FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN FINLAND IN 2003

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Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

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The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (The Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxembourg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by Olivier De Schutter, with the assistance of Valérie Verbruggen.
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PRELIMINARY REMARKS

The criteria for setting up the report

This report analyzes the development of fundamental rights in Finland during the year 2003. Note that this year was relatively quiet on the legislative front because of new parliamentary elections in March 2003. The work of the new Parliament did not begin to produce results until the beginning of September.

The report has been made with reference to the EU Charter of Fundamental Rights and by adhering to the written guidelines submitted by the coordinator of the network. In addition, a *discoursive criterion* has been applied for the purpose of distinguishing between relevant and irrelevant developments. According to this criterion, a certain evolution was considered significant if it was subject to discussion and debate within the (Finnish) fundamental rights discourse.

In particular, it is usually an illustration of "the fundamental rights relevance" of bills if they have been considered by the Constitutional Law Committee of Parliament. In Finland, there is no constitutional court, and ordinary courts play only a secondary role in the control of constitutionality of laws. The primary control of constitutionality is, instead, the advance review done by the Constitutional Law Committee during the progress of the bill through Parliament. In practice, this control is about the Committee issuing statements on the constitutionality of the bills and other matters submitted to it, as well as on their relation to international human rights treaties (Section 74 of the Constitution of Finland). As a consequence, the Committee deals with such questions which in many other Member States are adjudicated by constitutional courts or ordinary courts.[1] For the purposes of this report, it has been necessary to take a special notice of the practice of the Constitutional Law Committee.

Abbreviations

In this report, the following abbreviations have been used:

- HE (hallituksen esitys, Government bill), e.g. HE 265/2002vp ('vp' refers to the institution of 'valtiopäivät', the annual session of the Parliament).
- PeVL (perustuslakivaliokunnan lausunto, Opinion by the Constitutional Law Committee
- KHO (korkein hallinto-oikeus, the Supreme Administrative Court), e.g. KHO 2002:86
- KKO (korkein oikeus, the Supreme Court), e.g.KKO 2002:27

Major developments and reasons of concern

The following issues emerge from the wealth of information as particularly important, either because they are especially a source of concern or because they are otherwise highly important.

- Finnish Aliens' law fails to guarantee the appropriate observance of the rights of asylum-seekers insofar as the so-called accelerated processing of asylum applications is concerned because judicial appeal against a negative decision does

[1] True, the Committee is an organ of the Parliament which consists of MPs. However, its practice is characterized by search for legally well-founded interpretations and consistent use of precedent. Before issuing an opinion the Committee hears academic experts of constitutional law.

not have automatic or even general suspensive effect (see Article 18, concluding observations of international organisations and national legislation)

- incidents of racism or ethnic discrimination continued to occur despite various forms of action taken by the authorities
- lack of progress in the recognition of land and resource rights of the indigenous Sami people, despite favourable developments in other fields such as linguistic rights
- the implementation of EU directives under TEC article 13 which during the reporting period progressed up to the stage of a new Equality Acts and certain amendments to other legislation being adopted by Parliament
- Finnish courts were still struggling to meet international standards of fair trial, as witnessed by several rulings against Finland by the European Court of Human Rights
- The relationship between freedom of expression and right to privacy gained much attention in 2003 in Finland. It is the view of many that Finnish courts have put too much emphasis on the right to privacy at the expense of the freedom of expression and ignored the relevant jurisprudence of the European Court of Human Rights. It is therefore significant to note that two cases in which Finnish newspapers claim a violation by Finland of Article 10 of the ECHR (freedom of expression) will be considered shortly by the European Human Rights Court.
- The effective implementation of social rights. After the deep recession ten years ago when unemployment rose to an unprecedented level, the Finnish state introduced cuts in its social expenditure, reducing, *inter alia*, certain allocations in social services and health care. Consequently, Finland is now dealing with a situation where health care and social services experience that they do not have enough resources.

CHAPTER I : DIGNITY

Article 1. Human dignity

National legislation, regulation and case law

A bill for an Act on the use of gametes and embryos in fertility treatment[2] was withdrawn by Government in February because the bill became subject to too much controversy within Parliament (for this debate, see the discussion under Articles 7 and 21). However, the Government plans to give the bill anew to Parliament and, therefore, the following observations on the bill will be of relevance in the future, too.

In its Opinion concerning the bill, the Constitutional Law Committee of Parliament[3] considered, among other things, the bill in light of Section 1, subsection 2 of the Constitution of Finland which provides as follows: "The constitution shall guarantee the inviolability of human dignity and the freedom and rights of the individual and promote justice in society."

The Committee took the view that the bill succeeded in preventing the use of fertility treatment in a manner that might amount to a violation of human dignity. The bill prohibited the use of such embryos and gametes in fertility treatments which have been used in scientific research or whose hereditary qualities have been altered. Furthermore, the bill prohibited the possibility of trying to influence on the qualities of the child by selecting embryos and stem cells, though with certain exceptions. The bill was also, according to the Committee, in harmony with the prohibition of eugenic practices, in particular those aiming at the selection of persons, and the prohibition of the reproductive cloning of human beings. However, the bill permitted both the selection of embryos and stem cells tested "healthy" in respect of a certain serious hereditary illness and the selection of the donor for the purpose of ascertaining the (approximate) resemblance of appearance between the childdonor and the parent of the child. An exception was also proposed in respect of sex selection when the couple's own gametes were to be used and there was a risk of a sex-related hereditary illness that could be prevented through sex selection. The bill also limited the use of fertility treatments as a source of individual financial gain.

See Helsinki Administrative Court case 21 March 2003, reported under article 6.

Article 2. Right to life

National legislation, regulation and case law

When the bill for an Act on the processing of personal data by the police[4] (the bill was subsequently approved by Parliament, and the Act entered into force on 1 October 2003, see the discussion under Article 8, national legislation) was before Parliament, the Constitutional Law Committee noted that the general prerequisite of the transfer of personal data to outside the European Union (or the European Economic Area) is that the country in question guarantees the appropriate observance of data protection. The Committee referred to Article 25 of the Data Protection Directive (95/46/EC) and paragraph 1 of Section 10 of the Constitution of Finland. More detailed provisions on the protection of personal data are laid down by Personal Data Act (Act No 523/1999). The Committee noted that the transfer of

[2] HE 76/2002vp laeiksi sukusolujen ja alkioiden käytöstä hedelmöityshoidossa ja isyyslain muuttamisesta. The government proposal also include some amendments to the Paternity Act (Act No 700 of 1975).
[3] See PeVL59/2002vp.
[4] HE 93/2002vp laiksi henkilötietojen käsittelystä poliisitoimessa ja eräiksi siihen liittyviksi laeiksi.

personal data is only possible in accordance with the relevant provisions laid down by the Personal Data Act (see especially Chapter 5 of this Act). Moreover, the Committee referred to Section 9, subsection 4 of the Constitution which provides that "[a] foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity." According to the Committee, the interpretive effect of this constitutional provision entailed that personal data shall not be transferred if it is processed for the purpose of sentencing a capital punishment or executing it.

Article 3. Right to the integrity of the person

National legislation, regulation and case law

A Government Bill on amendmendts to the Act on Comprehensive Education (peruskoululaki), the Act on Higher Secondary Schools (lukiolaki), the Act on Vocational Education (laki ammatillisesta koulutuksesta) and the Act on Adult Vocational Training (laki ammatillisesta aikuiskoulutuksesta)[5] included new provisions on the right of teachers and other personnel of schools to use coercive means in relation to pupils or students who cause disturbance in the classroom or otherwise in school premises. The Constitutional Law Committee of Parliament emphasized in its Opinion the crucial importance of the proportionality principle in any use of coercive means and stated that the student's or pupil's integrity of the person must not be interfered with more deeply than what is necessary in order to remove him or her from the place where the disturbance occurs. The Committee proposed that the Bill be made more specific through explicit provisions accordning to which coercive means may entail merely the use of a person's own physical strength without any sort of weapon or instrument.[6] The Parliament adopted the Bill as amended to such effect.[7]

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

National legislation, regulation and case law

Regarding detention conditions:

(a) The Deputy Parliamentary Ombudsman has paid attention to conditions in detention facilities, both before and after the CPT visit (for the preliminary observations of the CPT, see Article 19)[8]. In March 2003 he recommended that accused persons should be transferred from police establishments to prisons as soon as possible.[9] In December, he expressed concern at deficiencies relating to the surveillance of persons in police custody. During his inspection visits the Ombudsman had found out that in some police stations persons taken into short-term custody can be left to their own devices for an unreasonably long period of time, sometimes for more than two hours. In small police stations such persons may be left completely alone, without any possibility to contact the outside world, for up until two hours, in case the only police patrol has to carry out an urgent mission. Of 90 police stations in Finland 16 belong to this latter category. Lack of surveillance constitutes a risk for these individuals' life and security of person, in particular since in the great majority of cases the reason for taking somebody into custody is intoxication.

[5] HE 205/2002 vp
[6] PeVL 70/2002 vp (28 January 2003)
[7] Act Nos. 477-480/2003
[8] Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Finland from 7 to 17 September 2003 (Strasbourg, 21 October 2003). A detailed visit report will be delivered in the spring of 2004.
[9] Tutkintavangin säilyttäminen poliisivankilassa, decision No. 458/4/01 (10 March 2003).

In the same decision, the Deputy Parliamentary Ombudsman also draws attention to the varying quality of investigations made into deaths in custody. Some 20 such deaths occur in Finland each year, and in most cases the cause of death is intoxication, stroke or head injury. A few suicides and homicides have also been reported. Even if these deaths are not caused by ill-treatment by the police, each case gives rise to serious concern and, accordingly, the Deputy Ombudsman stresses the need for thorough investigations. Besides being important in each individual case, the quality of such investigations affects the degree of trust that the public has in the police. Furthermore, a proper analysis of the events leading to deaths in custody will help to prevent their occurrence in the future.[10]

(d) Concern has also been expressed at the detention of asylum seekers and aliens with irregular status in prisons and police establishments pending the inquiry as to their status. The situation has now improved because special detention units have been established for that purpose. For instance, the Deputy Parliamentary Ombudsman, the Minority Ombudsman and the CPT delegation have all welcomed the entering into service of the temporary Helsinki Custody Unit for Aliens. The CPT delegation noticed certain shortcomings in its operation (e.g. insufficient access to daily outdoor exercise; inadequate health care provision) and hoped that the opening of a new permanent detention unit in Helsinki would remedy these problems. It should be noted, however, that outside Helsinki, detained foreigners can still be held in short-term detention in police establishments.

The treatment of Roma prisoners (currently 120-140 persons) has been on the domestic agenda ever since it emerged that a part of them are being held in isolation for security reasons. A working group set up to consider the position of Roma prisoners concluded in January 2003 that they are in many respects in a worse position than other prisoners. What is relevant here is the fact that isolation is not resorted to because the Roma would be dangerous but because of racist attitudes of other prisoners. As a result they do not have equal possibilities to participate in prison activities such as education, work and rehabilitation. The working group stated that equal treatment of prisoners does not permit the establishment of separate sections or groups for Roma prisoners, for doing so can be regarded as discrimination on the ground of origin.[11]

Article 5. Prohibition of slavery and forced labor

Reasons for concern

Public discussion has continued in the issue of trafficking in persons, in particular of women from Estonia, the Russian Federation and possibly other parts of the former Soviet Union into Finland for the purpose of prostitution. The focus in the discussion has been on proposals to criminalize the purchase of sexual services (as already done by Sweden), while in particular the police and the immigration authorities appear to deny the existence of trafficking by emphasizing the voluntary nature of prostitution in Finland.

Finnish authorities are currently drafting new penal provisions related to trafficking in persons. One controversial aspect of this project is whether or not to criminalise an attempt to buy sexual services. However, no concrete legislative steps have been taken.

[10] Päätös putkakuolemien tutkintaa ja vapautensa menettäneiden valvontaa koskevassa asiassa, decision No. 2865/2/00 (18 December 2003).

[11] Rikosseuraamusviraston julkaisuja 2/2003: Romanien asema ja olosuhteet vankiloissa sekä yhdyskuntaseuraamusten suorittajina. Työryhmän raportti 20.1.2003.

For information on prostitution and trafficking in women in Finland, see IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003 (Events of 2002),* online: http://www.ihf-hr.org

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

National legislation, regulation and case law

Helsinki Administrative Court, Report No. 03/0156/2; 06500/02/5900 (21 March 2003):

Relevant domestic provisions and relevant articles of the ECHR: section 9–4 of the Constitution Act; section 19 of the Act on International Co-Operation in the Enforcement of Certain Penal Sanctions; Chapter 2, sections 13–1 and 13–2 of the Act on the enforcement of penal sanctions; ECHR–5

Abstract: An Estonian citizen A had been sentenced in Finland to imprisonment for a drug offence. The Directorate of Immigration had decided on A's deportation once A is released from prison. The Ministry of Justice ordered that A is transferred to Estonia in order to serve the prison sentence there. A appealed against the Ministry's decision to the administrative court.

The administrative court noted that the formal conditions for A's transfer, as prescribed in the Act on International Co-Operation in the Enforcement of Certain Penal Sanctions, were fulfilled. However, section 9–4 of the Constitution Act had to be taken into account as well, as a specific legal condition for the transfer. Section 9–4 provides that a foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity. According to the court, attention should be paid, in particular, to prison conditions in the state to which the person is transferred and to the time period after which the person would have the possibility of being released on parole. In Estonia, a person may be released on parole after having served two-thirds of his/her sentence, whereas in Finland it is after one-half of the sentence has been served. The administrative court considered that although the carrying out of the sentence in Estonia may in practice prolong A's time in imprisonment, this did not as such contain a danger of treatment violating human dignity. Furthermore, in the court's view, there was no violation of Article 5 of the ECHR, as long as the term of imprisonment ordered by the Finnish court was not exceeded.

With reference to reports submitted by the Ministry of Justice, the court then noted that the prison conditions in Estonia in general could not as such result in treatment violating human dignity. Admittedly, the security conditions in prisons were not altogether stable, but on the other hand the court saw no reason to doubt that the prison authorities in Estonia would not have the means and the intention to prevent any possible threats to the security of the prisoners. The administrative court rejected A's appeal. The decision is final. The case is pending before the European Court of Human Rights.

Article 7. Respect for private and family life

International case law and concluding observation of international organs

Eur.Ct. H.R.: *K.A. v. Finland* no. 27751/95, 14 January 2003, Violation of Article 8 of the ECHR: The applicant and his wife had three children. His wife suffered from mental problems and is on early retirement. The social welfare authorities were contacted several times with regard to the family. The information received raised suspicion that the mother was sexually abusing the children. The parents were also consuming large amounts of alcohol. The children underwent, the parents consenting to this, a psychiatric examination. During this time the parents were contacted about the possibility of taking the children into public care. They objected this measure. The children were placed in public care by emergency orders (lastensuojelulaki 683/1983) with a view of ensuring that the incest investigation could be completed. After this the children have not been living with their biological parents at all, despite numerous appeals parents tried to make.

The applicant complained under art. 8 of the Convention that his right to respect for his private and family life and home was violated on account of his children's placement in public care, the decision making procedure and the implementation of that care. The Court held that there had been no violation of Article 8 on account of taking of the applicant's children into public care. The Court notes that the emergency orders of June 1992 were issued in the light of findings which, in the Social Welfare Board's Opinion, amounted to a discovery of incest directed against the applicant's children, in addition to the family's problems relating to their mental health and finances. Accordingly, the interference with the applicant's family life in the form of the emergency orders was "in accordance with the law". The applicant complained that the Social Welfare Board and the administrative courts failed to ensure his ability to present adequate arguments and expertise against the taking of his children into public care. The Court observed that the applicant could and did appeal against the ordinary care orders and that he was able to comment on the Social Welfare Board's submissions to the administrative courts in the appeal proceedings. In addition, he could sufficiently understand the material deemed decisive by the Social Welfare Board and the administrative courts in maintaining the public care in the form of ordinary care orders. The applicant had not shown that the authorities and the courts failed to take all necessary steps to render his involvement in the decision-making process as effective as possible. Accordingly, the Court found that the applicant was sufficiently involved in the decision-making concerning the taking into care of his children and therefore found no violation of article 8 in this respect.

The Court, however, did not discern any serious and sustained effort on the part of the social welfare authority to facilitate a possible reunification of the family during the years which the children had been in care. The local social welfare authority and the administrative courts did not consider the reunification of the original family as a serious option. Instead, they were firmly proceeding from a presumption that the children would be in need of long-lasting public care in a foster home. The severe restrictions on the applicant's right to visit his children reflected an intention on the part of the social welfare authority to strengthen the ties between the children and the foster family than to reunite the original family. The applicant's final appeal against the care orders had not yet been examined by the Supreme Administrative Court, when foster care was being planned for the children and children were being heard in respect of such an option. The applicant had also opposed foster care while awaiting the outcome of his appeal. When the appeal was dismissed, the children's possible return to the applicant's home was never presented as an option by the social welfare authorities. The Court concluded that there had been a violation of Article 8 as a result of the authorities' failure to take sufficient steps to reunite the applicant and his children.

