

Finland¹

IHF FOCUS: fair trial; prisons and detention facilities; right to privacy; national and ethnic minorities; intolerance, xenophobia and racial discrimination; asylum seekers; women's rights; persons with disabilities.

In Finland, 2003 was the year of parliamentary elections that are held every four years. The main opposition party—the Finnish Centre Party—won the election and formed a majority government with the Social Democratic Party and the Swedish People's Party. The then leader of the Finnish Centre Party, Anneli Jäätteenmäki, was elected by the new parliament to be the first female prime minister in the history of Finland and her government was appointed to office by the President of the Republic, Tarja Halonen, in April 2003.

Controversy soon emerged around Prime Minister Jäätteenmäki. She was accused of having obtained and used certain classified documents during the election campaign to criticize her main rival's foreign policy. In the end she had no choice but to submit her government's resignation to the president. The coalition parties agreed that a change of prime minister would suffice to restore their mutual confidence, and Matti Vanhanen from the Finnish Centre Party was elected by parliament as the new prime minister. The government was appointed to office in June 2003. As a result, the unique period during which Finland had both a female president and a female prime minister was a very short one.

The general social and economic situation remained stable in Finland during 2003. Economic growth (BNP) was lower than expected at around 1.3%, and the unemployment rate remained relatively high at approximately 9%. As a result, debates on how to increase the competitiveness of the Finnish economy, how best to fight income inequality and social exclusion, and how to reform the Finnish welfare state continued to occupy a prominent place on the national agenda.

Related to these big societal debates was the discussion about the well-being of Finnish children. Even though the situation of most children appeared to be good, mental health problems among them increased, as did the number of children placed in public care. In many cases the roots of this malaise could be traced to the deep economic depression of ten years ago when unemployment rose to an unprecedented level and the state cut its social expenditure, reducing, *inter alia*, services supporting parents and children. As Finland chose to decrease spending on preventive measures then, it faced a situation in 2003 where health care and social services did not have enough resources to treat an increasing number of people in need, many of them children who suffered from their families' financial and social problems.

In general, much remained to be done to overcome discrimination, prejudice and xenophobia and to foster tolerance and integration of minority groups into Finnish society.

Finland had ratified all major international human rights treaties and protocols adopted by the United Nations and the Council of Europe and accepted individual communication procedures when such existed. In addition, Finland signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 23 September 2003.

¹ Based on the report from the Finnish Helsinki Committee to the IHF, January 2004. For other concerns, please see the IHF, *Human Rights in the OSCE Region, Europe, Central Asia and North America, Report 2003 (Events of 2002)*, at http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322

In 2003 several laws relevant to human rights and fundamental freedoms were adopted by parliament. They revised or completed legislation in areas such as nationality, right to use Finnish, Swedish and Sami languages before the authorities, good governance, freedom of religion, freedom of expression in the media, public order, and equality.

Fair Trial

In 2003 the European Court of Human Rights (ECtHR) issued five judgments involving Finland. Of these five cases two were struck from the list because of a friendly settlement between the applicant and Finland. Both concerned fair hearing in criminal proceedings (article 6 of the European Convention on Human Rights, ECHR).² In the three remaining cases, Finland had violated the ECHR. In *Suominen v. Finland*³ and in *Fortum Corporation v. Finland*⁴ the court found that Finland had violated article 6 and in *K.A v. Finland*⁵ it found that Finland had violated article 8. Thus, all cases except *K.A v. Finland* concerned the right to a fair trial and, in particular, the principle of equality of arms—a feature of the wider concept of fair trial under which each party must be afforded reasonable opportunity to present his/her case in conditions that do not place him/her at a disadvantage.

- In *Suominen v. Finland* the applicant alleged that she had been denied a fair trial as the district court refused, without giving a reasoned decision, to admit part of the evidence she submitted. The court considered that the applicant had not had the benefit of fair proceedings because the district court had refused to admit the evidence she proposed. The lack of a reasoned decision hindered the applicant from appealing in an effective way against that refusal. The ECtHR unanimously found a violation of article 6 (1) of the ECHR.
- In *Fortum Corporation v. Finland* the applicant company alleged that it was denied a fair hearing within the meaning of article 6 because the Supreme Administrative Court failed to provide it with an opportunity to comment on documents which it had received from the first-instance body. The ECtHR concluded that the company had been unable to participate properly in the proceedings before the Supreme Administrative Court and was thus deprived of a fair hearing within the meaning of article 6 (1) of the ECHR.

When taking into account that the majority of cases decided by the ECtHR against Finland throughout the years concerned the right to a fair trial (fair hearing, reasonable time, equality of arms) and that similar cases were still pending before the court in 2003, it appeared that Finnish courts were having problems meeting international standards in this field.

