

OFFICE OF THE COMMISSIONER FOR HUMAN RIGHTS



Strasbourg, 19 September 2001

CommDH(2001)7
Original version in French

REPORT
BY MR ALVARO GIL-ROBLES,
COMMISSIONER FOR HUMAN RIGHTS,
ON HIS VISIT TO FINLAND
4 - 7 JUNE 2001

for the Committee of Ministers and the Parliamentary Assembly

INTRODUCTION

1. My visit to Finland from 4 to 7 June 2001, at the invitation of the Finnish Government was principally intended to establish contacts with the Finnish authorities including the Ombudsman, as well as with representatives of civil society (NGOs and other institutions), and to make an assessment of the human rights situation as regards both the relevant legislation and its practical application.

2. I would firstly thank the Finnish authorities for their warm welcome and for the help which they gave me in making this journey. Thanks to their co-operation, I was able to meet all those with whom I wished to confer, besides which I had the opportunity to visit the Kakola prison and detention centre in Turku. My very sincere thanks are also due to Mr Lauri LEHTIMAJA, the Finnish Parliamentary Ombudsman, and to Mr Paavo NIKULA, Chancellor of Justice¹, who provided me with valuable information during our discussions.

Lastly, I also wish to express my deep gratitude to Ambassador Erkki KOURULA, who accompanied me on the visit, and to thank Mr Mika BOEDEKER for his assistance during this mission.

1. National minorities

The national minorities in Finland are the Sami (about 10 000), the Roma (about 10 000), the Jews, the Tatars and the Russians (about 20 000 including 5 000 "Russians of old stock"). Although they actually form a minority, Swedish-speaking Finns are designated, according to the terminology used in Finland, as a second national group owing to the requirement in the Constitution that the State provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis. The Constitution further prohibits different treatment of any person on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. This prohibition reappears in other statutes, particularly the Penal Code and the new Act regulating employment contracts.

During my talks with the representatives of the above groups, the Swedish-speaking Finns assured me that they had no claims vis-à-vis the State authorities. The other representatives, however, disclosed a number of problems, particularly in connection with articles published by certain important media which perpetuate negative stereotypes regarding minorities, notably Roma, Russians and also Somalis and other minority groups who arrived more recently. The Government's efforts to educate journalists concerning minorities are useful in my view and should be continued.

¹ The Chancellor of Justice is a senior official responsible for overseeing the lawfulness of the official acts of the Government and the President of the Republic, and the lawfulness of the proceedings of the public authorities. These functions and powers resemble those of the Parliamentary Ombudsman. See Sections 38 and 69 and Chapter X of the Constitution of Finland.

1.1. Sami

Finland has made major efforts in various areas to improve the protection enjoyed by the Sami, an indigenous people inhabiting Northern Finland, particularly through the passage and implementation of the Act instituting the Sami Parliament. During my discussions I was told that delay had occurred in the settlement of land rights issues and in the definition of the term "Sami", generating tensions in the Sami territory. Considering the importance of land rights for the traditional Sami occupations – reindeer breeding, fishing and hunting – I deem it expedient to arrive at the earliest possible solution, one which should take due account of the Sami culture and of all the interests at stake. In this context, it is important that Finland take steps to ratify International Labour Organisation Convention No. 169 (concerning Indigenous and Tribal Peoples in Independent Countries); consequently, this question should be dealt with beforehand.

1.2. Roma

The Roma, one of the large minorities with some 10 000 members, have had an Advisory Board on Gipsy Affairs since 1956, which since 1989 has enjoyed permanent status as the Advisory Board on Romani Affairs. Despite the efforts of the State authorities in outlawing discrimination, improving access to housing and having the Roma language taught, the Roma seem to face *de facto* discrimination on the part of society, as was also confirmed in a report of the Ministry of Social Affairs and Health ("Strategies of the policy on Roma in 2000") which mentions in particular the low educational standard of Roma and identifies prejudice and discrimination on the part of the majority population as the reasons for their inferior socio-economic position.

On that score, the Roma representative asserted that Roma were subject to discrimination particularly as regards access to the private housing market and to employment (56% of the Roma population were unemployed in 1998).

By way of an example, I heard an account of the case of a qualified nurse to whom the prospective employer had reacted favourably on the telephone. But when she turned up in person, she was informed of some reluctance to employ a Romni who was likely to arrive at work in traditional costume before donning a nurse's uniform.

There is also reported discrimination regarding access to public premises (shops, bars, restaurants etc.). Although legislation against discrimination is adequate, by all accounts its enforcement is not; according to the Roma representative, the penalties imposed, usually fines, have little deterrent effect and indeed their very small amount makes the owners of these premises more inclined to pay the fines than to admit Roma.

