

Campaign against Finnish MP Päivi Räsänen

Päivi Räsänen has served as a member of the Finnish Parliament since 1995, was chair of the Christian Democrat Party from 2004-2015, and was Minister of the Interior from 2011-2015. On April 29, 2021, Finland's Prosecutor General decided to prosecute MP Päivi Räsänen on three counts: for the pamphlet she wrote in 2004, for the tweet she sent to the archbishop of the Evangelical Lutheran Church in 2019, and for her comments on a radio interview by Ruben Stiller.

In June 2019, the church board of the Evangelical Lutheran Church of Finland announced its official partnership with the LGBT event "Pride 2019". Räsänen questioned her church's leadership on this decision on social media, attaching an image of a Bible passage in Romans 1: 24-27 to her tweet: "How does the Bible, which is the doctrinal foundation of the Church, fit in with the ideology in which shame and sin are raised as a matter of pride?" In the tweet, the words "sin" and "shame" were not directed against a group of people, but against an ideology. The Prosecutor General, however, has interpreted this tweet as constituting incitement against a group of people.

In 2004, Räsänen had published a pamphlet on church and social policy on sexuality and marriage, based on the Bible and its interpretation, *Man and Woman he created them. Homosexual relationships challenge the Christian conception of man.*

Both the tweet and the pamphlet were first investigated by the Finnish police because of a request by an individual citizen asking the police to find out whether Räsänen had committed a crime of incitement against a group of people. With regard to the pamphlet, Detective Chief Inspector Markku Silen in 2019 made a decision not to conduct a pre-trial investigation based on his judgment that there is no reason to suspect a crime. In his ten-page decision, Silen argues that the opinions expressed in the pamphlet fall within the scope of protected speech.

In this paper my aim is to show that the Prosecutor General's interpretation of Räsänen's words contains a subjective element and even bias: (1) The interpretation given to Räsänen's statements by the Prosecutor General is contrary to the one given by the Detective Chief Inspectors Markku Silen and Teemu Jokinen, who did the preliminary investigation and concluded that Räsänen has not committed any crime. (2) The charges brought against Räsänen by the Prosecutor General misinterpret Räsänen's views to the extent of seriously distorting them. Räsänen herself comments: "Inevitably, the question arises in my mind as to whether the news release of the National Prosecution Authority is based on a lack of religious literacy, deliberate distortion, or a purposeful effort to shape public opinion?"

Detective Chief Inspector Silen's analysis

Chapter 11, Section 10 of the Finnish Criminal Code states: "A person who makes available to or distributes among the public information, opinion or other messages which threatens, slanders or insults on account of race, colour, descent, national or ethnic origin, religion or belief, sexual orientation or disability, or a comparable other basis shall be sentenced for incitement against a group of people to a fine or to imprisonment for at most two years."

Although the term hate speech is commonly used, Detective Chief Inspector Markku Silen points out in his statement that there is no nationally or internationally accepted definition of the term hate speech or generally valid grounds for judging whether the writing is threatening, defamatory, or offensive. As there is no direct or indirect intimidation in Räsänen's pamphlet, Silen's aim was to assess whether the writing threatens, slanders or insults. According to Silen, slander and insult have a slight difference in meaning: Slander means that a group of people is branded as criminal or inferior on a prohibited ground. Insult, on

the other hand, means comparing members of a group of people to parasites or animals, as well as making discrimination against a group of people acceptable or violence against a group desirable. (HE 317/2010 vp, p. 42; Illman 2012, pp. 218-219; Neuvonen 2012, pp. 416-417.)