National legislation, regulation and case law

Act on investigation of the criminal background of those who work with children (Laki lasten kanssa työskentelevien rikostaustan selvittämiseksi ja rikosrekisterilain 6 ja 7 §:n muuttamisesta, Act No 504 of 2002), date of entry into force 1.1.2003.[12] The purpose of the Act is to protect the personal integrity of children and to enhance their personal security. It provides for a procedure by which an employer shall check the criminal background of a person who is to be employed on a permanent basis in order to work continuously with minor children without the presence of their parents. The employer shall ask the person to present an extract from the criminal record. The document shall be returned to the person who has presented it, and it may not be copied. The Act also prescribes the obligation to observe secrecy when handling the information on a person's criminal record. Section 6 of the Act on criminal records (Act No 770 of 1993, as amended by Act No 505 of 2002) lists the offences which are to be included in the extract from the criminal record for this particular purpose.

A bill for an Act on the use of gametes and embryos in fertility treatment (see also discussion in the context of Article 21)[13] caused much dispute over, inter alia, the right of a child born from a donated gamete to know the donor's identity. The government decided in February to withdraw its Bill from Parliament, but it plans to a give a new bill to Parliament. Therefore, the following observations on the child's right to know the donor's identity are of significance.

According to the bill, the child would enjoy the right to an anonymous description of the gamete donor after having attained eighteen years of age. However, this right would not include the right to know the personal data of the donor unless the donor has accepted that his personal data will be revealed to the child born of the gamete donation (after the child has attained eighteen years of age). In part this limitation on the right of the child to know the identity of the gamete donor originated in fears that donor numbers might fall drastically if the identity of the donor is revealed to the child. However, this proposition was deemed to be unconstitutional by the Constitutional Law Committee. The Committee noted that the right of the child to know the identity of the gamete donor must be considered in light of Section 10 of the Constitution of Finland which guarantees "everyone's private life". According to the Committee, it was incompatible with that constitutional right if the child born of the gamete donation has no access to such information on his biological origins which is in the possession of the authorities. The Committee thus concluded that the child must have the right of access to public documents and other information concerning donor's identity after she or he has attained eighteen years of age.[14]

* * *

Case law concerning the right to family reunification/or the right to respect of family life in the context of cases involving the application of the Finnish Aliens' Act:

In general, the right to family reunification and the right to respect of family life have received more emphasis in the decision-making of the courts, notably the Supreme Administrative Court, than in the first instance decision-making by the Directorate of

[12] See also PeVL 9/2002vp.

[13] HE 76/2002vp laeiksi sukusolujen ja alkioiden käytöstä hedelmöityshoidossa ja isyyslain muuttamisesta. The government proposal also include some amendments to the Paternity Act (Act No 700 of 1975). See also PeVL59/2002vp.

[14] See PeVL 59/2002vp. The Opinion appears to leave open the constitutionality of a solution in which neither authorities nor the child would have access to the identity of the donor. In practice this could be achieved either by destroying the information in question after the fertility treatment or by mixing gametes from different donors at an earlier stage of the treatment.

Immigration. Moreover, the best interests of the child often receive more emphasis in the decision-making of the courts.

Supreme Administrative Court, KHO 2003:8:

Relevant domestic provisions and relevant Articles of the ECHR: Sections 20, 30, 31, 37, 38 and 43 of the Aliens Act, section 10 of the Constitution Act, ECHR–8

Abstract: The Directorate of Immigration had rejected A:s application for asylum and residence permit. A was to be deported to his home country and he was also refused entry to Finland for two years. Both the administrative court and the Supreme Administrative Court rejected A's appeal.

In his appeal to the Supreme Administrative Court, A referred to Article 8 of the ECHR. At the reception centre for asylum seekers A had met another asylum seeker, B, and had lived together with her for nine months. B was then deported to her home country and was refused entry to Finland for two years. After two years she returned to Finland for a few days with a tourist visa. She applied for asylum in Finland again and told then that she was pregnant. A claimed that under the circumstances his deportation would infringe with his right to private and family life as prescribed in the Constitution Act and in the ECHR.

The Supreme Administrative Court found that the definition of a "family tie" under Article 8 of the ECHR did not include a situation in which a couple lives together in a reception centre for asylum seekers, after having previously lived together for a short period of time and having thereafter been separated for over two years. The Aliens Act or the ECHR do not grant an asylum seeker who has no residence permit and no other ties to Finland the right to choose Finland as a place of residence for himself/herself or his/her family. The Court concluded that A's deportation was not in violation of Article 8 of the ECHR.

A has filed an application with the European Court of Human Rights

Supreme Administrative Court. KHO 2003:28:

Relevant domestic provisions and relevant Articles of the ECHR: Sections 1c, 18b and 18c of the Aliens Act, sections 9 and 10 of the Constitution Act, ECHR–8, CRC–3, CRC–7, CRC–10

Abstract: A was married to a Finnish citizen C. From a previous marriage A had a child B who was a minor. The Directorate of Immigration had rejected their applications for a residence permit. According to the Aliens Act, as a spouse of a Finnish citizen A could have been issued a residence permit on the basis of a family tie. As B was not C's family member, as defined in the Aliens Act, B could be issued a residence permit only if B had guaranteed means of support. The Directorate of Immigration found that considering C's income this was not the case. It concluded that taking into account all the relevant circumstances in matter and as B could not be issued a residence permit, A's residence permit should also be refused. The administrative court agreed with the decision and rejected the appeal made by C and B. The court also referred to the ECHR and noted that Article 8 did not guarantee a person a general right to receive a residence permit in the home country of his or her spouse. C appealed to the Supreme Administrative Court on behalf of B.

The Supreme Administrative Court discussed both the Aliens Act, the ECHR and the CRC. Regarding Article 8 of the ECHR, the Court noted that Article 8 provides protection for genuine and close family life. It does not grant an alien a general right of residence in the home country of his or her spouse, nor does it guarantee a child a right to be issued a residence permit in the country where the child's parent is residing. However, Article 8

guarantees family reunification provided there are no specific grounds against it. The Court continued that the requirement of guaranteed means of support is not as such in conflict with Article 8 as it is possible to interfere with the right to family life in the interests of the economic well-being of the country. The Court then referred to the CRC and to the best interests of the child. The fact that B could not be issued a residence permit because B did not have guaranteed means of support could not alone be regarded as a weighty reason for refusing A's permit. In the Court's view, it should be considered in A's case whether the purpose of the marriage has been to lead genuine and close family life. Furthermore, B's ties to his/her home country, other factors relating to the best interests of the child as well as their possible effect in considering A's residence permit had to be taken into account. As far as B's residence permit was concerned, the Court found that the requirement of guaranteed means of support could not supersede the obligations under the CRC. The Court then concluded that, in this case it should be assessed whether it is in B's best interests to follow A and whether one in that case has to deviate from the requirement of guaranteed means of support. On the other hand, if B:s family ties are mainly in his/her home country it must be considered whether it is in B's best interests that A's residence permit is refused. The case was returned to the Directorate of Immigration for a new consideration.

Supreme Administrative Court. KHO 2003:58:

Relevant domestic provisions and relevant Articles of the ECHR: Sections 18b and 18c of the Aliens Act, section 10–1 of the Constitution Act, ECHR–8, general references to the CCPR, CESCR, CRC and UDHR

Abstract: A had been issued a residence permit in Finland on the basis of need of protection. On A's application, the Directorate of Immigration had granted A's parents B and C residence permits on the basis of a family tie, but had rejected the application for residence permits A had submitted on behalf of his/her brothers X and Y and his/her sister Z. When A submitted the applications, both A, X, Y and Z were minors, but by the time the Directorate of Immigration made its decision, they had all reached the age of majority (in Finland 18 years).

A appealed to the administrative court which decided the case on the basis of the Aliens Act. Section 18b of the Aliens Act defines a "family member" as a spouse, an unmarried child of under 18 years of age and, in case of a minor, his or her guardian. According to section 18c, a family member of an alien residing in Finland with a residence permit issued on the basis of refuge or need of protection shall be issued a residence permit unless there are reasons relating to public order or safety or other weighty reasons against it. X, Y and Z were not A's family members as defined in the Aliens Act. When the parents were granted their residence permits, X, Y and Z had already reached the age of 18 years. Other relatives than family members may be issued a residence permit only on grounds specified in sections 18c–3 of the Act. With reference to section 18c–3, the administrative court concluded that refusing a residence permit would not be unreasonable as it could not be considered that the persons in question intended to continue their earlier close family life in Finland or that X, Y and Z would be fully dependent on a person residing in Finland. The decision of the Directorate of Immigration was not amended.

The Supreme Administrative Court rejected A's appeal. In the appeal, A referred to Article 8 of the ECHR and generally to the UDHR, CCPR, CESCR and CRC. The Supreme Administrative Court does not discuss these human rights instruments in its decision.

Supreme Administrative Court case KHO 2003:75:

Relevant domestic provisions and relevant provisions of the ECHR: ECHR-8

The application by Mr C for family reunification in the form of allowing his children A and B to move from Turkey to Finland was rejected by the Supreme Administrative Court, with one dissenting vote allowing the application in respect of B who had not reached the age of majority before the Court's decision. C had moved to Finland in 1991 and acquired Finnish citizenship in 1999, after marrying a Finn. During his stay in Finland his children were in the care of his relatives in Turkey and C had been sending money for their subsistence. He had twice visited his children in Turkey, in addition to maintaining contact by correspondence and telephone. In rejecting the application the Supreme Administrative Court referred to the judgment of the European Court of Human Rights in the case of P.R. v. the Netherlands (application No. 39391/98, judgment of 7 November 2000) and, similarly to the European Court, reasoned that the denial of family reunification did not prevent C from enjoying family life with his children to the degree chosen by himself by getting settled in Finland, taking into account that the ECHR does not guarantee an immigrant the right to choose the location where to enjoy family life.

However, in addition to this (correct) reasoning the Supreme Administrative Court stated that the enjoyment of family life between C and his children had to be considered "severed" through the voluntary and conscious decisions by C, and that the forms of contact retained by C did not show that there was sufficiently close and real family life to be protected as intended under article 8 of the ECHR.

Supreme Administrative Court: KHO 2002:84:

Relevant domestic provisions and relevant provisions of the ECHR: Sections 18b and 18c of the Aliens Act; ECHR–8

Abstract: A had arrived from Iran to a UNHCR refugee camp in Turkey in 1995 and had been issued a residence permit in Finland on the basis of refugee status in 1997. A applied for a residence permit on behalf of his Iranian wife B on the basis of family ties. According to section 18c of the Aliens Act, a family member of an alien residing in Finland with a residence permit issued on the basis of refugee status shall be issued a residence permit unless there are reasons relating to public order or safety or other weighty reasons against issuing the permit. The Directorate of Immigration considered that it had not been shown that there had been any genuine family life between A and B and rejected A's application. The administrative court dismissed A's appeal. The Supreme Administrative Court granted A leave to appeal.

A and B had known each other since childhood. Before A left for Turkey in 1995, he had asked B to join him, but that was not possible at the time. While being in Finland, A had kept in touch with B. They were married in Iran in 2000 according to Iranian legislation. Being a refugee, A could not be present at the wedding. After the wedding, A and B had spent a few weeks together in Turkey in 2001.

The Supreme Administrative Court referred to section 18c of the Aliens Act and Article 8 of the ECHR and noted that the purpose of these provisions is to protect genuine and close family life. When issuing a residence permit, the basis for the decision is an assumption of genuine family life. According to the Supreme Administrative Court, when assessing the meaning of family life in this case, the requirements set by religion and culture in Iran had to be taken into account. Consequently, it could not be required that A and B should have lived together before their marriage. After the marriage, A's status as a refugee gave him limited possibilities to see his wife. In this case, leading a genuine family life required thus that the

wife should have a possibility to move to live with her husband. The Court concluded that considering the circumstances in the matter in their entirety, the fact that A and B had up to now not led a family life did not mean that there would not have been a bond between the spouses which requires the protection of their family life when applying for a residence permit on the basis of a family tie in order to lead family life in Finland. The Supreme Administrative Court quashed the decisions of the administrative court and the Directorate of Immigration and returned the case to the latter for a new consideration.

Reasons of concern

The right to privacy was among the domestic human rights issue that gained attention in 2003. One privacy issue that gained much attention was the tension between the right to privacy and freedom of expression, see below, Article 11, reasons of concern.

Article 8. Protection of personal data

National legislation, regulation and case law

Act on the processing of personal data in the enforcement of punishments (Laki henkilötietojen käsittelystä rangaistusten täytäntöönpanossa, Act No 422 of 2002), date of entry into force 1.1.2003. The Act contains specific provisions on the processing of personal data by authorities which deal with the enforcement of prison sentences and pre-trial detention. It is meant to complement the more general provisions in the Personal Data Act (Act No 523 of 1999). The Act applies to personal data files or other processing of personal data in the Criminal Sanctions Agency, Probation Service and Prison Service, which are all units subject to the Ministry of Justice. It also prescribes on the rights of the person to whom the personal data pertains. As concerns secrecy and disclosure of information, the specific provisions of the Act complement the Act on the Openness of Government Activities (Act No 621 of 1999).

A*ct on the processing of personal data by the police* (Laki henkilötietojen käsittelystä poliisitoimessa ja eräiksi siihen liittyviksi laeiksi, Acts No 761-766 of 2003, date of entry into force 1.10.2003). These Acts repeal the current Act on the Personal Data Files of the Police (Act No 509 of 1995), and they provide the basic provisions concerning the automatic and other processing of personal data by the police where the data constitute or is intended to constitute a personal data file or a part thereof.[15] (See also the discussion under Article 2).

Amendments were made to the Coercive Measures Act (Act No 450 of 1987) and Criminal Investigation Act (Act No 449 of 1987), date of entry into force 1.1.2004, Acts No 645-659 of 2003).[16] The amendments open e-mail and wireless accounts to police surveillance. For instance, the police is allowed, if authorised by a court, to receive information on the sender and recipient of an e-mail, as well as on the contents of the message. The same also applies to personal logins and IP addresses, as well as mobile handsets. The police also receives information on the location of a specific mobile phone. In addition, investigating crimes committed over the internet become easier. As a rule, police is authorised to receive information on wireless accounts only if the minimum sentence for the suspected crime is four years imprisonment, but an exception would be made in respect of narcotics crime investigation.

[15] See also PeVL 51/2002vp.
[16] See also PeVL 36/2002vp.

A Bill for a new Act on Privacy on Electronic Communications (HE 125/2003vp).[17] The aim of this proposal is to improve confidentiality, protection of privacy and information security in electronic communications. It will promote the development of electronic communication services and clear the responsibilities of telecommunication operators and other service providers in terms of confidentiality in communications. The Act will implement the European Union Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector, and partly, the Directive on distant sale of financial services. The new Finnish Act would repeal the previous Act on the Protection of Privacy and Data Security in Telecommunications. The proposal is currently beforeParliament.

Practice of national authorities

Finland's National Bureau of Investigation (NBI) – Finland's Central Police, Keskusrikospoliisi – suspects that the corporate security section of Sonera – Sonera is the former State telecommunications monopole and still Finland's largest telecom carrier and the largest owner of Sonera shares is the Finnish state – violated the privacy of about 7,000 people in 2000 and 2001. Investigators suspect that the company illegally traced telecommunications information, and that the activity involved mobile telephone calls, as well as fixed-line calls and e-mail. The purpose of these activities was to find out the source of leaks of certain embarrassing information from inside the company to news media.[18] Under Finnish law, an operator can obtain telephone records to prevent and investigate wrongdoings, but the suspected offence must relate to telecommunications activities. Furthermore, telephone companies are legally obliged to guarantee the privacy of telecommunications, and access to telephone records is restricted to police and the authorities under court authorisation. The target of any such investigation must be informed about the scrutiny of phone records after the investigation is concluded. A person found guilty of aggravated violation of privacy in communications can be sentenced to three years' imprisonment, and even an attempt at the crime is penalised.