A study on the conditions of detention of Roma in prisons reveals that they are sometimes assaulted by the other inmates and the prison authorities, by their own admission, have trouble controlling these assaults. As a result, ostensibly for their own safety, Roma are often segregated from other prisoners and thus isolated.

Although there is statutory provision for teaching of the Roma language in primary and secondary schools, few local authorities have availed themselves of this possibility. Out of a total of 1 500 - 1 700 Roma pupils, only 220 are estimated to benefit from this teaching. A more serious problem is that quite large numbers of children are reportedly placed in specialised education units. The reason adduced is the cultural and linguistic difference between Roma and the population at large, but in my opinion thought should be given to other measures enabling Roma pupils to attend normal classes.

1.3. Russians

According to the Government, Russians in Finland belong to two different groups, viz. "Russians of old stock" to whom the Finnish authorities grant protection under the Framework Convention for the Protection of National Minorities, and recent immigrants whom the Government excludes from the scope of the Framework Convention. As this theoretical distinction seems difficult to apply in practice, its relevance should be re-assessed by the authorities.

According to the Russian representative, one of the problems affecting recent immigrants is the common misconception in the press and hence in public opinion that associates them with members of the Russian mafia and creates a negative image of all Russians.

Furthermore, the vast majority of pupils in Finnish-Russian schools are ethnic Finns learning Russian as a foreign language. Because of this, the representative of the Russian community has complained that schools do not cater for the needs of Russian mother tongue pupils.

2. Situation of foreigners and asylum seekers

2.1. Amendment of the Act concerning foreigners

The number of foreigners in Finland is still low (21 000 in 1990 and 90 000 in 2000 out of a population of 5.2 million), and Finland seldom grants asylum (see Appendix 1 below), although the number of applicants has increased considerably in the last few years. It would seem that Finland amended the legislation on foreigners in July 2000 in order to apply a more restrictive asylum policy. The amendments prescribe a faster procedure for processing manifestly ill-founded asylum requests and requests by foreigners coming from "safe" countries. In these cases, the Directorate of Immigration is required under the new procedure to issue its decision within seven days following transcription of the requester's interview with the Directorate. Although the requester has 30 days to appeal to an administrative court, the decision takes effect after 8 days have elapsed.

The NGOs have criticised these amendments on four main grounds: i) the accelerated procedure does not secure the right to an appeal with suspensive effect; ii) the amendments introduce a vague notion of "safe country of origin"; iii) legal protection

of asylum seekers is limited, given that four out of five procedures are accelerated ones; iv) the more complicated procedures and the shorter time limits would result in a higher demand for legal aid and interpretation.

Indeed, they consider that the concept of a safe country remains obscure and gives rise to fear of the authorities drawing up unofficial lists of countries designated as safe, although according to the letter of the law the question whether or not a country is safe should be determined as each individual case requires. In addition, asylum seekers refused entry to the country under the accelerated procedure will have difficulties in appealing to an administrative court, since the challenged decision is liable to be enforced before the appellant can actually lodge his appeal.

According to the principles of international law, there is no "right" to enter and remain in another country than one's own, and States retain freedom to allow or refuse a foreigner's entry to and residence in their territory. However, regard should be had to the need for effective (and not just legally prescribed) availability of the right to a judicial remedy, within the meaning of Article 13 ECHR, when it is claimed that the competent authorities have infringed or are likely to infringe one of the rights secured by the ECHR. This right to an effective remedy must be granted to all those who wish to challenge a decision on refusal of entry or removal from the territory. Such an appeal should have the effect of suspending the execution of a deportation order at least where a possible violation of Articles 2 and 3 ECHR is alleged.

2.2. Discrimination and xenophobia

Though unable to furnish conclusive proof in this regard, the NGOs claimed that the amendments to the Act concerning foreigners had been prompted by an influx of Roma asylum seekers originating from the countries of Central and Eastern Europe. There were in fact 1 883 applicants in 1999 and 1 973 in 2000, most of whom were supposed to be Roma.

Having to contend with a certain increase in acts of violence of a racist character (in 1997 there were 194 acts of violence against persons born abroad, 319 in 1998 and 281 in 1999), the Government adopted in March 2001 an action plan against ethnic discrimination and racism ("Towards ethnic equality and diversity – proposal for a Government programme of action against ethnic discrimination and racism"). This plan, covering the years 2001-2003, takes in new immigrants, immigrants who have resided for some years in Finland and second generation migrants, and Roma. It comprises national, regional and local measures and its main aim is to promote ethnic equality and diversity. The plan will be the subject of an evaluation report to be presented by the Government to Parliament in 2002. Likewise, the institution of an anti-discrimination Ombudsman is planned for 1 September 2001.