Silen refers to legal literature, according to which religious expression and communication in principle enjoys strong legal protection. According to the case law of the European Court of Human Rights (ECHR), freedom of expression protects not only positive, harmless and indifferent expressions but also expressions that may be considered worrying, disruptive and inappropriate (see eg ECHR *Unabhängige Initiative Informationsvielfalt v. Austria* 26 February 2022, § 34 and *E : Selistö v. Finland*, 16 February 2005, § 446). 'The European Convention on Human Rights therefore also protects the exercise of freedom of expression which is reasonably considered by some sections of the population to be shocking or confusing (ECHR: *Handyside v. The United Kingdom*, 7 December 1967, § 49). On the other hand, religious communication and preaching that is violent, offensive, coercive or based on some form of brainwashing is not permitted (ECHR: *Kokkinakis v. Greece*, 25.5.1993, § 48-49 ;; see also *PeVM 17/2006 vp*, p. 3). "

According to Silen, public expression of negative and even hate speech is not in itself punishable without a concrete and sufficient connection to intimidation, slander or insult. Nor may disseminating misleading or false information be punishable. A statement can be punished as slander or insult, if it is serious and accountable. "It has been considered in the case law that slander and insult are punished if the representatives of a group of people are equated with criminals or, for example, social bombers on a prohibited basis. Thus, the generalization of homosexuals as pedophiles could fulfill the characteristic of the crime of inciting as punishable slander and insult." (Silen 2019: 7)

In Silen's view, however, Räsänen's writings do not fall under this category. In the pamphlet, Räsänen criticizes the sexual education of children and young people for being superficial and encouraging sexual experimentation, which together with the collapse in societal morals is a dangerous combination (Räsänen 2004: 8-9). Silen interprets Räsänen's intention to be to say that modern sex education fails to protect young boys from older men who are dangerous. He concludes: "Objectively assessed, this statement cannot be understood in such a way that Räsänen identifies all gay men as pedophiles" (Silen 2019: 7). A contrary interpretation would lead to curtailing the fundamental right to freedom of expression for reasons other than those which are considered necessary. This would mean "extending the characteristics of a crime in a way that is expressly prohibited by the principle of legality in criminal law" (ibid.).

According to Silen, Räsänen does not commit a crime by regarding homosexuality as a deviation from the statistically more common heterosexuality and by relying on a research tradition that seeks to determine the cause and origin of homosexuality. Homosexuality appears to be an anomaly when viewed in the framework of Christian theology, which combines heterosexual relationships, good marriage, reproduction, the order of creation, and divine purpose (Räsänen 2004: 6-8, 14, 19). According to Silen, "Räsänen's interpretation is a permissible value judgment based on religious beliefs. The fact that Räsänen's view can be criticized from a hermeneutic or exegetical point of view does not mean that Räsänen's view is prohibited. Theological and scientific disagreements are not a legal basis for restricting freedom of expression, as the fundamental right to freedom of expression also includes the right to express controversial, disruptive and inappropriate opinions. The existence of disagreements is at the heart of the meaning of freedom of speech and freedom of thought. It can even be characterized as emphasizing the importance of freedom of expression, especially in social debates that provoke strong emotions and reactions and where there is disagreement between the parties." (8)

Räsänen's statement is based on the belief that a person is morally responsible for his or her behavior insofar as he or she can influence it. According to Silen, this is "a permissible opinion and value judgment per se". "Different conceptions of morality more broadly are usually based on the fact that an individual

can to some extent influence his or her own behavior, and in this regard, the community and moral authorities can provide the individual with instructions, advice, regulations, and other support for his or her behavior. Religious morality is no exception.” (8)

In his concluding remarks, Silen states that “not all statements that are negative or interpreted as such are slanderous or insulting in the sense meant in Chapter 11, Section 10 of the Criminal Code, but that worrying, inappropriate and disruptive statements also enjoy the protection of the fundamental right to freedom of expression. Freedom of expression cannot be restricted beyond what is necessary in a democratic society.” As the characteristics of insult and slander are partly open to interpretation, “considerations of freedom of expression should be taken into account through prudent legislation”, especially when it comes to a matter of political or other social significance (Illman 2012: 213 and 2018.) ”(9-10) Silen emphasizes that “freedom of expression is a precondition for the existence of a pluralistic free society” and that it “can be restricted only when it is absolutely necessary for the rights of others or public security”. “In my view, to interpret the case as an incitement to incitement would, in the context of the pamphlet, mean that, in practice, there would be insufficient room for disruptive and inappropriate statements, which are also considered to be part of freedom of expression. The real danger of ignoring a restrictive interpretation is an excessive restriction on freedom of expression. ’ (10)

The decision of the Prosecutor General

In spite of Silen’s analysis, The Finnish Prosecutor General decided on April 29. 2021 to prosecute Räsänen. According to the accusation, Räsänen violates the dignity and equality of homosexuals and makes derogatory and discriminatory statements about homosexuals.