² In *Eerola v. Finland* the applicant complained that the criminal proceedings against him were unfair, given the changing composition of the first-instance court. Whereas the proceedings were presided over by a professional judge accompanied by three lay judges, a total of 20 lay judges participated in the eight hearings, which made it difficult for them to form their own opinion of the facts. See *Eerola v. Finland* (Application No. 42059/98), Friendly Settlement, 6 May 2003. In *Hyvönen v. Finland* the applicant's dementia and other age-related illnesses were not accepted as a legally valid excuse for his failure to attend the Court of Appeals hearing. Furthermore, his counsel was unable to present pleadings and to re-examine a witness. The applicant further complained that he had been denied the right enshrined in article 2 of Protocol No. 7 to have his conviction reviewed by a higher tribunal. See *Hyvönen v. Finland* (Application No. 52529/99), Friendly Settlement, 22 July 2003.

³ *Suominen v. Finland* (Application No. 37801/97), 1 July 2003.

⁴ *Fortum Corporation v. Finland* (Application No. 32559/96), 15 July 2003, final 15 October 2003.

⁵ *K.A. v. Finland* (Application No. 27751/95), 14 January 2003, final 14 April 2003. This case was reported last year in IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003 (Events of 2002)*, p. 149-150, at <http://www.ihf-hr.org>.

Prisons and Detention Facilities

A delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Finland from 7 to 17 September 2003. It was the CPT's third periodic visit to Finland. The publication of the delegations preliminary observations was authorised by the Finnish government.⁶ The delegation did not find evidence of ill-treatment in any of the places in the several Finnish cities it visited. Nonetheless, it identified several areas where improvements were called for.

As regards police establishments, the delegation criticized material conditions in two police stations (state of repair, cleanliness) and regretted that it was still common for persons to be held on remand in police establishments, often for lengthy periods of time—an issue the CPT had addressed in 1992 and 1998. Such practice carried a risk of abuse of discretionary power and, moreover, police stations were not suitable for long periods of detention. The delegation pointed out that none of the inspected establishments offered persons on remand an appropriate regime of activities. The provision of health care also continued to be of concern.

As to prison conditions, the delegation was concerned with the extent of inter-prisoner intimidation and violence at Sukeva Prison and at the former Turku Remand Prison as well as by the sparseness of organised activities, and the shortage of psychological, psychiatric, counselling and rehabilitation services at those two prisons. Material conditions (overcrowding) were also of concern at Kuopio Prison and at the former Turku Remand Prison. In the delegation's opinion, doctors should visit all three prisons more frequently.

The deputy parliamentary ombudsman also paid attention to conditions in detention facilities, both before and after the CPT visit. In March he recommended that accused persons be transferred from police establishments to prisons as soon as possible.⁷ In December, he expressed concern at deficiencies relating to the surveillance of persons in police custody because during his inspection he found that in some police stations, persons taken into short-term custody had been left alone for unreasonably long period of times, sometimes for more than two hours. In small police stations such persons had been left completely alone, unable to contact the outside world, for up to two hours, when the only police patrol had to carry out an urgent mission. Of 90 police stations in Finland, 16 belonged to this latter category. Lack of surveillance constituted a risk for these individuals' life and security of person, since the majority of them were in custody due to intoxication.⁸

The deputy ombudsman also drew attention to the uneven quality of investigations made into deaths in custody. Some 20 such deaths occur in Finland each year, and in most cases the cause of death is intoxication, stroke or head injury. A few suicides and homicides are also reported. Even if these deaths have not been caused by ill-treatment by the police, each of them gives rise to serious concern and, accordingly, the Deputy Ombudsman stressed the need for thorough investigations. Besides being important in each individual case, the quality of such investigations affects the degree of trust that the public places in the police. Furthermore,

⁶ CPT, *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Finland from 7 to 17 September 2003* (Strasbourg, 21 October 2003), at <http://www.cpt.coe.int/documents/fin/2003-38-inf-eng.htm>. A detailed visit report will be delivered in the spring of 2004.

⁷ Deputy Parliamentary Ombudsman, "Tutkintavangin säilyttäminen poliisivankilassa," Decision No. 458/4/01, 10 March 2003.

⁸ Deputy Parliamentary Ombudsman, "Päätös putkakuolemien tutkintaa ja vapautensa menettäneiden valvontaa koskevassa asiassa," Decision No. 2865/2/00, 18 December 2003.

the ombudsman noted that a proper analysis of the events leading to deaths in custody would help to prevent their occurrence in the future.⁹

Finally, concern was also expressed at the detention in prisons and police establishments of asylum seekers and aliens with irregular status pending the inquiry into their status. The situation improved because special detention units were established for that purpose. For instance, the deputy parliamentary ombudsman, the minority ombudsman and the CPT delegation all welcomed the inauguration of the temporary Helsinki Custody Unit for Aliens in July 2002. The CPT delegation noticed certain shortcomings in its operation (e.g. insufficient access to daily outdoor exercise; inadequate health care provision) and hoped that the opening of a new permanent detention unit in Helsinki in 2004 would remedy these problems. Outside Helsinki, however, detained foreigners were still held in short-term detention in police establishments.

