



COMMISSIONER FOR HUMAN RIGHTS  
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## REPORT

**by Nils Muižnieks**  
**Commissioner for Human Rights of the Council of Europe**

**Following his visit to Finland**  
**from 11 to 13 June 2012**

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## **Summary**

Commissioner Nils Muižnieks and his delegation visited Finland from 11 to 13 June 2012. In the course of his visit, the Commissioner held discussions with the Finnish authorities and civil society representatives concerning systematic work for implementing human rights, non-discrimination and reform of equal treatment legislation, and human rights of the indigenous Sámi people.

### **1. Systematic work for implementing human rights**

The Commissioner welcomes the recent steps Finland has taken to systematise the implementation of human rights, in particular through the adoption of the country's first National Action Plan on Fundamental and Human Rights. The preparation of the 2012-2013 Action Plan was led by an inter-ministerial working group which consulted a panel of civil society representatives, resulting in 67 projects on a wide variety of themes, ranging from supervision of the police to reducing long-term homelessness. A Government network of contact persons in the different ministries has been established to monitor and report on the implementation of the Action Plan and to review the human rights situation in Finland. It is positive that civil society, trade unions and local authorities will be involved in monitoring the Action Plan.

In spring 2012, two new bodies joined the human rights architecture in Finland: an independent Human Rights Centre and an associated Human Rights Delegation, both administratively attached to the Office of the Parliamentary Ombudsman. It is planned that these three entities will jointly constitute a National Human Rights Institution in accordance with the UN Paris Principles. The Human Rights Centre has a wide-ranging mandate to promote human rights, and the 40-member Human Rights Delegation serves as a national cooperation organ for non-governmental organisations, national human rights structures and other stakeholders. A key short-term goal for the Centre and Delegation will be to map the current situation of human rights education and training in Finland, an essential objective which was not fully addressed by the Action Plan.

One of the weaker points of the development of the Action Plan was that it was not coordinated with the budgetary process to secure dedicated funding for the measures envisaged. In addition, the resources made available to the Human Rights Centre are not commensurate with the wide-ranging tasks of the institution. It is essential to ensure good communication between the newly established networks of human rights actors so that their full potential can be achieved. The evaluation of the National Action Plan and the Government's next Report on Human Rights Policy provide an ideal opportunity for assessing the effectiveness of the human rights architecture in Finland.

### **2. Non-discrimination and reform of equal treatment legislation**

Finland has made important progress in achieving gender equality, most notably in the field of political participation. However, the gender pay gap hovers at 17.9%, and violence against women is a problem which requires serious attention. The Commissioner encourages the authorities to implement rigorously the programme to reduce the pay gap. As for the current Action Plan to reduce violence against women, it will require further resources and coordination to meet its targets. The lack of sufficient emergency shelters should be addressed as a matter of priority. The Commissioner calls upon the Finnish authorities to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence without delay.

Roma, Russian-speakers and Somalis appear to be the most likely victims of racism and xenophobia in Finland. Discrimination in the field of employment, bullying at school and hate crimes targeting certain ethnic minorities are major problems. The Commissioner is particularly concerned about racist hate speech, also expressed by politicians, and the extreme marginalisation of young Somali persons. The prosecutors and courts should pursue diligently cases of racially motivated incitement to hatred. While a National Policy on Roma is already being implemented, it would benefit from more inclusive involvement of Roma. Similarly, specific consultative mechanisms should be set up between the authorities and the Russian-speakers and Somalis so that problems can be identified and addressed. Further consideration should be given to the status of the Russian language and the promotion of Russian-language education and media in Finland.

The Commissioner welcomes the Finnish plan to deinstitutionalise persons with intellectual disabilities. He encourages the prompt ratification of the UN Convention on the rights of persons with disabilities and stresses the importance of involving people with disabilities in its implementation. Particular care should be taken in setting up the independent national monitoring mechanism. A thorough reform of the legal framework on self-determination, involuntary treatment and restraints in care is essential, based on the presumption of legal capacity and offering supported decision-making alternatives. The inspection system into closed institutions should be reviewed with reference to the future national preventive mechanism under the Optional Protocol to the UN Convention on the Prevention of Torture.

The demographic trend of an aging population is progressing rapidly in Finland. The planned Act on Care Services for Older People will have to fulfil the need for equally affordable care services of adequate standards, regardless of the place of residence. The Commissioner stresses that older persons should have an active role in the planning, delivery and supervision of the services intended for them. The existing inspection system into remaining institutional settings should be reviewed to ensure its independence and effectiveness. Particular challenges are faced in the supervision of services provided in domestic settings, as well as in addressing the vulnerability of older persons to abuse, including by persons close to them.

The Commissioner welcomes the explicit prohibition of homophobic hate crime in the Finnish Penal Code and urges the authorities to extend such a specific provision to cover transphobic hate crime as well. The Finnish authorities should give particular attention to improving the protection afforded to trans people and intersex persons. Infertility and non-marriage requirements for the official recognition of gender reassignment should be abolished.

The Finnish Government has embarked on a timely reform of the national equal treatment legislation. The Commissioner welcomes the aims of the reform: extending the coverage to all grounds and fields of discrimination, and strengthening the legal safeguards, sanctions and equality bodies so that they afford a similar level of protection to all persons. However, the proposed protection system remains institutionally complex, especially in the field of employment. The Commissioner underlines the importance of preserving accessibility of the protection framework for all victims of discrimination and recommends avoiding unnecessary fragmentation of equality bodies.

### **3. Human rights of the indigenous Sámi people**

The Finnish Constitution recognises the Sámi as an indigenous people and confers upon them specific rights in the cultural and linguistic spheres, but this recognition has so far not extended to land rights or rights to reindeer herding. The ratification of the International Labour Organization Convention No. 169 concerning indigenous peoples - preparations for which have already taken over two decades - is included in the current Government Programme. The Commissioner urges Finland to ratify that Convention, ensuring that Sámi representatives are involved in the process, and to recognise Sámi rights to land and to reindeer herding in a traditional manner. While the rights of the majority residents in the Sámi homeland should be duly taken into account, the situation need not be treated as a zero-sum game. The current reform of *Metsähallitus*, the state enterprise which administers state-owned lands in the Sámi homeland, provides an opportunity for innovative solutions. The on-going negotiations for the Nordic Sámi Convention underscore the inter-state dimension of the Sámi issue and may highlight positive practices and possibilities for a harmonised approach.

The report also contains the Commissioner's conclusions and recommendations to the authorities. It is published on the Commissioner's website.

## Introduction

1. The present Report is based on a visit to Finland by the Council of Europe Commissioner for Human Rights (the Commissioner) from 11 to 13 June 2012.<sup>1</sup> The aim of the visit was to review the following human rights issues in Finland:
  - systematic work for implementing human rights with reference to the National Action Plan on Fundamental and Human rights, the government network of contact persons for fundamental and human rights, the Human Rights Centre and Human Rights Delegation (section 1);
  - non-discrimination and reform of equal treatment legislation with reference to gender equality, racism and xenophobia, people with disabilities, older persons, and lesbian, gay, bisexual, trans and intersex persons (LGBTI) (section 2);
  - human rights of the indigenous Sámi people with reference to land, economic, language and cultural rights, as well as the ratification of ILO Convention No. 169 (section 3).
2. In the course of the visit, the Commissioner engaged in a dialogue with representatives of the national authorities, including the President of the Republic of Finland, Mr Sauli Niinistö; the Minister for Foreign Affairs, Mr. Erkki Tuomioja; the Minister of Justice, Ms Anna-Maja Henriksson; the Minister of Health and Social Services, Ms Maria Guzenina-Richardson; the State Secretary to the Minister of Labour, Mr Janne Metsämäki; the Permanent Secretary of the Ministry of Agriculture and Forestry, Ms Jaana Husu-Kallio; and the Director General of the National Supervisory Authority for Welfare and Health, Ms Marja-Liisa Partanen. In addition, he met members of the Finnish Delegation to the Parliamentary Assembly of the Council of Europe, and the President of the Sámi Parliament, Mr Klemetti Näkkäläjärvi.
3. The Commissioner visited national human rights structures in Finland and met with the Parliamentary Ombudsman, Mr Petri Jääskeläinen; the Deputy Chancellor of Justice, Mr Mikko Puumalainen; the Ombudsman for Minorities, Ms Eva Biaudet; the Director of the Human Rights Centre, Ms Sirpa Rautio; and Deputy Ombudsman for Gender Equality, Ms Anja Nummijärvi. In addition, Commissioner Muižnieks held discussions with a number of non-governmental organisations working in the field of human rights. The Commissioner made an on-site visit to the Leevi housing units for older persons in Helsinki.
4. The Commissioner wishes to thank the Finnish authorities in both Helsinki and Strasbourg for their valuable assistance in organising and facilitating the visit. He expresses his gratitude to all of his interlocutors for their willingness to share their knowledge, insights and comments with him.

## 1. Systematic work for implementing human rights<sup>2</sup>

### 1.1 National Action Plan and Government network of contact persons

5. Finland has moved towards a more systematic way of implementing human rights through the adoption, in March 2012, of the Government's first National Action Plan on Fundamental and Human Rights (NAP) for 2012-2013.<sup>3</sup> The adoption of a NAP had been proposed by the Finnish Parliament following its discussion of the Government's 2009 Human Rights Policy Report in 2010. The NAP was included in the Government Programme of June 2011 and prepared, under a very tight schedule, by a working group composed of representatives of all ministries and the Offices of the Chancellor of Justice and the Parliamentary Ombudsman. The Ministry of Justice coordinated the work. A panel of civil society representatives, specialised ombudsmen and experts was consulted in the process. Further consultation was held through a hearing, a seminar and an on-

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<sup>1</sup> The Commissioner was accompanied during the visit by Bojana Urumova, Deputy to the Director of the Commissioner's Office and Lauri Sivonen, Adviser to the Commissioner.

<sup>2</sup> For an overview of specific considerations and recommendations in this field, cf. the Recommendation of the Commissioner for Human Rights on Systematic Work for Implementing Human Rights at the National Level (CommDH (2009)3).