Reasons of concern

One problem in the implementation of the right to privacy was related to the confidentiality of communications, in particular the legality of actions taken by a) the police and the courts in respect of phone-tapping, and b) the police in respect of acquisition and use of telecommunications identification data.**[19]**

Article 9. Right to marry and right to found a family

Practice of national authorities

According to the prognosis by Statistics Finland (tilastokeskus) there were in 2003 26.000 new marriages, 13.300 divorces and 200 cases of registering a same-sex relationship.[20]

[17] HE 125/2003vp Eduskunnalle sähköisen viestinnän tietosuojalaiksi ja eräiksi siihen liittyviksi laeiksi.
[18] Helsingin Sanomat, 13.8.2003.
[19] See decisions No. 200/4/01 and No. 2949/2/02 (both dated 21 October 2003) of the Deputy Parliamentary Ombudsman on phone-tapping, and 'Törkeän rikoksen tutkinta johti Lipposen puhelimen urkintaan, 'Helsingin Sanomat, 30 November 2003.
[20] http://www.stat.fi/tk/tp_tied/tiedotteet/v2003/275vrms.html (29 December 2003)

Article 10. Freedom of thought, conscience and religion

National legislation, regulation and case law

The Government Bill[21]l for a new Freedom of Religion Act was adopted in February 2003 and entered into force on 1 August 2003.[22] The new Act liberalizes the rules on the establishment, registration and operation of religious communities by abolishing several outdated restrictions. Due to the close connection of the subject matter with Section 11 of the Finnish Consitution the Bill was considered by the Constitutional Law Committee for adoption in the plenary, instead of the usual role of this Committee to give a legal opinion to another Committee. The Committee gave its support to the continuation of religion as an obligatory part in the curriculum of public schools. Through amendments to the Comprehensive Education Act[23] and the Act on Higher Secondary Schools[24] the pupils belonging to the Lutheran Church are obliged to participate in the teaching of that religion as part of the school curriculum.[25] Pupils belonging to other religious denominations or to no religion at all have various options, including participation in the lessons on the Lutheran religion or opting for separate lessons in their own religion, or ethics in the case of pupils not belonging to any religion. The most controversial issue was whether pupils belonging to the Lutheran Church, or their parents, should have the right to opt out of the teaching of religion on the basis of Section 11 of the Constitution which includes the clause: "No one is under the obligation, against his or her conscience, to participate in the practice of a religion." The Committee took the position that the proposed arrangement was in conformity with the Constitution because the teaching of religion was to be of non-confessional nature and hence does not constitute "practice" of a religion.[26]

New law on cemeteries. The Government Bill for a new Freedom of Religion Act was accompanied by another Bill[27] for an Act on Maintaining Cemeteries.[28] One of the reasons for new legislation in the matter was in the difficulties of Muslims to find a burial site in Finland where cemeteries traditionally belong to the Lutheran Church. Through the new law the parishes of the Lutheran Church were obliged to provide, at nondiscriminatory cost, separate areas for the burial of persons belonging to another religion or to no religious community. In its Opinion the Constitutional Law Committee took the view that this obligation was not contrary to constitutional property rights because the Lutheran Church and its parishes are public law entities and thus not holders of constitutional property rights. In addition the real estate property of the Lutheran Church was for the most part a result of its historical status as State Church.[29]

Wearing of the headscarf. The Parliamentary Deputy Ombudsman issued on 17 November 2003 a decision on the right of Muslim women to wear a headscarf in photographs taken for a passport or other identity document. The case originated from a complaint against restrictive practices applied by the police in the city of Vantaa. With reference to information received from the Ministry of the Interior the Deputy Ombudsman emphasized that it was possible to photograph Muslim women in a way that both secured their identification and respected their

[21] HE 170/2002 vp. For a description of the Bill, see the 2002 report.
[22] Uskonnonvapauslaki (453/2003) [Freedom of Religion Act].
[23] Laki peruskoululain 13 §:n muuttamisesta (454/2003) [Act on Amending Section 13 of the Comprehensive Education Act].
[24] Laki lukiolain 9 §:n muuttamisesta (455/2003) [Act on Amending Section 19 of the Act on Higher Secondary Schools].
[25] Technically the laws in question make obligatory the teaching of the religion adhered to by a majority of the pupils in a school. In practice this means the Lutheran religion in all public schools.
[26] PeVM 10/2002 vp.
[27] HE 204/2002 vp.
[28] Hautaustoimilaki (457/2003) [Act on Maintaining Cemeteries].
[29] PeVL 71/2002 vp.

freedom of religion. The Ministry was instructed to amend its instructions to the police so that uniform practice could be achieved.[30]

Article 11. Freedom of expression and of information

International case law and concluding observation of international organs

In its Concluding Observations of 22 August 2003 the UN Committee on the Elimination of Racial Discrimination (CERD/C/63/CO/5) expressed its concern about the continued occurrence of racist, discriminatory and xenophobic material on the Internet and recommended Finland to take appropriate measures to combat racist propaganda on the Internet.

National legislation, regulation and case law

New law on the freedom of expression. Parliament passed Act on the Exercise of Freedom of Expression in Mass Media (Act No 460 of 2003) and on some related laws. The Act will enter into force on 1 January 2004. Parliament made significant changes to the original bill (HE 54/2002vp) because the Constitutional Law Committee (PeVM 14/2002vp) had suggested the bill to be changed in many respects for the purpose of achieving harmony with freedom of expression enshrined in Section 12 of the Constitution of Finland. According to this constitutional provision, "[e]veryone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act."

The fundamental premise of the application of the new Act is that interference with the activities of the media shall be legitimate only in so far as it is unavoidable, taking due note of the importance of the freedom of expression in a democracy subject to the rule of law (Section 1, subsection 2).

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The Act applies both to the traditional (printed) media and to publishing in Internet. The Act does not bring about any significant alterations in so far as the traditional (printed) media is concerned. However, the most important changes relate to internet. Generally speaking, the new law brings internet publications on the same footing as traditional media.

The Act includes detailed provisions concerning duties of publishers and broadcasters (Chapter 2), reply and correction (Chapter 3), responsibility for the contents of the message, coercive measures (Chapter 5) and sanctions and right to prosecution (Chapter 6).

The most disputed provisions of the new Act relate to the obligation of publishers to store the web publications or programs and log information. According to the drafters of the law, the compulsory archival of the log information is required because it is the only way to find out the identities of those who write anonymously and at the same time commit a crime. The argument is that one can commit a number of crimes by using various means of expression, protected by freedom of expression; one can, for example, commit a fraud, libel, or publish information violating others' right to privacy. However, the critics are questioning the *ratio* of the storing obligation. They also argue that storing multimedia or e.g. educational programs for three weeks is too expensive and that the storing obligation might also otherwise present

[30] The position of the Deputy Ombudsman is in line with earlier decisions in Finland. For instance in its case No. 1713:96 of 16 January 1997 the Insurance Court quashed a decision to deny unemployment benefits to a Muslim woman who was unemployed as she had not been hired after telling the potential employer that she would wear the headscarf at work.

significant technical and other problems especially for NGOs and small businesses. Thereby, the obligation might restrict the freedom of expression in the Internet. The critics claim that the new Act fails to take the realities of the Internet appropriately into account and that the writers of the new law have had a very weak understanding of the Internet and underlying technologies.

English translation of Act on the Exercise of Freedom of Expression in Mass Media (Act No 460 of 2003) is available at http://www.finlex.fi

The second stage of the legislative reform in communications has been taken as the Communications Market Act (Act No 393 of 2003) entered into force on 25 July 2003. [31]

The Act implements new European Community Directives on electronic communications (Directive 2002/19-22/EC). It also seeks to reinforce communications administration, and accelerate processes resolving disputes. The new Act promotes e-commerce, television and radio operations and content production, as well as lays a groundwork for the development of communication services. One of the aims of the Act is to preserve media pluralism.

According to the new Act, obligations imposed on telecommunication operators mainly concern those with significant market power. Reasons for obligations are provided in the Act. The Finnish Communications Regulatory Authority defines the relevant communications market and makes decisions on obligations imposed on telecommunication operators. In accordance with the Act, operators with significant market power are obliged to relinquish access rights to mobile subscription capacity or some other equivalent smart card (for example SIM card) capacity.

Users of telecommunication services have a right to certain universal services such as a subscription in a public telephone network. A user would be entitled to retain his or her telephone number also when changing his or her mobile communications operator. This amendment is expected to increase competition in mobile communications.

Telecommunications operators providing network services in a cable television network have to transfer without charge only the programmes of the Finnish Broadcasting Company Ltd YLE including ancillary and supplementary services related to these programmes. YLE is responsible for the provision of comprehensive broadcasting services for everyone under equal conditions by virtue of Section 7 of Act on the Finnish Broadcasting Company (Act No 1380 of 1993). The transfer obligation also applies to commercial actors' national channels and related services. However, for their transfer a telecommunications operator cannot charge more than the cost-oriented price. Nevertheless, programmes of commercial, freely receivable channels have to be transferred free of charge until the end of the present operating licence period.

Case law

Supreme Court: KKO 2003:69:

Relevant domestic provisions and relevant Articles of the ECHR: Chapter 14, section 7 and Chapter 30, section 2 of the Code of Judicial Procedure, ECHR–10

Abstract: A, who had acted as an attorney in an appeal case, had been sentenced to a fine by the court of appeal for having used offensive and disrespectful language in the letter of appeal. A had, among other things, criticized the members of the first instance court and their judicial ethics. The decision of the court of appeal was based on chapter 14, section 7 of the

[31] See also PeVL 61/2002vp.

Code of Judicial Procedure. A appealed to the Supreme Court. In its decision, the Supreme Court concentrated on the question whether it was possible in this case to appeal without leave to appeal, and came to an affirmative conclusion. As to the merits, the Supreme Court did not change the decision of the court of appeal.

One justice of the Supreme Court submitted a concurring opinion, and another justice agreed with this opinion. In the concurring opinion, the justice discussed, among other things, the possibility of restrictions of the right to freedom of expression under Article 10–2 of the ECHR. He concluded that the penal provision in chapter 14, section 7 of the Code of Judicial Procedure constituted a restriction which was necessary for the appropriate administration of justice and which applied also to statements and letters submitted to the court by an attorney on behalf of his or her client. A admitted that he/she had tried to shock by his/her choice of language and referred to the opinions of the European Court of Human Rights according to which freedom of expression includes recourse to a certain degree of exaggeration and even provocation. The concurring justice pointed out that the opinions A was referring to did not apply to criticism addressed to a court in written pleadings. On the contrary, the European Court of Human Rights has emphasised that it must be possible to criticize courts without making accusations against the members of the court personally. The justice referred to the cases of *Barford* (Publications of the European Court of Human Rights, Series A, Vol. 149) and *Prager and Oberschlick v. Austria* (Publications of the European Court of Human Rights, Series A. Vol. 313).

Helsinki Court of Appeal, Report No. 126; R01/3905 (14 January 2003):

Relevant domestic provisions and relevant Articles of the ECHR: Chapter 24, section 9 of the Penal Code, ECHR–10–2

Abstract: An article in a periodical had dealt with the assistants of members of Parliament and their work in support of the re-election of the candidates. A former member of the Parliament, A, was assisting in the election campaign of a candidate and carried out this work within the framework of his own consultant firm. In the article, A's business activities were compared to the activities of a "dubious businessman". There was also some other misleading information in the article which was later corrected. However, the reference to a dubious businessman was not corrected.

With reference to the Penal Code, the court of appeal pointed out that spreading false information or a false insinuation of another person is not justified even when dealing with politics. Furthermore, the purpose of criticism may not be to offend another person. The court then noted that freedom of expression as provided for in Article 10 of the ECHR may be subject to restrictions that are prescribed by law and necessary in a democratic society in order to protect the reputation and rights of others. The court discussed the cases of Dalban v. Romania (judgment of 28 September 1999, Reports of Judgments and Decisions 1999–VI) and Bladet Tromsø and Stensaas v. Norway (judgment of 20 May 1999, Reports of Judgments and Decisions 1999–III) in which the European Court of Human Rights expressed the principle that the press must not overstep certain bounds in respect of the reputation and rights of others, although journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation. The court continued by pointing out that the reference to a "dubious businessman" had not been corrected. Even if A had refused to disclose information requested by the periodical, it did not justify the use of a defamatory expression. The court of appeal upheld the decision of the court of first instance. The editor of the periodical and the journalist who had written the article were sentenced for defamation to a fine. The decision is final.

Supreme Administrative Court, KHO 2003:77:

Relevant domestic provisions: Sections 3, 17 and 24 of the Act on the Openness of Government Activities

Abstract: A journalist had requested from the security police for a document which contained information about Finnish citizens who were suspected of having contacts with foreign intelligence services. With reference to the secrecy obligations prescribed in the Act on the Openness of Government Activities the security police denied the request on the grounds that giving access to the document could compromise state security and Finland's international relations. The administrative court rejected the journalist's appeal. In the appeal before the Supreme Administrative Court, the journalist claimed, among other things, that concepts such as "state security" or "compromising international relations" were very broad. The security police should have given more detailed and specified grounds for its refusal. The journalist also mentioned the role of the media as a "public watchdog" and referred to the following decisions of the European Court of Human Rights: *Bladet Tromsø and Stensaas v. Norway* (judgment of 20 May 1999, Reports of Judgments and Decisions 1999–III), *Jersild v. Denmark* (judgment of 23 September 1994, Publications of the European Court of Human Rights, Series A, Vol. 298), *De Haes and Gijsels v. Belgium* (judgment of 24 February 1997, Reports of Judgments and Decisions 1997–I), *Prager and Oberschlick v. Austria* (judgment of 26 April 1995, Publications of the European Court of Human Rights, Series A, Vol. 313) and *Goodwin v. the United Kingdom* (judgment of 27 March 1996, Reports of Judgments and Decisions 1996–II). The Supreme Administrative Court decided the case on the basis of the Act on the Openness of Government Activities and did not refer to the ECHR or the case law of the European Court of Human Rights. The Court found that the security police had received the document by means of a confidential exchange of information and while carrying out its tasks in maintaining state security. It was not obvious that access to the document would not compromise state security. The Supreme Administrative Court did not change the decision of the administrative court.

Reasons of concern

Freedom of expression was among the human rights issue that gained attention in 2003 in Finland. In recent years there have been several high-profile court cases dealing with the relationship between the right to privacy and freedom of expression (see e.g. the Supreme Court, 2001:96 and 2002:55), and the situation is unsettled. It is the view of many that Finnish courts have put too much emphasis on the right to privacy at the expense of the freedom of expression and ignored the relevant jurisprudence of the European Court of Human Rights. It is therefore significant to note that two cases in which Finnish newspapers claim a violation by Finland of Article 10 of the ECHR (freedom of expression) will be considered shortly by the European Human Rights Court.

Article 12. Freedom of assembly and of association

National legislation, regulation and case law

Answer to the question in frame: Freedom of assembly and freedom of association are guaranteed as constitutional rights under Section 13 of the Constitution of Finland.

More detailed provisions on the exercise of these freedoms are laid down by an Act, i.e. Association Act (No. 503 of 26 May 1989). According to Section 1 of this Act, an association may be founded for the common realisation of a non-profit purpose. The purpose may not be contrary to law or good manners. Moreover, associations which due to the obedience required of members, to the division into units or groups, or to the equipping with

arms is to be deemed, in full or in part, militarily organised, are prohibited (Section 3). These provisions prohibit the founding of such associations which would aim at destructing the principles of democracy and the rule of law, or fundamental rights.

Section 43 of the Association Ac regulates, in turn, terminating of associations. This provision, therefore, allows to react against such associations that function to violate the principles of democracy or the rule of law or fundamental rights. According to Section 43, the court of first instance of the domicile of an association may on the basis of an action brought by the Ministry of the Interior, Public Prosecutor or a member of the association declare the association terminated "if the association acts substantially against law or good manners". However, if the public interest does not require termination of the association, the association may be cautioned instead of being terminated.

Political parties are governed by a separate Act, i.e. Act on Political Parties (Act No 10 of 1969). Section 2, item 4 of the Act on Political Parties explicitly requires for the registration of political parties that the rules of the party guarantee the observance of democracy in the administration and function of the political party. Section 11 of the Act on Political Parties may, in turn, be interpreted as permitting the suspending of public funding of such a political party which would aim at violating the principles of democracy and the rule of law in its function.

Debate over banning the use of masks during demonstrations continued. Unlike in e.g. Denmark or Norway, it is not illegal to take part in a demonstration wearing a mask in Finland. The government is expected to give in 2004 a bill that would make it illegal for participants in a demonstration to wear masks. Calls for such legislation were brought forward last winter after masked protesters had attacked vehicles bringing guests to the President's Independence Day reception on 6 December 2002.

Article 14. Right to education

International case law and concluding observation of international organs

In its Conclusions XIV-2, the European Committee of Social Rights concluded that the situation in Finland was in conformity with article 1, paragraph 4, of the European Social Charter. The provision requires States to provide or promote appropriate vocational guidance, training and rehabilitation with a view to ensuring the effective exercise of the right to work. (para 1 of article 14 of the Charter). Similar conclusions were generally made also under articles 9 and 10 of the ESC, related, respectively, to the right to vocational guidance and the right to vocational training. However, a finding of non-conformity was made in respect of paragraph 4 of ESC article 10 because equal treatment is not guaranteed for nationals of non-EU Contracting Parties to the 1961 European Social Charter and of non-EU Parties to the Revised European Social Charter lawfully resident or regularly working in Finland with respect to financial assistance for vocational training.

Article 15. Freedom to choose an occupation and right to engage in work

National legislation, regulation and case law

Act on the marketing of forest reproductive material (Laki metsänviljelyaineiston kaupasta, Act No 241 of 2002), date of entry into force 1.1.2003: The new Act implements Council Directive 1999/105/EC on the marketing of forest reproductive material.

Some provisions of the Act pertain to the freedom to earn one's livelihood by the occupation or commercial activity of one's own choice. Among them is section 4, which provides that

forest reproductive material may be produced, marketed and imported by registered suppliers only. According to section 25, the supervisory authorities may withdraw their approval of registered basic material (seed source), if the material no longer fulfils the criteria prescribed in the Act. Section 26 provides the supervisory authorities with the possibility to prohibit the marketing of forest reproductive material which does not fulfil the criteria prescribed in the Act. These two sections thus include certain limitations to both the freedom of occupation and the right of peaceful enjoyment of one's possessions.

As regards the right to privacy, section 18, concerning the inspection rights of the supervisory authorities, prescribes explicitly on the inviolability of domicile. Section 21 includes provisions on a register of suppliers and lists exclusively what kind of personal data concerning the suppliers may be included in the register.

Equal treatment of foreign workers in working life will be promoted by legislative amendments (HE 151/2003. A bill that seeks to promote the equal treatment of foreign workers in working life and increase the possibilities of occupational safety authorities to supervise the equal treatment of foreign workers is before Parliament. A new penal provision on extorting work discrimination, where the foreigner's ignorance or weaker position has been taken advantage of, is proposed for the Penal Code. For instance, underpaying workers would constitute a crime equivalent to extortion, and subject to a maximum two years in prison The bill includes a specific ban on work discrimination on the basis of nationality. The bill also acknowledges the right for the occupational safety authorities to supervise whether foreign workers have a residence permit. A new obligation to preserve fixed-term information on foreign workers and on the grounds for their right to work will be imposed on employers. The bill supplements the proposal for the new Aliens' Act (see the discussion within the framework of Articles 18 and 19).