Right to Privacy

The right to privacy was among the domestic human rights issues that gained attention in 2003. One problem in the implementation of this constitutional right was related to the confidentiality of communications, in particular the legality of actions taken by the police and the courts in respect of phone-tapping, and by the police in respect of the acquisition and use of telecommunications identification data.¹⁰ Another privacy issue that gained coverage was the tension between the right to privacy and the freedom of expression (freedom of the press). In recent years there have been several high-profile court cases dealing with this conflict and the situation remained unsettled. Many feel that Finnish courts have put too much emphasis on the right to privacy at the expense of freedom of expression and thus, ignored the relevant jurisprudence of the ECtHR. Two cases in which Finnish newspapers claim a violation by Finland of article 10 of the ECHR will be considered shortly by the ECtHR.

National and Ethnic Minorities

There is one indigenous people in Finland—the Sami (ca. 7,500 persons or 0.15% of the Finnish population). Owing to this unique position, the Finnish Constitution (731/1999) guarantees the Sami cultural self-government within the Sami Homeland (the northernmost part of Lapland). This autonomy is exercised through the Sami Parliament which is an elected, representative organ of the Sami.

The Swedish-speaking Finns (ca. 290,000 persons or 5.6% of the population) are best characterized as a *de facto* linguistic minority. The other established minority groups are: Roma (10,000), so-called Old Russians (3,000-5,000), Jews (1,300) and Tatars (800).¹¹ In addition, Finland has a growing Russian-speaking minority, which is now the second largest linguistic minority in Finland after the Swedish-speaking Finns. At the end of 2002 there were 33,401 Russian-speakers living in Finland of whom 24,336 were Russian nationals.¹²

The situation of the Sami and the Roma were the focus of international and domestic concern. The most recent example dated from August 2003 when the UN CERD committee

⁹ Ibid.

¹⁰ See Decisions No. 200/4/01 and No. 2949/2/02, both dated 21 October 2003, of the deputy parliamentary ombudsman on phone-tapping, and “Törkeän rikoksen tutkinta johti Lipposen puhelimen urkintaan,” in *Helsingin Sanomat*, 30 November 2003.

¹¹ See *International Covenant on Civil and Political Rights – The fifth periodic report by Finland* (2003), pp. 73-80, at <http://www.formin.finland.fi>.

¹² See the website of Statistics Finland, at <http://www.stat.fi>.

issued its concluding observations on the sixteenth periodic report submitted by Finland under the International Convention on the Elimination of Racial Discrimination.¹³

Sami Minority

First, the CERD was of the opinion that Finland's approach towards the definition of a Sami was too restrictive. The CERD considered that by relying mainly, if not exclusively, on linguistic criteria and the taxes levied on a person's ancestors, Finland was not sufficiently taking into account the criterion of self-identification.¹⁴ There might have been some confusion on this point as Finnish law required, for the purpose of registration for the elections of the Sami Parliament, that a person identified himself as a Sami. This was an additional criterion to the objective ones related to language or the registration of a person's ancestors in certain public registers.

Second, while the CERD noted the efforts undertaken by Finland to solve the issue of Sami land rights, it regretted, once again, that the problem had not been resolved, and that Finland had not yet ratified ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. The CERD urged Finland to find an adequate settlement to the land dispute with the Sami and recommended that it adhere to ILO Convention 169 as soon as possible.¹⁵

A number of attempts have been made during the years to resolve the land ownership problem. The latest attempt to draft legislation was abandoned after strongly conflicting views were received on a draft government bill in the autumn of 2002. In September 2002 the Sami Parliament published the results of its own investigations contesting the state's title to land. The government considered that the Sami Parliament had given up the effort to find a solution based on the protection of an established right to use the lands within the Sami Homeland and had, instead, decided to claim land title. As a response, the government commissioned a new research project that would focus on the history of dwellings, populations and land use in certain areas of Lapland. The research project is being carried out by a group of university researchers and will be completed by the end of 2004.¹⁶

The Sami Parliament was critical of the most recent legislative projects. It repeatedly criticised the government for not trying to secure the status of the Sami as an indigenous people—a status guaranteed by the Finnish Constitution—but having as its primary objective equal treatment of the Sami and other local residents in the northern part of Finland. In the view of the Sami, the latter approach is not able to protect the Sami culture and their traditional means of livelihood, especially reindeer herding.¹⁷

Finally, the Sami Parliament criticized the government's plans to reform the Mining Act on the grounds that the status of the Sami was not taken into account in a manner required by the ILO Convention.¹⁸ The Mining Act has great significance for the Sami as it affects the use of lands within the Sami Homeland and thereby the traditional Sami livelihood.