<sup>3</sup> National action plan on fundamental and human rights 2012-2013, Ministry of Justice, Reports and Guidelines 20/2012.

line discussion forum. The process was carried out in tandem with the preparations and consultations for the second UN Universal Periodic Review of Finland in May 2012.

6. The NAP refers to the recommendations of the UN World Conference on human rights, held in Vienna in 1993, which encouraged each UN member state to draw up a national action plan for identifying steps for improving the promotion and protection of human rights. The Commissioner's 2009 Recommendation on systematic work for implementing human rights at the national level was also taken into account while preparing the NAP.
7. The NAP analyses the implementation of human rights in Finland and outlines 67 projects the Government intends to carry out in 2012–2013. It is placed within the context of the Government's priorities of reducing poverty, inequality and exclusion. The NAP identifies a wide range of human rights problems in Finland, although it does not include measures to address all of them. The projects are structured along 12 major thematic areas which are linked with constitutional fundamental rights guarantees. They range from supervision of the police to reducing long-term homelessness.
8. The Commissioner notes that many measures are related to legal reforms, research activities and the coordination of human rights work. The development of human rights indicators and a monitoring database of problems identified are of particular importance to systematic implementation. Guidelines on human rights screening of law proposals will also be made available.
9. A Government network of contact persons for fundamental and human rights will have the overall responsibility for monitoring the NAP and reviewing the implementation of Finland's obligations and commitments related to human rights. It will start its work in the autumn of 2012. The network is composed of representatives of all ministries and the Offices of the Chancellor of Justice and the Parliamentary Ombudsman. It is coordinated by the Ministry of Justice, except in regard to reporting to international human rights monitoring bodies, which is under the responsibility of the Ministry for Foreign Affairs.
10. The network will prepare the Government's next Human Rights Policy Report, due before the parliamentary elections scheduled for 2015. The report will also assess the implementation and funding of the NAP. An independent third party evaluation of the NAP will be carried out as well. A panel has been set up for the participation of civil society, trade unions, specialised ombudsmen and local authorities in the monitoring of the NAP.
11. The civil society panel has pointed out that the measures enumerated in the NAP are to a large extent a compilation of human rights-related activities which had already been included previously in the Government Programme or other policy programmes. Even though some of the major concerns highlighted in the Government's 2009 Human Rights Report were taken into account during the preparation of the NAP, the process did not benefit from a thorough base line study on the human rights situation in Finland. The civil society panel has stressed the need to allocate adequate resources for the implementation of the NAP and highlighted the fact that the NAP lacks measures in several key areas. For example, no major initiatives are planned for human rights education and training although the NAP identifies this as a major concern. The current lack of Government coordination of LGBTI-related issues has also been raised by the panel, whose proposals to reform legislation on gender reassignment and research into the situation of intersex persons were ultimately not included in the NAP. In addition, the panel has underscored the need to assess the independence and effectiveness of national human rights structures and the role of local authorities in implementing human rights.<sup>4</sup>
12. While confirming the above-mentioned concerns, civil society representatives met by the Commissioner nevertheless considered that the establishment of the panel itself had been positive,

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<sup>4</sup> Final statement by the panel of human rights actors regarding the National Action Plan on Fundamental and Human Rights, 22 March 2012, and statement by the panel on the preparation of the National Action Plan, 31 January 2012.

as it had enabled a coordinated civil society discussion on the implementation of human rights in Finland. They also welcomed the continuation of the panel's work.

13. The representatives of national human rights structures met by the Commissioner welcomed the NAP and the Government and civil society networks set up by it. However, several of them also referred to weaknesses in the NAP development process, i.e. the excessively brief consultation period and the lack of coordination with the budgetary process to ensure sufficient funding for the measures included.

## 1.2 *Human Rights Centre and Human Rights Delegation*

14. In spring 2012, two new bodies were added to the human rights architecture in Finland: an independent Human Rights Centre and an associated Human Rights Delegation, both administratively attached to the Office of the Parliamentary Ombudsman. It is planned that these three entities will jointly constitute a National Human Rights Institution in accordance with the UN Paris Principles: an accreditation with the International Co-ordination Committee of NHRIs will be sought to this effect.
15. The Human Rights Centre, established by an Act of Parliament (535/2011), has a wide-ranging mandate to promote information, training, education and research related to fundamental and human rights. The Centre is expected to assess the implementation of human rights in Finland and issue opinions and launch initiatives in this field. It will also participate in European and international cooperation on human rights. The Centre does not handle complaints or other individual cases. These fall within the competence of the Parliamentary Ombudsman, the Chancellor of Justice and specialised ombudsmen (except the Ombudsman for Children).<sup>5</sup>
16. Currently, the Human Rights Centre has only three members of staff: the director and two experts. The director also acts as the chair of the Human Rights Delegation. The director is appointed by the Parliamentary Ombudsman after the views of the Constitutional Law Committee of the Parliament have been heard. Even though the Centre is administratively attached to the Ombudsman's Office, it enjoys operational independence.
17. The 40-member Human Rights Delegation, appointed by the Parliamentary Ombudsman for a four-year term, serves as a national cooperation organ for stakeholders in the field of fundamental and human rights. The Delegation comprises representatives of non-governmental organisations, other human rights actors and advisory boards, as well as experts. The Delegation addresses human rights issues that are far-reaching and important in principle, and approves the Centre's annual operating plan and report. The Parliamentary Ombudsman, the Chancellor of Justice, the specialised ombudsmen and a representative of the Sámi Parliament serve as permanent members of the Delegation.
18. The Commissioner was informed that a key short-term goal for the Centre and Delegation will be to map the current situation of human rights education and training in Finland, an essential objective which was not fully addressed by the NAP. Awareness-raising activities, such as a human rights web portal, will also have priority. The Centre intends to draw from the human rights expertise of the Parliamentary Ombudsman's Office and will participate in the activities of the civil society panel for the NAP. As to the resources of the Human Rights Centre, the Finnish authorities have indicated that operational resources were likely to be strengthened, but that there were no plans as yet to increase staff.

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<sup>5</sup> The Chancellor of Justice and the Parliamentary Ombudsman monitor the compliance with the law and fulfilment of obligations of the courts of law, public authorities and other persons in their performance of a public task. They also have a duty to monitor the implementation of fundamental and human rights with reference to the Finnish Constitution, and their annual reports include specific sections on human rights. In addition, the Ombudsman for Gender Equality, the Ombudsman for Minorities, the Ombudsman for Data Protection, and the Ombudsman for Children promote human rights in their respective areas.

### 1.3 *Ratification of human rights instruments*

19. The Commissioner discussed the ratification of European and international human rights instruments with the Finnish authorities with particular reference to the:
- Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN OPCAT)
  - Convention on the Rights of Persons with Disabilities (CRPD)
  - Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)
  - ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
20. The Finnish authorities informed the Commissioner that the Government Bill for the ratification of the Optional Protocol to the UN Convention Against Torture would be introduced to the Parliament in autumn 2012. The Parliamentary Ombudsman indicated that his Office was ready to assume the role of a national preventive mechanism since the Ombudsman was already monitoring places of detention.
21. The Government has also set up working groups to map out the ratification process for the CRPD and the Istanbul Convention. The authorities emphasised that Finland followed a practice of first ensuring domestic compliance with treaties before ratifying them. The ratification of these conventions was expected in 2013.
22. As regards the ratification of the ILO Convention No. 169, the authorities indicated that its ratification had indeed been included in the Government Programme although unanimity had not yet been reached by the Government on the modalities of the ratification process (see section 3).
23. The civil society panel for the NAP has criticised the Government for the slow pace in ratifying international human rights instruments.<sup>6</sup>

### 1.4 *Conclusions and recommendations*

24. The Commissioner commends Finland for its efforts to systematise the implementation and monitoring of human rights through the National Action Plan and the establishment of the Government network of contact persons, the Human Rights Centre and the Human Rights Delegation. They signal the determination of the Government to ensure the protection of human rights in Finland and a willingness to continuously improve the level of protection afforded. The Government's emphasis on transversal cooperation and mainstreaming of human rights work among all ministries and the aim to achieve inclusive consultation and participation of civil society in human rights work are laudable features of the reform efforts.
25. However, the lack of measures to address some of the key concerns identified in the NAP is problematic, particularly as regards human rights education and training, which should be an integral part of any action plan to foster a human rights culture within society at large. The Vienna World Conference on Human Rights of 1993, which recommended the adoption of national action plans on human rights, called on states to develop programmes and strategies on human rights education and awareness-raising as well. Human rights should be fully integrated in education, training, and awareness-raising, using concrete and accessible language. The role of the media in promoting a human rights culture needs to be considered. The Commissioner stresses that teaching methods should encourage critical thinking and create a participatory learning environment free from discrimination and intolerance, all the better to convey human rights values. The principles developed in the Recommendation CM/Rec(2010)7 of the Committee of Ministers on the Charter on Education for Democratic Citizenship and Human Rights Education are useful in this context.

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<sup>6</sup> Statement by the panel of human rights actors on the preparation of the National Action Plan, 31 January 2012.

26. The lack of resources specifically allocated to the NAP undoubtedly played a part in constraining the choice of measures. In order to secure sufficient funding for the measures envisaged, human rights planning should be coordinated with the budgetary process. More generally, it would be useful to review budget proposals from a human rights perspective to inform politicians of the consequences of their decisions on the effective enjoyment of basic rights. It should also be noted that the resources made available to the Human Rights Centre do not as yet appear commensurate with the wide-ranging statutory duties set for the institution.
27. The establishment of the Human Rights Delegation, the Government network of contact persons and the civil society panel have resulted in three human rights networks whose role sometimes overlaps. It is now essential to ensure that communication between these networks functions smoothly so that different human rights initiatives can be coordinated. Close communication between the Human Rights Centre and the Ministries of Justice and Foreign Affairs, which are responsible for coordinating the Government network, would appear central for this purpose.
28. The Commissioner notes that the evaluation of the NAP and the Government's next report on human rights policy provide an ideal opportunity for assessing the human rights architecture in Finland. At that point, particular attention should be given to ensuring the effectiveness and independence of the Human Rights Centre and the specialised ombudsman bodies. The resources available to the national human rights structures should be reviewed with reference to their statutory tasks. The role and involvement of local authorities in the implementation of human rights would also merit detailed attention.
29. The Commissioner considers that Finland should accelerate its ratification process of European and international human rights instruments. Earlier ratifications would enable Finland to benefit sooner from the advice of treaty monitoring bodies as regards the implementation of treaty provisions. In particular, there appears to be no current obstacle to the Ratification of the Optional Protocol to the UN Convention against Torture. The implementation of human rights should be viewed as a continuous process, as the international standards for conformity and compliance evolve over time.