Practice of national authorities

Statistics: At the end of November, there were 277,500 unemployed job applicants registered at the employment offices, i.e. 600 less than a year ago. Unemployment among women decreased by 2,200 from October, whereas among men it increased by 4,800. Of the unemployed job applicants, 149,300 (54%) were men and 128,200 (46%) women. The number of unemployed job applicants under 25 years of age amounted to 31,300. Unemployed job applicants under 20 years of age numbered 7,400. Unemployed job applicants over 50 years of age amounted to 95,600. The number of long-term unemployed who had been unemployed without interruption for more than a year amounted to 70,500. Of these, persons unemployed without interruption for more than two years numbered 31,900.

At the end of November, the number of people covered by training and subsidized measures arranged by the labour administration amounted to 94,600.

At the end of November, the number of people placed under wage-related employment measures arranged by the labour administration was 36,100. Of these placements, 7% were in government jobs, 32% in local government jobs and 61% in the private sector. At the end of November, labour market training was attended by 35,200 students. During November, 6,800 new students started labour market training.[32]

[32] Source : http://www.mol.fi/katsaukset/tile200311.htm

Article 16. Freedom to conduct a business

National legislation, regulation and case law

Answer to the question in frame: Finland applies the EU Code of Conduct on Arms Exports adopted by the Council on 8th June 1998. Export and transit of defence material is allowed only if authorization (export licence) has been granted by the Government or by the Ministry of Defence (Act on the Export and Transit of Defence Material). Authorization shall not be granted if it jeopardizes Finland's security or is in contradiction with Finland's foreign policy. The Government has also drawn up the General Guidelines for export and transit of defence material to clarify the foreign and security policy as well as procedural aspects of defence material export. Granting an export licence is preceded by an overall assessment of a licence application by the Advisory Working Group for Export of Defence Material chaired by the Ministry of Defence.

For case law by which courts have prohibited/modified some economic activities on the basis of (b) protection of the environment, see Article 37

Article 17. Right to property

International case law and concluding observation of international organs

See, observations of United Nations Committee on the Elimination of Racial Discrimination on land rights of the indigenous Sámi population, and the recommendation join the International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples, reported under Article 22.

National legislation, regulation and case law

Amendments to the Act on the Adjustment of the Debts of a Private Individual (Laki yksityishenkilön velkajärjestelystä, Act No of 2003), date of entry into force 1.1.2003.[33] Amendments were made to the Act on the Adjustment of the Debts of a Private Individual, i.e. the Act that aims at alleviating the plight of those heavily in debt. Under the new provisions, a voluntary repayment plan can be sought with by all those who have accumulated significant amounts of debt, notably during the recession of the early 1990s. When the requirements of such a plan have been fulfilled, the debtor would be free of the obligations. Those getting by solely with social security benefits or national pension could see their debt load reduced considerably. The Constitutional Law Committee examined the bill in the light of Section 15 of the Constitution of Finland which provides that "the property of everyone is protected." According to the Committee, the basic requirement under Section 15 was that the debt adjustment should not become unreasonable from the point of view of the creditors. The Committee concluded that the bill was compatible with this criterion.[34]

A case about the Finnish system of adjustments of debts is pending before the European Court of Human Rights. The case of Bäck v. Finland (application no. 37598/97) is brought by a guarantor who due to the inability of the debtor to repay the loan was obliged to pay the bank about 19,000 EUR. When the debtor was granted adjustment of his debts the applicant's claim against the debtor was reduced to about EUR 360. Mr Bäck complains, under Article 1 of Protocol No. 1 (protection of property) to the Convention, that the adjustment of the debtor's debt deprived him of his property without compensation and that it did not serve a legitimate

[33] See also HE laeiksi yksityishenkilön velkajärjestelystä annetun lain ja verotusmenettelystä annetun lain 88 § :n muuttamisesta.
[34] See PeVL 33/2002vp.

aim in the general interest. The Governments of the Netherlands, Norway, Sweden and the United Kingdom applied to take part in the proceedings as third parties, mainly because the Court's judgment could have important consequences for their respective systems of debt adjustment. Leave was granted in April 2003. An oral hearing was held in July 2003.

Reform of old-age pensions. Government Bill HE 242/2002 vp, presented to Parliament in November 2002, included major adjustments to the insurance-type system of earnings-based old-age pensions, paid in Finland in addition to a publicly funded basic subsistence level universal pension paid also to persons who were not gainfully employed. The age limit for old-age pension was changed from a fixed age of 65 to a more flexible system where the pension entitlement starts at the age of 63 to 68 years and there is an economic incentive for postponing retirement beyond 63 or 65. The level of pensions was made dependent on changes in average life expectancy, so that if average life span continues to rise, monthly pension payments will be lower.

With reference to its earlier practice, the Constitutional Law Committee of Parliament stated that the constitutional right to property (Section 15) covers such pension entitlements that a person has already earned for himself or herself, not pension systems as such. Hence, the Committee did not object to the proposed changes as to retirement age. As to the proposed effect on pension levels of future changes in life expectancy, the Committee assessed that any negative effect to be expected on pension levels would be of minor nature. As the possible reduction in pension levels would not affect only a particular group of persons but would be a general and permanent change in the pension system as a whole it was held constitutionally permitted in respect of the right to property as guaranteed in the Finnish Constitution. A separate assessment was, however, made in respect of existing additional pension entitlements based on a direct contractual relationship between an employer and an employee. According to the Government Bill possible reductions in pensions based on the general scheme would not be compensated through an increase of such a contract-based pension. The Constitutional Law Committee held that this kind of a clause could, depending on the terms of a particular contract, constitute unconstitutional interference in the constitutionally protected property right to a pension guaranteed in a private law contract, and stated that the provision in question needed to be amended in order to make the Bill compatible with the Constitution.

Article 18. Right to asylum

International case law and concluding observation of international organs

(i) The United Nations Committee on the Elimination of Racial Discrimination (CERD) urged, in its Concluding Observations of 22 August 2003 (CERD/C/63/CO/5) Finland to protect the legal rights of asylum-seekers and to make sure that all procedures concerning the processing of asylum applications are in accordance with Finland's international obligations. In particular, the CERD expressed concern about the "accelerated procedure" that could lead to the immediate expulsion of the asylum-seeker as it may be enforced within eight days irrespective of an appeal. In the Committee's opinion, such narrow time limits may not allow for the proper utilization of the appeal procedure available and may result in an irreversible situation even if the decision of the administrative authorities were overturned on appeal. Also several Finnish NGOs have criticised the accelerated processing of asylum applications. Basically, the criticism is that the accelerated procedure clearly falls short of the appropriate level of legal safeguards for asylum seekers system. – Finland passed a law on the accelerated processing of asylum applications in 2000 when there was a flood of asylum applications from groups of Roma arriving from Slovakia and certain other countries, who in the view of the authorities were not considered to be in

need of asylum. The accelerated processing of asylum applications under Finnish law is outlined below (*see national legislation*)

(ii) In an Opinion issued on 17 October 2003 (CommDH(2003)13) the Council of Europe Commissioner for Human Rights, Mr Alvaro Gil-Robles, expressed serious criticism against the Government Bill for a new Aliens Act. In addition to certain other matters he took up the issue of the accelerated procedure and made the following recommendations:
- The timeframe of seven days for deciding upon applications involving "safe countries" should be extended to allow sufficient time to assess all facts pertaining to the case and to analyse them in light of international human rights obligations and information about the situation of the country;
- The timeframe of eight days for the execution of the decision on refusal of entry order should be extended in order to give sufficient time and facilities for the preparation of the applicant's appeal, including appropriate legal and linguistic assistance;
- It should be ensured that a decision on refusal of entry not be executed as long as the time limit for appeal is not exhausted;
- It should be ensured that the appeal be given an automatic effect of suspending the execution of the decision on refusal of entry, unless the court seized with the appeal decides otherwise.

National legislation, regulation and case law

Act amending Section 37 of the Aliens' Act (Laki ulkomaalaislain 37 § muuttamisesta (592/2002), date of entry into force 1.12.2002. A new sub-section 7 was added to the list of grounds for refusal of entry in section 37. The amendment was made in order to implement Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals. An alien may be refused entry into Finland if another EU-country has made a decision on the expulsion of this person in accordance with sections 1 to 3 of Council Directive 2001/40/EC. In its opinion on the amendment, the Constitutional Law Committee of Parliament emphasized that the sub-section should be implemented in accordance with international human rights treaties and the provisions on fundamental rights in the Finnish Constitution.[35]

Overall reform of the Finnish Aliens Act : A bill for an overall reform of the Aliens Act is before Parliament (HE 28/2003vp)[36] The most critical elements of the bill are:

(i) The Bill contains the current system of accelerated processing of asylum applications which has been subject to severe criticism by certain international organs and domestic NGOs (see above, observations of international organs). The Finnish system of accelerated processing of asylum applications is as follows (see Section of the Aliens Act (Act No 378 of 1991) and Section 103 of the bill for the new Aliens Act, HE 28/2003vp).
The asylum application can be moved into an accelerated procedure if:

[35] PeVL 25/2002vp.

[36] The government's proposal for overall reform of the Aliens Act was already presented to Parliament in December 2002, but due to the lack of time before the general election in March 2003 the proposal lapsed. The Refugee Advice Centre and other NGOs had announced their own respective positions on the proposal . The new Government introduced the bill again with only technical amendments. Therefore, the debate on the "old" bill is still very much of interest.

1.) the applicant makes a new asylum application after having received a negative decision in Finland or comes back to Finland shortly after being rejected;
2.) if the applicant has been in another EU country before entering Finland (Dublin Convention procedure);
3.) if the applicant has come to Finland from a safe country or origin or a safe third country;
4.) if the application is considered manifestly unfounded in some other way (e.g. the applicant has not claimed as grounds serious human rights violations).

In the above mentioned cases 1.) and 2.) the decision can be appealed to the Helsinki Administrative Court within 30 days from the notification of the decision. The expulsion can, however, be executed immediately after the notification unless the Court very quickly makes an interim decision to suspend the expulsion. This means that the asylum seeker does not have the right to wait in Finland until the appeal or even the decision on the suspension of the expulsion has been decided on. The applicant does not even have the right to prepare the appeal in Finland before being expelled.

In cases 3) and 4) the applicant can also appeal to the Helsinki Administrative Court within 30 days from the notification. The expulsion can, however, be executed after 8 days (of which 5 days have to be working days) from the notification. If an application is made to the Helsinki Administrative Court to suspend the expulsion, the such application has suspensive effect only if the Court so decides within the same 8 days' time limit.

In practice, the time frame of the accelerated procedure is much too short to guarantee effective judicial review of asylum decisions by the Directorate of Immigration. The applicant has to get a lawyer and an interpreter very quickly. The application to suspend the expulsion has to be made to the Helsinki Administrative Court almost immediately after the notification of the decision of the first instance. If the Helsinki Administrative Court has not been able to decide on the application to suspend the expulsion within the 8 days time limit, the expulsion can be put into force. This is also the case when the Court decides that it is not necessary for the applicant to stay in Finland until the appeal has been decided on. However, the Court always makes a decision concerning the appeal even if the applicant has been expelled.[37]

Originally, the accelerated procedure was meant for special cases. However, the procedure is today the main rule: of all of the decisions made by Finnish authorities on asylum applications in recent years, ca. 60% have involved accelerated procedure. By the end of September, 1,266 people had applied for asylum in 2003.

(ii) *Family reunification*: One of the most controversial issues of the bill relates to the reunification of families. The first problem is that the definition of a family member would not include the minor child's non-married siblings under 18 years with the consequence that reunification with a child's non-married siblings under 18 year of age would not be possible. Second, the proposal is that family reunification of minor children would take place primarily in the country where the parents are.

[37] In the normal asylum procedure there is suspensive effect when appealing the decision to the Helsinki Administrative Court. There is also a possibility to apply for a leave to appeal from the Supreme Administrative Court after having a negative decision from the Helsinki Administrative Court. The asylum seekers can, however, be expelled after the notification of the decision made by the Helsinki Administrative Court unless the Supreme Administrative Court makes an interim decision to suspend the expulsion. Earlier also appealing to the Supreme Administrative Court suspended the execution of the expulsion.

In this way, the aim is to prevent the practice of sending a family's children to Finland in hopes of making the rest of the family automatically eligible for immigration. However, the criticism is that this solution would be in violation of respect for family life and the interest of the child.

(iii) *The concept of a safe country of origin*. This concept is already included in the current Aliens Act. The fundamental criticism is that refugee status should always be determined on the basis of an individual examination of the case concerned, meaning that rejection of applications based on the country of origin are inappropriate and involve discriminatory features of the kind forbidden by Article 3 of the Geneva Refugee Convention. Even in cases in which the safe country of origin concept is included, claims to asylum cannot automatically be rejected. Instead, such claims also need to be determined on an individual basis. After all, no country anywhere in the world is always safe for all people in all circumstances.

(iv) *Carrier sanctions*. The proposal includes new provisions concerning carrier sanctions, i.e. the obligations and liability of those engaged in providing transport. Transport companies would thereby be financially liable if they transported illegal immigrants to Finland. This liability would arise irrespective of any asylum application subsequently filed. Parties engaged in providing transport could be discharged of liability only by demonstrating that they had exercised due care in inspecting the documents of travellers. In practice this leads to a situation in which transport businesses increase their surveillance of passenger documents and exercise extraterritorially powers that belong to immigration authorities.

The bill for a new Aliens' Act will not bring about any major changes to the current law regarding such issues as legal aid, interpreters and translators, female asylum seekers, or (unaccompanied) minors. However, the bill can be subjected to criticism to the extent that it lacks any detailed provisions concerning e.g. the qualifications of the authorities dealing with asylum applications by unaccompanied minors or females.

There is also an additional bill (HE 151/2003vp) which is closely linked with the proposal for the new Aliens Act. This additional bill involves changes concerning the use of foreign labour. Employers would be obliged to keep a record of foreign employees. Occupational health and safety officials would also have the right to monitor compliance with the terms of a foreign worker's residence permit more closely. In addition, amendments are proposed to make it a crime to discriminate on the basis of nationality. Employee benefits must be the same for both foreign and Finnish employees, and failure to produce an itemised pay slip would be a punishable offence. (See in more detail the discussion within the framework of Article 15).

Case law

For case law involving the right to family reunification and the right to respect of family life, see Article 7

In general, the courts, notably the Supreme Administrative Court, have paid more attention to the interests of the child, as well as emphasised the need of individual examination of the situation, than the first instance decision-maker, the Directorate of Immigration.

Supreme Administrative Court: KHO 2003:73:

Relevant domestic provisions and relevant human rights treaties: sections 1c, 37, 38 and 39 of the Aliens Act, CRC–3, CRC–7

Abstract: The administrative court had rejected the applications for asylum and residence permit made by spouses A and B and their child C. The Directorate of Immigration had made a decision to deport the family to their home country. The family appealed to the Supreme Administrative Court. They claimed that in their home country they would face the risk of being persecuted on account of their nationality. In addition, the child C had been born in Finland and when the appeal was submitted, B was pregnant. The second child was born in Finland after the decision on deportation had been made. While the case was pending, the deportation was carried out. The family's counsel claimed that this was against the law, as the decision on deportation did not concern all members of the family.

The Supreme Administrative Court did not grant leave to appeal as far as the applications for asylum and residence permit were concerned. However, it decided to consider the appeal against the decision on deportation. The Court noted that when making the decision on deportation, the Directorate of Immigration could not take into consideration the child who had not yet been born at that time. No separate application for asylum or residence permit had been submitted on behalf of the child. According to the Court, the position of a child who is born after a decision to deport the child's parents has been made has as such no effect when considering whether the parents are in need of asylum or international protection. It can be assumed that a newborn child travels together with his or her parents. If necessary, the police may provide the child with a separate travel document. The Supreme Administrative Court concluded that it was possible to carry out the deportation of the family after the applications for asylum and residence permit had been rejected. Taking into account the valid travel documents of the family, it was also possible to deport the newborn child who travelled with his/her family. The deportation was thus not in violation of the Aliens Act or the Convention on the Rights of the Child.

Supreme Administrative Court: KHO 2003:82:

Relevant domestic provisions and relevant human rights treaties: Section 36 of the Aliens Act; Article 1–C–5 of the Convention relating to the Status of Refugees

Abstract: A and his family had arrived in Finland as quota refugees in 1990. In 1999, the Directorate of Immigration decided to abrogate A's refugee status. A no longer needed protection as the circumstances which caused him/her to be a refugee no longer existed. The administrative court rejected A's appeal, and A took the case to the Supreme Administrative Court. A claimed that the principle of equality had been violated as only A's refugee status had been abrogated but not that of other quota refugees originating from A's country of nationality. A also claimed that the real reason behind the decision was that A had been sentenced to imprisonment for a serious drug offence. As long as A had refugee status, he/she could not be deported.