Roma Minority

¹³ UN Doc. CERD/C/63/CO/5, 22 August 2003. Finland had submitted its periodic report in 2001.

¹⁴ UN Doc. CERD/C/63/CO/5, 22 August 2003, para. 11.

¹⁵ *Ibid.* paras. 11, 12.

¹⁶ See *International Covenant on Civil and Political Rights – The fifth periodic report by Finland* (2003), pp. 8-9.

¹⁷ *Ibid.*, p. 9. See also *Annual Report of the Sami Parliament 2000*, ch. 2.3, and the chapter on Finland in IHF, op.cit.

¹⁸ *Ibid.*

The CERD was concerned about the difficulties faced by Roma in the areas of employment, housing and education, as well as about reported cases of discrimination such as denial of access to public places, restaurants and bars. It recommended that Finland take all necessary measures to promote tolerance and overcome prejudices, negative stereotyping and discrimination against Roma.¹⁹

In addition to these well-known problems, the treatment of Roma prisoners (120-140 persons as of the end of 2003) was on the domestic agenda since it emerged that several of them were being held in isolation allegedly for security reasons. A working group set up to consider the position of Roma prisoners concluded in January 2003 that they were in many respects in a worse position than other prisoners. Of relevance here was that isolation was not resorted to on the basis of the Roma being dangerous, but because of the racist attitudes of other prisoners. As a result, Roma prisoners did not have equal opportunity to participate in prison activities such as education, work and rehabilitation. The working group stated that equal treatment of prisoners did not permit the establishment of separate sections or groups for Roma prisoners, for doing so could be regarded as discrimination on the grounds of origin.²⁰

Intolerance, Xenophobia and Racial Discrimination

At the end of 2002, the number of foreigners residing in Finland was 103,682, which was approximately 2% of the population. The six largest groups of foreigners were Russians (24,336), Estonians (12,428), Swedes (8,037), Somalis (4,537), persons from former Yugoslavia (4,224) and Iraqis (3,420).²¹ In ten years, the number of foreigners almost quadrupled, and Finland has changed from a markedly homogeneous nation to an increasingly multicultural one. This rapid change has caused tensions that have manifested themselves in a proliferation of negative attitudes and discrimination towards immigrants. An indication of this was the election to parliament of a certain candidate of the True Finns Party who publicly endorsed xenophobic views. Instances of violence also occurred.

Finnish legislation complied well with international standards of equality and non-discrimination. Racial discrimination was prohibited by section 6 of the Finnish Constitution and in the Employment Contracts Act, and it was criminalized in the Penal Code.²² Furthermore, on 5 December 2003 the Finnish Parliament adopted an act providing for guarantees of equality (*yhdenvertaisuuslaki*), which became law on 1 February 2004. This Equality Act is the principal instrument for the implementation of two EC directives: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment of persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. The Equality Act is a general law that will cover both direct and indirect discrimination as well as harassment, and it will complement existing legislation. It will prohibit discrimination on a number of grounds in respect of employment and occupation (age, ethnic and national origin, language, religion, conviction, opinion, state of health, disability, sexual orientation or other reason that concerns one's person). Moreover, it will generally cover racial or ethnic discrimination (e.g. in respect of granting social services). As

¹⁹ UN Doc. CERD/C/63/CO/5, 22 August 2003, para. 16. For detailed information on the situation of the Roma minority in Finland see IHF, op.cit., pp. 145-146.

²⁰ Rikosseuraamusviraston julkaisu 2/2003: *Romanien asema ja olosuhteet vankiloissa sekä yhdyskuntaseuraamusten suorittajina. Työryhmän raportti 20.1.2003.*

²¹ Statistics Finland, at <http://www.stat.fi>.

²² For more information on these provisions of the Finnish Penal Code, see IHF, op.cit., pp. 146-147.

a result, the applicable provisions and available remedies will depend on the ground for discrimination and the field of activity in which discrimination occurs.²³

In recent years Finland has also strengthened its institutional mechanisms for the protection and promotion of the status and rights of ethnic minorities and immigrants. Notably, the office of the minority ombudsman was established by an Act in 2001, replacing the office of the ombudsman for aliens. The Equality Act will bring with it the broadening of the mandate of the minority ombudsman. He/she will monitor compliance with the prohibition of racial or ethnic discrimination in areas other than employment and occupation together with a Board against Discrimination (*syrjintälautakunta*) which is yet to be established.

