

IHF FOCUS: fair trial; national minorities; asylum seekers; women's rights.

During the year a number of human rights issues in Finland were examined by international bodies. In January the UN Committee on the Elimination of Discrimination against Women examined the implementation of women's rights under the International Convention on the Elimination of All Forms of Discrimination. While commending the legislative framework in place, the Committee expressed dissatisfaction due to several persisting problems.

In the autumn the Committee of Ministers of the Council of Europe issued comments and recommendations regarding the implementation of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages in Finland. The Committee voiced concern about the unsatisfactory status of the languages and cultures of the Roma and the Russian-speaking minorities and called for effective measures to address the problems of discrimination and police intolerance against Roma. Moreover, the Committee urged the authorities to take action to promote teaching and media activities in Sami and to encourage the use of Sami and Swedish within judicial and administrative bodies as well as the sectors of health and social care.

In November the UN Human Rights Committee finalized its examination of a 1997 communication from two reindeer breeders of Sami origin, concluding that the principle of equality before the court, the right to a fair trial and the right to an effective remedy had been violated in the case.

Domestically, a commission set up to draft a proposal on how the rights of Sami to land, water, natural resources and traditional means of livelihood could be safeguarded in the Sami Homeland, published its concluding report in December.

During the year a new post of Ombudsman for Ethnic Minorities was also created to monitor the realisation of the rights of ethnic minorities and foreigners.

The number of asylum seekers fell sharply compared to the previous year, and the practice of detaining asylum seekers together with suspects and prisoners continued, despite international protests and prohibitive legislation.

Fair Trial²

On 7 November the UN Human Rights Committee concluded its consideration of a 1997 communication submitted by two reindeer breeders of Sami origin from Finland. The plaintiffs were members of the Sallivaara Reindeer Herding Co-Operative, which had 286,000 hectares of state-owned land available for reindeer husbandry. The authors had brought a suit in the Lappi District Court of first instance against the National Forestry and Park Service (*Metsähallitus*), a state enterprise responsible for the administration of state-owned land and water areas. The suit sought to prohibit any logging or road-construction in the Mirhaminmaa-Kariselkä area (which was said to be the best winter herding lands of the Sallivaara Co-Operative) because the loggings would endanger reindeer herding in that area.

On 30 August 1996, the District Court had decided to prohibit logging or road construction in Kariselkä, but to allow it in Mirhaminmaa. On Forestry Service's appeal to the Rovaniemi Court of Appeal court, the Forestry Board sought the then exceptional measure of oral hearing. The Court granted this motion while rejecting the plaintiffs' motion that the Court itself would conduct an on-site inspection. In July 1997, the Court allowed logging also in Kariselkä, and awarded court costs of 75,000 FIM (12,615 Euro) against the plaintiffs. The ruling, however, was partly influenced on allegedly distorted arguments presented by the Forestry Service to the Court claiming that the Human Rights Committee had not found a violation of Article 25 in a separate case.³ The

plaintiffs had not seen the brief because the Court had deemed their access to that particular information “manifestly unnecessary”. In October 1997, the Supreme Court decided not to grant leave to appeal.

In December 1997, the Parliamentary Ombudsman decided that the municipality of Inari and its mayor had exerted inappropriate pressure on the plaintiffs by formally asking them to withdraw from the legal proceedings, but did not find that the Forestry Service had acted unlawfully or otherwise wrongly. In November 1998, the plaintiffs were ordered to cover the court costs of over 20,000 FIM (3,365 Euro): the sum corresponded to a major share of the plaintiffs’ taxable annual income.

On submission of their communication to the UN Human Rights Committee, the authors claimed a violation of Article 14 (1) (equality before the court and the right to a fair trial) and 14 (2) (presumption of innocence) under the International Covenant on Civil and Political Rights (ICCPR). They contended that the Appeal Court had not been impartial, having pre-judged the outcome of the case and violated the principle of equality of arms in allowing oral hearings while denying an on-site inspection; and taking into account material without providing an opportunity to the other party to comment on it. They also contended that the appellate level’s award of costs against them, a party whose suit had been partly satisfied at the first instance, represented biased behaviour and effectively prevented other Sami from invoking Covenant rights to defend their culture and livelihood – in particular, as there was no state assistance available to impecunious litigants to meet court costs.