The Supreme Administrative Court noted that in Finnish administrative practice, abrogation of a person's refugee status was rare and it was not done systematically as soon as the human rights situation in the country of origin had improved. Therefore, the abrogation of refugee status in an individual case must be based on a well-founded reason. According to legislation concerning aliens, commission of a serious crime is a factor which may be taken into account when considering an alien's entry into a country or his/her residence in the country. The Court found that there had been no abuse of discretionary power nor a violation of the principle of equality when the Directorate of Immigration had started the procedure for the abrogation of A's refugee status.

The Court then discussed the abrogation of refugee status under the Aliens Act and the Convention relating to the Status of Refugees. It pointed out that the decision of the Directorate of Immigration was based on a general assessment of the social changes in A's country of nationality. However, the matter should also have been assessed taking into

account A's individual need of protection and considering whether A could still refuse to avail himself/herself of the protection of his/her country of nationality. As the documents on interviews with A and his/her family made at the refugee camp were not available, no such evidence had been presented on the grounds of which the Directorate of Immigration could have abrogated A's refugee status on the basis of section 36 of the Aliens Act. The Court concluded that the decision of the Directorate of Immigration was against the law and quashed this decision as well as the decision of the administrative court.

Practice of national authorities

- Compared with other EU Member States, Finland receives by far the largest relative number of asylum-seekers who have toured from one country to the next and lodged several applications. Between January 15th and the end of September, 20 percent of the people who applied for asylum in Finland had lodged applications in at least one other Member State. The fastest movers had sought asylum in three countries before arriving in Finland. According to the Directorate of Immigration, the explanation is Finland's peripheral location within the EU. Therefore, asylum-seekers normally pass through several other EU countries before arriving in Finland, and Finland is the last resort.[38]
- There was a slight increase in illegal immigration into Finland in the first half of this year. In January - June this year more than 430 people were listed by police as having been illegally brought into Finland. Over the same period in 2002 the number was 250. According to figures released by the National Bureau of Investigation, people from the former Yugoslavia comprised the largest national group - 95 individuals. They were followed by Iraqis, Turks, Bulgarians and Somalis.[39]
- The number of asylum-seekers declined slightly from about 1,500 in the first half of 2002 to about 1,400 this year.[40]
- As of the end of 2002, the number of foreigners residing in Finland was 103,682, which is approximately 2 per cent of the Finnish population. The six largest groups of foreigners are Russians (24,336), Estonians (12,428), Swedes (8,037), Somalis (4,537), Yugoslavians (4,224) and Iraqis (3,420). In some ten years, the number of foreigners has almost quadrupled, and Finland has changed from a markedly homogeneous nation to an increasingly multicultural state.[41]

Reasons for concern

Finnish law fails to guarantee the appropriate observance of the rights of asylum-seekers insofar as the so-called accelerated processing of asylum applications is concerned.

Article 19. Protection in the event of removal, expulsion or extradition

International case law and concluding observation of international organs

In its preliminary observations, the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has found out, that in the summer of 2002, three members of the same family, the mother and an 11 year old girl and 12 year old boys, were forcefully injected with sedating and neuroleptic medication (used in the treatment of certain mental disorders). The Committee's report concludes: *"the*

[38] See www.uvi.fi
[39] Helsingin Sanomat, 22.8.2003.
[40] Helsingin Sanomat, 22.8.2003.
[41] Statistics Finland, online: <http://www.stat.fi>.

delegation obtained information (including of a documentary nature) about a case involving several members of the same family (of whom two were minors) who had been forcefully injected with sedating and neuroleptic medication without proper examination by a doctor. Practices of this kind are totally unacceptable." (page 5) The action of the Finnish officials was also sharply condemned by visiting European Commissioner for Human Rights Alvaro Gil-Robles on 27 October.

According to the Finnish law, the police cannot order or to give any medication to persons who are being deported. Only a doctor can do so. In this case the injections were administered by a nurse after she had been authorised thereto by a doctor who had not met with the family.

The incident led to two investigations. The competent Finnish body, National Board of Medicolegal Affairs (TEO), disciplined both the doctor and the nurse by giving a written warning on the basis that the doctor should have personally examined all family members and that the medication had been ordered by the doctor and administered by the nurse against the family's will to which they had no right under Finnish law. The nurse had told that she had injected the children without any medication in order to obtain the psychological effect, but this was not considered relevant as an injection automatically equals interference with personal integrity.[42]

As to the police, the Ministry of the Interior considered that the policemen in question had not acted against relevant orders or instructions but had in fact been in a difficult situation in which there was both a right and a justifiable reason to use coercive measures (in this case fetters, handcuffs, use of force).[43] The Parliamentary Ombudsman is still investigating the actions of the police on its own initiative.

It remains to be seen these events lead to reforms in the instructions and practices concerning deportation, in particular as it appears that there are other types of questionable deportations taking place as well (at least occasionally), such as deportation of women who are heavily pregnant, deportation of families in two 'parts', and deportation of young immigrants to countries to which they have no ties after they have been convicted of a crime in Finland. In any case, it is clear that deportations should in the future be carried out in a manner that respects the dignity of asylum seekers and the principle of proportionality even in cases where the law allows (immediate) deportation or the use of coercive measures.

The current Aliens Act – as well as the bill for the new Aliens Act – does not include any specific provisions concerning the practical implementation of deportation orders. Several NGOs have criticised this and, accordingly, have demanded the introduction of detailed provisions by an Act which would ensure the appropriate observance of fundamental and human rights, as well as increase the transparency of deportation procedures.

UN Committee Against Torture, Communication 197/2002 (Views of 1 May 2003). The petitioner, Mr. U.S. a Sri Lankan citizen, awaiting deportation to Sri Lanka in Finland, claimed that his forced return to Sri Lanka would constitute a violation by Finland of art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The petitioner was arrested for 4 months by LTTE (Liberation Tigers of Tamil Elam) in 1985. He was a member of PLOTE (People's Liberation Organisation of Tamil Eelam), which was forbidden by LTTE, until 1985. He was later detained for almost two years (1987-89) by the

[42] Terveydenhuollon oikeusturvakeskuksen päätös 6/2003 koskien ammattihenkilöiden menettelyä ukrainalaisperheen maasta poistamisen yhteydessä, 3 December 2003, online:<http://www.teo.fi>.

[43] 'Sisäasiainministeriön selvitys erään perheen käännyttämisestä valmistunut: Poliisimiehet toimivat virkavelvollisuuksiensa mukaisesti,' 21 November 2003, online: <http://www.poliisi.fi>.

Sri Lankan army and subjected to torture. In 1989 he escaped to Germany, applied for asylum, but the application was rejected. He attempted to go to France, was returned to Germany and further returned to Sri Lanka. He then stayed in the LTTE controlled area of Jaffna until 1995. He was interrogated during this time several times. 1996 the Sri Lankan army occupied Jaffna and the petitioner moved to Hatton. There he was arrested twice by the army as he was new in the area. 1998 he was detained for three months because of a suspicion of being a LTTE member. During this time he was beaten badly. He escaped then through Russia to Finland. He applied for asylum, but the application was rejected. A deportation order was issued against him. In November 2001 the Helsinki Administrative Court rejected his appeal. He didn't get a permission to appeal to the Supreme Administrative Court. According to medical reports he suffered from post traumatic stress disorder, his injuries coincide his description of the torture and his mental and physical traumas were "possibly caused by torture".

Petitioner claimed that there were substantial grounds to believe that he would be subjected to torture if returned to Sri Lanka. He stressed that the human rights situation in Sri Lanka continued to be poor, and that persons suspected of LTTE membership were in danger of disappearing and being arbitrarily detained and tortured.

The Committee noted the relevance of the ongoing peace process in Sri Lanka, which led to cease fire between LTTE and the Government in 2002. Despite that a disturbing number of cases of ill-treatment and torture still took place, that practice was not systematic by the State Party. According to the opinion of the Office of the High Commissioner for Refugees of March 1999, those, who do not fulfill refugee criteria, may be returned to Sri Lanka, even if they are of Tamil origin. A large number of Tamil refugees returned to Sri Lanka in 2001 and 2002. It was noted that the petitioner had not been politically active since the mid-1980's. The committee recalled that, for article 3 of the Convention to apply, the individual concerned must face a foreseeable and real risk of being subjected to torture in the country to which he is being returned and that this risk is personal and present. In the light of the observations in this case, the Committee did not consider that the existence of a personal and real risk had been established by the petitioner. The petitioner's removal to Sri Lanka by the State Party (Finland) would not constitute a breach of article 3 of the Convention.

In an Opinion issued on 17 October 2003 (CommDH(2003)13) about the Government Bill for a new Aliens Act the Council of Europe Commissioner for Human Rights, Mr Alvaro Gil-Robles referred to the treatment of a group of persons of Roma descent from eastern Slovakia who sought asylum in Finland in 1999 : "According to the Finnish Refugee Board, many of the applicants gave account on maltreatment by skinheads. The accelerated procedures did not, however, allow adequate time to obtain medical certificates as evidence. Moreover, reportedly, the nurses working in Finnish reception centres had told researches from Amnesty International that they noticed unusually high rates of sterilisations among the women in this group. The asylum-seekers where, however, speedily returned. Subsequently, there have been allegations of forced or coerced sterilisations of Roma women in Eastern Slovakia, which could amount to inhuman or degrading treatment."

National legislation, regulation and case law

A Bill for the Act on Extradition between Finland and other EU Member States is before Parliament.[44] The bill implements the Council Framework Decision on the European arrest warrant. This EU measure is in open conflict with Section 9, subsection 3 of the Constitution which includes the absolute prohibition to extradite Finnish citizens in the following way: "Finnish citizens shall not be … deported or extradited or transferred from Finland to another

[44] HE 88/2003vp Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi. See also PeVL 18/2003vp

country against their will."[45] In addition, the bill was deemed to be in conflict with constitutional rights in some other respects by the Constitutional Law Committee, too.[46]

Given that the bill is in conflict with the Constitution, it has to be approved, according to the Committee, in accordance with the procedure required for the incorporation of international obligations at variance with the Constitution (Section 95, subsection 2 of the Constitution).

The bill for the Extradition Act, however, includes the absolute prohibition to extradite a person if in consequence he or she would, on thbe ground of origin, religion, membership of some social group or political opinion, become subject to persecution threatening his or her life or liberty or other persecution. Similarly, there is the absolute prohibition to extradite a person if he or she would be threatened by treatment violating his or her freedom of expression or freedom of association or protection under the law. Given these prohibitions, the bill significantly tightens the prerequisites for extradition from those under the European arrest warrant because the latter is totally silent on such prerequisities.

See, Helsinki Administrative Court case 21 March 2003, reported under article 6.

Reasons for concern

There is a lack of specific legal rules, provided by an Act, concerning the execution of deportation orders.

CHAPTER III : EQUALITY

Article 20. Equality before the law

International case law and concluding observation of international organs

In its Concluding Observations of 22 August 2003 the UN Committee for the Elimination of Racial Discrimination (CERD/C/63/CO/5) expressed its concern about the difficulties faced by Roma in the fields of employment, housing and education, as well as about reported cases of discrimination in daily life such as denial of access to public places, restaurants or bars. The Committee referred to its general recommendation XXVII on discrimination against Roma and recommended that Finland take all necessary measures with a view to promoting tolerance and overcoming prejudices and negative stereotypes in order to avoid any form of discrimination against members of the Roma community.

National legislation, regulation and case law

On the Equality Act, designed to implement Council Directives 2000/43/EC implementing the equal treatment of persons irrespective of racial or ethnic origin and 2000/78/EC establishing a general framework for equal treatment in employment and occupation, see Article 21.

Supreme Court case KKO 2003:107 (judgment of 17 November 2003). The Supreme Court held that a five-year statute of limitations in the 1975 Act on the Implementation of the Paternity Act, excluding from 1 October 1981 onwards the possibility to establish a dead

[45] The domestic implementation of the European arrest warrant has also been considered to necessitate the reform of Section 9, subsection 3 of the Constitution because this constitutional provisions becomes entirely misleading after the entry into force of the implementing Act of the said EU measure. The bill for amendment of the Constitution of Finland is currently before Parliament. See HE 102/2003vp laiksi Suomen perustuslain muuttamisesta sekä eräiksi siihen liittyviksi laeiksi.
[46] See PeVL 18/2003vp.

man's paternity in relation to a child who had been born prior to the entry into force of the 1975 Paternity Act, was not discriminatory. Although children born outside of marrige subsequent to 1 October 1976 can initiate proceedings without any time limit, reasons of legal certainty spoke for the application of the transitory provision barring access to court for similarly situated persons who had been born prior to that date. Such reasons of legal certainty gained more weight from the fact that the legislation in question had been in force already for more than 25 years and any persons covered by the transitory provision had reached majority already some time ago. Hence, the persons in question were not without an acceptable reason treated differently from persons born outside of marriage after 1 October 1976. Consequently, the 1975 law was not held to be in conflict with Section 6, subsection 2, of the Constitution. Without specifying what practice it referred to the Supreme Court also stated that neither the UN Convention on the Rights of the Child nor the ECHR, read in light of their implementation practice, supported a position that the application of the contested clause in the 1975 Implementation Act would be contrary to the human rights treaties in question.

A critical observer is tempted to pose the question whether the possibility in Section 106 of the new Constitution, of formal judicial review of the constitutionality of laws passed by Parliament in cases of a *manifest* conflict in fact operated to the detriment of the applicant. In its earlier related (but not identical) cases KKO 1984 II 95 and KKO 1993 :58 the Supreme Court had relied on constitutional or international equality guarantees for the purpose of securing access to court in paternity cases even when the wording of the 1975 law appeared to exclude such access. Now the existence of a possibility for formal review of constitutionality appears to have directed the attention of the Supreme Court to the existence or non-existence of a *manifest* conflict between the Constitution and an ordinary law, and a presumption of the absence of such a manifest conflict was applied. If this observation is correct, it means that the formal strengthening of the role of constitutional rights provisions in the Finnish legal system has resulted, at least in certain areas of law, in the emergence of a deferential doctrine and consequently in the *weakening* of the real effect of the constitutional provisions on equality and nondisctimination. This would, of course, be directly against the goals of the 1995 constitutional rights reform and the total reform of the Constitution in 2000.

Article 21. Non-discrimination

National legislation, regulation and case law

The Equality Act (yhdenvertaisuuslaki). Primarily due to an interruption in the legislative process due to the March 2003 parliamentary elections, Finland was somewhat delayed in the transposition of Council Directives 2000/43/EC implementing the equal treatment of persons irrespective of racial or ethnic origin and 2000/78/EC establishing a general framework for equal treatment in employment and occupation. At the end of the reporting period (1 December 2003) the Government Bill on the implementing legislation[47] had passed the Committee stage in Parliament and was awaiting final adoption by the plenary.[48]

The main features of the implementing legislation are as follows:

(i) Both directives are implemented by enacting a uniform Equality Act (yhdenvertaisuuslaki) which, hence, covers both racial or ethnic discrimination in general and a broader range of prohibited grounds of discrimination in respect of employment and occupation. Different provisions of the Act relate to the two directives in varying degree, with the consequence that the applicable provisions

[47] HE 44/2003 vp

[48] In fact, the Bill, as amended by the Employment and Equality Committee, was adopted by Parliament in the second and final reading on 5 December 2003.

and available remedies will depend on the ground of discrimination and the field of life where discrimination occurred. The Act includes, inter alia, definitions of direct and indirect discrimination, harrassment and reasonable accommodation.

(ii) In addition, several amendments are made to existing legislation. These include:
   a. The Equality Ombudsman Act (laki vähemmistövaltuutetusta) which is renamed as the Act on the Equality Ombudsman and the Board Against Discrimination (laki vähemmistövaltuutetusta ja syrjintälautakunnasta) in order to establish a body for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin., as required by article 13 of Council Directive 2000/43/EC.
   b. The Employment Contract Act (työsopimuslaki), the Seamen's Act (merimieslaki), the Act on State Civil Servants (virkamieslaki), and the Act on Municipal Civil Servants (laki kunnallisesta viranhaltijasta) are amended in order to include references to the Equality Act what comes to the definition of discrimination, burden of proof and certain other matters. However, neither the Constitution nor the Criminal Code were amended.

(iii) Certain important modifications were made in the implementing legislation, compared to the two Directives, in order to achieve harmony also with the Finnish constitutional traditions in the field of nondiscrimination. Hence, discrimination on account of (any) nationality was by and large covered by the same framework as other prohibited grounds of discrimination.

The Constitutional Law Committee and the Employment and Equality Committee both criticized the solution of enacting a new Equality Act as the framework for the implementation of the Directives. Parliament urged the Government to proceed, after the entry into force of the now enacted framework, towards such comprehensive legislation that is based on the Finnish system of constitutional rights and will make all prohibited grounds of discrimination subject to equal remedies and equal sanctions.

During the consideration of a Government Bill on certain amendments to legislation on government financial aid for students (opintotuki),[49] the Constitutional Law Committee of Parliament identified as a potential problem under Section 6 of the Finnish Constitution that only Finnish citizens are eligible for aid to studies conducted outside Finland. In the light of the current status of European regulation of aid for students it was nevertheless in the Committee's opinion justified to restrict government aid for studies conducted abroad to Finnish citizens only. However, the Committee added that the equality provisions of the Constitution would speak for extending also this type of aid to foreigners who are permanent residents in Finland.[50]

A Bill that caused much dispute during winter 2003 involved fertility treatment.[51] Disagreements on the right of single women and lesbian couples to fertility treatment were so intense that the government decided in February to withdraw the bill from Parliament. In addition, the bill sparked hot dispute over the right of a child born from a donated gamete to know the donor's identity (for that debate, see Article 7).