## **2. Non-discrimination and reform of equal treatment legislation**

### *2.1 Current protection framework and reform of equal treatment legislation*

30. The current Finnish protection system against discrimination is characterised by a fairly complex legal and institutional framework. The level of protection varies significantly depending on the applicable discrimination ground.
31. Finland has ratified Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination. The Finnish Constitution includes an equality provision in Section 6: "No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person." The Finnish Non-Discrimination Act (21/2004) prohibits discrimination on the grounds of age, ethnic or national origin, nationality, language, religion, belief, opinion, health status, disability, sexual orientation or any other reason related to the person. It prohibits both direct and indirect discrimination in the fields of employment, education and trade union activities. Furthermore, with reference to ethnic origin, it also covers social and health services, social security, conscription, housing and provision of services to the public. The Act authorises positive measures and obliges the authorities to promote equality, also by the means of municipal equal treatment plans. There is a separate Act on Equality between Women and Men (609/1986 – "Gender Equality Act") which prohibits discrimination on the basis of sex or gender.
32. In addition, the Penal Code (Chapter 11, Section 11) prohibits discrimination in access to and provision of services and events on grounds of race, national or ethnic origin, skin colour, language, sex, age, family ties, sexual preference, inheritance, incapacity or state of health, religion, political orientation, political or industrial activity or another comparable circumstance. The Penal Code also



prohibits work discrimination under these grounds (Chapter 47, Section 3). The Employment Contracts Act (55/2001) includes a non-discrimination provision (Chapter 2, Section 2).

33. The Ombudsman for Gender Equality is an independent non-judicial authority – albeit administratively connected with the Ministry of Social Affairs and Health – which supervises the compliance with the Gender Equality Act and examines individual complaints of discrimination between women and men in addition to giving recommendations, instructions and advice. Trans people and intersex persons are also included in the scope of protection. The Deputy Ombudsman informed the Commissioner that a great deal of the complaints received related to the discrimination of women in working life, particularly as concerns family leaves and pay discrimination. There is also a Gender Equality Board which is an independent committee that oversees compliance with gender equality legislation and resolves matters related to it. Only the Ombudsman and labour confederations can refer cases to the Gender Equality Board.
34. The Ombudsman for Minorities has a mandate to prevent ethnic discrimination and promote non-discrimination. Although it is administratively connected with the Ministry of the Interior, it is an independent authority pursuant to the Non-Discrimination Act and is empowered to issue recommendations, instructions and advice with an extensive right to access information. The Ombudsman can act on complaints and on his/her own initiative. The mandate is limited to ethnic discrimination alone and, apart from its general function to promote non-discrimination, does not cover the field of employment. In 2010, 848 cases were processed by the Ombudsman for Minorities. The highest number of contacts received by the Office came from the Roma, Russian-speakers, Sámi and Somalis.<sup>7</sup> During her meeting with the Commissioner, the Ombudsman for Minorities stressed that the restriction placed on her mandate regarding working life posed a problem, as minority ethnicity and foreign nationality, often in combination with gender, put the people concerned at a serious disadvantage in the labour market.
35. Complaints about ethnic discrimination can also be addressed to the National Discrimination Tribunal. The competence of the Tribunal does not include employment and service relationships. A decision of the Tribunal has the same legal effect as a judgment of a general court of law and its decisions can be appealed to an Administrative Court. So far, the Tribunal has only pronounced a few condemnatory decisions.
36. The Occupational Safety and Health Administration (OSHA) is responsible for monitoring equal treatment in working life, apart from the ground of gender, which falls under the competence of the Ombudsman for Gender Equality. The OSHA is integrated in five Regional State Administrative Agencies and is supervised by the Ministry of Social Affairs and Health. The occupational health and safety inspectors are authorised to visit all work places, and their mandate covers the enforcement of over a hundred acts and decrees regarding safety and health at work. They are obliged to report suspected labour crimes to the police, including those related to gender discrimination. In 2010, 126 complaints of employment discrimination were treated by the different regional divisions of the OSHA. Most of them were related to the grounds of health status (61) and industrial activity (20). The Southern Finland Division had received the clear majority of the complaints (87).<sup>8</sup>
37. The Parliamentary Ombudsman and the Chancellor of Justice are further non-judicial institutions empowered to address complaints about discrimination. Their mandates, however, are primarily limited to monitoring the conduct of public authorities and will not be affected by the planned reform of the Non-Discrimination and Gender Equality Acts as outlined in the next paragraph.
38. In 2013 the Government is expected to bring reform proposals to the Parliament in the area of non-discrimination. While the proposals are still under discussion, the reform is aimed at strengthening protection against discrimination by extending the legislation to all grounds of discrimination and all areas of life, and setting legal safeguards and sanctions that are similar for all persons in various discrimination situations. The duty to promote equality will also be extended. The Ombudsman for

<sup>7</sup> 2010 Annual Report of the Ombudsman for Minorities.

<sup>8</sup> Discrimination in the Finnish Labour Market: An Overview and a Field Experiment on Recruitment, Publications of the Ministry of Employment and the Economy 16/2012.

Minorities is likely to be transformed into a new general equality body with competence to cover all discrimination grounds apart from gender, for which the Gender Equality Ombudsman would remain responsible. It is envisaged that gender identity and expression will be explicitly mentioned as discrimination grounds in the Gender Equality Act. The Occupational Safety and Health Administration is expected to retain its competence in the field of employment under the Non-Discrimination Act, while the new general equality body would have a promotional function in this field. It is planned to amalgamate the National Discrimination Tribunal and the Gender Equality Board to cover all grounds of discrimination stipulated in the two equal treatment Acts. It remains unclear whether the new non-discrimination tribunal will be fully competent in the field of employment; thus far, only the Gender Equality Board had competence in this area.

## 2.2 *Gender equality and violence against women*

39. While gradual progress in achieving equality between men and women in Finnish society is discernible, enduring concerns include the sexual harassment of women and girls, women's discrimination at the workplace and families' unequal division of responsibilities.<sup>9</sup> The Ombudsman for Gender Equality and the UN Committee on the Elimination of Discrimination against Women (CEDAW) have raised concerns about the segregation of women and men in the labour market and discrimination of women related to pay, pregnancy and family leaves. The Gender Equality Ombudsman has also pointed out that compulsory military service for men can be regarded as a gender equality issue in Finland, although it does not fall under the scope of the Gender Equality Act. Men experience discrimination in the housing market as well.<sup>10</sup>
40. Progress in gender equality can be observed in political life in Finland. Nine members of the Cabinet are women and ten are men. There are 85 woman parliamentarians in the 200-seat *Eduskunta*. 36.7% of local councillors are women, although among mayors their proportion is only 16%. In business, the picture is different. Only 18.7% of members of company boards are women; among state-owned companies the figure is 38.4%.<sup>11</sup>
41. The gender pay gap was estimated at 17.9% in 2011. An equal pay programme involving the authorities, employer organisations and trade unions was initiated in 2006. The main objective of this programme is to reduce the gender-based pay gap to a maximum of 15% by 2015 through a collective bargaining policy, as well as measures to combat segregation at work, improve remuneration systems, and support the careers of women.
42. In June 2012, the Finnish Government adopted a new Action Plan for Gender Equality 2012-2015. It has a special focus on the effects of taxation and transfer payments on the economic equality of women and men. The Action Plan addresses issues relating to working life, decision-making, education and prevention of violence against women, as well as exclusion and health differences between women and men.
43. Civil society representatives have highlighted the vulnerable status of women from ethnic and other minorities, especially Roma, Sámi, and immigrant women, women with disabilities as well as LGBTI persons, who can face multiple discrimination based on gender, gender identity and other grounds. They have also advocated 40% gender quotas on company boards.<sup>12</sup>
44. Violence against women continues to be a serious problem. It is estimated that in Finland 20 to 26 women are killed every year by their current or former male partner. According to recent comparative research, violence committed by current partners may be equally common among men and women. However, women are victims of violence committed by their ex-partner more often than men. In addition, the physical and psychological consequences of intimate partner violence are

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<sup>9</sup> Gender Equality Barometer 2008, Ministry of Social Affairs and Health, 2009.

<sup>10</sup> Gender Equality Ombudsman's contribution to the UN Universal Periodic Review - Finland, 21 November 2011, and Annual Reports 2008 and 2010; Concluding Observations of the Committee on the Elimination of Discrimination against Women: Finland, 15 July 2008, CEDAW/C/FIN/CO/6.

<sup>11</sup> *Naiset ja miehet Suomessa 2011*, Statistics Finland, 2012.