The authors also asserted that the Forestry Service had exerted improper influence on them while the case was before the courts. Moreover, the authors maintained that the Supreme Court’s unreasoned decision to deny leave to appeal violated the right to an effective remedy under Article 2(3) even though a miscarriage of

justice (in violation of Article 14) had been demonstrated. Finally, the authors claimed a violation of Article 27, contending that the permission to log in the herding lands, coupled with a reduction of the permissible number of reindeer, amounted to a denial of their right to enjoy their culture, in community with other Sami, for which the survival of reindeer herding was essential.

On 24 October 2001, the UN Human Rights Committee found a breach of Article 14(1) in conjunction with Article 2 of the ICCPR. The Committee held that a rigid duty on a court to award costs to the winning party may have a deterrent effect on the ability of persons who wish to pursue a remedy before a court. Thus, the Committee found that the imposition of substantial court costs against the plaintiffs at the appellate level constituted a violation of the right to an effective remedy. Further, the Committee found that the Court of Appeal had violated the principle of equality before the court and the right to a fair trial by failing to provide full opportunity to the authors to challenge the submissions made by the Forestry Service. The Committee was of the view that there had been a breach of Article 14 (1) both taken alone and in conjunction with Article 2.

As regards the allegations of harassment and intimidation exerted by the Forestry Service, the Committee noted that there was not sufficient material to consider their substance and the possible effect on the proceedings. Likewise, the Committee found no violation of the plaintiffs’ right to enjoy their culture as provided for in Article 27, referring to a lack of information to determine the factual importance of reindeer husbandry on Sami culture and the long-term impacts of logging on its sustainability. In conclusion, the Committee held that the authors were entitled to an effective remedy, and therefore Finland was under an obligation to refund to the authors the proportion of the court costs already recovered and to refrain from executing any further

portion of the award. Furthermore, the Committee held that as the decision of the Court of Appeal was tainted by a substantive violation of fair trial provisions, Finland was obligated to reconsider the plaintiffs' claims. The Committee also obliged Finland to ensure that similar violations do not occur in the future.

National Minorities

Ombudsman for Ethnic Minorities

On 1 September, a post of Ombudsman for Ethnic Minorities was established, while the post of Ombudsman for Foreigners⁴ was abolished. The mandate of the new office was extended to cover both foreigners and ethnic minorities.

The tasks of the Ombudsman for Ethnic Minorities include promoting good ethnic relations; monitoring, improving and reporting on the status and rights of ethnic minorities; initiating measures to combat ethnic discrimination; and informing about legislation related to the status of ethnic minorities and foreigners. The Ombudsman is also to be heard when asylum applications are processed and when extradition of foreigners is considered. In addition, the Ombudsman is tasked to supervise, in collaboration with other authorities and the implementation of provisions on equal treatment of residents with regard to their ethnic background; to give recommendations, instructions and advice when observing acts of ethnic discrimination; and to propose measures to improve the status of minority groups or foreigners. He/she is granted powers to initiate legal proceedings in cases of ethnic discrimination. Under certain circumstances the Ombudsman can also provide legal aid to persons who have faced discrimination. The work of the Ombudsman is to be supported by an advisory board for minority issues.⁵ The new Ombudsman, Mikko Puumalainen, took office on 1 January 2002.

The Finnish League for Human Rights (FLHR), an NGO running a project on com-

bating racism and promoting tolerance, welcomed the extension of the mandate of the Ombudsman to include ethnic minorities. At the same time, the NGO stressed the importance of providing the new office with sufficient human resources to enable it to carry out its tasks in an effective way. Given the low number of cases of racial discrimination that have hitherto been brought before court, the FLHR also commended the fact that the Ombudsman was granted the right to initiate court proceedings. However, at the same time, the FLHR regretted that the Ombudsman had not been granted any alternative possibilities to promote remedies for racial discrimination.⁶ This omission was particularly deplorable in light of the fact that the UN Committee on the Elimination of Racial Discrimination had recommended that Finland consider ensuring alternative measures to penal proceedings in cases of racial discrimination.⁷

Framework Convention for the Protection of National Minorities (FCNM)

On 31 October the Committee of Ministers of the Council of Europe adopted, for the first time, conclusions and recommendations on the implementation of the FCN in Finland.

