

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

FINLAND, Situation as of 31 December 2005

General Overview

Preliminary Note: This table is accompanied by an explanatory note

COUNTRY: FINLAND	Constitutional provisions	Specific legislation	Criminal law	Civil and administrative law
Norms concerning discrimination in general	Art. 6 of the Constitution of 2000	Non Discrimination Act 2004	Yes, Art. 9, Chap. 11 of the Criminal Code Art. 3, Chap. 47 of the Criminal Code	Yes (right to work, civil service).
Norms concerning racism	No	No	Yes, Art. 8, Chap. 11 of the Criminal Code	No
Relevant jurisprudence	No	No	Yes	No

EXPLANATORY NOTE

FINLAND / GENERAL OVERVIEW

Finland's legislative arrangements specifically aimed at combating racism are based on two criminal law provisions adopted in the wake of Finland's ratification in 1970 of the UN International Convention on the Elimination of All Forms of Racial Discrimination: one prescribes penalties for racial propaganda, the other for unjustified discrimination in the social or economic field. It should be noted that Finland, unlike other Nordic countries, has incorporated this Convention into its domestic legal system (a step taken at the time of ratification).

Over the last few years certain changes have taken place, especially in the course of the implementation of the European Union's Anti-discrimination directives to Finnish law by the Non Discrimination Act 2004.

It remains true that changes in legislation are aimed not so much at racism in particular as at discrimination in general.

Finland is also taking social measures to combat racism (public information and awareness-raising campaigns, measures to integrate immigrants and refugees, etc.). However, this resolve to combat racism did not really take hold until after an assault on a black American in November 1995. At that point the President of the Republic became personally involved and, in his New Year address to the nation, stressed the need to check the rise of xenophobia and intolerance.

In 2000 the new Constitution entered into force. It required amendments to other legislation in certain fields related to the prevention of racism in a wider sense, mainly the Aliens Act.

The number of cases related to the problem of racism has slightly been increasing over the last few years. Courts' decisions, mostly in application of Criminal Law, show that legislation has found its way into legal practise.

Constitutional law: Finland

Preliminary Note: This table is accompanied by an explanatory note

Constitutional provision	Scope	Relevant jurisprudence	Remarks
General prohibition of discrimination in Art. 6 of the New Constitution of 2000			A discriminatory law cannot be set aside by a judge or an administrative authority.

EXPLANATORY NOTE

FINLAND / CONSTITUTIONAL LAW

As in the old Constitution, the new Constitution of 2000 does not explicitly mention "racism". The prevention of racism that is provided by Art. 6 is included in the expressions "other personal reason" or "origin".

In any event, the protection afforded by Art. 6 of the Constitution of 2000 is only relative: in principle, the court cannot review the constitutionality of an act in the formal sense: in fact, he can only dismiss unconstitutional regulations (Art. 106 of the Constitution of 2000).

SPECIFIC LEGISLATION/FINLAND

Since 2004 the Non Discrimination Act (21/2004) is in force. It contains regulations concerning all kinds of discrimination on private and public level. The Act bases on the directives (2000/78/EC and 2000/43/EC) of the European Union concerning the prevention of discrimination and implements them into Finnish national law.

As in other Finnish regulations concerning discrimination the expression “race/racism” is not explicitly used. Instead one finds the more general terms of “ethnic or national origin” (e.g. Section 9 of the Non-Discrimination Act 2004).

The Act provides two kinds of sanctions in a case of discrimination.

On one hand it refers to the provisions of the Finnish Penal Code in Section 20 of the Anti Discrimination Act, in particular to chap. 11, section 9 and chap. 47, section 3 (concerning discrimination in the field of employment) of the Penal Code.

The second pillar of the system of sanctions is the award of compensation for damages in section 9 of the Act that must be paid to the injured party. One aspect that seems worth mentioning is the fact that section 17 of the Act provides a shift of the burden of proof to the defendant of a civil action. He must demonstrate that the prohibited act of discrimination has not been committed instead of the plaintiff to prove that the prohibition has been infringed.