<sup>12</sup> Submission to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women - Finland, Coalition of Finnish Women's Associations (NYTKIS), February 2012.

more serious to women. The authorities have admitted that the likelihood that a woman will fall victim to domestic violence in Finland is more than double the European Union average and that very few rapes are reported to the police.<sup>13</sup>

45. The CEDAW has criticised Finland for the insufficient provision of shelters for women victims of violence and the lack of Government coordination and monitoring of activities to combat violence against women. It has also urged Finland to make sexual harassment punishable by law.<sup>14</sup>
46. A national programme to reduce violence against women is being implemented for the period from 2010 to 2015. The programme includes measures to prevent violence, to protect and support the victim, and to bring perpetrators to justice. The focus is on developing a low-threshold service network to provide support, assistance and advisory services. Particular attention is given to meeting the needs of immigrant women, women with disabilities and older women. An on-going reform of social welfare legislation aims to introduce a duty to organise emergency services and long-term support for victims of intimate partner and domestic violence. In addition, the Criminal Code (1082/2010) was amended in 2011 to bring petty assault in close relationships within the scope of public prosecution.
47. Civil society representatives met by the Commissioner criticised the national programme to reduce violence for its lack of funding and Government coordination. They also pointed out that there is no legal obligation in Finland to provide shelters for victims of violence and that the current provision was uneven and largely inadequate. A recent report commissioned by the Ministry of Social Affairs and Health confirms the lack of sufficient emergency shelters, the geographical inequalities in access to services and the lack of peer support for victims of violence.<sup>15</sup>

### 2.3 Racism and xenophobia

48. Finland is gradually turning from a country of emigration to a country of immigration, even if the number of immigrants remains relatively low. At the end of 2011, 183,133 foreign nationals lived in Finland, amounting to 3.4% of the total population of 5.4 million. The major countries of origin were Estonia (18.6%), Russia (16.2%), Sweden (4.6%), Somalia (4.1%), and China (3.4%). Among mother-tongue language groups, the largest in the population as a whole were Finnish (90.04%), Swedish (5.39%), Russian (1.08%), Estonian (0.61%) and Somali (0.26%).<sup>16</sup>
49. The Commissioner notes that Finnish attitudes towards immigration have been quite critical for years, which has also been reflected in the political debate. Anti-immigrant rhetoric has been particularly wide-spread on web-based media and individual blogs. Denigrating and degrading statements made by several populist politicians have also amounted to incitement to hatred against immigrant groups. Judgments by Finnish courts in two high-profile cases, which were discussed intensively during the Commissioner's visit, have brought about clarity to the standards applied to separate hate speech from the ambit of freedom of expression.<sup>17</sup> The Finnish police is also developing promising practices in monitoring the internet and social media for hate speech. Currently, a shift towards a less critical position towards immigrants can be discerned in Finnish society. According to a recent survey, 46% of respondents considered that immigration enriched Finnish society while 33% did not agree with this position.<sup>18</sup>

<sup>13</sup> Salmi, V. et al., *Perheväkivalta Suomessa, Verkkokatsauksia 12/2009*, National Research Institute of Legal Policy; *Tuhansien iskujen maa: miesten kokemaa väkivaltaa Suomessa*, European Institute for Crime Prevention and Control, HEUNI, 2010; UPR – Second national report of Finland, 29 February 2012, A/HRC/WG.6/13/FIN/1.

<sup>14</sup> Concluding Observations of the Committee on the Elimination of Discrimination against Women: Finland, 15 July 2008, CEDAW/C/FIN/CO/6.

<sup>15</sup> Mäkeläinen, T. et al., *Tukitoimet lähisuhdeväkivaltaa kokeneille naisille, Sosiaali- ja terveysministeriön raportteja ja muistioita 2012:11*.

<sup>16</sup> *Maahanmuuton vuosikatsaus 2011*, Ministry of the Interior.

<sup>17</sup> Judgment of the Supreme Court KKO:2012:58 (R2010/1101) of 8 June 2012 and judgment of the Court of Appeal of Kouvola KouHO:2012:9 (R10/1164) of 12 December 2011.

<sup>18</sup> *EVA, Ovi raottuu – suomalaisten maahanmuuttoasenteet 2012*, No 22, 8.5.2012.

50. In 2010, 860 reports of suspected hate crimes, many of them assaults, were made to the police. This was 15% less than in 2009. 86% (741) of those reports involved racist incidents. Somalis experienced the highest frequency of racially motivated crime.<sup>19</sup> A recent study on labour market discrimination applying situation testing found that discrimination based on ethnicity was three times more likely than discrimination based on gender.<sup>20</sup> The 2009 Eurobarometer survey demonstrated that 72% of respondents considered that discrimination based on ethnicity was widespread in Finland.<sup>21</sup> Roma, Russian-speakers and Somalis appear to be particularly vulnerable to racism and xenophobia in Finland.
51. The UN Committee on the Elimination of Racial Discrimination (CERD) and the Advisory Committee of the Council of Europe Framework Convention on the Protection of Minorities (FCNM) have urged Finland to combat manifestations of racist discrimination, especially on the internet and in the labour market, and to ensure that persons belonging to minorities are involved in the design and implementation of integration strategies and plans.<sup>22</sup>
52. In 2011, Finland ratified the Additional Protocol of the Council of Europe Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. An amendment to the Criminal Code also took effect that year, providing additional powers to intervene in racist and other hate speech. Public displays or dissemination of opinions or other messages that threaten, slander or insult any group on grounds of race, skin colour, national or ethnic origin, religion or conviction, sexual orientation or disability, or on other corresponding grounds are now punishable. These grounds can also constitute aggravating circumstances in other bias-related crimes.
53. An Act on the Promotion of Integration of Immigrants (1386/2010) was adopted in 2010. More recently (June 2012), the Government adopted its first National Programme for the Integration of Immigrants 2012-2015. The programme is based on an estimation that the number of foreigners will continue to rise in Finland to reach 330,000 in 2020 and 498,000 in 2030. It is focused on inclusion in the labour market and support measures to immigrant children, young persons and women, including language training and new integration courses.
54. Many Finns continue to hold racist attitudes towards Roma, who number between 10,000 to 12,000 people in the country. According to the 2008 EU Special Barometer, 25% of those surveyed in Finland felt uncomfortable and 25% comfortable about having Roma as neighbours.<sup>23</sup> Discrimination in housing, employment, and access to restaurants is often reported by Roma, and wide-spread bullying in schools is one of the reasons for a high dropout rate among Roma young persons.<sup>24</sup> Illiteracy remains a hidden problem among some Roma. In a study published in 2008, 57% of the Roma interviewed felt that employers' prejudices against Roma constituted the main obstacle to their employment.<sup>25</sup> The CERD has expressed concern about de facto segregation of Roma in housing and the limited enjoyment by Roma of their rights to education, employment and access to public spaces. It has urged the Finnish authorities to increase employment opportunities for Roma and to combat negative attitudes and prevailing stereotypes, in particular among employers. The Advisory Committee of the FCNM has echoed these concerns and recommended

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<sup>19</sup> Niemi, J., *Poliisin tietoon tullut viharikollisuus Suomessa 2010*, Police College of Finland, 2011.

<sup>20</sup> Discrimination in the Finnish Labour Market: An Overview and a Field Experiment on Recruitment, Publications of the Ministry of Employment and the Economy 16/2012.

<sup>21</sup> Special Eurobarometer 317, Discrimination in the European Union in 2009, November 2009.

<sup>22</sup> Concluding Observations of CERD - Finland, 13 March 2009, CERD/C/FIN/CO/19; and Advisory Committee on the FCNM, Third Opinion on Finland, 13 April 2011, ACFC/OP/III(2010)007.

<sup>23</sup> Special Eurobarometer 296, Discrimination in the European Union: perceptions, experiences and attitudes, July 2008.

<sup>24</sup> Annual Reports of the Ombudsman for Minorities 2008, 2009 and 2010; *Enemmän samanlaisia kuin erilaisia: romanilasten ja -nuorten hyvinvointi ja heidän oikeuksiensa toteutuminen Suomessa, Lapsiasiavaltuutetun toimiston julkaisu* 2009:2.

<sup>25</sup> Syrjä, H. & Valtakari, M., *Romanien pitkä matka työmarkkinoille - tutkimus romanien työmarkkinoille sijoittumisen edistämisestä, Työ- ja elinkeinoministeriön julkaisu* 22/2008.

the inclusion of measures for the promotion of full and effective equality of Roma in municipal equal treatment plans.<sup>26</sup>

55. The Government is implementing the first National Policy on Roma which was prepared in 2009. Among 147 specific measures, particular focus is given to equal treatment in education, employment and access to services and housing, promotion of the Romani language and culture, and the empowerment of Roma. Local authorities are key to the implementation of the policy. In 2011, the Ministry of the Interior coordinated a media campaign to combat negative stereotypes and prejudice against the Roma. The National Advisory Board on Romani Affairs and its regional boards function as cooperative fora for the authorities and Roma representatives.
56. The Roma representatives met by the Commissioner during the visit welcomed the National Roma Policy. They stressed the importance of positive measures in education and the development of Romani-language media, and advocated the drafting of a special Act on the Romani language, which was currently under consideration by the Ministry of Justice. The Roma community had also been increasingly devoting attention to the need to address domestic violence.
57. A large number of the Russian-speakers in Finland, whose total number is estimated as 58,331, have reported that they have been the victims of discrimination and crime. The 2009 EU-MIDIS Survey carried out by the EU Agency for Fundamental Rights (FRA) pointed out that 27% of Russians in Finland felt discriminated against in the past 12 months, the highest score of the countries surveyed (Finland, Estonia, Latvia, and Lithuania). 27% of the incidents were reported to the authorities. Work-related discrimination was the most common type of incident. 12% of Russian-speakers reported that they had been victims of racially-motivated crime and 2% perceived that they had been victims of racial profiling by the police. According to police statistics, 38 persons born in Russia had been victims of suspected racist crime in Finland in 2010 (4% of all cases).<sup>27</sup>
58. A recent Finnish study applying situation testing demonstrated that job-seekers with Russian names had to send twice as many applications as those with Finnish names in order to receive an invitation for a job interview, which confirmed concerns expressed in an earlier survey by the Ombudsman for Minorities. There was also a tendency of multiple discrimination against Russian-named men applying for certain types of jobs.<sup>28</sup>
59. The Advisory Committee of the FCNM has stressed that Russian-language schools should be designed in a manner that also accommodates the needs of pupils who speak Russian as their mother tongue. It has encouraged the authorities to develop a coherent policy regarding Russian language teaching for native speakers. In addition, the Committee has found that the availability of Russian-language media was insufficient, and has recommended the establishment of a specific consultation mechanism between the authorities and the Russian-speakers.<sup>29</sup>
60. Civil society representatives met by the Commissioner during the visit indicated that Russian-speakers had not been officially recognised as a minority in Finland. This was reflected in the extremely limited development of Russian-language media and education in the country. They advocated the official recognition of Russian as a minority language in Finland.
61. The difficult situation experienced by the Somali community, estimated at 14,045 people, has come to light through recent data on discrimination and hate crime. According to the 2009 EU-MIDIS Survey, 47% of Somalis in Finland had experienced discrimination in the previous year. 34% stated that they had been victims of racially-motivated crime. 42% felt that they had been stopped by the police due to racial profiling. Respondents were almost equally discriminated against when seeking

<sup>26</sup> Concluding Observations of CERD - Finland, 13 March 2009, CERD/C/FIN/CO/19; and FCNM Advisory Committee, Third Opinion on Finland, 13 April 2011, ACFC/OP/III(2010)007.

