



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of Finland to the conclusions and recommendations
of the Committee against Torture (CAT/C/CR/34/FIN)***

[19 May 2006]

^{1*} In accordance with the information transmitted to State parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Recommendation 5(c):

The Committee recommends that the State party:

Strengthen the legal safeguards for asylum-seekers to ensure that all asylum procedures conform to article 3 of the Convention and other international obligations in this field;

1. According to section 21 of the Constitution of Finland (731/1999), everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.
2. The Committee has expressed its concern about the “accelerated procedure” under the Aliens Act. The provisions on the accelerated procedure were reintroduced into the Aliens Act in 2000 (HE 15/2000). During the parliamentary discussion of the bill, the Constitutional Law Committee and the Law Committee of Parliament profoundly assessed the accelerated procedure, particularly in view of the suspensive effect of appeal, in the light of the Constitution and international obligations binding on Finland. After an extensive political debate, Parliament adopted the bill with a clear majority of votes.
3. A new Aliens Act (301/2004) entered into force in 2004. All the situations to which an accelerated procedure may be applied are mentioned in one section of the Act. Differing from the repealed provisions, this section makes a distinction between cases where the application is not examined and those where the merits of the case are examined through the so-called accelerated procedure. The purpose of the change was to clarify the wording of the provisions, whereas the procedure applied to the processing of application was not changed. The publicity of proceedings, the right to be heard and obtain a reasoned decision, and the right of appeal as well as other guarantees of a fair trial and good governance are ensured by law.
4. Appeal against a decision on refusal of entry that has been made in connection with the dismissal of an application has no suspensive effect, but the person concerned may lodge a petition with Helsinki Administrative Court for an order staying the enforcement of the decision. However, such a petition does not prevent the enforcement of the decision on refusal of entry. In cases where the asylum-seeker has been found to arrive from a safe country of origin or asylum, the decision on refusal of entry under section 201, subsection 3, of the Aliens Act may be enforced at the earliest on the eighth day from service of the decision on the applicant. Asylum-seekers have always, with the exception of renewed applications, the right to be heard in person. They have also the right to always use an interpreter and legal counsel. The suspension of enforcement for at least eight days ensures that the asylum-seeker has an opportunity to appeal before being removed from the country. The period of eight days is sufficient for the Administrative Court to prohibit enforcement of the decision, where necessary, and thus ensure the asylum-seeker's protection by law.

5. Where the decision on refusal of entry has been made under the Council Regulation² on determining the State responsible for examining an asylum application or under the Dublin Convention³, it may be enforced immediately after it has been served on the asylum-seeker. The distribution of responsibility established by the Regulation is based on that each state applying the Regulation has a functioning administrative and legal system that is able to offer international protection to those in need of it. In respect of renewed applications for asylum, the decision may also be enforced immediately after it has been served on the asylum-seeker. It is required by the provisions of the Aliens Act that, in connection with the dismissal of a renewed application, a new decision on refusal of entry is always made, allowing appeal. This is important in view of legal certainty and the asylum-seeker's protection by law. Thus, it may be considered that the enforcement of a decision on refusal of entry despite appeal does not jeopardise the legal protection of the asylum-seeker.

6. Under section 9 of the Constitution, 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 section 147 of the Aliens Act, no one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area.

7. The aforementioned provisions are taken into account in the examination of applications for asylum. Furthermore, under section 200, subsection 2, of the Aliens Act, a final decision or a decision that is otherwise enforceable under this Act may not be enforced if there is reason to believe that returning the alien to his or her country or origin or another country may expose him or her to danger as referred to in section 147, i.e. the asylum-seeker could be subject to the death penalty, torture, persecution or other treatment violating human dignity (absolute prohibition on refoulement). The police enforcing the decision ensure, as the last authority, that there are no obstacles referred to in section 147 for removing the person in question from the country. If necessary, the police will delay the enforcement or advise the alien to file a new application for international protection.

8. All applications for asylum are examined case by case. Section 98 of the Aliens Act contains a provision that further strengthens the requirement of individual assessment and the application of the principle of benefit of doubt. Under that section, the requirements for issuing a residence permit are assessed individually for each applicant by taking account of the applicant's statements on his or her circumstances in the State in question and of information on the circumstances in that State. It is worth noting that, in addition to the protection afforded by these important principles, asylum-seekers always have the right to be interviewed in person, from which derogation is only possible in respect of renewed applications, as well as the right to be assisted by an interpreter and legal counsel irrespective of whether the application is examined through the ordinary or accelerated procedure.

² Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [Official Journal L 50 of 25 February 2003].

³ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (97/C 254/01)

9. Different organisations, including non-governmental organisations and the UNHCR, have expressed critical views on the accelerated procedures applied in Finland. However, the Government and Parliament have been of the view that there is no conflict with the international obligations binding on Finland. In this respect, it is also worth noting that there are no binding international rules concerning asylum procedures. In the European Union, a political agreement has been reached on a directive concerning asylum procedures. In the preparation of the directive, it was observed that the Finnish system affords a good level of protection for asylum-seekers when compared with certain other EU Member States. Upon its entry into force in the future, the directive will be the first binding international instrument on asylum procedures.

10. In Finland, all applications examined through either the ordinary procedure or the accelerated procedure are subject to individual assessment, the asylum-seeker is provided with fundamental procedural guarantees, and the asylum-seeker always has the right of appeal and the right to file a petition with Helsinki Administrative Court for the suspension of enforcement of a decision on refusal of entry. Furthermore, the provisions of the Constitution, the Aliens Act and international human rights conventions concerning the principle of non-refoulement are taken into account in connection with the enforcement of decisions. Thus, the rights of asylum-seekers are protected as required by the law and international agreements.

11. In connection with submitting the bill for the enactment of the Aliens Act, the Government requested the Ombudsman for Minorities to prepare a report on the application of the accelerated asylum procedure with special reference to practical problems in the legal protection of asylum-seekers. The report was completed in December 2005. In this report, the Ombudsman focused on the most relevant elements of the protection of asylum seekers and on their de facto protection during the asylum procedure, in the light of the protection of human rights as guaranteed by international conventions, and of the provisions of the Constitution on legal protection and good governance.

12. On the basis of his report, the Ombudsman has concluded that in most cases, the accelerated procedure affords adequate protection for the asylum seeker during the procedure. In practice, however, there have been problems of interpretation in the asylum procedure, to which attention should be paid by means of administrative instructions and, where necessary, legislative amendments. The Ombudsman has also found that the possibility of transferring the responsibility for the interview of an asylum-seeker to the police, or of not holding the asylum interview in certain cases, undermines the main responsibility of the Directorate of Immigration in the assessment of criteria for the granting of asylum. The access of the asylum-seeker to legal assistance and the use of such assistance should also be monitored, throughout the asylum procedure. The introduction of the accelerated procedure was necessary, among others, because of cases of abuse of the system of asylum but the efforts to accelerate the asylum procedure should not jeopardise the legal protection of the asylum seeker. In this respect, the possibility of using the accelerated procedure should be restricted to those cases where it can clearly be applied, to avoid its unnecessary expansion to other cases. Furthermore, in cases of deportation of asylum-seekers to another EU Member State pursuant to the application of the Regulation concerning determination of the state responsible for an application for asylum, attention should be paid to the possibility of repetitive deportations, which are prohibited.

13. The most relevant observation in the report of the Minority Ombudsman concerns the effectiveness of the right to appeal and its relationship with the enforcement of a decision to

remove an alien from the country. The possibility of appeal to the Administrative Court to prevent the enforcement of a decision on refusal of entry has in practice become the most relevant element contributing to the effectiveness of the right to appeal. It is important to ensure that the Administrative Court always has a possibility to give its opinion on a decision to remove an alien from the country before its enforcement. In this connection, it is also important to ensure the fairness of proceedings.

14. On the basis of the individual observations of the Minority Ombudsman, it cannot be concluded that referral to an accelerated procedure would always jeopardise the legal protection of the asylum-seeker, but there may sometimes be problems relating to the effectiveness of the right of appeal. The problems detected also involve the risk of a repetitive cycle, which must be taken into account. In the future, it is necessary to pay attention to the coherence of the actions of different authorities and to the guarantees of equality during the asylum procedure, regardless of the origin of the asylum-seeker and his or her ability to protect their own interests.

Recommendation 5(d):

The Committee recommends that the State party:

Complete the process of implementing the suggestions made by the working group established to look at the situation of Roma in Finnish prisons and all other necessary measures to improve the situation and welfare of Roma prisoners;

15. Roma prisoners still face some problems in Finnish prisons. Therefore, a working group was set up to consider these problems. The working group published its report in 2003, proposing various measures to improve the situation. The Criminal Sanctions Agency carried out an inquiry in the autumn of 2005, to find out the extent to which the measures proposed by the working group have been implemented. In the light of the replies received, the encouragement of Roma prisoners to use the regular educational services and the rehabilitation services for intoxicant abusers has succeeded best. This has been done in connection with the assessment of needs and the preparation of a plan for the duration of imprisonment.

