, and their publication activities are thus not under its self-regulation and control.

Sweet wrappers

Through a customer contact, the Ombudsman for Minorities was informed of the insulting nature of the wrappers used by two sweets manufacturers. The customer felt that in these wrappers, black people are presented as clowns with big lips, large eyes and huge ear rings. The picture was regarded as a racist caricature of black people, and as such insulting.

The Ombudsman for Minorities considered that the appearance of the wrappers and packaging can be regarded as ethnically doubtful. The appearance of the packaging may insult black people. The long-term use and traditional character of the pictures does not make their use acceptable. As this was a matter of compliance with the regulations of the consumer protection legislation, however, the Ombudsman referred the matter to the Office of Consumer Affairs.

One of the sweet manufacturers in question announced that they would change the sweet wrapper to make it "more appropriate for a multicultural society" during the year 2007.

Television and stereotypes

The Ombudsman paid attention to the stereotyped descriptions of a certain ethnic group in the children's programme of a TV channel and the risk of children's programmes reinforcing prejudices against ethnic minorities. The TV channel was asked to take these issues in consideration when selecting children's programmes in the future. The Ombudsman pointed out that children are a particularly important group in the promotion of equality and good ethnic relations.

Discrimination at work

According to the delegation of authority specified in the Non-Discrimination Act, intervening in discrimination at work appertains to the Occupational Safety and Health Inspectorates. 35 customer who contacted the Ombudsman for Minorities criticised the actions of employers. In case it was estimated based on the customer contact that the issue needed a closer examination, it was referred to the Occupational Safety and Health Inspectorate.

The general task of the Ombudsman for Minorities is to promote the position and rights of ethnic minorities and foreigners. As working life is a central factor of well-being, the Ombudsman continued his dialogue with the Occupational Safety and Health Inspectorates

on intervening in working life discrimination e.g. by assessing the usefulness of the discrimination at work regulations of the Penal Code and the Non-Discrimination Act. Ethnic minorities still meet with a lot of discrimination at work in such as recruitment, and they do not have adequate information about taking the matter to the Occupational Safety and Health Inspectorates for investigation. Discrimination at work should always be assessed in the light of the legal protection means offered by both the Penal Code and the Non-Discrimination Act.

Development of advisory activities against ethnic discrimination

In customer contacts with the Ombudsman for Minorities, the share of those having experienced discrimination is steadily increasing. In the national perspective, there are too few advisory services available, and their arrangement is fragmented. The possibilities of receiving advice and upholding one's rights remain haphazard, even if the requirement of equality and non-discrimination is the same everywhere.

One central tool in preventing discrimination and mainstreaming equality are equality plans prepared in municipalities, which could also take a stand on organising advisory services. Despite the obligation imposed by the Non-Discrimination Act, equality planning has not progressed to a very practical level in all municipalities.

As part of the EurEquality project, the Office of the Ombudsman for Minorities made a study in 2005 of who is offering advice, what it contains and how its quality should be assessed. The study mapped the advisory practices in Helsinki, Espoo, Vantaa, Kotka and Tampere. In addition to the general practices, measures directed at certain special groups, such as the Sami, Roma and young immigrants were examined. The so-called cornerstones of good advisory service were drawn up as quality criteria for developing advi-

sory services, as well as a model for organising and co-ordinating advice in municipals, regionally and nationally.

In the second phase of this project in autumn 2006, eight discussion and training events were organised in various parts of Finland. These looked at recognising and intervening in ethnic discrimination and the possibilities of organising advisory services locally. These events reached more than 200 representatives of authorities and NGOs working with ethnic minorities and also a number of representatives of ethnic minorities. The project report was also published in English (Riikka Tella: Etnisen syrjinnän vastainen neuvonta kunnissa. Publication series of the Ombudsman for Minorities 3, Helsinki 2006. The English version "Advisory Services Against Ethnic Discrimination in Municipalities, same publication data).

The report proposes a model suited for organising advisory services based on co-operation between the municipal, regional and national levels. There are regional differences in the situations of ethnic minorities, which is why it is important to know the local needs for advice. The main responsibility for the local arrangement of anti-discrimination advice would thus be shouldered by the municipality. The practical implementation of the model would be based on co-operation between the various administrative sectors in the municipality, such as the social, housing and educational services and the police.