<sup>27</sup> EU-MIDIS Main Results Report, FRA, 2009; Niemi, J., *Poliisin tietoon tullut viharikollisuus Suomessa 2010*, Police College of Finland, 2011.

<sup>28</sup> Discrimination in the Finnish Labour Market: An Overview and a Field Experiment on Recruitment, Publications of the Ministry of Employment and the Economy 16/2012; *Venäjänkielisten työllistyminen ja työsyryntä 2010*, Ombudsman for Minorities, 2010.

<sup>29</sup> FCNM Advisory Committee, Third Opinion on Finland, 13 April 2011, ACFC/OP/III(2010)007.

jobs and at work, by housing agencies, health care personnel and at cafes, bars and shops. 32% of discrimination incidents and 30% of crimes had been reported to the authorities. According to police statistics, 127 persons born in Somalia had been victims of suspected racist crime in Finland in 2010 (12% of all cases).<sup>30</sup>

62. The marginalisation of young Somali persons is of particular concern. According to current research, 41.2% of young Somalis in Finland do not go to school or work, whereas only about 5% of young persons among the majority population are considered to be marginalised. The Advisory Committee of the FCNM has expressed concern about the bullying of Somali schoolchildren and stated that Somalis continue to face racist attitudes in public spaces.<sup>31</sup>
63. The Ministry of the Interior has recently set up an expert group to gauge the problems faced by the Somali community in Finland.
64. In their submission to the Commissioner, representatives of the Somali community indicated that Somalis were often the targets of racially-motivated hate speech, some of which had been expressed by politicians. Many Somalis had been harassed at their homes by their neighbours, and young Somali persons hesitated to use public transport for fear of racist harassment and violence. The Somali representatives stressed that the political climate was negative towards refugees, resulting in a restrictive policy towards family reunification which affected the Somalis in particular.<sup>32</sup>

#### 2.4 *People with disabilities*

65. People with disabilities are a particularly diverse group, estimated to constitute 10% of the Finnish population. The Commissioner notes with concern that, in addition to the problem of discrimination, there have also been instances of bias-motivated crime against persons with disabilities in Finland. In 2010, 21 hate crimes based on the victim's disability were reported to the police. The 2009 Eurobarometer survey showed that 56% of respondents in Finland considered discrimination on the ground of disability to be widespread. 54% saw disability as a disadvantage in recruitment, while 8% of women and 5% of men with disabilities felt discriminated against in recruitment personally. It has been estimated that 81.8% of severely disabled persons are not included in working life and that the unemployment rate is 13.9% for people with less severe disabilities. There are no quotas for people with disabilities in the Finnish labour market. A working group was set up in early 2012 to make an assessment about the social welfare services needed to support the inclusion of persons with disabilities in working life.<sup>33</sup>
66. The Commissioner notes that disability-based discrimination in social and health services, social security, housing and general access to goods and services is not covered by the current equal treatment legislation in Finland. Although a duty to provide reasonable accommodation in employment exists, its effects appear to be quite limited, as employers and authorities lack information on the provision. There is no independent equality body to monitor the equal treatment of people with disabilities. In working life, complaints can be made to the Occupational Safety and Health Administration. As for public services and institutional care, the Parliamentary Ombudsman can receive complaints and carry out inspections, along with the Regional State Administrative Agencies and the National Supervisory Authority for Welfare and Health.
67. The Commissioner discussed the Government's preparations for the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), which should be completed by 2013.

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<sup>30</sup> EU-MIDIS Main results report, FRA, 2009; Niemi, J., *Poliisin tietoon tullut viharikollisuus Suomessa 2010*, Police College of Finland, 2011

<sup>31</sup> Youth Researcher Päivi Harinen interviewed on YLE News on 26 April 2012; *Hukassa - ketkä ovat syrjäytyneet nuoret?*, *EVA analyysi*, No 19, 1.2.2012; FCNM Advisory Committee, Third Opinion on Finland, 13 April 2011, ACFC/OP/III(2010)007.

<sup>32</sup> *Suomen somaliliiton kommentteja Suomen ihmisoikeustilanteeseen*, 6.7.2012.

<sup>33</sup> Special Eurobarometer 317, Discrimination in the European Union in 2009, November 2009; Discrimination in the Finnish Labour Market: An Overview and a Field Experiment on Recruitment, Publications of the Ministry of Employment and the Economy 16/2012; and Niemi, J., *Poliisin tietoon tullut viharikollisuus Suomessa 2010*, Police College of Finland, 2011.

A working group is assessing the conditions for ratification and the modalities for creating an effective national monitoring system. Changes are expected to the legal provisions on the use of restraints and the self-determination of persons in social and health care. A reform of the legislation in this field is part of the National Action Plan on human rights.

68. The need to reform the legislation on self-determination in care, especially with reference to involuntary treatment, is underscored by the judgment (not yet final) of the European Court of Human Rights in the case of *X v. Finland* (application no. 34806/04) of 3 July 2012. The Court found that the Finnish Mental Health Act (1116/1990) lacked proper safeguards against arbitrariness regarding the continuation of involuntary treatment, as independent psychiatric opinion was not required, and because periodic review of the conditions of involuntary treatment could only take place every six months at the initiative of the relevant domestic authorities. The situation was aggravated by the fact that a care order issued for the involuntary hospitalisation of a psychiatric patient also contained an automatic authorisation to treat the patient, even against their will, without an immediate remedy with which to complain. The judgment found Finland to be in breach of Articles 5 § 1 (e) and 8 of the European Convention on Human Rights.
69. The Commissioner welcomes the Personal Assistance Act (981/2008) which has entitled people with severe disabilities to personal assistance, to be provided free of charge by the municipal authorities.
70. The Finnish Disability Policy Programme 2010-2015 outlines 112 policy measures from the perspective of the human rights principles of the CRPD. Special attention is paid to improving the socio-economic status of persons with disabilities, ensuring the availability of high-quality services and support measures across the country, improving accessibility and strengthening the knowledge base on disability. The Commissioner notes with interest the aim of the programme to deinstitutionalise, by 2020, all persons with intellectual disabilities, some 2000 of whom currently live in institutional settings. The Ministry of Social Affairs and Health in cooperation with the Ministry of the Environment is preparing a plan to meet their future housing needs. In addition, the Government has established a National Council on Disability, which is a consultative body for cooperation between the authorities and organisations representing people with disabilities and their carers.
71. The civil society representatives met by the Commissioner during the visit advocated the ratification by Finland of the CRPD and the involvement of people with disabilities in its monitoring framework. They also indicated that the sole independent mechanisms for treating complaints about care services and institutions were the Parliamentary Ombudsman and the judiciary. Sign language users considered that a specific law on sign language would be needed to protect sign language users as a linguistic minority and to promote the right of deaf children to inclusive education. The Finnish authorities informed the Commissioner that the preparation of a law on sign language was currently under consideration by the Ministry of Justice.

## 2.5 Older persons

72. Finland is following the European trend of a rapidly aging population, which has implications for the provision of care services. There is also growing awareness of age discrimination. In 2010, the total population of Finland was 5.4 million people. The part of the population aged 65 or over was 17.3%, projected to rise to 22.3% in 2020 and to 26% in 2050. The proportion of those aged 80 or above in 2010 was 4.7%, projected to rise to 5.6% in 2020 and to 10.3% in 2050. The total population in 2050 is expected to reach 5.7 million.<sup>34</sup>
73. The 2009 Eurobarometer survey showed that 63% of the respondents in Finland saw discrimination on the ground of age (any age) as being widespread. 5% felt that they had been discriminated against personally on the ground of age. Discrimination based on older age is perceived to be particularly severe in recruitment. However, older men were least likely to perceive discrimination

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<sup>34</sup> The 2012 Ageing Report, European Economy, 4/2011.

on the ground of their age at work, while older women with disabilities felt more discriminated against.<sup>35</sup>

74. The Commissioner notes that equal treatment legislation on the ground of age in Finland does not apply in the fields of social and health care, social security, housing and access to goods and services. There is no independent equality body relating to a person's age, although the Occupational Health and Safety Administration is responsible for monitoring age discrimination in employment.
75. The policy for older people is set nationally, but is generally implemented by municipalities. The municipalities have the duty to arrange health and long-term care services for their residents. Long-term care is provided in older people's own homes, in sheltered housing units, in institutions for older people and in the inpatient wards of municipal health centres. The Government's policy for older people aims at replacing institutional care with care services at the clients' own homes or in sheltered housing units. In 2008, approximately 7.6% of Finland's population over the age of 65 received long-term care at home, and 4.6% received care in an institution.<sup>36</sup>
76. In 2008, the Ministry of Social Affairs and Health set out certain objectives in the National Framework for High-Quality Services for Older People. The nationwide aims are that, by 2012, people aged 75 and above will:
- live at home independently or with the help of social and health services (91-92%)
  - receive regular home care (13-14%)
  - receive informal care support (5-6%)
  - fall under the sphere of intensified service accommodation (5-6%)
  - be cared for in institutional homes for older people or in health centre wards (3%).
77. The Parliamentary Ombudsman has raised several concerns about the institutional care of older persons. Staff-client ratios were not adequate in some municipalities. Monitoring of institutions by regional administrative agencies has not been as frequent as needed and has not covered all institutions. In addition, restraints (e.g. high-edge beds and locked outside doors) are being applied in social care institutions without a clear legal basis.<sup>37</sup>
78. The European Committee of Social Rights has found Finland to be in breach of the Social Charter since the minimum state old-age pension fell under the poverty threshold. It has also expressed concern about the lack of independence of inspections into institutions taking care of older persons.<sup>38</sup>
79. The National Supervisory Authority for Welfare and Health (Valvira), together with six Regional State Administrative Agencies and settings in addition to the Parliamentary Ombudsman, supervise social and health care, examine complaints and carry out inspections into institutionalised. A national supervisory programme on welfare and care of older persons has been drawn up to set standards for monitoring the care provided. Valvira representatives informed the Commissioner that particular emphasis was currently being placed on the development of self-supervision exercised by the care and service staff themselves. They acknowledged that the resources available to Valvira and the regional agencies to carry out on-site inspections remained quite limited. This issue was being addressed at local level, and many municipalities had appointed patient and social care ombudsmen who assisted clients in making complaints about services and care.
80. The Ministry of Social Affairs and Health is preparing a new Act on Care Services for Older People, which will be brought to the Parliament in the autumn of 2012. The basis for access to services will be the capabilities of the older person rather than the person's age in itself. In urgent cases, the

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<sup>35</sup> Special Eurobarometer 317, Discrimination in the European Union in 2009; and Discrimination in the Finnish Labour Market: An Overview and a Field Experiment on Recruitment, Publications of the Ministry of Employment and the Economy 16/2012.