According to the press release given by the National Prosecution Authority, the charge against Räsänen has been filed mainly for four reasons. Räsänen is said to have claimed that 1. homosexuality is a scientifically proven disorder of psychosexual development; 2. insofar as homosexuality is a genetic trait, it is a genetic degeneration and a genetic disease that causes the disease; 3. homosexuality is a shame and a sin; 4. homosexuals are not created by God like heterosexuals.

Each of these charges is misleading or otherwise problematic.

1. A couple of decades ago it was generally taught in Finnish universities that “homosexuality is a disorder of psychosexual development”. Consistent jurisprudence would result in charges being brought against thousands of people. If such charges are not raised, Räsänen will have been unjustly targeted.

2. Räsänen has not claimed that homosexuality is a genetic degeneration. Räsänen writes on Facebook on April 30th. 2021: “Contrary to what the prosecutor claims, in the interview by Stiller, I did not say that homosexuality is a genetic degeneration or a genetic disease. On the contrary, I rejected the idea of homosexuality as a genetic trait proposed by the editor of the discussion program: I said that the most recent studies have shown that the potential genetic inheritance in homosexuality is small.”

3. Räsänen does not claim that the homosexual tendency in itself is a sin. Instead, according to the Bible, practicing homosexuality is a sin. This is also what the Evangelical Lutheran Church of Finland teaches. However, the leadership of the Evangelical Lutheran Church has not been prosecuted. In this respect, too, the situation is beginning to resemble a selective targeting. The prosecutor does not seem to make a distinction between human dignity and the moral evaluation of a person’s actions.

4. The fourth complaint is also distortive. In many of her speeches, Päivi has emphasized that we are all created by the Creator and equally valuable, regardless of sexual orientation. Räsänen has never claimed that God did not create homosexual people. In Ruben Stiller's program, Räsänen says (41:35): "God did not

originally create man to be homosexual. He created human beings to be heterosexual. He created man and woman. And he meant marriage to be between the two."

In spite of the fact that Räsänen has been interrogated for hours by the Finnish police, the Prosecutor General hasn't been able to draft the charges in such a way that they would do justice to Räsänen's actual views. Räsänen writes in her Facebook statement on 30.4.2021: "I marvel at the erroneous and distorted allegations of my views contained in the press release of the National Prosecution Authority in 29.4. The Prosecutor General has had more than six months to delve into the pre-trial investigation material, interrogation transcripts, and my final statements. ... Within the time available, precise and objective justifications for the charges could be expected. "

The charges brought against Räsänen by the Prosecutor General seem to be based on new interpretations of the Equality Act and the Discrimination Act:

1. There are scientific theories in developmental psychology and genetics that are punishable by law.
2. It is a criminal offence to say that the practice of homosexuality is immoral.
3. Human dignity is not based on a common humanity or on the fact that human beings are created in the image of God. The basis of human dignity is that the state forces everyone to accept a person's sexual and gender self-definition and the way of life based on them.

There are six types of statements in Räsänen's pamphlet.

First, Räsänen makes a statement based on the Christian view of the human being and the philosophical tradition of natural law, according to which same-sex sexual relations are contrary to the original purpose of creation. The words "natural" and "unnatural", "healthy" and "unhealthy" are always based on some worldview and its inherent values. If the judiciary intervenes in such a philosophical reflection, it distorts the nature of the philosophical debate. If the judiciary wants to criminalize one of the notions defended by the natural law tradition, which is one of the major philosophical traditions, it will have to censor books from libraries by the shelf.