As of the beginning of 2001, there were about 290,000 Swedish-speaking Finns (5.6% of the total population) and 28,000 Russian-speakers (0.5%) in Finland.⁸ The Roma minority numbered around 10,000 Roma. Moreover, there were about 6,900 Samis, of whom about 2,400 lived outside the Sami Homeland.⁹ The Committee of Ministers noted with appreciation the efforts made to protect the rights of Swedish-speaking Finns and welcomed the improvements in the protection enjoyed by the Sami. As regards the Roma, however, the Committee concluded that the implementation of the FCNM had not been entirely successful, and stressed that further attention should be paid to the situation of the Russian-speaking community.¹⁰

In its considerations, the Committee of Ministers was largely guided by the opinion of the Advisory Committee on the FCNM.¹¹ The Advisory Committee commended the status of Swedish in the sectors of media and education, but concluded that there was scope for improvement as regards the status of the languages and cultures of the Russian-speaking and the Roma minorities. The Committee found that, despite certain improvements, the situation of Russian-speaking media remained precarious, and encouraged the authorities to consider ways in which this media could be supported, including by measures to increase the volume of Russian programmes in the mainstream media.

Further, the Committee found that the attitudes of the police vis-à-vis minorities were often disconcertingly negative. The Committee urged Finland to ensure the implementation of a 1997 order from the Ministry of the Interior aimed at increasing tolerance among the police and to consider additional ways in which police tolerance could be promoted. Recruiting persons belonging to minorities to serve as police officers was mentioned as a possible measure.

In its implementation of the FCNM, Finland has opted to limit the concept of national minorities to minority groups considered to be deeply rooted in and retaining strong ties with their country of residence, i.e. the Sami, the Roma, the Jews, the Tatars, the so-called Old Russians and *de facto* also to the Swedish-speaking Finns¹⁴. However, the Advisory Committee stated that it would be possible to extend the scope of the Convention, where appropriate, on an article-by-article basis. Consequently, the Committee found that the theoretical distinction between the so-called "Old Russians" – a group of 2,500-5,000 persons¹⁵ – who are considered to fall within the scope of the Convention, and other Russians who are considered to fall outside its scope should be examined in consultation with the groups concerned.

The Committee was also of the opinion that the Finnish-speaking population in the autonomous province of Åland could be granted the possibility to rely on protection provided by the Convention, insofar as the issues concerned fell within the competence of the Province of Åland.

Roma Minority

The Advisory Committee noted with regret that only about 200 of a total of more than 1,500 Roma pupils took part in the instruction of the Roma language in the primary and secondary schools. Stressing that the major problem was the lack of qualified teachers, the Committee called on the authorities to intensify their efforts to provide for the training of Roma teachers, while taking into account the experience gained in securing training for Swedish and Sami speaking teachers. The importance of availability of adequate teaching material was also underlined.

Moreover, the Advisory Committee voiced concern about the *de facto* discrimination of Roma. Noting that Roma continued to face discrimination in the service sector, although such discrimination was prohibited under the Penal Code, the Committee urged the authorities to step up their efforts to investigate cases of alleged discrimination and to prosecute the perpetrators.¹²

The Committee also held that there were shortcomings in the effective participation of the Roma in social and economic life, referring in particular to the fact that the unemployment rate amongst Roma was considerably higher than the average rate¹³, and that their housing situation remained far from satisfactory. The Committee maintained that improvements in the sphere of education could also bring positive results in the field of employment and housing. The Committee also emphasized that special attention should be paid to Roma women when measures to address the situation of the minority are implemented.