The report emphasises the fact that the quality of the advisory services can be

improved by involving immigrants and Roma and Sami people in its planning and implementation. In addition, the model contains proposals for reporting methods in order to map and recognise various forms of discrimination and the ways in which it occurs.

Through the implementation of the model, the capacities of facing and helping a customer having experienced discrimination would increase everywhere in all services. The aim is at advisory services with a low threshold, where the advice is as often as possible offered in the customer's native language. Advice would be offered flexibly in various situations: sometimes the customer would be directed elsewhere for help, sometimes they would be informed of the procedures and legal protection in discriminating situations. In connection with the guidance, the customer's own active role in solving the problem would also be promoted e.g. by offering peer support.

For the regional co-ordination of advice and to organise the collection of data concerning discrimination, a regional pilot project was launched in co-operation between the Office of the Ombudsman for Minorities, the Ministry of Labour and the Employment and Economic Development Centre for Southeast Finland (the so-called ESKO project). For these tasks, an Immigration Committee will be set up in the Employment and Economic Development Centre. The experiences received in the pilot project will in the future be used to develop advisory services against ethnic discrimination.

“Despite the obligation imposed by the Non-Discrimination Act, equality planning has not progressed to a very practical level in all municipalities.”

Processing of discrimination and a racist motive in legal proceedings

In his earlier Annual Reports, the Ombudsman for Minorities paid attention to the fact that many persons having contacted the Ombudsman felt the police did not take the investigation of racist crimes seriously enough. This is why the Ombudsman for Minorities has pointed out that when receiving a report of a crime, no anticipatory opinions of e.g. the right of the restaurant to select their customers should be put forward, but the matter should be examined in police investigation.

The Ombudsman has been concerned over the fact that not all cases that could have a racist motive are recorded as such in the information system of the police. This also emerges in the study published annually by the police on racist crime. Despite the fact that the police have in their guidelines emphasised the importance of uncovering racist motives in the preliminary investigation of a crime, only one half of reported crimes that can be considered racist have been recorded as such.

In the Ombudsman's view, a racist motive should be recorded in the investigation register whenever any of the persons associated with the case brings up a suspicion of a racist motive. The definition used by the police in United Kingdom, for example, states that "a racist incident is any incident which is perceived to be racist by the victim or any other person". The police should also not exclude a racist motive in public statements concerning the cases, as this could be interpreted as the allegation not being taken seriously. The existence of a racist motive should only be assessed by the tribunal when making a final decision on the matter.

During the year 2006, the Ombudsman for Minorities monitored e.g. the preliminary investigation and legal process of two crimes perpetrated by representatives of the main population on immigrants. The immigrants living in the area regarded these crimes as having

at least partially a racist motive. In one of these cases, the Ombudsman for Minorities responded by an opinion issued to the top management of the police to a statement issued by the police management in the beginning of the preliminary investigation that the crime would not be recorded as racist in the information system of the police.

A racist motive has been a justification for passing a heavier sentence since the beginning of 2004. The prosecutor did not, however, demand a heavier sentence based on a racist motive in connection with the processing of either of the above-mentioned crimes, even if at least in one of the cases, the interrogation reports showed that racist verbal abuse had preceded the act of violence. Neither was a racist motive taken in consideration as warranting a more severe sentence in either of the judgments issued in these cases.

All participants in the criminal procedure, or the police, legal aids, prosecutors and tribunals should look at the position of the victim of a racist crime. So far, there has been little debate on the professional competence or attitudes of these actors. Some of the customers contacting the Ombudsman for Minorities, for example, questioned their relevant competence.

What is understood as a racist motive can vary from one person to another. This is why it is possible that a racist motive is not always taken in consideration. The fact that the acts were not considered racist was justified for example by the perpetrator also having foreign friends. In the light of

certain cases, it is also possible to presume that individual actors' ideas of the condemnability of discrimination also affect the prioritisation of their actions: in the reporting year 2006, the Deputy Chancellor of Justice reprimanded two District Court judges for delays in arraigning the defendants accused of discrimination to the District Court. Because of such delays, the time limit for the court hearing of five persons accused for discrimination against the Roma in restaurants elapsed.

“The Ombudsman has been concerned over the fact that not all cases that could have a racist motive are recorded as such in the information system of the police.”

