



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Finland
<b>Title:</b>	Displaying swastika flag in a window-opening found to be harassment prohibited in the Non-Discrimination Act
<b>Date:</b>	20 March 2019
<b>Expert:</b>	Rainer Hiltunen
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Displaying a swastika flag in a window-opening was found to be harassment on grounds of religion and prohibited in the Non-Discrimination Act
<b>Grounds of discrimination:</b>	Religion or belief
<b>Field of application:</b>	Other field
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Sections 8(1,2), 14(1) and 28 of the Non-discrimination Act (1325/2014)

### Content

**Decision of the court:** The National Non-Discrimination and Equality Tribunal considered that suspending a swastika/Nazi flag to a window-opening of an apartment was harassment<sup>1</sup> on grounds of religion and prohibited in the Non-Discrimination Act. The Tribunal prohibited the tenant of the apartment who had displayed the flag from repeating the harassment.<sup>2</sup>

The Non-Discrimination Ombudsman claimed in her application to the Tribunal that public displaying of the swastika flag infringed the human dignity of Jewish people as the flag symbolises the persecution of Jewish people by the Nazis. The Ombudsman attached a written statement of the chairperson of the Jewish Community of Helsinki in which the chairman stated that displaying the flag in the window for several months without the intervention of the authorities had caused the Jewish community fear and concern. The Ombudsman named the chairperson as the victim in the application.

The Tribunal was unanimous on that the behaviour of the defendant had infringed the human dignity of the victim and that the defendant's behaviour related to religion, a ground referred in the Non-Discrimination Act. The Tribunal voted and found (with votes 13-1) that the behaviour had also created a degrading or humiliating, intimidating, hostile or offensive environment towards the victim.

The decision has not been appealed against and it is therefore final.

---

<sup>1</sup> Harassment is defined in Section 14 the Non-Discrimination Act as 'The deliberate or de facto infringement of the dignity of a person is harassment if the infringing behaviour relates to a reason referred to in Section 8(1), and as a result of the reason, a degrading or humiliating, intimidating, hostile or offensive environment towards the person is created by the behaviour.'

<sup>2</sup> The National Non-Discrimination and Equality Tribunal decision, 19.12.2018, 393/2018.

**Key points of analysis:**

- The decision shows the wide applicability of the Non-Discrimination Act. The Act applies also to individuals and not just authorities, employers, providers of education and goods and services.
- The current Non-Discrimination Act does not allow the Non-Discrimination Ombudsman to bring a case to the Tribunal without identifying a victim of discrimination or harassment and obtaining their consent. Under the previous Non-Discrimination Act (in force until the end of 2014) no such requirement of identifying the victim existed. The Ombudsman has demanded in her report<sup>3</sup> to the Parliament that the previous legal state in this regard should be restored. This change in legislation may have been unintended and took place without consultation or discussion in society.<sup>4</sup> The criticism against the new requirement of identifying a victim may have had an effect on what kind of relationship the majority of the Tribunal required between the behaviour of the defendant and the consequences directly to the victim.
- The decision opens up the possibility to intervene in public displays of Nazi symbols which has previously been possible only on the basis of the 'prohibition of incitement to hatred' defined in the Criminal Code.

**Internet link source:**

[https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/jFpTF4RIt/YVTltk-tapausseloste-19.12.2018-hairinta-hakaristolippu\\_L.pdf](https://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/jFpTF4RIt/YVTltk-tapausseloste-19.12.2018-hairinta-hakaristolippu_L.pdf). Published 28.2.2019.

---

<sup>3</sup> See page 50 in the report of the Non-Discrimination Ombudsman to the Parliament:  
<https://www.syrjinta.fi/documents/14490/0/The+report+of+the+Non-Discrimination+Ombudsman+to+the+Parliament/9b16017c-b442-4805-8927-9f60f1d5c681>.

<sup>4</sup> See page 51 in the report of the Ombudsman.