<sup>36</sup> OECD Factsheet on Long-term care in Finland, 18 May 2011.

<sup>37</sup> Annual reports of the Parliamentary Ombudsman 2010 and 2011.

<sup>38</sup> European Committee of Social Rights, Conclusions 2009 (Finland), January 2010.



authorities would have to arrange services without delay. For non-urgent services, an older person would have the right to receive an approved service within three months. Institutional care will only be considered if absolutely necessary.

81. The responsibility for implementing the law will rest with the municipalities. Each municipality will draw up a plan on measures for promoting the well-being, health, capabilities and independent living of older persons, along with an assessment of service quality and sufficiency. The Government may still issue statutory regulations specifying the number of staff in service units and their expertise, duties, and supervisory arrangements. Units providing services for older persons must have sufficient staff with appropriate qualifications. The Commissioner notes with interest that the Act would also empower senior citizens' councils, enabling them to convey the views of older people to all decision-making concerning them.
82. The authorities stressed that the Act should be viewed in the broader context of an on-going reform of municipalities in Finland which aims at restructuring local authorities so that they can be effective in meeting the service and care needs of their residents. However, the municipalities themselves have expressed concerns about the financial impact of the planned Act in an economic climate which is likely to bring cuts in Government subsidies to the municipalities. They have also been critical about proposals to issue detailed standards on staff-client ratios for services and care.<sup>39</sup>
83. NGOs representing older persons and their carers have stressed that the proposed Act should specify more clearly the services to be provided and the financial obligations of municipalities to provide for the costs of those services, while also defining ceilings for the fees to be paid by the clients. They have argued that the Act should give a subjective right to older persons to services, and that statutory requirements should be set for the standards of care, including staff-client ratios. The status of informal and family carers should also be addressed in the Act.<sup>40</sup>
84. A Finnish NGO representing informal and family carers has made two collective complaints to the European Committee of Social Rights. One of the complaints alleges breaches of Social Charter obligations due to the failure of the state to regulate the fees charged by municipal care homes for older persons. In the other case, the NGO alleges that the system of financial support for family and friend care givers is discriminatory, as it varies according to the place of residence.<sup>41</sup>
85. While in Finland, the Commissioner visited the Leevi housing units for older persons in Helsinki and held discussions with the residents, staff, civil society representatives and one of the patient ombudsmen of the City of Helsinki. The units consisted of privately owned and rented flats and an open and closed group home with individual rooms for persons with dementia. In the closed home, the outside windows and door were barred, but the residents were able to walk freely within the group home and wear their own clothes. Altogether, there were 160 residents in the housing units, with the average age of 85, and 40 members of staff. The service provision ranged from 10 hours per month to full 24-hour assistance. It was estimated that a monthly pension of € 1500 would be needed for a resident to cover the individual costs, although the real living and service costs, met from several sources, amounted to about € 4000 per person. The admission of residents for the rented apartments and the group homes was subject to approval by the municipal social services.
86. Several concerns regarding the care and services for older persons in Finland in general were raised in the discussions during the visit to the Leevi housing units. Depending on the municipality, there were differences in the cost of care paid by the clients and in contractual arrangements and compensation given to informal and family carers. The difficult economic situation of many municipalities was highlighted in this respect. There was often a lack of clear standards for the care and services provided, as well as on the issue of restraints. Particular challenges were faced in the supervision of services provided at individual homes and in the outreach to isolated older persons.

<sup>39</sup> Association of Finnish Local and Regional Authorities, *Lausunto - Luonnos laiksi iäkkään henkilön sosiaali- ja terveyspalvelujen saannin turvaamiseksi*, 8.6.2011, and *Täydentävä lausuma*, 18.4.2012.

<sup>40</sup> *Kuuleminen sosiaalihuoltolaista*, Association of Care Giving Relatives and Friends, 19.4.2012; *Kannanotto valtioneuvoston talousarvioehdotukseen 2012 ja lainsäädäntöön*, EETU Association, 20.10.2011; *Lausunto luonnoksesta laiksi iäkkään henkilön sosiaali- ja terveyspalvelujen saannin turvaamisesta*, EETU Association, 30.3.2011.

<sup>41</sup> European Committee of Social Rights, Collective Complaints Nos. 70/2011 and 71/2011.

There was stigma attached to the abuse of older persons by persons close to them, and the victims of such abuse had difficulties in reporting it. It was stressed that the participation of older persons in decision-making on care and services should be improved.

## 2.6 *Lesbian, gay, bisexual, trans and intersex persons (LGBTI)*<sup>42</sup>

87. LGBTI persons continue to experience discrimination and hate crimes in Finland. According to the 2009 Special Eurobarometer, 50% of Finnish respondents felt that discrimination on the ground of sexual orientation was widespread. 1% of the respondents felt that they had personally been subjected to discrimination on that ground. The 2008 EU Special Barometer also showed that 8% of Finns felt uncomfortable and 47% comfortable about having a gay or lesbian person as their neighbour.<sup>43</sup>
88. In June 2010, the Helsinki Gay Pride was subjected to a violent attack by individuals using tear gas and pepper spray, thereby injuring many participants. The police pursued the perpetrators and three men were convicted and sentenced to four months' conditional imprisonment. In 2010, a total of 41 reports of hate crimes motivated by the victim's real or perceived sexual orientation were made to the police.<sup>44</sup> Prejudice based on sexual orientation was explicitly included in the Finnish hate crime legislation in 2011. Gender identity is not mentioned specifically, although the open-ended provision could be applied to hate crimes against trans persons as well.
89. The Commissioner notes that there are gaps in the equal treatment legislation on the ground of sexual orientation in terms of the fields of application and the lack of an independent equality body. Although gender identity is currently not explicitly mentioned in the Finnish equal treatment legislation, the Ombudsman for Gender Equality has applied the Gender Equality Act to protect trans and intersex persons against discrimination. She has published a report on the situation of trans and intersex persons in Finland, which recommends improvements in the provision of health care and in the procedures for changing personal entries in the national population register regarding sex. The Ombudsman, who has highlighted the discrimination experienced by trans persons in employment, also calls for the abolition of the requirement of infertility in the Act on Gender Reassignment (563/2002). In addition, she has expressed concern about the classification of medical diagnoses applied to trans persons. Transvestism was recently withdrawn from the national classification of diseases, but transsexualism remains as a mental disorder in the classification.<sup>45</sup>
90. The authorities informed the Commissioner that the Government network of contact persons set up for the implementation of the National Action Plan on human rights would also have the task of monitoring and coordinating LGBTI-related issues. The Ministry of Social Affairs and Health will set up a working group to assess the need for modifying the Act on Gender Reassignment.
91. Finnish NGOs representing LGBTI persons met by the Commissioner considered that LGBTI issues lacked coordination among the central authorities. They advocated the abolition of infertility and non-marriage as requirements for the official recognition of gender reassignment. The NGOs also raised the persistent problem of bullying of LGBTI pupils in school, and underlined that parental rights, family leaves and access to adoption granted to same-sex couples remained discriminatory. In addition, they raised the issue of intersex persons, including small children, who are in a vulnerable position and can be exposed to non-medically based surgery.<sup>46</sup>

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<sup>42</sup> Regarding the appellation "LGBTI persons", see the Appendix to the Commissioner's 2011 Report "Discrimination on grounds of sexual orientation and gender identity in Europe".

<sup>43</sup> Special Eurobarometer 317, Discrimination in the European Union in 2009; Special Eurobarometer 296, Discrimination in the European Union: perceptions, experiences and attitudes, July 2008.

<sup>44</sup> Niemi, J., *Poliisin tietoon tullut viharikollisuus Suomessa 2010*, Police College of Finland, 2011.

<sup>45</sup> *Selvitys sukupuolivähemmistöjen asemasta, Tasa-arvojulkaissuja 2012:1*.

<sup>46</sup> See also Submission by Seta, Trasek, Sateenkaariperheet and ILGA-Europe to UPR on Finland, 21 November 2011.