THE POSITION AND RIGHTS OF FOREIGNERS

Amendments to the Aliens Act

During the year 2006, several amendments were made in the Aliens Act. This was due to not only national needs but also the enforcement of European Union Directives. The Ombudsman for Minorities issued a number of opinions on the amendment projects and was heard by the parliamentary Administrative Committee as well as the Working Life and Equality Committee.

In order to make more efficient the work against human trafficking, provisions on permits of residence to be granted to victims of human trafficking were added to the Aliens Act. The Ombudsman for Minorities pointed out that permits of residence issued to victims of human trafficking are necessary, but the position of the victim should be looked at in a comprehensive sense.

Provisions on definitions of a family and the grounds for permits of residence granted based on family ties were also reformed in a way that the Ombudsman felt matched better what people really think of as their family.

Provisions on the duty of reception centres for asylum seekers to provide information in order to develop the information flow between authorities and the adding of regulations on tracing the parents of under-aged asylum seekers entering the country alone in the Aliens Act provoked plenty of public debate. The Ombudsman did not find the tracing of parents a problem, as the Directorate of Immigration already had the duty to consider the best interest of the child. On the other hand, the Ombudsman felt that the objectives of imposing the duty to provide information were ambiguous, and he drew attention to the significance of this issue in principle: the reception procedure based on mutual trust between the asylum seeker and the reception staff on one hand and the asylum process on the other have been kept separate. This is a precondition e.g. for recovering from traumatic experiences.

The provisions on residence permits for foreign students were also reformed. The aim was that the student could in the future apply for a permit of residence for jobseeking in Finland after concluding his or her studies. The Ombudsman highlighted the fact that the obligatory and unconditional medical expenses insurance may factually prevent the reform from being implemented.

apply his right to be heard in connection with the deportation proposals. The proposed deportations mainly concerned persons who had moved to Finland as minors with their parents. As many of them had resided in Finland for extended periods, during which time they had developed plenty of ties to the Finnish society, the Ombudsman felt it was necessary to put forward his view of the legality and appropriateness

“In order to make more efficient the work against human trafficking, provisions on permits of residence to be granted to victims of human trafficking were added to the Aliens Act.”

Deportation opinions

Section 209 of the Aliens Act (301/2004) imposes a duty to hear the Ombudsman for Minorities. The Ombudsman for Minorities is entitled to on his request to be heard in a matter concerning an asylum seeker or deportation of a foreigner. The authority making the decision in the case may set a reasonable time limit for the Ombudsman for Minorities for issuing this opinion.

Proposed deportations to Somalia

In early 2006, the Directorate of Immigration and the police gave notification of traffic connections opened to Somalia. In line with the decision-making procedure of the Directorate of Immigration, Somali asylum seekers were no longer regarded as being in need of protection solely because of the security situation in Somalia, and the Directorate started processing deportation proposals of citizens of Somalia who had been guilty of crimes while staying in Finland.

The Ombudsman for Minorities felt that this was a socially significant matter relevant to the position and rights of foreigners and decided to

of the deportations. What also affected the Ombudsman's decision to apply his right to be heard were changes in the security situation in Somalia and the earlier active public debate on the crimes committed by young people with a Somali background.

The Ombudsman gave an opinion on 22 proposed deportations. Even if grounds for deportation pursuant to the Aliens Act could be shown to exist for each proposal, the Ombudsman decided to oppose them. The Ombudsman estimated that some of those proposed for deportation had developed such strong ties to Finland that the issues in favour of the deportation could not be considered more weighty than those against the deportation in an overall consideration. In some of the cases the Ombudsman felt that even after an overall consideration, there would have been strong grounds for deportation. Despite this the Ombudsman concluded by also opposing these deportation because of the situation in Somalia estimated as unstable.

The conflict having erupted in southern parts of Somalia in early spring in particular made the area more unstable than before. As regards northern Somalia, which is considered more peaceful, it was stated that the ex-

tended stay abroad of those to be deported was not in favour of their return to the area. The Ombudsman mainly based his assessment of the security situation in Somalia on reports of the UN High Commissioner for Refugees (UNHCR). What increased the unstable conditions in Somalia was the attack of the temporary government supported by Ethiopian troupes towards the end of the year into the areas governed by the Council of Islamic Courts.

The processing of the proposed deportations of Somalis is to date unfinished by other authorities.