*European Charter for Regional or Minority Languages (ECRML)*¹⁶

On 19 September, the Council of Europe Committee of Ministers adopted for the first time ever conclusions and recommendations regarding the implementation of the ECRML in State Parties to the Convention. Finland was one of three parties examined.

The Committee of Ministers gave special emphasis to the Sami language, and recommended that the authorities take immediate measures to strengthen its position within the field of education. In particular, efforts were deemed necessary in pre- and primary education and to improve availability of teacher training and teaching materials in Skolt and Inari Sami, which are in danger of extinction.¹⁷ The Committee also urged the authorities to promote the presence of Sami in the media, above all by encouraging, through concrete measures, the establishment of newspapers and regular broadcasts of TV-programmes.

Further, the Committee called on the authorities to create more favourable conditions for the use of Swedish (the less widely-used official language) and Sami (in the Sami Homeland) with judicial and administrative authorities. In particular, it was considered crucial that better knowledge of these languages amongst officials and administrative staff should be promoted. Finally, the Committee urged the authorities to ensure that those who wish do so, can obtain services in Swedish and Sami in the health care and social welfare sectors, as provided for by law.

As of early 2002, amendments to the Language Act were being drafted with the aim of remedying some of the problems identified by the Council of Europe's Committee of Ministers. Amendments to the Act on the use of Sami language was also under preparation. The Acts were scheduled to enter into force at the beginning of 2004.

*Sami Land Rights*¹⁸

The lack of legislation dealing with Sami land rights has prevented Finland from ratifying the ILO Convention No. 169 on indigenous and tribal peoples in independent countries. In its October conclusions regarding the implementation of the FCNM in Finland, the Council of Europe's Committee of Ministers noted that the failure to settle the question of Sami land rights has created tensions in the Sami Homeland¹⁹. The Advisory Committee to the FCNM recommended that Finland solve the existing conflict as quickly as possible in a manner that ensures protection of the rights of the Sami minority without interfering with the rights of the non-Sami population in the region.²⁰

The most recent attempt to solve the conflict was made in late 2000 when the Ministry of Justice appointed a commission to draft a proposal on the realisation of Sami rights to land, water, natural resources and traditional means of livelihood in the Sami Homeland. The commission was mandated to elaborate arrangements to safeguard the rights of the Sami as an indigenous people, while paying due regard to the local conditions and the need to develop them. The commission was chaired by the Governor of the District of Lapland and comprised representatives of different interest groups, with the official Sami representatives being in the minority.

On 3 December 2001 the commission published a concluding report, which proposed that a special board be appointed to make decisions on the use of state-owned land in the Sami Homeland. This board would include an equal number of representatives of the two Sami groups resident in the area as well as its four municipalities, whereas the Government would appoint the chair. The State would continue to own the land and the Forestry Service would remain responsible for the administration of it, but both the public service and the business operations of the latter would be guided by principal board decisions.

The report asserted that the proposal guaranteed the right of the Sami to be involved in the decision-making on the use of land in the Sami Homeland as stipulated by the Constitution.²¹ However, the Sami representatives on the committee expressed a dissenting opinion. In their view, the proposal put forward would in fact weaken the position of the Sami, as it was aimed at maintaining the position of the Forestry Service as intact as possible while strengthening the position of the local municipalities. The Sami representatives also pointed out that the Sami would form either a majority or a minority on the board depending on the chair appointed by the Government, an arrangement that they considered to run against the purpose of the ILO Convention. Finally, the Sami representatives claimed that the working methods of the Ministry of Justice commission had proven that there was not as yet readiness to make structural changes favouring the Sami.²² On the basis of the proposal presented by the commission, ensuing comments and consultations with the Sami Parliament, the Ministry of Justice is to prepare a government bill on the land rights of the Sami.