A new bill is being prepared by the Ministry of Justice, but it is yet to take a definitive stand on the content of the bill. However, a working group of the Ministry of Social Affairs and Health proposed that "in-family adoptions" for registered same-sex couples could be allowed. This would mean that one of the partners would be able to get parental rights to the biological child of the other partner.

[49] HE 93/2003 vp
[50] PeVL 14/2003 vp (19 November 2003)
[51] HE 76/2002vp laeiksi sukusolujen ja alkioiden käytöstä hedelmöityshoidossa ja isyyslain muuttamisesta. The government proposal also include some amendments to the Paternity Act (Act No 700 of 1975). See also See PeVL59/2002vp.

Practice of national authorities

Statistics: The police continued collecting statistics on racially motivated crime. According to the latest (2003) report, the police registered during 2002 altogether 364 racist crimes: the largest groups were 147 cases of (various defrees of) assault and 59 cases of destruction of property (either business premises or cars owned by a foreigner). There were 26 cases of the crime of discrimination. The crimes were reported to the police in 293 reports of offence, compared to 346 such reports in 2001. There were 348 individual victims of crime, the largest victim group being Somali nationals (45 crimes)[52], followed by Turkish, Russian, Iranian and Iraqi nationals. Three out of four victims were male. The suspected perpetrators were mostly (95 %) Finnish citizens, male (90 %) and to a large degree (48 %) previously unknown to the victim.[53] The most typical racist crime is assault against a foreigner at nighttime in the street or in another public space.

Academic scholars have expressed reservations in respect of the methodology applied by the police in collecting these statistics. They emphasize the role of victim surveys as instrumental in disclosing the level of hidden racist crimes, i.e. crimes that are not reported to the police. According to a recent study only 14 % of all of the immigrants who had experienced discrimination had at least once reported such an incident to the police. Similarly, of those who had been victims of any type of racist crime, such as harassment or violence, only 29 % had reported such a case to the police.[54]

Reasons for concern

Incidents of racism or ethnic discrimination continued to occur despite various forms of action taken by the authorities.

Article 22. Cultural, religious and linguistic diversity

International case law and concluding observation of international organs

In its concluding observations of 22 August 2003 the United Nations Committee on the Elimination of Racial Discrimination urged Finland to seek a solution to the dispute over land rights of the indigenous Sámi population (ca. 7,500 persons or 0.15% of the Finnish population), and to join the International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples. The Committee referred to its general recommendation XXIII on the rights of indigenous peoples which, inter alia, calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources. The Committee urged the State party to find an adequate settlement of the land dispute together with the Sami people.

As for the so-called Sámi definition, the Committee suggested Finland to give more weight to the personal views of individuals concerning their identity.[55]

[52] This number does not include 13 naturalized Finnish citizens of Somali origin. Altogether 112 of the victims were Finnish citizens but 73 of these were naturalized immigrants. Out of the remaining 39 Finnish nationals who were victims of crime, 17 were Roma and 17 fell victims because of their association with a foreigner, typically a spouse.

[53] In addition, in 29 % of the reports of offence no mention was made of the perpetrator being either previously known or unknown to the victim.

[54] Inga Jasinskaja-Lahti, Karmela Liebkind & Tiina Vesala: Rasismi ja syrjintä Suomessa. Gaudeamus, Helsinki 2002. See, also Timo Makkonen, General Situation of Discrimination in Finland, included in an anti-discrimination reference handbook published as a part of a project coordinated by the Regional Office for the Baltic and Nordic States of the International Organization for Migration, see http://www.iom.fi/anti-discrimination/handbook.htm

[55] The Concluding Observations of the Committee (CERD/C/63/CO/5) can be found at:

There might have been some misunderstanding as regards the latter issue, as Finnish law requires, for purposes of registration for the elections of the Sami Parliament that a person identifies himself or herself as a Sami. This subjective criterion is additional to the objective ones related to language or the registration of a person's ancestors in certain public registers. By combining the subjective and objective criteria the Supreme Administrative Court has applied the law in a way that corresponds to the approach taken by the UN Human Rights Committee in the cases of *Lovelace v. Canada* (Communication No. 24/1977) and *Kitok v. Sweden* (Communication No. 197/1985). See, for instance KHO 2003:61.

The Committee was also concerned about the difficulties faced by Roma in the fields of employment, housing and education, as well as about reported cases of discrimination such as denial or access to public places, restaurants or bars. It recommends that Finland take all necessary measures with a view to promoting tolerance and overcoming prejudices and negative stereotypes in order to avoid any form of discrimination against Roma.

National legislation, regulation and case law

New Language Act adopted. The Government Bill for a new Language Act,[56] introduced in the 2002 report, was adopted by Parliament in February 2003 and entered into force on 1 January 2004.[57] The Act mainly regulates the right to use the two national languages of the country, Finnish and Swedish, in accordance with Section 17, subsections 1 and 2, of the Finnish Constitution.[58] The main principle of the Act is that the use of the two national languages in dealings with the authorities is not arranged through translation and interpretation services but through the requirement of various administrative, judicial and other bodies to use both languages in their everyday work. However, as certain parts of the country are practically monolingual this principle is not applied in respect of all local or regional authorities. In its Report on the Bill the Constitutional Law Committee of Parliament[59] gave its support to the parallel reform of the Sami Language Act. It also drew attention to the fact that only a small part of Roma children receive education in the Roma language and proposed that the Government should take further measures for the protection of the Roma language and culture. As a part of the Bill a new Act on the Knowledge of Languages Required of Personnel in Public Bodies was enacted.[60] The main principle of this Act is that civil servants are required to know both Finnish and Swedish. The Constitutional Law Committee raised the issue whether the requirement of « excellent ability to speak and write the language of the majority in the authority's district and a satisfactory ability to speak and write the other [national] language » (Section 6) might constitute indirect discrimination against experts coming from other EU countries. In the view of the Committee the possibility of the Government granting, in an individual case, a dispensation from such a requirement (Section 9) might prove insufficient.

A separate Sami Language Act was also adopted.[61] The Act aims at the preservation and promotion of the three variants of the Sami language through various positive measures, such as translation and interpretation services and incentives offered to civil servants who wish to study the Sami language. To a limited extent the Act also guarantees an individual right to use

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http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.63.CO.5.En?Opendocument

[56] HE 92/2002 vp

[57] Kielilaki (423/2003) [Language Act]; English translation available at : http://www.finlex.fi/pdf/saadkaan/E0030423.PDF and information on the reform at http://www.om.fi/20802.htm

[58] The Swedish-speaking Finns (290,251 persons or 5.6% of the Finnish population) is the biggest linguistic minority in Finland.

[59] PeVM 9/2002 vp (31 January 2003).

[60] Laki julkisyhteisöjen henkilöstöltä vaadittavasta kielitaidosta (424/2003) [Act on the Knowledge of Languages Required of Personnel in Public Bodies] ; English translation available at: http://www.finlex.fi/pdf/saadkaan/E0030424.PDF

[61] Government Bill 46/2003 vp, Saamen kielilaki (1086/2003) [Sami Language Act]. Translations into the three variants of the Sami language spoken in Finland are available at http://www.finlex.fi/pdf/sdliite/liite/4720.pdf

the Sami language in dealings with such authorities that have jurisdiction extending to the Sami homeland.[62] In its Report the Constitutional Law Committee inserted a clause into the Act according to which a person's knowledge of the Sami language is a special merit in recruitement to public office also in cases where it is not made a required qualification for a particular post.[63]

Supreme Administrative Court case KHO 2003:3 (22 January 2003) related to the level of and restrictions on government subsidies to reindeer herders. The applicant A, a Sami individual, based his case on the fact that government subsidies for reindeer herders were clearly lower than those afforded to farmers raising certain other animals (e.g. pigs) and were subject to a restrictive condition not applied in respect of producers of other animals, namely that the total annual income of the person must not exceed a certain amount. The Supreme Administrative Court held that these conditions did not prevent A from enjoying his culture by practicing reindeer herding in community with other Sami, as required by Section 17, subsection 3, of the Finnish Constitution and CCPR article 27. In addition, the Court found no breach of Section 18 of the Constitution (comparable to Articles 15 and 16 of the Charter), article 8 of the ECHR or Protocol 3 to the EU Accession Treaty of Finland.

Article 23. Equality between man and women

International case law and concluding observation of international organs

Paragraph 1. In its Conclusions XIV-2, the European Committee of Social Rights concluded that the situation in Finland was not in conformity with article 4, paragraph 3, of the European Social Charter related to the right of men and women workers to equal pay for work of equal value. The Committee's conclusion was based on the fact that Finnish law does not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.[64]

Reasons of concern

Statistics and other significant information regarding equality between man and women: Although Finland is among the top countries in the world as regards equality between men and women, direct, indirect and structural discrimination occur in the labour market and women are also more easily affected by forms of multiple and intersectional discrimination (discrimination on several grounds such as sex, age, pregnancy). As a result, women continue to earn less than men and are severely underrepresented in upper management and among senior officials and university professors ('glass-ceiling'). Professional segregation is typical of the Finnish labour market, and female-dominated branches enjoy lower respect and pay lower salaries.

Furthermore, women do more part-time work than men (66,1% of part-time workers are female) and their employment contracts are more often temporary (women 19,5%; men 12,5%). Temporary employment is especially common among younger women. In 2002 the unemployment rate of men and women was the same (9,1%).

As regards politics, the situation is better. In 2000, Finland got its first female President, elected by direct popular vote. The number of women in parliament remained at a relatively

[62] The three northernmost municipalities of Enontekiö, Inari and Utsjoki and a part of the municipality of Sodankylä.
[63] PeVM 4/2003 vp (19 November 2003).
[64] A finding of non-conformity was made also in respect of paragraph 2 of ESC article 4, related to the right of workers to an increased rate of remuneration for overtime work. There is no corresponding provision in the Charter.

high level after the March 2003 elections; in fact, there figure is exactly the same as during the previous parliamentary term (74 out of 200 MPs or 37%). Eight out eighteen government ministers are female: Coordinate Minister for Finance and Ministers of Culture, Transport and Communication, Social Affairs and Health, Labour, Trade and Development, Education, and Health and Social Services. Nonetheless, the most prestigious minister posts are held by men, including the post of Prime Minister, which was occupied by Ms Jäätteenmäki for two months in the spring of 2003. Of the eight parties represented in Parliament only the Left Alliance is led by a woman.

The law requires a minimum of 40 per cent membership from each sex on all state committees, commissions, and appointed municipal bodies.

In education, majority of students in upper secondary and at university level are women, which has occasionally given rise to proposals of changing the existing practices to better suit the boys' needs. No concrete measures have so far been taken.

Article 24. The rights of the child

National legislation, regulation and case law

See Articles 7 and 18, national legislation and case law, for legislation or case law taking the best interests of the child into account in the asylum proceedings or other situations related to the application of Finnish Aliens' Law

Reasons of concern

Related to the big societal debates (see below, Article 34, *reasons of concern*) is the discussion about the well-being of Finnish children. In light of studies and statistical data, the situation of most children appears to be good. On the other hand, mental health problems of children have increased in the past few years, as has the number of children placed in public care. Children clearly suffer from financial and social problems that their families face. In many cases the roots of this malaise can be traced to the deep depression ten years ago when unemployment rose to an unprecedented level and the state cut drastically its social expenditure, reducing, *inter alia*, services supporting parents and children alike. As Finland chose to decrease its spending on preventive measures, it is now dealing with a situation where health care and social services do not have enough resources to treat an increasing number of people in need of help, many of them children.

Article 25. The rights of the elderly

National legislation, regulation and case law

See Article 17, national legislation, for reform of old-age pensions

Article 26. Integration of persons with disabilities

International case law and concluding observation of international organs

In its Conclusions XIV-2, the European Committee of Social Rights concluded that the situation in Finland was in conformity with article 15 of the European Social Charter related to the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement.

National legislation, regulation and case law

The Equality Act, designed to implement Council Directive 2000/78/EC. During the Parliamentary consideration of a Government Bill[65] aimed at implementing Council Directives 2000/43/EC and 2000/78/EC by enacting an Equality Act, the Bill was strengthened in the issue of reasonable accommodation for disabled persons. Following an opinion by the Constitutional Law Committee[66] the Committee on Employment and Equality amended the Bill in order to transform the goal of reasonable accommodation into a genuine obligation of employers.[67] In its motivation for the amendment the latter Committee stated that it will constitute prohibited discrimination if an employer hires a person without disabilities instead of a more qualified applicant with a disability, in a situation where the latter person could perform the task in question if reasonable accommodation was made. Generally on the Equality Act, see Article 21, above.

According to the Employment Contracts Act (työsopimuslaki) the employer on his part shall "strive to further the employees' opportunities to develop themselves according to their abilities so that they can advance in their careers".[33] This obligation extends also to disabled employees. The employer has also to take an employees' physical and psychological ability into account when planning the work to be carried out, in order to eliminate or decrease any potential danger or harm that the work may inflict on the health or safety of the employee, pursuant to the Occupational Safety and Health Act [työturvallisuuslaki (738/2002), entered into force on 1.1.2003], section 28.

Employment Services Act (työvoimapalvelulaki) 1005/1993: The employer may receive a refund for costs that result from work and training experimentations, medical examinations, and consultations aiming to support the opportunities of an disabled person to gain or keep her/his work.[34] The employer may also receive compensation for such accommodation measures (with regard to changes to machines or other physical environment or e.g. the rearrangement of the method of work) that she/he has taken in order enhance the opportunity of a disabled person to gain or keep his/her work.[35] To be compensated for these kinds of accommodation measures, they must be *necessary* in order to eliminate or decrease disadvantage resulting from a disability or an illness.[36] Maximum compensation for such measures has been laid down to be 1 681,88 € per person. An employer may also receive compensation in a situation in which a fellow employee provides help to a disabled employee in order to enhance his/her ability to perform his/her work properly. The maximum compensation in this case is 168,19 € per month for a maximum period of one year.

Act on Social Undertakings adopted. In October 2003 a Government Bill on social undertakings[68] was submitted to Parliament. The new legislation will enter into force on 1 January 2004. According to the new Act on Social Undertakings (laki sosiaalisista yrityksistä),[69] if at least 30 % of the work force of an undertaking is constituted of persons with disabilities or of persons with a history of long-term unemployment, the undertaking is entitled to status as a "social undertaking" (sosiaalinen yritys). Social undertakings will be entitled to specific employment policy subsidies.

[65] HE 44/2003 vp
[66] PeVL 10/2003 vp
[67] See Section 5 of the Equality Act, as amended in TyVM 7/2003 vp
[33] Section 2:1 of the Act.
[34] Employment Services Act, section 12.
[35] Decree on Employment Service Benefits [asetus työvoimapalveluihin liittyvistä etuuksista 17.12.1993/1253)], section 14.
[36] Idem.
[68] HE 132/2003 vp
[69] The President of the Republic confirmed the Act on 30 December 2003.

According to the Occupational Safety and Health Act, which entered into force on 1.1.2003, an employer is under an obligation to pursue all measures available after he has learned of undue treatment or such harassment that may pose a harm or danger to the health of an employee. Such harassment or undue treatment may take place between employees or between an employee and a superior.[51]

CHAPTER IV : SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

International case law and concluding observation of international organs

In its Conclusions XIV-2, the European Committee of Social Rights concluded that the situation in Finland was in conformity with articles 2 and 3 of the 1988 Additional Protocol to the European Social Charter related, respectively, to the the right of workers to be informed and consulted within the undertaking, and to the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking.

Article 28. Right of collective bargaining and action

Practice of national authorities

Related to low economic growth (see Article 34, *reasons of concern*), a number of companies to lay off part of their workforce, which resulted in small-scale demonstrations on the part of their personnel and certain trade unions.

Article 29. Right of access to placement services

No significant development to be reported during the period under scrutiny

Article 30. Protection in the event of unjustified dismissal

No significant development to be reported during the period under scrutiny

Article 31. Fair and just working conditions

International case law and concluding observation of international organs

Paragraph 1. In its Conclusions XIV-2, the European Committee of Social Rights concluded that the situation in Finland was in conformity with article 3, paragraph 3, of the European Social Charter related to consulting employers' and workers' organisations on measures intended to improve industrial safety and health. As Finland has not accepted paragraphs 1 and 2 of ESC article 3, no conclusions were made in respect of these provisions.

[51] HE 59/2002 vp.

Paragraph 2. In the same Conclusions, the Committee concluded that the situation in Finland was in conformity with article 2, paragraphs 2 and 3, of the European Social Charter, related to holidays with pay (see, paragraph 2 of article 31 of the Charter). However, as to paragraphs 1 and 4, the Committee concluded that the situation in Finland was not in conformity with the ESC which relate to daily or weekly working hours (para. 1) and the right to additional annual holidays for persons in dangerous or unhealthy occupations (para. 4). The negative conclusion under para. 1 was based on the fact that Finnish law permits, in exceptional cases, daily rest periods to be lowered to seven and even to five hours. As to para. 4, the negative conclusion was based on the fact that workers exposed to radiation in the health sector are not entitled to reduced working hours or additional paid holidays. This conclusion follows the Committee's findings in collective complaint No. 10/2000 (STTK and Tehy v. Finland). As to paragraph 5 of ESC article 2, related to weekly periods of rest, the Committee deferred its consideration until receipt of further information.