Somalis are one of the largest minority groups in our country, and the constantly changing security situation of Somalia has an impact on their circumstances. There has been a wide news coverage of the situation in Somalia, and public debate has arisen on the justice of deporting so-called second generation immigrants or people comparable to them. The Finnish Association for Legal and Social Sciences organised a seminar on this theme in December, in which the Ombudsman for Minorities took part.

Other opinions on deportations

The Ombudsman for Minorities requested to be heard pursuant to Section 209 of the Aliens Act (301/2004) in individual cases concerning the deportation of asylum seekers or foreigners. In the period November-December, the Ombudsman requested to be heard in deportation matters where the person proposed for deportation either had family ties in Finland and/or had been a minor when arriving in Finland.

The Ombudsman gave his opinion on 15 proposed deportations during this period.

Conditions for granting a permit of residence

The Ombudsman for Minorities looked at several customer cases during the year that were about meeting the conditions for being granted a permit

of residence. Cases that were about meeting the requirement for means of support, conditions for a permit of residence granted based on family ties as well as circumventing regulations concerning entry in the country and suspicions of sham marriages emerged in the Office's customer work. The Ombudsman provided information on the applicable legislation and case law as well as guidance and advice in getting legal aid.

In the customer service work it was observed that foreigners residing in Finland have a great need for advice and guidance in permit of residence matters and for information on the conditions and practices of granting permits of residence, possibilities for appealing and filing complaints and public legal aid. The Ombudsman felt it was necessary in order to ensure the implementation of legal protection for asylum seekers that adequate and good quality legal aid services and general information on their use will also be offered in the future. The Ombudsman for Minorities was heard by a Working Group looking at the arranging of legal aid offered to foreigners, asylum seekers and victims of human trafficking.

Meeting the requirements for means of support

The Ombudsman was contacted by a person who had applied for a permit of residence for his wife in order to unite the family. The Directorate of Immigration had turned down the application, considering that the requirements for means of support were not met. The Directorate of Immigration stated that despite the resources and income of the person wishing to unite his family, considering the fixed term of his job and the amount of earned income from work, he could not ensure the means of support of the applicant in Finland over the long term.

The Ombudsman opposed the Directorate of Immigration's interpretation of meeting the requirements for means of support. Meeting the requirements for means of support was a requirement for granting a permit of residence to unite a family, but the meeting of the

“Foreigners residing in Finland have a great need for advice and guidance in permit of residence matters.”

means of support requirements for an extended permit of residence should have been assessed separately. The means of support cannot be expected to be ensured in advance for a longer period than that for which the permit of residence is applied. This is why the Directorate of Immigration should not have assessed the meeting of the means of support requirement also for extended permits possibly granted at a later stage. The Ombudsman also justified his opinion by the case law of the Administrative Court.

The Directorate of Immigration acknowledged the decision as erroneous and made a new decision in favour of the person wishing to unite his family. The Ombudsman for Minorities also informed the Legal and Country Information Unit of the Directorate of Immigration of his interpretation.

Requirement for means of support

In his opinion issued to the Administrative Committee of the Parliament, the Ombudsman for Minorities estimated that the requirement for means of support in accordance with the guidelines of the Directorate of Immigration is too stringent and prevents many immigrants from uniting their families.

The Directorate of Immigration had issued a guideline (Register nr 3/10/2004) concerning the application of the means of support requirements pursuant to Section 39 of the Aliens Act on 6 April 2005. Even though this guideline is only indicative, it in fact specifies the means of support requirement adopted by the Parliament at a level that for many immigrants becomes an obstacle to living together with their families. The net income of a non-Finnish citizen working in Finland should be

a total of € 2,430 a month in order to bring such as his or her spouse and two under-aged children to live in Finland based on the regulations on uniting families. According to the guideline, benefits compensating for costs, such as a housing subsidy, are also including in calculations of net income, but not social support.

The individual's income level set as the means of support requirement exceeds the average consumption of the lower fifth of income earners living in Finland. As a comparison, it could also be mentioned that the basic part of the social support for an immigrant family of four would only total € 1,101.

Compliance with an Administrative Court decision

The Ombudsman for Minorities examined a case in which a police department had turned down an application for a permanent permit of residence after considering that the requirement of permanent residence for granting the permit was not met. This decision was appealed by filing a complaint with the Administrative Court, which repealed the decision of the police department.