Asylum Seekers

The number of persons seeking asylum in Finland decreased considerably from 3,170 in 2000 to 1,651 in 2001. The largest number of applicants came from Russia, Ukraine, Iraq, former Yugoslavia, Turkey and Slovakia. While four persons were recognised as refugees and granted asylum, 346 persons were granted the right to stay for reasons of protection and 416 persons for other reasons, including humanitarian ones. In addition, 47 cases of family reunification were approved of.²³

According to the 1991 Aliens' Act, asylum seekers who are detained should not be kept in regular detention or prison facilities, but in separate facilities. On 1 March 2002, new regulations entered into force, which, in particular, prohibited placing asylum seekers in the same facilities as sus-

pects or prisoners. However, as no special facilities were available, the police had no choice but to act in violation of the law. Thus, asylum seekers whose identity or route prior to entering Finland were unclear sometimes had to spend several weeks or even months in prison while their cases were being investigated. Mikko Puumalainen, the new Ombudsman for Ethnic Minorities, deemed this practice inappropriate as it in effect placed asylum seekers on the same level as criminals. Further, the Refugee Advice Centre emphasized that being placed in prison was often traumatizing for asylum seekers, many of whom had previously experienced harsh incidents in detention, including being subjected to torture. The Finnish practice has also been heavily criticized by international bodies, including the UNHCR and the European Committee against Torture.

The Ministry of Labour, which was in charge of providing adequate facilities for the detention of asylum seekers, claimed that the core problem was the difficulty in finding suitable premises for asylum seekers since proper legislation was now in place and funding for new facilities secured. The Ministry referred *inter alia* to the fact that plans to turn the Røykkä hospital in Nurmijärvi into a detention facility for asylum seekers had to be abandoned due to resistance from the local authorities. A few hundred asylum seekers are detained in Finland every year, most of them in the capital. In 2001, 160 asylum seekers entering Finland via the Helsinki-Vantaa airport or the Helsinki harbours were detained.²⁴

Women's Rights²⁵

On 22 January, the UN Committee on the Elimination of Discrimination against Women (CEDAW) considered the third and fourth periodic reports of Finland under the International Convention on the Elimination of All Forms of Discrimination against Women.

The CEDAW noted with satisfaction the involvement of NGOs in the preparation of the report. The Committee also commended the Government for having been one of

the first State Parties to the Convention to sign and ratify its Optional Protocol; for important achievements in the promotion of equality legislation relating to women and men; and for positive changes to the Finnish Constitution which *inter alia* provides that in case of conflicting legislation, fundamental rights, including women's right to equality, shall prevail. The Committee also welcomed the Act on Restraining Orders, which entered into force in 1999. Further, the Committee acknowledged the efforts made by the Government to counteract discrimination of women in the workplace on the basis of the Equality Act.

However, at the same time, the Committee expressed concern over continuing discrimination in employment, and particularly over the wage gap between women and men, which was primarily ascribed to the horizontal and vertical patterns of gender segregation prevailing on the labour market.²⁶ The Committee was also concerned about the low presence of women in high-ranking positions in many areas. In particular, it noted with discontent that women only held 18.4% of the professorships in the academic world, and deemed the system of hiring professors by invitation instead of open competition to be disadvantageous for women.

In order to address these problems, the Committee recommended that the authorities encourage cross-vocational training in typical female- and male-dominated areas, and to consider the impact that policies on time-fixed contracts have on women. The Committee also urged the Government to increase incentives for men to use their rights to parental leave and to es-

tablish more effective mechanisms for the monitoring of the equality plans drawn up under the Equality Act. Other recommendations included proactive measures to encourage more women to apply for high-ranking posts and mainstreaming of gender studies in all areas of education.

Moreover, the Committee voiced concern over the high incidence of sexual harassment in the workplace as well as of domestic violence. The Committee welcomed the ongoing efforts to combat violence against women, but urged the Government to pay more attention to prevention and to take steps to establish legally binding zero-tolerance policies. While noting the measures already taken by the Government to deal with the problems of trafficking in women and prostitution involving women, the Committee called for increased cooperation with foreign authorities, particularly those in Russia and the Baltic States, to prevent the situation from deteriorating. The Committee also recommended that the Government take action against the condescending attitudes towards women that sex phone lines foster, thus undermining efforts made to portray women positively in the media.