Indeed, it was not the lack of legislative measures but the implementation of existing legislation that was the problem in Finland. Despite the existence of institutional mechanisms, the adoption of an Action Plan to Combat Ethnic Discrimination and Racism in 2001 and other measures, such as research and studies²⁴ the CERD noted with concern that racist and xenophobic attitudes existed among some sectors of the Finnish population, notably the young.²⁵ Moreover, it considered that despite the efforts undertaken by Finland in monitoring the spread of racist, discriminatory and xenophobic material on the Internet, further measures were needed to combat such propaganda.²⁶

After the CERD issued its concluding observations, the first ever report on the living conditions of immigrants in Finland was published in November 2003. The study was based on the experiences of a selection of Russian, Estonian, Somali and Vietnamese immigrants. It inquired into their state of health, education, language skills, employment, housing, social relations and experiences of violence. Its findings established that immigrants suffered from discrimination, depression, unemployment and violence. Somalis reported the most experiences of racist violence and of discrimination while searching for employment. Overall, the wage level among the immigrants interviewed was considerably lower than that of Finns, which was often but not always explained by the low level of education (primarily among Somalis and Vietnamese) and by deficient language skills.²⁷

In December 2003, statistics regarding racist crimes in Finland in 2002 were released. During that time 364 racist crimes were reported to the police (compared to 448 in 2001 and 495 in 2000). The decline in numbers was due either to non-reporting or to a fall in the actual number of offences, or both. Studies of immigrants' experiences in Finland have shown that offences are seldom reported to the police, in the belief that they are of minor importance or that no action would be taken anyway.²⁸ This fact was also noted by the CERD in its concluding observations.²⁹ In 2002, the most common crime was assault (28%), followed by destruction of property, mainly of business premises and cars (16%). Typically, racist crimes occurred in public places in the evening or at night. The victim was often a man and the perpetrator was often a young Finnish man unknown to the victim. Skinheads were suspected

²³ See the Government Bill on the Equality Act (HE 44/2003 vp).

²⁴ See "Positive aspects" in the concluding observations of the CERD Committee (UN Doc. CERD/C/63/CO/5, paras. 7-10).

²⁵ Ibid. para. 13.

²⁶ Ibid. para. 14.

²⁷ Pohjanpää, Paananen & Nieminen, *Maahanmuuttajien elinolot. Venäläisten, virolaisten, somaliaalaisten ja vietnamilaisten elämää Suomessa 2002*, Tilastokeskus. Ca. 1,300 persons participated in the study.

²⁸ See the chapter on Finland in IHF, op.cit. It contains information on the results of the largest ever survey on immigrants' experiences of racism and discrimination in Finland, published in 2002. Non-reporting was also mentioned by immigrants participating in the study referred to in the previous note.

²⁹ UN Doc. CERD/C/63/CO/5 (22 August 2003), para. 17.

in some 20 cases. Most of the victims were Somali nationals (45 crimes), followed by Turkish, Russian, Iranian and Iraqi nationals.³⁰

It was noteworthy that only 26 discrimination cases were reported; among them was a case in which a foreigner was denied entry into a restaurant on apparently racist grounds. This sort of racial discrimination was a common phenomenon in Finland. For instance, in October 2003 the District Court of Helsinki sentenced a doorman to pay a fine because he had refused to let two foreigners of African origin into a night club, allegedly for fear that it would provoke disturbances on the part of certain clients. The court did not accept a risk of disturbances as an acceptable reason for his conduct.³¹

Asylum Seekers

According to preliminary information, approximately 2,800 persons sought asylum in Finland from January to November 2003. The Directorate of Immigration estimated that the figure for the whole year would be slightly over 3,000, which would be less than the 3,443 applicants in 2002. Many asylum seekers had apparently applied for asylum in other European countries before coming to Finland.³² There were considerable delays in the processing of asylum and family reunification applications, which was a serious problem. The average process took almost a year, but in practice many asylum seekers waited even longer for a decision.

The conditions of entry into and departure from Finnish territory were provided for in the Aliens Act (378/1991) which was being reformed in 2003. A new law was deemed necessary as amendments and additions to the old one made it difficult to comprehend. A government bill on a new Aliens Act was submitted to parliament in January 2003, but it lapsed because parliament was not able to discuss it before the March elections. The bill was submitted again to the new parliament in June 2003 with only technical amendments, but it had not been adopted by the end of the year.

The so-called “accelerated procedure” introduced into the Aliens Act in July 2000 was the focus of intense criticism by the human rights community. The procedure was originally created as a reaction to the growing number of Roma asylum seekers from Central and Eastern Europe. According to the government, there were signs that asylum seekers had chosen Finland because of long processing times and good social benefits. Hence, the objective of the amendment was to accelerate the processing of asylum applications in order to reduce the number of ill-founded applications. The government argued that this had indeed happened.³³ The procedure targeted applicants coming from “a safe country of origin” or “a safe country of asylum” or whose application was “manifestly ill-founded.” If the application was rejected and entry refused, it could lead to the immediate expulsion of the asylum seeker.