16. The replies to the inquiry showed that Roma prisoners mostly needed educational services. Many of them had not completed their basic education, and they also needed preparatory and vocational training. Specific education for Roma has already been provided in those prisons where there is a larger group of Roma prisoners. Such education has been provided despite that the National Board of Education has reduced the funds reserved for the education of the Roma. Apart from the teaching of the Roma language and culture, Roma prisoners have been given basic education, vocational education and training in the development of their preparedness to learn and think.

17. The proposal for the designation of support persons for released Roma prisoners has not been implemented. Nor have Roma contact persons been designated for all prisons.

18. An overall reform of the enforcement of sentences of imprisonment will enter into force on 1 October 2006. The contents of this reform have been thoroughly explained in connection with the consideration of the fourth periodic report of Finland in Geneva, May 2005. The reform also improves the situation of Roma prisoners, as the new Imprisonment Act requires more careful

assessment of the prisoner's needs for activities and security measures. The new regional prisons that will start their operation on 1 October 2006 must plan and develop their activities so that the special needs of Roma prisoners will also be better taken into account. The new provisions of law also improve the security of prisoners who are afraid of being living together with other prisoners. Under the provisions of the Imprisonment Act, such prisoners must be provided with a possibility to be separated from other prisoners, where there is just ified reason to do so.

19. In addition, the Prison Administration is preparing an equality plan for prisons. The Non-Discrimination Act requires the Finnish authorities to prepare such plans to enhance ethnic equality. Through the implementation of the plan, different forms of discrimination may be better identified, intervened in and prevented.

Comment of the Advisory Board for Roma Affairs

20. The Advisory Board for Roma Affairs is satisfied with the Committee's recommendation as to the completion of the process of implementing the suggestions made by the working group established to look at the situation of Roma in Finnish prisons. The Advisory Board and the Roma Education Unit of the National Board of Education are preparing an initiative to be submitted to the Criminal Sanctions Agency, for the implementation of the measures proposed by the working group. The Advisory Board has included the education of Roma prisoners in its plan of action for the period 2005 to 2007.

Recommendation 5(e):

The Committee recommends that the State party:

Consider means to accelerate the prison renovation programme and, in the interests of improved hygienic conditions, explore additional alternative interim solutions to the practice of “slopping out”;

21. The plan for the renovation of prisons was prepared when responsibility for the management of prison premises was transferred to the State Real Property Agency (later replaced by Senate Properties) at the beginning of the decade. A programme of financing, which was agreed on in a framework agreement, covers the replacement of the prisons located in Turku with a new prison, and renovations and additional premises at other prisons. It is necessary to adjust the programme of financing, among others, because of raised costs, the establishment of regional prisons and the requirements imposed by the new Imprisonment Act, including the premises for the new assessment and placement units.

22. The number of prisoners in Finland has considerably increased in the past few years. In 2001, the average number of prisoners was 3,200, and it was 3,888 in 2005. The funds reserved for the Prison Administration have not been correspondingly increased, however. The restrictions on Government spending have made it necessary to review the programme of financing for the renovation of prisons, and it has been necessary to postpone the basic renovations of some prisons.

23. There are some 550 cells in Finland without sanitary equipment. In 2010, there will still be such cells at the prisons of Helsinki, Hämeenlinna and Kerava, amounting to a total of 370 cells.

The aforementioned adjustments to the programme of financing may further make it necessary to postpone the basic renovation of Konnunsuo Prison, to be carried out after the year 2010. This would mean that there will be approximately 490 cells without sanitary equipment in 2010. The possibility of replacing the use of so-called "slopping out" has been constantly assessed. The problem of smells has been addressed by offering prisoners chemical lavatories that could be placed in prison cells. However, the prisoners have not wished to have such lavatories but have rather maintained the existing practice.

24. Where prisoners are allowed to use the toilets of prisons at nights, the presence of two prison guards is necessary for security reasons. Due to a lack of human resources, this is not possible at all prisons. However, Konnunsuo Prison, for example, has been able to start opening doors of prison cells at nights in 2006 where necessary. The situation has also been improved by later closing hours of prison wards. At Helsinki Prison, for example, there are plans to change the arrangements so that the doors of some wards, where the cells have no sanitary equipment, are also kept open at nights. In order to ensure the safety of the staff and prisoners, however, it is necessary to carefully select the prisoners that may be placed in such wards. The planned arrangement will be possible once the basic renovation has been completed in 2006.

25. The basic renovation of Riihimäki Prison will be completed during the first half of 2006, and thereafter all the prison cells will have sanitary equipment. The overall situation will also be improved upon the opening of the new Prison of South-western Finland in the second half of 2007. All the prison cells in this prison will also have sanitary equipment.