Second, Räsänen presents a Biblical theological statement that all sexual relations outside of a lifelong and faithful heterosexual marriage, including homosexual relationships, are sinful. Churches have traditionally believed, based on the Bible, that heterosexuality is God-created and that homoerotic desires are the result of the Fall and are therefore unnatural. As a creature created by God but fallen into sin, human beings can experience as natural things which are caused by the Fall. If this is hate speech, then almost all the traditional theological discussion about sexuality and marriage will have to be eradicated. Is the judiciary competent to determine the correct position in Christian theology?

Third, Räsänen presents a psychological statement based on the psychoanalytic research tradition, according to which the homosexual tendency is the result of a disorder of psychosexual development. According to Räsänen, a person who considers his or her own homosexual tendencies to be undesirable can in some cases be helped to integrate into a heterosexual life through therapy. Toiviainen considers these allegations to be degrading to homosexuals and therefore criminal. Is the judiciary competent to resolve the controversy among psychologists over the causes of homosexuality? Does the Prosecutor General want to define certain psychological and medical research findings as illegal, regardless of how much evidence can be presented for them? If the judiciary considers that it can decide which psychological or other scientific theories of the origin of homosexuality is correct, it will take a position on matters which it is not competent to resolve. At the same time, it unnecessarily restricts freedom of scientific debate.

Fourth, Räsänen makes an argument based on sociological research that same-sex relationships are, on average, more unstable than heterosexual relationships. This is a sociological claim supported by research

data. Does the Prosecutor General want to criminalize certain sociological findings? How can freedom of science be realized in a society where the judiciary determines what kind of sociological research results are allowed to be published without fear of punishment? The resolution of such cases is generally outside the remit of the judiciary. Will publishing certain sociological research results become a crime?

Fifth, Räsänen makes an argument concerning sex education, that the current liberal sex education encourages young people to engage in sexual experimentation and, in doing so, exposes them to sexual abuse. Based on this, Räsänen has been accused of claiming that all homosexuals are pedophiles. Silen's analysis shows that this is not the case. At a general level, Räsänen expresses his concern that sex education that encourages sexual experimentation exposes children and young people to sexual exploitation. If it is a crime to argue in this way, it becomes unnecessarily complicated to debate on ways to protect children and young people from sexual exploitation.

Sixth, Räsänen makes an argument in the field of law, in which he rejects the argument put forward in defense of the Gender-Neutral Marriage Act that the right to a same-sex marriage is a human right. According to Räsänen, every adult has the right to marry, but marriage is by definition a lifelong and faithful union between a woman and a man. If this statement is a crime, then Members of Parliament are forbidden to present their own reasoned positions in the debate on marriage law. This undermines the democratic process. The position defended by Räsänen has been prevalent in major world cultures throughout history. Toiviainen suggests that in her argument Räsänen opposes the human rights of homosexuals. In reality, Räsänen puts the word "human rights" in quotation marks in order to emphasize that the alleged right to a same-sex marriage is not a genuine right because it violates a child's more fundamental right to know her biological father and mother and be reared by them. Toiviainen thus separates Räsänen's comments from their textual context.

If any of these statements made by Räsänen are criminalized, freedom of expression is restricted in a way that has a negative impact on the social debate. In many cases, Räsänen's claims are based on research data that should be the subject of free scientific debate, or moral, philosophical, and societal positions that should be resolved in free critical debate. As Mr. Silen said, restricting freedom of expression in the debate on these issues is a threat to democracy.

Freedom of expression will be significantly narrowed if the state is given the authority to decide the truth or falsity of claims and to punish the presentation of views that it considers false. If such an authority is given to the state, the result is a restriction on the kind of free exchange of opinion and scientific debate that best serves the finding of truth. Since finding the truth and disseminating the right information are important for the well-being of the people, the state should not restrict free debate on the basis of what it considers to be true. If the state restricts speech on important moral, political, scientific, and other similar matters on the basis of what it considers to be true and false, it strengthens conformity and group thinking, impedes the study of controversial issues, and encourages inaccuracy. In fact, this prevents the search for and appreciation of the truths that these measures are claimed to defend. (Anderson & George 2019) The fundamental problem is that the Prosecutor General's interpretation of the limits of free speech makes it difficult or impossible to defend the sexual morality that underlies lifelong and faithful marriage.