According to the decision of the Administrative Court, the police department should have assessed the purpose of residing in the country as having become permanent once the employment contract of the applicant was made valid until further notice. The Administrative Court stated that the police department could not reject the application on the grounds cited in the decision and referred the matter for re-processing.

The police department made a new decision in the matter, again stating

that the requirement of permanent residence was not met. The applicant again complained of the decision to the Administrative Court and contacted the Ombudsman for Minorities.

The Ombudsman for Minorities suggested that the police department should not have rejected the application again on the same grounds. The Administrative Court had, when repealing the decision by the police, expressed an opinion on the issue of interpretation of the law and the use of discretion, and the contents of its decision had to be considered as binding. The police should have complied with the Administrative Court's view of the date on which permanent residence had started. The Ombudsman justified his view not only with the case law of the Administrative Court but also the decision of the Deputy Parliamentary Ombudsman, in which he had considered that the Directorate of Immigration had violated the law and the principle of protecting trust, when it had not complied with the decision of the Administrative Court.

The Ombudsman felt that the applicant had the right to trust that the police department would comply with the interpretation of the Administrative Court. The police department cancelled their erroneous decision and granted a permanent residence permit. The Ombudsman for Minorities informed the Ministry of the Interior of this case and his opinion, highlighting the importance of the appeal system and the duty to defer to the decisions of the Administrative Courts.

Citizenship issues

The Ombudsman for Minorities corresponded with the Chancellor of Justice of the Council of State concerning the long processing times of citizenship applications. Persons having contacted the Office of the Ombudsman for Minorities claimed that they had waited for the processing of their citizenship application for up to more than seven years. According to the information received by the Ombudsman, the long processing times concerned expressly

the citizenship applications of Somali citizens. What the Ombudsman also considered problematic was that the Directorate of Immigration does not waive the time period reserved for complementing citizenship applications, even if this probably would lead into the matter being referred to re-processing by the Directorate through the appeal procedure.

The Chancellor of Justice stated in his reply that measures to improve efficiency and to shorten the delays of processing citizenship matters at the Directorate of Immigration were under way, and there was no cause to intervene at the present moment. The Chancellor of Justice said that no adequate information showing that the processing times of Somali applicants were longer than those of others had been presented. As regards complementing the application, however, the Chancellor of Justice stated that the complementation procedure of the Directorate of Immigration should be sufficiently flexible.

The Supreme Administrative Court has subsequently issued two decisions, in which the time reserved by the Directorate of Immigration for complementing citizenship applications was regarded as inadequate. According to the Supreme Administrative Court, the time set by the Directorate of Immigration for complementing applications was not adequate in proportion to the requirement of a reasonable deadline considering the nature and contents of the matter in Section 33 of the Administrative Procedure Act (see KHO:2007:14 and KHO:2007:15).

A large part of contacts relevant to citizenship matters in 2006 continued to concern the long delays of processing, and nearly all of those contacting the Ombudsman were Somali citizens.

Visa matters

The Ombudsman for Minorities requested the opinion of the Chancellor of Justice of the Council of State on the duty to justify decisions to not grant a visa. In the Ombudsman's view, the duty

imposed by the Constitution to justify decisions is not safeguarded in visa matters, as putting forward justifications is dependent on the applicant's request, and there is no duty to give justifications. The Ombudsman for Minorities requested the Chancellor of Justice's opinion on the duty to justify refusals to grant a visa and its extent and the constitutionality of Sections 17 and 32 of the Aliens Act.

In his reply, the Chancellor of Justice said that it was not possible for him in this case to give a general opinion on the constitutionality of legislation in force. The Chancellor of Justice stated that when adopting the Aliens Act, the Parliament had also approved the exceptions to the duty to justify in the proposed extent.

Execution of decisions to refuse entry

The processing of asylum applications in an accelerated asylum procedure continued to spark contacts with the Office of the Ombudsman. The Ombudsman examined a case in which a police department had executed a decision to refuse entry to an asylum seeker, even if the Administrative Court of Helsinki had by its decision prohibited the execution. The police was informed of the stay of execution only after execution had started. The Ombudsman felt it was problematic that the requirement of efficiency had not been realised in legal protection. The applicant had not been given the possibility of getting temporary legal protection while the appeal process was incomplete. The Ombudsman informed the Ministry of the Interior of this.