3. Conscientious objectors

The conscientious objectors' NGO called my attention to problems regarding armed national service and civilian service. Inter alia, it complained that the duration of alternative civilian service and the term of imprisonment for those refusing to perform it remained excessive. There is also alleged discrimination in the conditions of execution of sentences for conscientious objectors, owing to the different treatment

CommDH(2001)7

which they receive. Indeed, according to the statistics issued on 1 June 2001, 18 conscientious objectors were serving their sentence under semi-custodial conditions while another was confined to a closed prison.

Following a 1997 reform, the periods of armed national service are respectively 180, 270 or 362 days, compared to 330 days for non-combatant national service. The duration of alternative civilian service, however, is 395 days. According to the statistics, the term of national service actually performed averages 8.5 months.

Assuming that the duration of alternative civilian service is still 395 days, this makes it 1.5 times longer than the average of the various periods of national service. It can nevertheless last up to 2.5 times longer compared to the shortest duration of a period of national service (180 days). This difference is probably due to the official desire not to make alternative civilian service more attractive than national service.

The NGOs felt that the duration of civilian service and of national service should be in reasonable proportion. Amnesty International considers that civilian service should not be more than 1.5 times the duration of national service.

In my opinion, regarding civilian service and its duration, the Government of Finland should take into consideration the Macciocchi resolution approved on 7 February 1983 by the European Parliament, according to which the duration of alternative civilian service ought not to exceed that of military service, and especially the recommendation of the Committee of Ministers of the Council of Europe of 9 April 1987 and Resolution 1998/77 of the United Nations Commission on Human Rights of 22 April 1998 as it relates to civilian service. According to these texts, the duration of civilian service, in order to be deemed "reasonable", should not be "punitive" by comparison with that of military service.

Otherwise, "absolute" objectors receive a 197 day prison sentence, amounting to half the duration of the alternative civilian service (395 days). I consider it important to seek other methods than the strict application of the Penal Code to "absolute" objectors, which in my opinion is not the appropriate way to deal with this question.

4. Children's rights

Certain NGOs together with Ms Riitta-Lena PAUNIO, Deputy Ombudsman responsible for protection of children's rights, drew my attention to a number of questions concerning children.

While highlighting the priority which the child's best interests should receive in any action by society, the Deputy Ombudsman emphasised, firstly, the importance of the family as the chief guardian of the rights of the child and, secondly, the subsidiary character of State intervention. Although in most cases (44 000 cases in 1999) the authorities provide families in difficulty with support, in 1999 there were nevertheless 1 300 orders giving the authorities custody of children (almost 200 of these being

made against the child's will)². The Deputy Ombudsman therefore adverted to the problem of the balance to be struck between cases where the authorities do not act promptly enough to protect a child and those where they act too hastily. However, the competent authorities also informed us that the child's welfare is not adequately considered in practice, particularly by comparison with parents' rights. At all events, the fact that several cases in this connection are pending before the European Court of Human Rights against Finland seems to indicate that this balance is occasionally disturbed by the actions of the welfare services.

In the case of placement with the public assistance service, in a home or with a foster family, the primary question is often preservation of parent-child links. The authorities do not appear to consistently provide the requisite support for this purpose, according to the Deputy Ombudsman. She has already impressed upon the Government the need to amend the relevant legislation in order to ensure better protection of the right to respect for family life. The Government informed me at the time that it was preparing legislative amendments on maintenance of relations between child and parents.

The Deputy Ombudsman also mentioned to me the necessary psychiatric treatment for children suffering from mental illnesses. She said she had repeatedly asked the authorities to take the requisite measures to ensure that dangerous subjects or those in need of special treatment receive care in keeping with their condition.

The Government should bear in mind the concerns expressed by the Deputy Ombudsman, and adopt the necessary measures for ensuring as far as possible the proper balance between public intervention and the right to private and family life, also having regard to the judgment of the European Court of Human Rights in the case of *K. and T. v. Finland* (Application No. 25702/94) on 12 July 2001.

² In 1999 a total of 12 370 children were placed with the public assistance service, 1 183 of them in the custody of the authorities against their will.