## 2.7 Conclusions and recommendations

### *Reform of equal treatment legislation*

92. The Finnish Government has embarked on a timely reform course of the national equal treatment legislation. The Commissioner welcomes the reform's aims of extending the coverage to all grounds and fields of discrimination, and strengthening the legal safeguards, sanctions and equality bodies so that they afford a similar level of protection to all victims of discrimination. Everyone should receive equal protection against discrimination without any hierarchy of discrimination grounds. A generalised duty to promote equality is essential to fostering a culture of equality in society.
93. When developing equal treatment legislation it is essential to take the viewpoint of the victim. Legislation and measures should aim at ensuring a high level of protection which is easily accessible to the victim. The role of independent equality bodies is central as low-threshold complaints mechanisms and active advocates of equality. The Commissioner's 2011 Opinion on national structures for promoting equality provides detailed guidance on the establishment of independent and effective equality bodies and the equal treatment legislation which should underpin them.<sup>47</sup>
94. The Commissioner notes that the current plans comprise two laws: the expanded Non-Discrimination Act and partly reformed Gender Equality Act. Additional provisions related to discrimination in the Penal Code and labour law would remain. As regards monitoring, treatment of complaints and promotion of equality, it is envisaged that several institutions will share the tasks: a new general equality body for all grounds other than sex, gender identity and gender expression without a mandate in employment apart from a general function to promote non-discrimination; the Gender Equality Ombudsman for the grounds of sex, gender identity and gender expression in all fields of activity; a general non-discrimination tribunal to examine cases covering all grounds and probably all fields of activity; and the Occupational Safety and Health Administration (OSHA) to monitor implementation and examine complaints exclusively in the field of employment under the grounds covered by the expanded Non-Discrimination Act (but not under the Gender Equality Act). The complaints avenues to the Parliamentary Ombudsman and the Chancellor of Justice would remain in addition to the courts.
95. The Commissioner considers that such an institutional arrangement may not be sufficiently clear and accessible to victims of discrimination, as the different functions and somewhat overlapping competences of each constituent part are not easy to understand. While efficient cooperation among the bodies and extensive awareness-raising could help overcome the obstacles to accessibility, further reflection is needed to identify the best approach vis-à-vis the field of employment, where a great deal of discrimination usually takes place. Studies on the implementation of the equal treatment legislation in working life have questioned the effectiveness of the current monitoring arrangements. It is quite surprising that only 126 complaints about labour discrimination were received by the OSHA in 2010, despite its relative proximity to complainants, and that, on the basis of these complaints, discrimination on grounds of health status emerges as the most common form of discrimination (61 complaints).<sup>48</sup>
96. It is essential that equality bodies are effective and independent. At present, the OSHA does not fulfil the criterion of independence, as it forms an integral part of Regional State Administrative Agencies. The availability of sufficient expertise on different grounds of discrimination within the OSHA, and with reference to disability and reasonable accommodation in particular, is another concern. Moreover, the monitoring of equal treatment forms only a small part of the extensive duties of the OSHA.

<sup>47</sup> The Commissioner for Human Rights, Opinion on national structures for promoting equality, 21 March 2011, CommDH (2011)2.

<sup>48</sup> *Yhdenvertaisuuslain toimivuus: tutkimusraportti viranomaisten käsityksistä sekä oikeus-, laillisuusvalvonta- ja lainvalvontakäytännöstä*, Työ- ja elinkeinoministeriön julkaisuja 11/2008, and *Discrimination in the Finnish Labour Market: An Overview and a Field Experiment on Recruitment*, Publications of the Ministry of Employment and the Economy 16/2012.

97. The Gender Equality Ombudsman and the current Gender Equality Board fulfil the criteria of independence and expertise with regard to the grounds of sex. However, under the new framework other discrimination grounds are not likely to benefit from an equal level of protection in the field of employment, since the new general equality body would only have a promotional function in that area. In addition, the arrangements regarding access to the planned general non-discrimination tribunal and its precise fields of competence are not yet clear.
98. The Commissioner stresses that equality bodies should have sufficient resources to implement all their functions to the scale and standard necessary to make an impact. The new general equality body would have the widest responsibility for examining complaints, providing information and expertise, and promoting equality on most discrimination grounds. It is clear that the current Ombudsman for Minorities would not be able to assume the vastly expanded mandate without a significant increase in resources in terms of staff, expertise and operational budget.
99. Following the adoption of the reformed equal treatment legislation, it will also be essential to raise awareness of the new non-discrimination framework and to train the professionals concerned, including local authorities, who can play an important role in raising awareness of equality and related redress mechanisms. Municipal equal treatment plans should cover all the grounds of discrimination.
100. In conclusion, the Commissioner would like to underline that unnecessary fragmentation of equal treatment legislation and institutions entrusted with its monitoring should be avoided. The comprehensiveness and coherence of the mandates of the planned general equality body and non-discrimination tribunal will be key to the success of the reformed legislation. The overall aim should be to ensure an easily accessible protection framework to all victims of discrimination.

*Gender equality and violence against women*

101. Finland has made significant progress in achieving gender equality, particularly in the field of political participation. However, the gender pay gap hovers at 17.9% and violence against women is a problem which requires serious attention. The programme to reduce the pay gap has to be implemented rigorously. The Commissioner finds that the Action Plan to reduce violence against women is based on sound principles, but requires adequate resources and coordination to meet its targets. The lack of sufficient emergency shelters, and the uneven access to services for residents of different municipalities and for minority women, should be addressed as a matter of priority. The Commissioner calls on Finland to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence without delay.

*Racism and xenophobia*

102. The Commissioner welcomes the focus on labour inclusion in the Government's National Programme for the Integration of Immigrants. There is a need to step up efforts to combat racism and xenophobia among the majority population who have often adopted a critical viewpoint towards immigration. Hate speech, also expressed by politicians, is a major problem. The Commissioner urges the prosecutors and courts in Finland to pursue diligently cases of racist incitement to hatred.
103. The Roma, Russian-speakers and Somalis appear to be the most likely victims of racism and xenophobia in Finland. The Commissioner is particularly concerned about the extreme marginalisation of young Somali persons. The authorities are implementing a National Policy on Roma; however, the Commissioner considers that more inclusive involvement of Roma should be sought in this process. As for the Russian-speakers and Somalis, few specific measures are currently being undertaken. Dedicated consultative mechanisms should be set up between the authorities, the Russian-speakers and the Somalis to form an understanding of existing problems and measures needed to address them. In the light of current knowledge, it is clear that discrimination in the field of employment, bullying experienced at school and hate crimes targeting

ethnic minorities should be addressed as a matter of priority. The authorities should grant further consideration to the status of the Russian language and promote the development of Russian-language education and media in Finland.

*People with disabilities*

104. The 2009 Personal Assistance Bill has been a noteworthy step in enhancing the social inclusion of people with severe disabilities. However, Finland has not yet ratified the UN Convention on the rights of persons with disabilities (CRPD). The Commissioner encourages the prompt ratification of the Convention by Finland and stresses the importance of associating people with disabilities in its implementation and monitoring. Particular attention should be given to the identification of the national monitoring framework, which should include an independent monitoring mechanism. The reform of the equal treatment legislation should clarify the implementation of reasonable accommodation. The status of sign language would benefit from specific legislation to ensure the effective equality of sign language users.
105. A thorough reform of the Finnish legislation on self-determination, involuntary treatment and restraints in social and health care is essential. The reformed legislation should enable the effective enjoyment of legal capacity by persons with intellectual and psychosocial disabilities. The starting point, in line with Article 12 of the CRPD, should be the assumption of legal capacity and the provision of supported decision-making alternatives for those who want assistance in making decisions or communicating them to others.<sup>49</sup> The Commissioner welcomes the plan to deinstitutionalise the care and services for persons with intellectual disabilities.<sup>50</sup> While community living should be the aim, independent inspections into any remaining or transitional institutions providing care for people with disabilities should be stepped up. The inspection system into closed institutions should be reviewed with reference to the Finnish national preventive mechanism under the Optional Protocol to the UN Convention on the Prevention of Torture.

*Older persons*

106. The Commissioner considers that the planned Act on Care Services for Older People will be key to ensuring the human dignity of older people and shares its aim of providing services in domestic settings whenever possible. The autonomy and social participation of older persons should be preserved to the maximum extent possible. For this reason, the Commissioner would like to highlight the importance of involving older persons in decision-making about the planning and provision of care services in municipalities. The active role of the senior citizens' councils, strengthened by the planned Act, will be essential in this context. The Act should aim to fulfil the need for equally affordable care services of an adequate standard, regardless of the place of residence. While respecting municipal autonomy, the state will have to ensure that minimum standards for care and affordability are implemented across the different municipalities. This will necessitate independent monitoring and the availability of easily accessible and effective complaints mechanisms for service users. The role of informal and family carers should also be addressed in the reform.
107. The adequacy of the existing inspection system into institutionalised settings of care for older persons should be reviewed to ensure its independence and effectiveness. The supervision of services provided in domestic settings is a current challenge for which innovative solutions will have to be sought to cover both public and private service providers. The reform of the legislation on self-determination in social and health care should clarify the conditions for the authorised use of restraints. In addition, the reform of the equal treatment legislation should address the current protection gaps for the ground of age.

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<sup>49</sup> The Issue Paper, "Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities", published by the Commissioner in 2012, includes recommendations on the subject.

<sup>50</sup> The Issue Paper, "The right of people with disabilities to live independently and be included in the community", published by the Commissioner in 2012, provides recommendations and indicators for deinstitutionalisation and community living.