The Ombudsman had already earlier paid attention to the implementation of legal protection in the accelerated asylum procedure (reference: The Ombudsman for Minorities (2005): Vähemmistövaltuutetun selvitys nopeutetun turvapaikkamenettelyn oikeusturvatakeista – nopeus, tehokkuus vai oikeudenmukaisuus? Publication Series of the Ombudsman for Minorities 2). On a positive note, attention

was paid to this matter in the Working Group's proposal for the strategy of the Ministry of the Interior to develop the immigration administration and aliens legislation. The Working Group proposed assessing how the provision on the execution of a decision to refuse entry made in the accelerated procedure should be clarified taking in consideration the legal protection of the asylum seeker, legal certainty and equal treatment of the applicants and, on the other hand, the efficiency requirements of the asylum procedure.

Co-operation in aliens issues

The Ombudsman for Minorities provides information on the legislation concerning the position of foreigners and its application practices. In addition to providing advice, the Ombudsman monitors the implementation of the legal protection of foreigners, good governance and other basic rights, intervenes in problems and puts forward improvement and development proposals.

The Ombudsman acts in co-operation with various bodies. The most important authorities include the Directorate of Immigration, the police and the Frontier Guard. The Ombudsman makes an effort to disseminate information on matters and interpretation practices regarded as problematic and to put forward proposals to improve the position of foreigners. The Ombudsman also co-operates with non-governmental organisations. Especially in questions relevant to international protection, the Ombudsman has co-operated with the Refugee Advice Centre.

The Ombudsman has also aimed to create co-operation relationships between the aliens administration and NGOs. During the reporting year, the Ombudsman took part in the organisation of a joint seminar of the Somali League in Finland and the Directorate of Immigration. The aim is to facilitate an increasingly active, independent and open dialogue of bodies representing immigrants with the immigration authorities also in the future.

APPENDICES

OPINIONS

- 25.1.2006**
The Revised European Social Charter; the 2nd periodical report of Finland
2546/059/2005TM
- 26.1.2006**
Opinion of the Working Group on the right to marry
2698/65/2005TM
- 26.1.2006**
The SII guideline "Interpretation, translation and interpretation centres" relevant to the application guidelines of the Administrative Procedure Act
99/65/2005 TM
- 8.5.2006**
UN, the Human Rights Commission/ Council for Human Rights; enquiry on national, ethnic, religious and linguistic minorities
764/059/2006 TM
- 10.5.2006**
A Draft Equality Plan for the SII, chart of measures and memorandum of justifications
832/65/2006TM
- 19.4.2006**
Implementation of Directive 2003/109/EC
646/001/2006 TM
- 19.5.2006**
Implementation of recommendations concerning Finland of the European Commission Against Racism and Intolerance
1044/003/2006 TM
- 22.5.2006**
The Council of State's educational policy report to the Parliament
1131/65/2006 TM
- 01.06.2006**
Electronic processing in aliens and citizenship issues
1112/001/2006 TM
- 09.06.2006**
Opinion on the Scandinavian Sami Convention
566/003/2006 TM

- 05.06.2006**
Memorandum of the Working Group on the overall reform of the Child Protection Act; opinion of the Ombudsman for Minorities
1080/001/2006
- 07.06.2006**
The Draft Work Procedure of the Ministry of Labour
1243/000/2006 TM
- 26.06.2006**
UN/CRC; the conclusions of the UN Children's Rights Committee with reference to the 3rd periodical report of Finland
661/003/2006 TM
- 06.07.2006**
Report of the Working Group on the system to assist victims of human trafficking
TM016:00/2005
- 10.07.2006**
Human rights in a multicultural community; report by the European Council Committee for Human Rights Development
1449/003/2006 TM
- 20.07.2006**
Draft decrees of the Passports Act
1327/001/2006 TM
- 21.07.2006**
A Draft for the ESF Operational Programme for Continental Finland 2007–2013
TM006:00/2005
- 11.08.2006**
Implementation of Directive 2004/38/EC
1525/001/2006 TM
- 02.10.2006**
Implementation of Directive 2004/114/EC
1951/001/2006 TM
- 10.10.2006**
Implementation of the European Charter for Regional or Minority Languages
2131/003/2006 TM
- 24.10.2006**
An Operational Programme of Better Control
539/003/2005 TM