The ECRI³⁴ and the United Nations High Commissioner for Refugees had previously criticized this procedure, and in 2003 the matter was taken up by the CERD and the Commissioner for Human Rights of the Council of Europe, Alvaro Gil-Robles. The CERD pointed out that although a refusal of entry could be appealed, it could also be enforced within eight days irrespective of an appeal, which would not delay deportation. In the CERD’s

³⁰ Finnish Ministry of Interior, *Poliisin tietoon tullut rasistinen rikollisuus 2002*, Sisäasiainministeriön poliisiosaston julkaisusarja 12/2003.

³¹ *Helsingin Sanomat*, ”Vahtimestarille sakkoja ulkomaalaisten syrjinnästä,” 21 October 2003.

³² *Helsingin Sanomat*, ”Useasta maasta turvapaikkaa hakeneiden määrä kasvanut,” 31 December 2003.

³³ See *International Covenant on Civil and Political Rights – The fifth periodic report by Finland* (2003).

³⁴ See the chapter on Finland in IHF, op.cit.

opinion, such a narrow time limit might not allow for the proper utilization of the appeal procedure, and could result in an irreversible situation even if the decision of the administrative authorities were overturned on appeal. The CERD urged Finland to guarantee legal safeguards for asylum-seekers and to ensure that all its asylum procedures conformed to its international obligations.³⁵ The comments of the European Commissioner for Human Rights were critical as well, but more detailed. In essence, he recommended that Finland extend the accelerated procedure time frames regarding decision-making and execution of negative decisions; not execute refusals of entry before the time limit for appeal is exhausted; and guarantee the delaying effect of any appeal made, unless the court handling the appeal decides otherwise.³⁶ Since approximately 60% of asylum applications were processed under the accelerated procedure in 2002, its future was far from being a marginal question.

Deportation

CPT delegation found that in October 2002 members of a family (of whom two were minors) had been forcefully injected with sedating and neuroleptic medication without proper examination by a doctor in the context of deportation by plane. The delegation stated that, “practices of this kind were totally unacceptable” and urged the Finnish authorities to urgently draw up “detailed instructions on the use of force and/or means of restraint authorized in the context of deportation.”³⁷ The Council of Europe Commissioner for Human Rights, who happened to be visiting Finland when the news broke, strongly condemned such practice.³⁸

The incident led to two separate investigations. The Ministry of the Interior concluded that the policemen in question had not acted against orders but had, in fact, been in a difficult situation in which there had been both a right and a justifiable reason to use coercive measures (in this case fetters, handcuffs and use of force).³⁹ The parliamentary ombudsman was still investigating the actions of the police on her own initiative.

The National Board of Medicolegal Affairs (TEO), disciplined both the doctor and the nurse by issuing them a written warning stating that they had had no right under Finnish law to give medication to the members of the deported family against their will, and that the doctor should have personally examined all family members. The nurse said that she had injected the children (a girl aged 11 and a boy aged 12) without any medication in order to obtain the psychological effect, but this was not considered relevant as an injection automatically equals interference with personal integrity.⁴⁰

As things stood at the end of 2003, there were no specific legal rules concerning the execution of deportation orders. Nevertheless, according to Finnish law, the police could not order or give any medication to persons who were being deported. Only a doctor could do so and injections had to be administered by a nurse with authorization from a doctor who had personally examined the persons.

It remained to be seen whether this incident will lead to reforms in the instructions and practices concerning deportation, in particular as it appears that other types of

³⁵ UN Doc. CERD/C/63/CO/5, 22 August 2003, para. 15.

³⁶ Opinion of the Commissioner for Human Rights, Mr Alvaro Gil-Robles, on certain aspects of the proposal by the Government of Finland for a new Aliens Act (CommDH(2003)13, 17 October 2003).

³⁷ CPT, *op.cit.*

³⁸ Ministry for Foreign Affairs, news release, 27 October 2003, at <http://www.formin.finland.fi>.

³⁹ Ministry of Interior, ”Sisäasiainministeriön selvitys erään perheen käännättämisestä valmistunut: Poliisimiehet toimivat virkavelvollisuuksiensa mukaisesti,” 21 November 2003, at <http://www.poliisi.fi>.

⁴⁰ TEO, ”Terveystieteiden tutkimuskeskuksen päätös 6/2003 koskien ammattihenkilöiden menettelyä ukrainalaisperheen maasta poistamisen yhteydessä,” 3 December 2003, at <http://www.teo.fi>.

questionable deportations took place occasionally, such as deportation of women who were heavily pregnant, deportation of families in two ‘parts’, and deportation of young immigrants to countries in which they had no ties after they had been convicted of a crime in Finland.⁴¹ In any case, it was clear that deportations should, in the future, be carried out in a manner that respects the dignity of asylum seekers and the principle of proportionality even in cases where the law allows immediate deportation or the use of coercive measures.