*Lesbian, gay, bisexual, trans and intersex persons*

108. The Commissioner welcomes the explicit prohibition of homophobic hate crime in the Penal Code. He urges the Finnish authorities to extend the prohibition also to hate crime with specific reference to gender identity. The reform of equal treatment legislation should address the current gaps concerning the grounds of sexual orientation. The authorities should give particular attention to improving the protection afforded to trans people and intersex persons. The Commissioner calls for the abolition of infertility and non-marriage requirements for the official recognition of gender reassignment and notes the establishment of a working group by the Ministry of Social Affairs and Health to assess the issue. The specific protection needs of intersex persons, including intersex children, should be identified and addressed in cooperation with civil society organisations representing them. The Government should also assess whether the network of contact persons for human rights will be in a position to provide sufficient coordination for LGBTI-related issues among the ministries, or whether a particular ministry should be entrusted with the task specifically.<sup>51</sup>

### **3. Human rights of the indigenous Sámi people**

#### *3.1 Sámi and their legal status*

109. The indigenous Sámi people traditionally inhabit a territory known as Sápmi, which spans the northern parts of Norway, Sweden and Finland, and the Russian Kola Peninsula. The Sámi population is estimated to be between 70,000 and 100,000 people in total, with about 9,000 Sámi living in Finland. The Sámi have traditionally practiced reindeer herding, hunting, fishing, gathering and trapping. The Constitution of Finland (Sections 17 and 121) recognises the Sámi as an indigenous people and their right to linguistic and cultural self-government within their homeland. The Sámi Parliament Act (974/1995) delimits the Sámi homeland within the municipalities of Enontekiö, Inari, Utsjoki and Sodankylä. The Sámi Language Act (1086/2003) affirms the right of the Sámi to use the Sámi language in certain administrative contexts.<sup>52</sup>
110. The mandate of the 21-member Finnish Sámi Parliament (*Sámediggi*) is to preserve the Sámi language and culture, as well as other matters relating to their status as an indigenous people. The Sámi Parliament can make initiatives, proposals and statements to the authorities. Furthermore, the Sámi Parliament Act affirms that the Finnish authorities have to negotiate with the Sámi Parliament regarding “all far-reaching and important measures that directly or indirectly may affect the Sámi’s status as an indigenous people” including matters relating to the management, use, leasing and assignment of state lands, conservation areas and wilderness areas. However, the current Finnish legislation does not grant any special land rights to the Sámi people or any exclusive rights for them to pursue their traditional livelihoods.<sup>53</sup>
111. The Commissioner notes that Finland voted in favour of adoption of the UN Declaration on the Rights of Indigenous Peoples, which affirms that “indigenous peoples have the right to self-determination. By virtue of that right they freely determine their own political status and freely pursue their own economic, social and cultural development.”<sup>54</sup>
112. Having regard to the vulnerable situation of indigenous peoples, the International Labour Organization (ILO) Convention No. 169 – which Finland has not yet ratified – calls for special measures to be adopted to safeguard the persons, institutions, property, labour, cultures and environment of these peoples (Article 4). Article 7 of the Convention states that “the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or

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<sup>51</sup> Specific recommendations related to LGBT persons can be found in the Commissioner’s 2011 report “Discrimination on grounds of sexual orientation and gender identity in Europe”.

<sup>52</sup> Report of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum - The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, 6 June 2011, A/HRC/18/35/Add.2.

<sup>53</sup> *Ibid.*

<sup>54</sup> Cf. Article 3 of the UN Declaration on the Rights of Indigenous Peoples (61/178 of 20 December 2006).

otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.” Article 14 of the ILO Convention gives detailed provisions on land rights and the UN Declaration includes a similar provision in its Article 26.

113. The authorities informed the Commissioner that 90% of the land within the area designated as the Sámi homeland legally belongs to the state. In 2010, the Advisory Committee of the FCNM noted with deep concern that no progress had been made towards finding a solution to the dispute regarding the land rights of the Sámi people. It highlighted the general differences in approach to the issue between Finnish Government representatives and the Sámi Parliament. The Finnish authorities have considered that land rights should not be granted to the Sámi as a people but rather to all traditional residents of the Sámi homeland. The Sámi, however, see themselves entitled as an indigenous people to special land rights, in conjunction with the existing protection mechanisms of their culture and identity.<sup>55</sup>
114. The Advisory Committee recommended the creation of a specific entity within the Finnish Government dealing with issues related to the Sámi to ensure the co-ordination of a clear Government position on land rights issues. It urged the Finnish authorities to engage in a dialogue with the Sámi Parliament to find a solution to the continuing legal uncertainty over land rights, and also encouraged the Finnish authorities to ratify the ILO Convention in close consultation with all actors concerned. The UN Special Rapporteur on the rights of indigenous peoples has recommended that Finland should step up its efforts to clarify and legally protect Sámi rights to land and resources and to ensure special protections for their traditional reindeer husbandry, given the centrality of this means of livelihood to the culture and heritage of the Sámi people.<sup>56</sup>

### 3.2 Current situation

115. The National Action Plan on human rights includes projects that seek to clarify the participation of the Sámi in policy making and planning concerning the use of state-owned lands and waters in their homeland. The reform of the Act on *Metsähallitus*, the state enterprise which administers state owned lands in Finland including in the Sámi homeland, is of particular interest in this respect. Moreover, the new Mining Act (621/2011) and Water Act (587/2011) prohibit measures that impair the opportunities of the Sámi to engage in their culture and traditional means of livelihood. They include provisions for hearing the Sámi Parliament on relevant matters, and on the right of the Sámi Parliament to appeal against decisions made under these laws. A reform of the Sámi Parliament Act has also been initiated. In the opinion of the Sámi Parliament, the current reform of *Metsähallitus* would provide a good opportunity for finding solutions to the land rights issue.
116. The current Finnish Government Programme envisages ratification of International Labour Organization (ILO) Convention No. 169 concerning indigenous peoples, and to this end the Ministry of Justice has carried out a consultation between ministries and other stakeholders which was completed in June 2012. The Convention would grant the Sámi land rights, as it recognises the rights of indigenous peoples to land and natural resources as central to their material and cultural survival. Most ministries had no objections to the ratification of the Convention. However, the Ministry of Finance has maintained that fundamental changes in current land rights and use would pose problems.<sup>57</sup> As for the Ministry of Agriculture and Forestry, it has stressed that it is essential to strike a balance between the interests of Sámi in terms of livelihood and land use and those of other people living in the same area: the same rights should apply to everybody.
117. The Sámi Parliament has proposed the formation of an inter-parliamentary group, composed of an equal number of members of the Sámi Parliament and the Finnish Parliament, to prepare the ratification of the ILO Convention with the support of a working group of government officials. The Members of the Finnish Parliament met by the Commissioner during the visit found this proposal constructive.

<sup>55</sup> Advisory Committee on the FCNM, Third Opinion on Finland, 13 April 2011, ACFC/OP/III(2010)007.

<sup>56</sup> *Ibid.* and Report of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum - The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, 6 June 2011, A/HRC/18/35/Add.2.

<sup>57</sup> *Alkuperäiskansoja koskevan sopimuksen ratifiointiedellytykset: tiivistelmä. Mietintöjä ja lausuntoja 39/2012*, Ministry of Justice.

118. The complex issues relating to cultural survival of the Sámi are reflected in a discussion which has resurged about the definition of “Sámi” for eligibility to vote for the Sámi Parliament. In a 2011 ruling, the Supreme Administrative Court gave particular weight to the self-identification criterion in combination with an early ancestral connection (being a descendant of a person who had been identified as a “Lapp” in previous land and taxation records). In contrast, the Sámi Parliament considers that language skills should be given more weight.<sup>58</sup> Another integral aspect of Sámi culture concerns traditional reindeer husbandry, which tends to differ from the reindeer farming practices of the majority population. For example, there have been disputes within reindeer cooperatives which are composed of both Sámi and non-Sámi herders concerning culling of reindeer herds, and the UN Human Rights Committee has received an individual communication on the issue.<sup>59</sup>
119. The Government is about to launch a comprehensive programme to revive the Sámi languages, with a focus on early childhood education, teaching, social welfare and health care, culture, the media and economic policy. A Sámi Cultural Centre was opened in Inari in 2012, with the aim of creating better possibilities for the Sámi in Finland to preserve and develop their own language, culture and business activities as well as to manage and develop their cultural self-government and to support the development of their general living conditions.
120. Negotiations began in 2011 to conclude a treaty, the Nordic Sámi Convention, based on a draft which provides the principal framework for defining the common objectives of the Sámi people and to advance Sámi self-determination as one people. The negotiations are carried out between three delegations, each with a maximum of six persons, which must include representatives both of the respective Governments (Finland, Norway and Sweden) and of the Sámi Parliaments. The aim is to complete the negotiations in five years.
121. During his meeting with the Commissioner, the President of the Sámi Parliament of Finland expressed the hope that the negotiations for the Nordic Sámi Convention will lead to a harmonised approach to issues concerning the Sámi within the countries concerned. He also highlighted the importance of the ratification of ILO Convention No. 169 and indicated that the reform of *Metsähallitus* was essential in this regard, as was the resolution to the dispute on land rights, on which the Sámi Parliament takes a different position from that of the Ministry of Agriculture and Forestry. He emphasised that the Sámi do not have claims to private land but only to land owned by the state. While commending the new Acts on mining and water and the 20-year moratorium undertaken by the *Metsähallitus* on felling trees in the Sámi homeland, he stressed that the mining industry and tourism still posed threats to the preservation of Sámi culture and livelihoods. The President of the Sámi Parliament also expressed concern that the unresolved land rights question was fuelling an increase in hostility towards the Sámi by the majority population in the Sámi homeland.

### 3.3 *Conclusions and recommendations*

122. The Finnish Constitution has recognised the Sámi as an indigenous people and conferred upon them specific rights in the cultural and linguistic spheres. However, this recognition has not yet been extended to land rights or rights for reindeer herding, although the UN Declaration on the Rights of Indigenous Peoples and the International Labour Organization Convention No. 169 clearly provide for rights in these areas. The Commissioner notes that the preparations for the Finnish ratification of the ILO Convention No. 169 have already taken over two decades. The central issue is that special measures are required to ensure the enjoyment of economic and cultural rights by the Sámi as an indigenous people. Under international human rights law, special measures can be authorised in

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<sup>58</sup> The concern of the Sámi Parliament is that the Sámi community will be further diluted with persons already assimilated into the majority Finnish population.

<sup>59</sup> Input provided by the Saami Council to UN UPR on Finland, 21 November 2011.



such a situation, as long as they remain proportionate to the legitimate aims pursued. The Commissioner would like to stress that the ratification process should not be viewed as a zero-sum game, as the land usufruct rights of the majority population and their right to exercise their livelihoods would also have to be taken into account.

123. The Commissioner urges Finland to ratify ILO Convention No. 169, and to recognise the Sámi usufruct rights to land and to reindeer herding in the traditional manner. Close cooperation between the different ministries is essential for addressing the remaining needs for legislative reform in a coherent manner. This would also facilitate discussions with Sámi representatives, who should be closely involved in the ratification process. The proposal to set up a joint working group between the Finnish and Sámi Parliaments to pursue ratification merits serious consideration. The current reform of *Metsähallitus* provides another opportunity for innovative solutions to the issues concerned. The on-going negotiations for the Nordic Sámi Convention underscore the inter-state dimension of the Sámi issue and may highlight positive practices and possibilities for a harmonised approach.