Article 32. Prohibition of child labour and protection of young people at work

No significant development to be reported during the period under scrutiny

Article 33. Family and professional life

National legislation, regulation and case law

Act amending the Sickness Insurance Act (Laki sairasvakuutuslain muuttamisesta, No 1075 of 2002), date of entry into force 1.1.2003. The amendment has extended *paternity* leave from 18 weekdays to 30 weekdays, following the birth of an infant.

In addition, the amendment contains new rules to allow greater flexibility in parental leave for families with more than one child, as well as to transfer an entitlement to maternity leave to the father should the mother suffer serious illness. Under the previous system this last-mentioned measure was only possible if the mother has died. A possibility for part-time parental leave was also introduced.

The hope is that this new alternative will increase the willingness of fathers to share parental leave with their partners. The Finnish Ministry for Social Affairs and Health expects about one thousand families to take up this part-time option when it becomes available. Several thousand families are expected to adopt it later. However, a weak point in the part-time option will be the condition that the employer will also have to agree on its use in each individual case.

The amendment also included certain other details seeking a more equitable position for fathers in special situations. Men who adopt children will enjoy the same paternity and parental rights as other fathers and the parents of twins and triplets will be entitled to extended parental leave. Social allowances and benefits for maternity, paternity and child care are linked to the corresponding rights to leave. These allowances and benefits are not especially generous by comparison with the increased expenses of a larger family, and it is common that a new child in the family results in a tighter family budget.

Article 34. Social security and social assistance

National legislation, regulation and case law

Act on Social Lending (Laki sosiaalisesta luototuksesta, Act No 1133 of 2002) entered into force on 1 January 2003.. This Act codified the the three-year trial use of social loans by local authorities since 2000. The major purpose of the new law is to enable people hit by poverty and heavy debts to get a financial foothold to ease their situation. The earlier experiment displayed that most of those who applied to a social loan did so to help with the household economy or alleviate debts. During the three-year trial, sixty five percent of the loans were granted for servicing debts and 35 per cent were for various acquisitions.

Reform of old-age pensions. In its Opinion PeVL 60/2002 vp on Government Bill HE 242/2002 vp on amendments to pension legislation, the Constitutional Law Committee of Parliament addressed, in addition to issues related to property rights,[70] also the effect of Section 19, subsection 2, of the Finnish Constitution.[71] With reference to its earlier practice the Committee stated that the Constitution established for the legislature an obligation to guarantee for everyone in need of basic subsistence a right to a social security entitlement arranged by the public authorities, to the effect that no categories of persons would fall in-between various schemes of social security. In the assessment of the Committee, the proposed changes to the pension system met these requirements. The Bill was approved by Parliament on 18 February 2003, and the new law enters into force on 1 January 20043. [72]

The system of judicial review was simplified. The Finnish system of judicial review has been very complicated in the field of social security. However, several amendments designed to simplify the system of judicial review entered into force on 1 May 2003.[73]

Practice of national authorities

Interim Evalutation Report of the Working Group on Residence-Based Social Security. [74]An interim evaluation report analysed problems related to the Finnish legislation on residence-based social security and its implementation in international situations as well as various options for reforming the legislation. A survey of the legislation in force, regarding both the relevant national and EC legislation, complied by the secretaries of the Working Group was attached to the report. The major conclusions of the report were the following: (i) A considerable part of Finnish social security is residence-based. The present system functions well in many respects, but in some respects it should be adjusted so as to correspond better to changes in the policy environment (the principle of preciseness of legislation as laid down in the Finnish Constitution, the evolving EC legislation, etc.). (ii) The scope of the residence-based social security is – regarding national legislation, international agreements and EC legislation – difficult to interpret and of a general nature, thereby leaving too much room for discretion for the competent authorities. The fact that the fundamental principles of Finnish legislation differ from those of the EC legislation entails problems. (iii) There are ambiguities related to the concept of residence itself. (i) It is difficult in practice to manage the entirety constituted by different international and national legislative acts and the implementation practice, including the case law of the appeal tribunals and courts. Neither does the Finnish

[70] See Article 17, above.
[71] "Everyone shall be guaranteed by an Act the right to basic subsistence during unemployment, illness, disability and old age as well as in the event of the birth of a child or the loss of a provider."
[72] See also PeVL 60/2002vp. In its Opinion, the Constitutional Law Committee largely reviewed the the bill in the light of protection of poverty.
[73] Insurance Court Act and some related laws, Vakuutusoikeuslaki ja siihen liittyvä lainsäädäntö (Acts No 132-140 of 2003).
[74] Working Group on Residence-Based Social Security (SOLMU 3), 27.11.2002. Working Group Memorandum of the Ministry of Social Affairs and Health 2002 :20.

legislation underpin situations which are supposed to be solved by applying international agreements. In its present form, the legislation is unable to address the challenges that in particular the evolving EC legislation constantly poses.

However, the report also concludes that there is no need for major amendments to the current social security system. All problems can be diminished or even eliminated by several minor reforms of legislation and administrative practices.

* * *

New case law on the right to social assistance as a justiciable social right.. Pursuant to Section 19, subsection 1, of the Finnish Constitution[75] the right to social assistance is understood as a so-called subjective right, i.e. judicially enforceable individual right for those in need of social assistance. This was the starting point in the enactment of the Social Assistance Act in 1997.[76] Administrative courts have been consistent in the interpretation of the right to social assistance as a genuine right based on the needs of the individual. Hence, they have quashed negative decisions by municipalities when social assistance has been denied, for instance, on the basis of the fact that the applicant belonged to a certain category of persons, such as students.[77] In 2003 this case law was developed in the issue whether also prisoners may be entitled to social assistence on the basis of an individual assessment of their needs.

Supreme Administrative Court case KHO 20.05.2003/1220 related to a person who while serving a prison sentence did not participate in work offered to prisoners, due to threats to the security of his person. Therefore he did not receive any money for his personal needs, while his accommodation, food and clothing were provided by the prison. The Supreme Administrative Court held that as prisoners have not been excluded from the scope of social assistance they are entitled to social assistance when they do not receive any other income to cover their individually assessed needs, such as coffee, tobacco and products of personal hygiene. Supreme Administrative Court case KHO 20.05.2003/1221 is similar but was related to a prisoner in remand to whom the prison had not been able to offer work or education which would be accompanied with certain economic benefits. In a third case, KHO 24.03.2003/674 the Supreme Administrative Court upheld a negative decision in relation to an application by a prisoner to have the rent of his awaiting apartment paid through social assistance while he was in prison. In its reasoning the Court noted that the applicant did not have a family and that the authorities would arrange him housing once he was released from prison.

As to the issue of students' entitlement to social assistance, the Supreme Administrative Court ruling KHO 25.07.2003/1698 confirmed the existence, in principle, of such a right and also stated that the costs for contraceptive pills belong to the individually assessed needs of a person that give rise to a social assistance entitlement.

Reasons of concern

The general social and economic situation remained stable in Finland during 2003. Economic growth (BNP) was lower than expected (at around 1,3%), and the unemployment rate remained at a relatively high level of 9% (see also above Article 15, *statistics*). As a result, debates on how to increase the competitiveness of the Finnish economy, how to best fight income inequality and social exclusion, and how to reform the Finnish welfare state continued

[75] "Those who cannot obtain the means necessary for a life of dignity have the right to receive necessary subsistence and care." The provision was made part of the 1919 Constitution Act in 1995 and was in 1999 included in the new Constitution of Finland.
[76] Laki toimeentulotuesta 30.12.1997/1412
[77] See, for instance Supreme Administrative Court case KHO 2000:58.

to occupy a prominent place on the national agenda. As already mentioned (see Article 28, *Practice of national authorities*), low economic growth also prompted a number of companies to lay off part of their workforce, which resulted in small-scale demonstrations on the part of their personnel and certain trade unions.

Related to these societal features, the effective implementation of social rights continued to be among the domestic human rights issue that gained attention in 2003 in Finland. Municipalities play a role in providing services concerning education, social welfare and health care, but municipalities are not necessarily able to assign enough economic resources to handle these tasks. There appears to be significant differences between the financial resources of different municipalities.[78]

Article 35. Health care

Reasons of concern

Public health care experience that they do not have enough to treat an increasing number of people in need of health care, many of them children (see also Article 28, reasons of concern and Article 34, reasons of concern). The roots of this problem can be traced to the deep recession ten years ago when unemployment rose to an unprecedented level and the Finnish introduced cuts in its social expenditure, reducing, *inter alia*, certain allocations in health care. services.

Article 36. Access to services of general economic interest

National legislation, regulation and case law

See Article 11 for the new Communications Market Act

Article 37. Environmental protection

International case law and concluding observation of international organs

C-240/00: The Court of Justice of the European Communities ruled that, by failing to classify fully and definitively the SPAs in its territory, Finland had failed to fulfil its obligations under Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

In Finland, the national Natura decision is still to become final. Several appeals were made in the summer of 2000. The Supreme Administrative Court ruled in favour of 50 of the appeals, changed the boundaries of four protected areas, and sent 14 areas back to the Government for consideration. Currently, new cases involving claims against the legality of Finland's Natura proposal are pending before the Supreme Administrative Court.

National legislation, regulation and case law

On 19 December 2003, the Government finally gave its approval to a controversial bill entailing the ratification of the so-called Århus Convention which contains regulations on the public right to information, to participate in decision-making, and to appeal decisions on

[78] See e.g. Perustuslain seurantatyöryhmän mietintö 2002:7, at p. 15.

projects with an environmental impact. The bill was before the government during the previous electoral term, but it lapsed after it was strongly opposed by the Conservative Party (Kokoomus) (which was then in the government coalition).

The Finnish courts prohibited/modified economic or commecial activities on the basis of protection of the environment in several cases, the most important of which include the following ones :

The Supreme Administrative Court, KHO 2002:86 (issued 18 December 2002):

The Court prohibited the construction of a dam and reservoir in *Vuotos* in Finnish Lapland. The judgment is final and cannot be appealed.

The judgment put an end to the *Vuotos* reservoir affair which has been a topic of extremely heated debate for over thirty years. The first suggestions of an artificial lake and hydroelectric plant arose in the 1960s. In 1982, the Government decided to drop the project, but the issue was revived in the late 1980s. A state-owned company (Kemijoki Oy) applied for the construction permit in 1992, after the government had taken a positive stance towards the project. It received the permit in 2000. However, about 60 appeals were made against the decision, and in June 2001 the Vaasa Administrative Court overturned the decision, heavily relying on environmental concerns. The company then made an appeal to the Supreme Administrative Court.

In its judgment, the Supreme Administrative Court Court concluded that the reservoir would cause considerable environmental damage to the area within the meaning of Chapter 2, Section 5 (amendment No 467 of 1987) of the Water Act (Act No 264 of 1961)[79] This was the very first time in the history of application of the Water Act that a court applied this provision for the purpose of quashing a construction permit. According to the Court, the 242 square kilometres that the reservoir would have covered contain valuable swamp, river and water habitats. 88 endangered species have been found in the area. In addition, the project would have had adverse effects on reindeer husbandry. In its reasoning, the Supreme Administrative Court also took notice of Section 20 of the Constitution of Finland which is about responsibility for the environment in the following terms: "Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment."

On the following day after the Court issued its ruling its implications were discussed in Parliament. On this occasion Prime Minister Paavo Lipponen used expressions that could be understood as ciriticism against a judicial decision, although he in the same breath stated that he did not question the Court's authority to decide issues of law. As reproduced in the records of Parliament (19 December 2002), the Prime Minister stated: "The Court has issued its ruling. Of course one may wonder why these types of matters are decided by courts of law when they to a large extent pertain to the field of policy."

The Supreme Administrative Court, KHO 2003:38:

The Finnish Supreme Administrative Court ruled that Finland's current law on nature protection, the Nature Conversation Act (Luonnonsuojelulaki, Act No 1096 of 1996) does not meet the requirements of the Council Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora. The judgment is considered an important precedent,

[79] Vesilaki (264/1961).

setting the pace for the protection of rare mammals (in the case for the flying squirrels) in Finland.

According to Section 49 of the Nature Conversation Act, "[t]he destruction and deterioration of clearly identifiable breeding sites and resting places used by specimens of animal species referred to in Annex IV (a) of the Habitats Directive is prohibited". However, the said EC directive does not include such a limitation. Instead, the directive guarantees protection to all resting and breeding areas - even those which cannot be clearly seen. The Supreme Administrative Court thus concurs with the view of the European Commission that the Finnish legislation does not fully meet the requirements of the said EC Directive.

Currently, a government proposal for an amendment of Section 49 of the Nature Conservation Act is before Parliament (HE 76/2003vp). However, the Constitutional Law Committee concluded that the bill is contrary to the protection of property (Section 15 of the Constitution of Finland) to the extent that the protection of an area based on section 49 does not entitle the land-owner to any compensation. According to the Committee, the bill should be changed so that, on certain extreme occasions, owners would be entitled to compensation on the protection of areas on the basis of situations covered by section 49 (PeVL 15/2003vp).

The Supreme Administrative Court, KHO 2003:41:

In a request for a preliminary ruling (C-513/99 *Concordia Bus Finland*),[80] the Finnish Supreme Administrative Court had asked the European Court of Justice whether the EU public procurement Directives allow consideration of non-economic environmental factors, such as the level of air and noise pollution, when deciding to whom to award a public procurement contract. The EU directives are silent on the issue although one could argue for a flexible reading of the EU Directives, since they refer to non-economic elements such as aesthetics.

In its preliminary ruling, the ECJ held that, when determining what constitutes the most economically advantageous tender, a public authority, is allowed to take environmental criteria into consideration. According to the ECJ, the EU public procurement Directives do not imply that each of the award criteria used by a public authority must necessarily be of a purely economic nature. However, the possibility of integrating environmental (and by extension, other secondary) criteria is qualified by a number of conditions:(i) environmental criteria must be linked to the subject-matter of the contract;(ii) the criteria must not give to the public authority an unrestricted freedom of choice;(iii) the criteria must be expressly mentioned in the contract documents or the tender notice (the principle of transparency); and (iv) the criteria must comply with the fundamental principles of Community law, particularly non-discrimination. – The preliminary ruling is widely regarded as being a very important land-mark ruling.

In its own judgment, the Supreme Administrative Court abided by the preliminary ruling and, accordingly, ruled that environmental factors could be taken into account by the public authority when considering the most economically advantageous tender.

Article 38. Consumer protection

No significant development to be reported during the period under scrutiny

[80] C-513/99 Concordia Bus Concordia Bus Finland Oy Ab, formerly Stagecoach Finland Oy Ab, and Helsingin kaupunki, HKL-Bussiliikenne, judgment of the Court 17 September 2002.

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

National legislation, regulation and case law

New Nationality Act (359/2003) *entered into force on 1 June 2003*. The most important change is that dual (multiple) nationality is now acceptable. A Finn who acquires a foreign nationality will not lose his/her Finnish nationality, nor will a foreigner who acquires Finnish nationality be obliged to renounce his/her current nationality (subject to the proviso that the nationality legislation of the country in question does not necessarily accept multiple nationality.)

Article 40. Right to vote and to stand as a candidate at municipal elections

No significant development to be reported during the period under scrutiny

Article 41. Right to good administration

National legislation and case law

Administrative Procedure Act (Hallintolaki, Act No 434 of 2003) was confirmed on 6 June 2003, an it will enter into force on 1 January 2004.

The objective of the Act is to achieve and promote good administration and access to justice in administrative matters. This Act also promotes the quality and productivity of administrative services (section 1).

The Act contains provisions on the fundamental principles of good administration and on the procedure applicable in administrative matters. It is applicable by state authorities, municipal authorities and independent institutions under public law, as well as in the agencies under the Parliament and the Office of the President of the Republic (*authority*). The Act is also applicable by state enterprises, associations under public law and private parties when these are performing public administrative tasks.

Moreover, the Act is applicable to *administrative contracts which are* contracts, within the competence of an authority, on the performance of a public administrative task, or a contract relating to the exercise of public authority. When entering into an administrative contract, the fundamental principles of good administration shall be adhered to; in addition, the rights of the persons concerned shall be adequately protected in the drafting of the contract, as shall their chances to affect the contents of the contract. (section 3).

The Administrative Procedure Act does not apply to the administration of justice, pre-trial investigations, police inquiries or enforcement. Neither does it apply to military orders nor to other internal orders of the administration relating to the performance of a task or some other measure, nor to oversight of legality, as carried out by the highest overseers of legality in the country, unless specifically otherwise provided.

CHAPTER VI : JUSTICE

Article 41. Right to good administration

Not relevant

Article 42. Right of access to documents

Not relevant

Article 43. Ombudsman

Not relevant

Article 44. Right to petition

Not relevant

Article 45. Freedom of movement and of residence

Not relevant

Article 46. Diplomatic and consular protection

Not relevant

Article 47. Right to an effective remedy and to a fair trial

International case law and concluding observation of international organs

Eur.Ct. H.R: Suominen v. Finland (application no. 37801/97) Violation Article 6 § 1:

Kersti Hannele Suominen, a Finnish national, was born in 1942 and lives in Forssa (Finland). Between 26 June 1991 and 16 February 1993 she made arrangements with a bank to finance the company of which she was the owner and managing director. In spring 1993 the bank refused to grant Ms Suominen any more loans and in February 1995 instituted civil proceedings against her for the return of the previous loans. The District Court found for the bank and Ms Suominen's property was seized. She appealed unsuccessfully.

Ms Suominen complained, under Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, that she had been denied a fair trial because the District Court had refused, without giving written reasons for its decision, to admit part of the evidence she had wanted to submit.