This shift does not apply in cases of criminal law.

The application of the Non Discrimination Act is supervised by the Ombudsman for Minorities and the Discrimination Board as provided in the Act on the Ombudsman for Minorities and the Discrimination Board (660/2001).

Criminal law: Finland

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Spreading of racial hatred	Art. 8, Chap. 11 of the Criminal Code	The declarations must be such as to threaten, denigrate or humiliate a group of persons.	Fine or imprisonment for up to two years		Rarely applied.
Refusal to supply a service intended for the public	Art. 9, Chap. 11 of the Criminal Code	The provision makes it an offence to refuse access to a	Fine or imprisonment for up to six months	HD1981 II 33 (A Gypsy woman was refused admittance to a restaurant;	Not applicable for discrimination in the field of employment

		public event, to supply a service or, more generally, to treat a person less favourably on account of his/her race.	the sentence was a fine).
Discrimination in the field of employment	Art. 3, Chap. 47 of the Criminal Code	Penalises someone who when advertising for a vacancy or selecting an employee, or during employment without justification puts a job seeker in an inferior position because of race, nationality, ethnic origin language etc.	Fine or imprisonment for up to six month
Genocide	Art. 6, Chap.11 of the Criminal Code	Penalises, in particular, the elimination of groups of people because of their race.	Term of imprisonment from four years to life.

EXPLANATORY NOTE

FINLAND / CRIMINAL LAW

Article 8, Chapter 11 of the Criminal Code

This provision, adopted in application of the UN International Convention on the Elimination of All Forms of Racial Discrimination, combats racist propaganda and incitement to racial hatred.

There was a serious proposal to restrict the scope of this provision to declarations which are threatening or contemptuous, and, at the same time, to reduce the maximum penalty to one year's imprisonment (see the Government's proposal to Parliament, 1993 rd/RP94). This double proposal, completely at variance with the trend towards greater severity which is to be observed in other European states, was finally rejected. Indeed, in 1995 Parliament widened the scope of the provision to cover groups that may be "assimilated to racial, ethnic, religious or national groups": this extension makes it possible to punish incitement to hatred against immigrants, asylum seekers or foreign workers¹.

To date, the Supreme Court has not had occasion to interpret Article 8, Chap.11, and there have been few rulings by the lower courts². In other words, this provision is seldom applied.

Article 9, Chap.11 of the Criminal Code

Until the 1995 revision of the Criminal Code, this provision, which was also adopted in pursuance of the UN Convention on the Elimination of All Forms of Discrimination, applied only to the refusal to supply a service intended for the public: it now prescribes penalties for all forms of unjustified discriminatory behaviour in economic or social life.

This provision has given rise to only one Supreme Court judgment (a restaurateur was fined for refusing to serve a Roma woman). Nevertheless the provision seems to be applied fairly often; there were five convictions by the lower courts in 1991 (between 1987 and 1991 the annual number of convictions varied between one and eighteen).

Article 3, Chap. 47 of the Criminal Code

This legal norm now contents special regulations in the field of discrimination in the employment sector. It is therefore closely linked to the new Employment Contract Act (55/2001) which provides – beside the prosecution by criminal law – the award of compensation for damages.

Caselaw³

Over the last few years the number of cases brought to court has increased. Finnish courts have to deal with more and more cases concerning the prosecution of racism. Two newer decisions of higher courts could be found.

In December 1999 the Court of Appeal of Eastern Finland upheld the decision of a district court that had sentenced a group of skinheads to fines for ethnic agitation (production of T-Shirts with racist sayings printed on).

In September 2001 the Helsinki Court of Appeal upheld the decision of a district court against a leader of an association who published communications threatening and insulting to various ethnic groups.