Finally, the CEDAW regretted the continuing discrimination of immigrant and minority women, particularly Roma and Sami women, who may suffer from double discrimination, based on both their sex and ethnic background. The Committee urged the Government to undertake studies on the participation of minority women in society, to take effective measures to eliminate discrimination against them and to strengthen efforts to combat xenophobia and racism in the republic.

Endnotes

¹ Unless otherwise noted, based on a report from the Finnish Helsinki Committee.

² Based on UN Human Rights Committee, *Communication No 779/1997: Finland*, 7 November 2001.

³ Jouni Länsman et al. v. Finland, *Communication No 671/1995: Finland*, 22 November 1996.

- ⁴ Established in 1991.
- ⁵ Act on the Ombudsman for Ethnic Minorities (660/2001), and Act on the Amendment of the Aliens Act (661/2001), 13 July 2001.
- ⁶ Finnish League for Human Rights, *Memorandum on Hearing in the Administrative Committee of the Parliament*, 30 May 2001.
- ⁷ Committee on the Elimination of Racial Discrimination, Fifty-seventh session, *Concluding Observations: Finland*, 1 May 2000.
- ⁸ Statistics Finland, at <http://statfin.stat.fi/statweb>, and regarding Roma, Mr Alvaro Gil-Robles, Commissioner for Human Rights, *Report on June 2000 visit to Finland*, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, 19 September 2001.
- ⁹ *Report of the Committee of Experts on the Application of the European Charter for Regional and Minority Languages*, 20 September 2001, ECRML (2001)3.
- ¹⁰ Council of Europe (COE), the Committee of Ministers, *Resolution on the Implementation of the Framework Convention for the Protection of National Minorities (FCNM) by Finland*, 31 October 2001.
- ¹¹ COE, Advisory Committee, *Opinion on Finland*, 22 September 2000.
- ¹² In 2001, the Ministry of the Interior, in cooperation with the Finnish League for Human Rights, published a brochure for the victims of racist acts and ethnic discrimination, the aim of which was to encourage victims to report offences to the police so that the police would have more information on cases of discrimination against ethnic minorities.
- ¹³ In 1998, 56 % of the Roma population was unemployed. Mr Alvaro Gil-Robles, Commissioner for Human Rights, *op.cit.*
- ¹⁴ Chapter 1, *Comments of the Government of Finland on the Advisory Committee Opinion on the Report on the Implementation of the FCNM in Finland*, 22 September 2000.
- ¹⁵ To define the exact number of “the Old Russians” has proven difficult e.g. due to assimilation. Finnish UNESCO, *Suomen kulttuurivähemmistöt* (The Cultural Minorities of Finland), Helsinki 1997.
- ¹⁶ COE, Committee of Ministers, *Recommendations on the Application of the European Charter for Regional or Minority Languages (ECRML) by Finland*, 19 September 2001. See also: The Committee of Experts, *Report on the Application of the ECRML*, 20 September 2001.
- ¹⁷ According to figures cited by the Committee of Ministers, Inari Sami and Skolt Sami were only spoken by some 200 persons respectively.
- ¹⁸ See also Fair Trial.
- ¹⁹ COE, Committee of Ministers, *Resolution on the Implementation of the FCNM by Finland*, adopted on 31 October 2001.
- ²⁰ Opinion on Finland adopted on 22 September 2000.
- ²¹ Report of the Sami Commission, 3 December 2001, at www.om.fi/12517.htm
- ²² Dissenting opinions to the Report of the Sami Commission, pp. 4-22, at www.om.fi/12517.htm
- ²³ Directorate of Immigration, at www.uvi.fi/englanti
- ²⁴ *Helsingin Sanomat*, “Turvapaikanhakijoita vankiloissa Suomessa vastoin lakkia”, 7 March 2002.
- ²⁵ Committee on the Elimination of Discrimination against Women, Twenty-fourth session, *Consideration of Reports of State Parties, Finland, Third and Fourth Periodic Reports*, 22 January 2002.
- ²⁶ Women’s wages remained 81-85 % of those of men.