In May 2003, the UN Committee against Torture (CAT) issued its views on an individual communication against Finland. The petitioner was a Sri Lankan citizen residing in Finland and awaiting deportation to Sri Lanka. He claimed that his forced return would constitute a violation of article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in that there were substantial grounds to believe that he would be subjected to torture if returned. The CAT stated that for article 3 to apply the petitioner must face a foreseeable and real risk of being subjected to torture, and that this danger must be personal and present. The CAT concluded that the applicant had not established the existence of a personal and real risk.⁴²

Women’s Rights

Direct, indirect and structural discrimination continued to occur in the labor market. Women were also likely to be affected by a form of discrimination in which they are discriminated against on two or more grounds simultaneously, such as sex, age and pregnancy. As a result, women were severely underrepresented in upper management, among senior government officials and among university professors. Professional segregation was common in the Finnish labor market, and typically female jobs tended to receive lower respect and lower salaries. In general, women were paid 20% less than men. Women also engaged in part-time work more often than men (66.1% of part-time workers were female) and their employment contracts were more often temporary (women 19.5%; men 12.5%).⁴³

Politically, the situation was better. The law required a minimum of 40% membership from each sex on all state committees, commissions, and appointed municipal bodies. In 2000, Finland’s first female president was elected by direct popular vote. The number of women in parliament remained relatively high at 37% after the March 2003 elections. Nevertheless, of the eight parties represented in parliament only the Left Alliance was led by a woman. As for the government, eight out of eighteen ministers were female, but the most prestigious ministerial posts were held by men.

In education, the majority of students in upper secondary school and at university were women,⁴⁴ which occasionally gave rise to proposals suggesting changes to better suit the needs of boys. No concrete measures had been taken by the end of 2003.

Section 6 of the Constitution prohibited discrimination on the grounds of sex. The Act on Equality between Men and Women, in force since 1 January 1987, contained further provisions for equality between the sexes with respect to remuneration, and work conditions. This Act was being revised.

⁴¹ See *Helsingin Sanomat*, ”Komitea moittii ankarasti Suomea maasta poistettujen huumaamisesta,” 27 October 2003; *Helsingin Sanomat*, ”Turvapaikkaa hakenut lapsiperhe yritettiin käännättää kahdessa erässä,” 7 November 2003; and a documentary ”Karkoitettut” (”Deported”), aired by YLE 1 (Finnish public service broadcasting company) on 19 October 2003.

⁴² *U. S. v. Finland, Communication No. 197/2002*, UN Doc. CAT/C/30/D/197/2002 (15 May 2003).

⁴³ The figures are taken from Statistics Finland, at http://www.stat.fi/tk/he/tasaarvo_tyo.html and http://www.stat.fi/tk/he/tasaarvo_tulot.html.

⁴⁴ Statistics Finland, at http://www.stat.fi/tk/he/tasaarvo_koulutus.html.

From the point of view of women's rights, it was significant that Finnish authorities were drafting Penal Code provisions related to trafficking in persons, based on the Palermo Convention and its Protocol.⁴⁵ Legislation in force in 2003 did not expressly cover such trafficking even if many acts that were generally related to it were punishable offences. One controversial aspect of this legislative project was whether or not to criminalize the purchase of sexual services. At the end of 2003, the outcome was still unclear.

Though Finnish law criminalized rape, marital rape and domestic abuse, violence against women, in particular domestic violence, continued to be a serious problem in Finland. According to a 1997 study, 40% of Finnish women had suffered physical or sexual violence after having reached the age of fifteen, and every fifth woman lived in a relationship where such violence or threats of it occurred.⁴⁶ There was no indication that the situation had improved, but the authorities started to take active measures to combat this problem. Notably, a campaign against violence against women was undertaken by the National Research and Development Centre for Welfare and Health (Stakes) in 1998-2002. On the legislative side, a government bill recently submitted to parliament proposed a change to the Penal Code that would require the prosecution of abusers even in cases where victims did not want to press charges. The government also proposed that the act on restraining orders be broadened by introducing the possibility to impose such an order upon a violent family member.

Persons with Disabilities

A rights-based approach to disability has been gaining strength in Finland since the enactment in 1987 of a law on services offered to the disabled. According to this approach, human rights are universal, so they belong to every human being, including persons with disabilities. One should not see the disabled as a problem: the state and society should accommodate the disabled rather than the disabled having to give up their dignity and rights.

The rights-based approach culminated in Finland in 1995 when disability became prohibited as a grounds for discrimination on the constitutional level in connection with the so-called fundamental rights reform of the Finnish Constitution. The prohibition covered both direct and indirect discrimination and required both formal (*de jure*) and substantial (*de facto*) equality. This development was very positive, also as compared internationally.⁴⁷ In addition, the Constitution expressly mentioned disability in two sections dealing with social rights. Section 17 on educational rights prescribed that, "the rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act." Unfortunately, no such act had been passed by the end of 2003. Section 19 guaranteed the right to social security in the event of disability.