Civil and administrative law: Finland

Preliminary Note: This table is accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Art. 11 and 12, Chap. 3	Prohibition of processing sensitive data, including race and ethnic origin, with explicit derogations of that prohibition	Chap. 38 Section 9 of the Penal Code: Fine or Imprisonment up to one year		
Art. 2, Chap. 2 of the Employment Contracts Act 2001	Employer shall not exercise unjustified discrimination because of national or ethnic origin etc.	Art. 1, Chap. 12, Award of damages		Linked to the Criminal Code
Instructions to the Parliamentary Ombudsman (1920)	Sets up a body to mediate between citizens and the administration			A few cases of complaints of racial discrimination; an inquiry into the conduct of the police with regard to Roma/Gypsies (1993). Slightly increasing number of cases over the last few years

EXPLANATORY NOTE

FINLAND / CIVIL AND ADMINISTRATIVE LAW

Labour law

Art 1, chap. 12 of the new Employment Act 2001 provides protection against all kinds of discrimination including those based on ethnic or national origin. Beside the

regulations in this code concerning compensation the Act is also linked to the appropriate regulations in Criminal Law (i.e. Art. 3, chap. 47 of the Criminal Code). The fact that discrimination in this special sector is separated from the “general” preventions shows a parallel to the system of directives of the European council 2000/78/EC and 2000/43/EC in which this distinction is also made.

Consultative and mediation bodies

Finland now has certain institutions to fight racism on a more-or-less political level. On one hand there is the Commission against Racism, Xenophobia, Antisemitism and Intolerance. It is a consultative body installed by the government. Different groups and various people are brought together to participate in the political fight against the xenophobic phenomena. The Commission plays an important role in sensitisation and mobilisation of the public. It is seen as a moral authority.

On the other hand there is the Parliamentary Ombudsman and Ombudsman for Minorities who deals with specific disputes. However, recourse to the Parliamentary Ombudsman is available to anyone who has a complaint against the administration. From 1990 to 1993 the Parliamentary Ombudsman received five complaints of racial discrimination against Roma/Gypsies or immigrants⁴; all were declared inadmissible or unfounded. In 1993, however, the Ombudsman conducted an investigation on his own initiative into police discrimination against Roma/Gypsies; the police were reprimanded. When the Constitution was revised to strengthen fundamental rights in 1995, the parliamentary Ombudsman was formally given the task of monitoring in particular the public authorities’ observance of these rights, whether conferred by the Constitution (including the prohibition of discrimination, Art.5(2), Constitution) or by an international treaty (particularly the United Nations International Convention on the Elimination of all Forms of Racial Discrimination⁵). This task was seriously undertaken, and the following year the Ombudsman denounced the problems caused by a local government civil servant to a Gypsy family; these problems were solely the result of an intention to discriminate against persons of a different ethnic origin⁶.

Nowadays the Ombudsman is also seen as a strong moral authority. In fact his “reprimands” are seen as a punishment. Over the last years there have been several investigations by the Ombudsman’s office.

He interfered in a case when a police officer used the word “Negro”. In another case he decided that materials published by a police officer in a free Newspaper were racist and capable of causing xenophobia. Other recent cases were about a speech by a town council member containing racist elements and – a well known topic in Finland – writings of a police officer that gave the impression all members of the Roma minority were a threat to older people living alone⁷.

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Note

³ UN- International Convention on the Elimination of all Forms of Racial Discrimination, Document: CERD/C/409/Add.2 11 April

2002. This report gives more examples from the district court level.

Note

⁴ Letter of 7 September 1994 from the Parliamentary Ombudsman.

Note

⁵ See Art. 49(2) of the Constitution, and the “Report of the Finnish Parliamentary Ombudsman”, Helsinki, 1995, p.33, where the Ombudsman states that this new task would mean an increase in complaints about discrimination.

Note

⁶ “Report of the Finnish parliamentary ombudsmen”, Helsinki 1996, p. 40.

Note

⁷ UN- International Convention on the Elimination of all Forms of Racial Discrimination, Document: CERD/C/409/Add.2 11 April 2002.