HEARINGS BY THE PARLIAMENT

- 23.2.2006**
The Administrative Committee Government Bill amending the Aliens Act
HE 198/2005 vp
- 31.3.2006**
The Administrative Committee A proposal for the immigration political programme and implementation programme
VNS 1/2006 vp
- 2.5.2006**
The Administrative Committee Government Bill to the Parliament on the Passports Act and certain associated Acts
HE 25/2005 vp
- 12.5.2006**
The Administrative Committee Government Bills amending the Aliens Act and Sections 5 and 10 of the Act on the Register of Aliens
HE 32/2006 vp
- 18.10.2006**
The Administrative Committee Bill amending the Act on the Integration of Immigrants and Reception of Asylum Seekers
HE 183/2006 vp
- 26.10.2006**
The Working Life and Equality Committee Bill amending the Act on the Integration of Immigrants and Reception of Asylum Seekers
HE 183/2006 vp
- TALKS**
- 16 Jan 2006**
Working Group on the Equality Plan of the Criminal Sanctions Agency
- 18 Jan 2006**
Training event of Occupational Safety and Health Lawyers
- 2 Feb 2006**
Seminar by the Embassy of United Kingdom "Are the current integration policies working?"

21 Mar 2006

Event of an anti-racism day,
Tampere

21 Mar 2006

Panel of the Islamophobia seminar,
Cultural Centre Caisa

22 Mar 2006

Promotion of equality in companies and
communities event

23 Mar 2006

Concluding event of the anti-racism week
in Kouvola

31 Mar 2006

The Working Group on minority issues
of Scandinavian Governments

20 Apr 2006

Visit by a Latvian group of journalists

17 May 2006

"Legal protection problems of the
accelerated asylum procedure"
in the seminar Everyday Work of the
Finnish Asylum Policy

23 May 2006

Joint seminar by the Directorate of
Immigration and the Somali League
in Finland

15 Jun 2006

The Equality Authority, Ireland

10 Jul 2006

Delegation of the Iraqi Government

12 Aug 2006

Summer seminar of the Oikeuspoliittinen
yhdistys Demla association

23 Aug 2006

A meeting of Scandinavian Ombudsmen
for Ethnic Discrimination,
Copenhagen

7 Sept 2006

"On the possibilities of intervening
in ethnic discrimination",
Rotary Club of Kamppi

8 Sep 2006

"Ulteva 2" Working Group established
by the Ministry of Labour

17 Sep 2006

100th anniversary of the Romano Mission

22 Sep 2006

Equality Day of the Education Department

27 Sep 2006

"Promoting equality in education and
working life", seminar by the National
Board of Education

26 Oct 2006

The international concluding seminar of
the EurEquality project and steering group
meeting, Madrid

28 Oct 2006

Event of Kanava Youth Association

16 Nov 2006

ENAR round table

20 Nov 2006

Equality seminar of the Evangelical
Lutheran Church

23 Nov 2006 Visit by the Parliamentary

Ombudsman for Morocco

30 Nov 2006 Visit by journalism students

from University of Tampere

RELEASES

21 March 2006

Discrimination is a serious crime

11 May 2006

The Non-Discrimination Act is underused
in issues of discrimination at work

23 November 2006

Ethnic minorities need anti-discrimination
advice

TRAINING AND INFORMATION EVENTS OF THE EUR-EQUALITY PROJECT

29 Aug Helsinki,

Romani round table event

2 Sep Hollola,

staff of the Municipal Federation of
Public Health Care in Tiirismaa

28 Sep Jyväskylä,

The Working Group on Equality in
Jyväskylä Region

9 Oct Tampere,

The Romani Working Groups
in Western Finland

10 Oct Lohja,

The Working Group on Equality
in Lohja

24 Oct Imatra

8 Nov Rovaniemi

24 Nov Helsinki,

The final seminar of the national section of
the project in Helsinki

PUBLICATIONS

Vähemmistövaltuutetun vuosikertomus
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ISSN 1796-3001,
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Savion kirjapaino, Helsinki 2006

Riikka Tella: Etnisen syrjinnän vastainen
neuvonta kunnissa.
Publication Series of the
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ISBN 952-490-031-9
ISSN 1796-0819, Edita, Helsinki 2006.

Riikka Tella: Advisory Services Against
Ethnic Discrimination in Municipalities.
Publications of the Ombudsman for
Minorities 3,
ISBN 952-490-031-9
ISSN 1796-0819,
Edita, Helsinki 2006.



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