The most recent legislative development benefiting persons with disabilities was the adoption by parliament in December 2003 of the Equality Act (see above). Disability was included in the list of prohibited grounds of discrimination in the context of employment and occupation, and the act established the goal of reasonable accommodation of disabled persons as a genuine obligation of employers. Certain other obligations of employers vis-à-vis disabled employees were also contained in specific legislation in the area of employment.

⁴⁵ For information on prostitution and trafficking in women in Finland, see IHF, op.cit., p. 149.

⁴⁶ Markku Heiskanen, & Minna Piispa, *Usko, toivo, harkkaus. Kyselytutkimus miesten naisille tekemästä väkivallasta*. Tilastokeskus, Tasa-arvoasiain neuvottelukunta, 1998.

⁴⁷ See Institute for Human Rights of Åbo Akademi, *Vammaisten henkilöiden oikeudet Suomessa*, 2003. Authors: Jukka Kumpuvuori & Marika Högbäck, supervisors: Catarina Krause, Martin Scheinin, at <http://www.abo.fi/institut/imr/>.

Even though Finland was characterized as an institutional welfare state with a relatively good human rights record, various physical, social and structural obstacles limited the full participation in Finnish society of persons with disabilities. Instances of discrimination on the ground of disability—either in its direct or indirect form—occurred daily in areas such as education, housing, freedom of movement, and the right to work. Persons with disabilities experienced mostly institutional discrimination, that is, discrimination resulting from societal structures and mechanisms that pushed them to the margins, leaving them without sufficient services or support, and subjected them to the control of authorities. For example, a significant percentage of the disabled were unemployed, partly because of discrimination, and thus depended on welfare benefits. A typical situation was also lack of access to public buildings or public transport, which was an obstacle to equal treatment and restricted the constitutionally guaranteed freedom of movement.⁴⁸

As regarded people with severe disabilities, Finland was criticized for putting too much emphasis on placing them in institutions instead of prioritizing the building of appropriate housing units and securing appropriate support services.⁴⁹

Despite the existence of domestic laws protecting the disabled in Finland, it was still up to the individuals themselves, or to their relatives, to be active by claiming their rights (provided they were aware of them which was too seldom the case). A recent research report identified lack of implementation of existing legislation as the biggest problem with respect to the rights of the disabled in Finland. Obtaining services or support to which one was legally entitled was next to impossible.⁵⁰ No institution in Finland systematically monitored and promoted the implementation of the rights of persons with disabilities. One source of the implementation problem was municipal self-government, which created varied levels of support across Finland. In other words, persons with disabilities were treated unequally on the basis of their place of residence.⁵¹

Women with Disabilities

Women with disabilities were an invisible group in Finnish society. There was little research or statistical information on them and the conditions in which they lived, their employment or their education. The focus was always on the disabled as a group, even though women constituted approximately 60% of them. Also, women with disabilities were largely ignored by NGOs working in the field of disability and by women's organizations. There is clearly a need to make these women visible by engaging them in advocacy, and by integrating them into research and into policy-making concerning both women and disability.

Women with disabilities suffered from multiple forms of discrimination: they faced discrimination because of their gender and because of their disability. Older women with disabilities formed a special group in need of particular attention, since they faced discrimination also because of their age. Furthermore, it was brought forward that women with disabilities were particularly vulnerable to violence and needed more support in their efforts to report offences to the police and to cope with the harmful effects of abuse.⁵²

⁴⁸ See *ibid.* and the decision of the Deputy Chancellor of Justice No. 912/1/01, 22 January 2003, on the provision of railway services for persons with disabilities (“Rautateiden kuljetuspalvelut liikuntaesteisten kannalta”).

⁴⁹ See, for example, letters to the editor published in *Helsingin Sanomat* on 29 October 2003 and 11 November 2003.

⁵⁰ See Institute for Human Rights of Åbo Akademi, *Vammaisten henkilöiden oikeudet Suomessa*, 2003.

⁵¹ See *Helsingin Sanomat*, “Heikoimmatkin pitää hoitaa,” 28 October 2003, and decision of the Deputy Parliamentary Ombudsman, no. 2576/4/01, 25 February 2003.

⁵² National Council on Disability, ”Valtakunnallisen vammaisneuvoston lausunto YK:n kaikkinaisten naisten syrjinnän poistamista koskevan yleissopimuksen toimeenpanoa koskevaan Suomen viidenteen määräaikaiskertomukseen,” 9 September 2003, at <http://www.vane.to/paatokset.html>; and Statement of

the Finnish Association of People with Mobility Disabilities (Suomen invalidiliitto ry) regarding the fifth periodic report by Finland on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women , 15 September 2003, at <http://www.invalidiliitto.fi/tiedotus>.