CONCLUDING REMARKS AND RECOMMENDATIONS

The standard of human rights protection in Finland is clearly high. However, a number of problems remain, and certain issues have yet to be resolved by the authorities, especially as regards the protection of foreigner's rights (most of all asylum seekers), protection of national minorities and conscientious objectors, and safeguarding of children's rights.

Speedy implementation of Action Plan 2001 will no doubt make it possible to solve many problems affecting foreigners and national minorities, particularly as regards furtherance of equality and ethnic diversity. It would nevertheless be expedient for the Government to take steps to ratify International Labour Organisation Convention No. 169 (concerning Indigenous and Tribal Peoples in Independent Countries).

The Government should also reconsider its treatment of conscientious objectors with reference to the duration of civilian service, in order to ensure that it is "reasonable" and not "punitive" by comparison with the duration of military service. In the case of "absolute" objectors, a more suitable solution than strict application of the Penal Code should be found.

It appears necessary that the competent authorities re-assess their criteria regarding placement of children, in the light of the problems raised in this report and the case-law of the European Court of Human Rights. They should therefore, as a matter of importance, take measures to preserve as far as possible the proper balance between public intervention and the right to private and family life, and to encourage the maintenance of relations between a placed child and its parents.

APPENDIX I

© Statistics Finland

Asylum-seekers and refugees

	1992	1993	1994	1995	1996	1997	1998	1999
Asylum-seekers	3634	2023	839	854	711	973	1272	3106
Decisions on asylum 1)								
– Asylum granted	12	9	15	4	11	4	7	29
– Residence permit granted	564	2073	301	219	334	277	372	467
– No asylum or residence permit granted	1344	1435	492	276	248	278	240	1330
Family reunification								
– Opinions in favour	–	1208	323	250	226	509	240	*185
– Adverse opinions	–	838	765	880	513	299	769	*362
Quota	500+	500+	500	500+	500+	500	600	650
– Additional quota	200	200	–	500	500	–	–	–
Refugees received by municipalities 2)	2349	3689	1412	1415	1193	1406	958	1189
Immigrating as refugees, from 1973–	6361	10050	11462	12877	14070	15476	16434	17623

(1) Decisions of the Directorate of Immigration. (2) Refugees by quota, asylum-seekers having received a favourable decision, persons admitted under the family reunification scheme.

Table in Excel format [vamu3.xls](#)

Last Modified: 8.5.2000
 Statistics Finland/Reference books

APPENDIX 2**PROGRAMME OF THE VISIT
BY Mr ALVARO GIL-ROBLES,
COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE,
TO FINLAND
FROM 4 TO 7 JUNE 2001****Monday 4 June 2001**

10.50 pm Arrival at Helsinki-Vantaa Airport

Tuesday 5 June 2001

8-9.30 am Exchange with the NGOs

10-10.45 am Conversation with Mr Paavo Nikula, Chancellor of Justice

11 am-12.15 pm Conversation with Mr Ville Itälä, Minister of the Interior

12.30-2 pm Luncheon hosted by Ms Ann-Marie Nyroos, Director, Human Rights Unit, Ministry of Foreign Affairs

2.15-2.45 pm Conversation with Ms Tarja Halonen, President of the Republic of Finland

3-3.45 pm Conversation with Mr Johannes Koskinen, Minister of Justice

4.15 pm Talks with members of the Constitutional Commission

5 pm Folktinget (Swedish Assembly of Finland)

Wednesday 6 June 2001

- 9-9.45 am** Conversation with Mr Erkki Tuomioja, Foreign Affairs Minister
- 10-10.45 am** Conversation with Mr Osmo Soininvaara, Minister for Health and Social Affairs
- 11-11.45 am** Conference with Mr Lauri Lehtimaja, Ombudsman, Ms Riitta-Leena Paunio, Deputy Ombudsman, and Mr Jaakko Jonkka, Deputy Ombudsman
- 12-1.30 pm** Luncheon hosted by Mr Mikko Elo, Chairman of the Finnish Delegation to the Council of Europe Parliamentary Assembly
- 1.30-2 pm** Press Conference at the Houses of Parliament
Departure for Turku
- 4 pm** Visit to the Turku prison (Kakola)
- 6 pm** Exchange with representatives of minorities
- 7 pm** Evening at Brinkkala

Thursday 7 June 2001

- 9.30-11 am** Participation in the seminar "Rethinking and Developing Strategies against Racism and Ethnic Intolerance"
Address and comment by M. Alvaro Gil-Robles
- 12 noon** Visit to the Turku detention centre (Kakola)
- 2 pm** Departure pour Helsinki

Friday 8 June 2001

- 9.15 am** Departure for Strasbourg