The European Court of Human Rights noted that the main issue here was whether the court had given reasons for its decision to refuse to admit part of the evidence submitted by the applicant. As it had not done so, the applicant had been unable to appeal effectively against the refusal. The Court held unanimously that the applicant had not had a fair trial and that there had accordingly been a violation of Article 6 § 1.

The Court awarded the applicant 2,000 euros (EUR) for non-pecuniary damage and EUR 2,300 for costs and expenses.

Eur.Ct. H.R: Fortum Corporation v. Finland no. 32559/96, 15 July 2003, Violation of Article 6 (1) of the ECHR*.:*

On 11 October 1993 the Competition Office brought proceedings before the Competition Council for an order requesting Neste (now Fortum Corporation) to cease abusing its dominant position on the Finnish market for motor-engine fuel. The Competition office requested the imposition of a fine on Neste. The Competition Council found in favour of the Competition Office, however, without imposing a fine. The parties appealed to the Supreme Administrative Court ("SAC"). The SAC had been in receipt of memoranda from the Competition Office that had not been communicated to Neste. SAC upheld the Competition Council's decision in large part and concluded that Neste should have been fined. Fortum Corporation complained that under article 6 (1) of the ECHR, its predecessor, Neste, had been denied a fair hearing in the proceedings before the SAC due to reason that certain documents had been submitted to the SAC and without any possibility to comment upon them. The European Court of Human Rights found that at least one of the memoranda could have affected the outcome of the proceedings Therefore, the Court stressed that the SAC should have given Neste an opportunity to comment on them before it decided the case. The Court found a violation of article 6 (1) of the ECHR as the applicant company had been unable to participate properly in the proceedings and had thus been deprived of a fair hearing.

Eerola v. Finland no. 42059/98, (friendly settlement) 6 May 2003:

The applicant complained, under Article 6 (1) of the European Convention on Human Rights that the criminal proceedings against him had been unfair because the composition of the first-instance court had changed during the course of the proceedings. The criminal procedure was presided over by a presiding professional judge accompanied by three lay jurors altogether 20 different lay jurors had participated in eight hearings resulting in difficulties to form their own opinion of the facts of the case. The presiding judge changed after the first hearing. When the court rendered its judgment, it had one lay juror who had participated in one earlier hearing whereas the two others were new. The government of Finland and the applicant agreed to a friendly settlement.

Hyvönen v. Finland no. 52529/99 (friendly settlement) 22 July 2003:

On 16 June 1998 the applicant (born in 1928) was convicted of aggravated concealment of stolen goods and aggravated forgery and sentenced to 18 months' of imprisonment. The applicant appealed to the Court of Appeal. The court requested the applicant to attend its oral hearing, but the applicant failed to do so allegedly due to his dementia and other age-related illness. His appeal was struck out after he had failed to attend the hearing. The applicant complained that he had been denied a fair hearing in the criminal proceedings against him. His dementia and other age-related illnesses were considered as invalid excuses for his failure to attend the Court of Appeal's hearing. His request for the proceedings to be reopened was dismissed by the Court of Appeal. The applicant further complained that he had been denied the right to have his conviction or sentence reviewed by a higher tribunal in accordance with article 2 of protocol no. 7 of the ECHR. A friendly settlement was reached between the applicant and the government of Finland.

National legislation, regulation and case law

Supreme Administrative Court: KHO 2002:91:

Relevant domestic provisions and relevant Articles of the ECHR: Chapter 13, sections 1, 2, 6 and 7 of the Code of Judicial Procedure; ECHR–6

Abstract: The administrative court had dismissed X's appeal against a decision by the social welfare board concerning X's social assistance. Before the administrative court, X claimed that the members of the court and the referendary in the case should be disqualified as they had previously dealt with similar matters concerning X. The court dismissed the claim. X also said he/she would report the members and the referendary for an offence. The Supreme Administrative Court granted X leave to appeal as far as the impartiality of the court was concerned.

The Supreme Administrative Court referred to the provisions in the Code of Judicial Procedure concerning the impartiality of a judge. It also discussed briefly Article 6 of the ECHR and the case law of the European Court of Human Rights concerning subjective and objective impartiality. The Supreme Administrative Court noted that X's unilateral announcement that he/she would report the members of the court and the referendary for an offence, did not make X their adversary in a trial and did not give justified cause to doubt their impartiality in a matter concerning X's social assistance. The Court also noted that there was no reason to doubt that the members of the court or the referendary would have had a preconception of the case on the grounds that they had previously dealt with matters relating to X's social assistance. According to the Court, there was no specific reason to doubt the impartiality of these persons either. The Court concluded that there was no reason to disqualify the court members or the referendary on the basis of the Code of Judicial Procedure and that there had been no violation of the right to a fair trial under Article 6 of the ECHR. X's appeal was dismissed.

Supreme Administrative Court: KHO 2003:24:

Relevant domestic provisions and relevant Articles of the ECHR: Chapter 13, sections 6 and 7 of the Code of Judicial Procedure, section 76 of the Administrative Judicial Procedure Act, ECHR–6–1

Abstract: C had been taken into care by the decision of a municipal social welfare board. As the parents A and B objected to the decision, it was submitted to an administrative court. The court approved the decision and rejected the parents' appeal. A appealed further to the Supreme Administrative Court and claimed, among other things, that the expert member of the court, Y, should have been disqualified. Y was the director of a family advice bureau which was a unit under the social welfare board. Y was also the superior of the psychologist, Z, who had given a statement concerning C's health and development.

The Supreme Administrative Court first referred to the Administrative Judicial Procedure Act according to which the provisions of the Code of Judicial Procedure concerning the disqualification of a judge are applicable to a person considering an appeal in an administrative court. In addition to the relevant provisions of the Code of Judicial Procedure, the Court also discussed Article 6–1 of the ECHR and the notions of subjective and objective impartiality as specified in the case law of the European Court of Human Rights. The Court found that Y's position as an official subordinate to the social welfare board or his position as Z's superior did not in general and as such constitute grounds for Y's disqualification as an expert member of the court. However, in this particular case both these positions coincided. Furthermore, A had criticized the board and its officials for their inability to co-operate and to take into account the cultural and immigrant background of the family. Finally, C had been

taken into care mainly because of C's own behaviour and problems, and thus Z's statement had been of major importance when the administrative court had dealt with the case. The Supreme Administrative Court concluded that on these grounds Y's objective impartiality had been jeopardized to the extent that Y should have been disqualified as an expert member of the court. The decision of the administrative court was quashed and the case was returned to the administrative court for a new consideration.

Insurance Court: Report No. 6276:2001:

Relevant domestic provisions and relevant Articles of the ECHR: Section 1 of the Act on accident compensation for convicted prisoners and persons in institutional care (894/1946), ECHR–3, ECHR–6, CCPR–7, CCPR–14–1

Abstract: Convict A had been transferred to a prison hospital for rehabilitation. He was injured while playing football with the other inmates. The State Treasury did not grant A accident compensation. A appealed against the decision to a specific accident insurance appeal board which rejected the appeal. The board admitted that A had a duty to participate in the football match as a part of his/her rehabilitation programme. However, when the accident happened, A was not at work under the guidance and supervision of the prison authorities, as required in the Act on accident compensation for prisoners.

A appealed to the Insurance Court and claimed, among other things, that the board's decision was in breach of Articles 3 and 6 of the ECHR and Articles 7 and 14–1 of the CCPR. The Insurance Court rejected the appeal on the same grounds as the board. The court also concluded that there had been no violation of the ECHR or the CCPR, but did not discuss the provision in more detail in its decision

Supreme Court: KKO 2003:12:

Relevant domestic provisions and relevant Articles of the ECHR: Chapter 5, section 17 of the Criminal Procedure Act, ECHR–6–3

Abstract: A had taken two water scooters owned by B and C who had then reported the loss to an insurance company. The court of first instance sentenced A for theft of the trailer A had used for the transportation of the water scooters. As for the theft of the water scooters, A was charged with aiding and abetting in an insurance fraud, but these charges were dismissed. In the court of appeal the prosecutor accused A for aggravated theft as an alternative to the original charges for fraud. A was condemned for aggravated theft. A appealed to the Supreme Court claiming that the alternative charge for aggravated theft should have been dismissed without considering the merits.

The Supreme Court referred to Article 6–3 of the ECHR and the right of a person charged with a criminal offence to be informed of the nature and cause of the accusations against him/her and to have adequate time and facilities for the preparation of his/her defence. Based on this provision, Chapter 5, section 17 of the Criminal Procedure Act prescribes that a charge shall not be altered during a trial. As an exception to this main rule section 17 provides that the prosecutor may extend a charge against the same defendant to cover another act if the court considers this appropriate. According to the Government Bill to the Criminal Procedure Act, this exception is not meant to be applied in proceedings in a higher court. However, the Supreme Court was of the opinion that in this case there were special features which spoke in favour of making an exception and allowing the extended charge before the court of appeal. The original charge was based on A's statement during the pretrial investigation in which A had said that B and C were aware of the theft. After the pretrial stage and during the proceedings before the first instance court, A had changed his/her statement and told that he/she had in fact stolen the water scooters without B's and C's knowledge. As the extended

charge was based on facts given by A, the presenting of the charge for the first time before the court of appeal could not, in the Supreme Court's view, have essentially hindered A's possibilities to prepare his/her defence. In the main hearing before the court of appeal A had the possibility to respond to the accusations and to have witnesses examined. The Supreme Court concluded that as A's right to a fair trial had not been violated, the charge against A could be extended during the proceedings in the court of appeal. The Supreme Court upheld the decision of the court of appeal. Two justices of the Supreme Court were of the opinion that the court of appeal should have dismissed the charge for aggravated theft without considering the merits.

Supreme Court: KKO 2003:16:

Relevant domestic provisions and relevant Articles of the ECHR: ECHR–6

Abstract: The land court had affirmed a construction plan for a private road. A had objected to the plan but his claim had been dismissed by the court. The Supreme Court did not grant A leave to appeal, but A submitted a complaint on the basis of a grave procedural error. One of the parties in the road construction plan, B, was the managing director of a company which had been given the task, as a consultant, to prepare a proposal for a shore plan. Two lay members of the land court owned land in that shore area. A claimed that the two members should have been disqualified as there was reason to doubt their impartiality when they were dealing with a matter in which B was a party. A referred to Article 6 of the ECHR and to the case law of the European Court of Human Rights.

The Supreme Court assessed that tasks of the consultant and noted that from the viewpoint of the land owners the consultant had a central, independent and influential role in the preparation of the shore plan. However, the Court continued, it is not rare that a judge has to deal with matters concerning a person whose actions again may affect matters concerning the judge's own person or property. This does not necessarily mean that there is an interdependent relationship between that person and the judge. In this case, it had not been claimed that the lay members would have expressed any particular wishes to B or that they would have had anything at all to do with B in matters relating to the shore plan. The shore area was vast, and there were thousands of land owners in that area. A consultant's relations with individual land owners could thus not have become very personal. The Supreme Court concluded that there was no reason to doubt the impartiality of the lay members on the grounds presented by A. A's complaint was dismissed.

Supreme Court: KKO 2003:35:

Relevant domestic provisions and relevant articles of the ECHR: Section 9–1 of the Insurance Court Act; section 38 of the Administrative Judicial Procedure Act; ECHR–6–1

Abstract: A's appeal in an accident insurance case had been rejected by the Insurance Court. A had requested for an oral hearing in order to hear as a witness a doctor whose written medical opinion on A's physical condition had been submitted to the court. The Insurance Court rejected the request as manifestly unnecessary. A appealed to the Supreme Court.

The Supreme Court first referred to section 38 of the Administrative Judicial Procedure Act, which prescribes that an oral hearing shall be conducted if a private party so requests, unless it is manifestly unnecessary in view of the nature of the matter or for another reason. The Court pointed out that when interpreting this provision, Article 6–1 of the ECHR had to be taken into account. The Court then discussed at length the case law of the European Court of Human Rights, including the cases of *Fischer v. Austria* (judgment of 26 April 1995, Publications of the European Court of Human Rights, Series A, Vol. 312), *Lundevall v. Sweden* (judgment of 12 November 2002), *Salomonsson v. Sweden* (judgment of 12

November 2002), *Döry v. Sweden* (judgment of 12 November 2002), *Fredin v. Sweden* (judgment of 23 February 1994, Publications of the European Court of Human Rights, Series A, Vol. 283–A) and *Eisenstecken v. Austria* (judgment of 3 October 2000, Reports of Judgments and Decisions 2000–X). On the basis of this discussion the Court reached the conclusion that determining a case in a written procedure only may be acceptable under Article 6–1 of the ECHR, if the issue in the case is the assessment of written medical opinions or medical experience and their role in the determination of the case. However, if the medical evidence is incomplete, contradictory or disputed, Article 6–1 may require that an oral hearing is conducted at the request of a party. Furthermore, when assessing a person's right to an oral hearing, the importance of the issue for that person has to be taken into account. The Court then noted that in this case A had considered that it was necessary to hear the doctor as a witness in order to supplement the doctor's written medical opinion and to clarify the link between the accident and A's disability on the one hand and the harm caused by the disability on the other hand, in view of the fact that the Insurance Court and the accident insurance appeal board had found that the medical opinion did not give cause to accept A's claim. The issue was of great importance for A as far as A's subsistence was concerned. The Supreme Court concluded that, taking into account the case law under Article 6 of the ECHR, no specific grounds had been presented in this case on the basis of which A's request for an oral hearing could have been reasonably rejected as manifestly unnecessary. The Supreme Court quashed the decision of the Insurance Court and returned the case to the latter court for a new consideration. One justice of the Supreme Court found that, considering the main issue in the case, it was unnecessary and meaningless to hear the doctor as a witness, as the outcome of the case could still not have been in A's favour.

Insurance Court: 9710:2002:

Relevant domestic provisions and relevant Articles of the ECHR: Sections 1 and 6 of the Legal Aid Act

Abstract: A wanted to appeal against a decision by which the State Treasury had granted A compensation from state funds for crime damage. The Treasury had adjusted the compensation as compared to A's original claim. For the purpose of making the appeal, A applied for legal aid from a state legal aid office. By the decision of the legal aid office A's expenses for the measures already undertaken were covered. However, A's request for an attorney paid for by the state was rejected on the grounds that this was a petitionary matter and there were no especially weighty reasons for appointing an attorney. A appealed against the decision, and the legal aid office forwarded the matter to the Insurance Court.

The Insurance Court referred to the Legal Aid Act and its preparatory materials. When considering the appointment of an attorney under the Legal Aid Act, the decisive question is whether the applicant is able to protect his or her interests properly without assistance. The court pointed out that the requirements set in the ECHR must also be taken into account. In A's appeal, the amount of the compensation was at issue. The assessment of the compensation is principally based on the documents and evidence presented at the trial. A decision on the amount of the compensation does not involve demanding legal and factual questions. A and A's lawyer had not presented any new information regarding A's claim for compensation. Nor had they presented any cause pertaining to A's person on the grounds of which A would not be able to make the appeal himself/herself. The Insurance Court concluded that A was able to protect his/her interests without assistance. The decision of the legal aid office was not amended and A's request for the appointment of an attorney paid for by the state was rejected.

Insurance Court: Report No. 3780:2003*:*

Relevant domestic provisions and relevant Articles of the ECHR: Sections 1 and 6 of the Legal Aid Act

Abstract: A's application for earnings-related unemployment allowance had been rejected by an unemployment fund. In order for a person to receive earnings-related unemployment allowance, he or she must have been employed for 43 weeks during the two immediately preceding years. When calculating the time A had been employed, the unemployment fund had not included a time period during which A had not been paid a salary but had instead received compensation for loss of income from an insurance company under the Traffic Insurance Act. A wished to appeal against the fund's decision and applied for legal aid from a state legal aid office. A was granted certain benefits which according to the Legal Aid Act could be granted to a person whose means entitle him or her to legal aid for free. However, the legal aid office considered it was not necessary to appoint a legal aid attorney for A. A appealed against this decision, and the legal aid office forwarded the matter to the Insurance Court.

The Insurance Court referred to the Legal Aid Act and its preparatory materials. The possibility to receive legal aid depends on the means of the applicant as well as his or her need for legal assistance. When considering the appointment of an attorney under the Legal Aid Act, the decisive question is whether the applicant is able to protect his or her interests properly without assistance. The court pointed out that the requirements set in the ECHR must also be taken into account. The main issue in A's case was whether the time period during which A had received compensation from the insurance company should be regarded as a period of employment. The legal question was clear and could not be regarded as demanding. Furthermore, in the court's view, the importance of the issue for A was indirect at most: even if A's claim were accepted, by the time A submitted his/her application he/she had been employed for less than 43 weeks during the two preceding years and was thus not entitled to earnings-related unemployment allowance. The Insurance Court concluded that A was able to protect his/her interests in the matter without assistance. A had not presented any cause pertaining to his/her person on the grounds of which he/she would not be able to make the appeal himself/herself. The Insurance Court rejected A's request for an attorney. In addition, unlike the legal aid office, the court considered that because of his/her financial circumstances, A could not be granted the benefits intended for persons who are entitled to legal aid for free.

Article 48. Presumption of innocence and right of defence

No significant development to be reported during the period under scrutiny

Article 49. Principles of legality and proportionality of criminal offences and penalties

No significant development to be reported during the period under scrutiny

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No significant development to be reported during the period under scrutiny