

## IHF FOCUS: right to a fair trial; police misconduct and inhuman or degrading treatment; ethnic minorities (Sami, Roma); asylum seekers; trafficking in human beings.

Finland continued to experience difficulties with regard to the guarantee of provisions under the right to a fair trial. In 2005, the European Court of Human Rights (ECtHR) found Finland to be in violation of article 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in six cases.

While authorities were seen to be able to respond more effectively than in previous years to problems involving ethnic and national minorities and racially motivated violent incidents, such issues remained a cause for concern. The Sami minority in the North of the country continued to face persistent hostility from the majority population, especially with regard to the conditions for reindeer herding. The Roma minority also faced hostility and discrimination on a daily basis.

While Finland was a transit country for trafficking, new efforts were made by the authorities, and some results in combating trafficking in human beings were achieved during the year.

### Police Misconduct and Inhuman and Degrading Treatment

#### *Police Misconduct*

Despite a relatively positive overall picture about police operation, there were reports of police bribery, failure to respond adequately to reported crimes and a routine practice of taking intoxicated patients with apparent mental problems into police custody.

- ◆ The deputy chancellor of justice condemned the routine practice carried out by the health care authorities and police in the city of Vantaa of transferring intoxicated patients suffering from mental health problems from hospital emergency rooms to police premises to sober up. According to the deputy chancellor the practise did not

have any legal basis. In one case, it was reported that a patient had come to the hospital at night seeking treatment for depression. While he had allegedly displayed no tendency toward violent behaviour, the following morning he had been woken up by a nurse and two police officers, who took him to a police station and later on during the same day back to the hospital by ambulance. During the investigations into the case it was revealed that the said conduct was based on a daily routine.<sup>1</sup>

- ◆ In June the deputy parliamentary ombudsman decided on a case concerning two police officers who had offered money to an injured party to stop the latter from filing a complaint against them. The police officers had signed a contract with the injured party giving the latter EUR 170 each in exchange for him dropping all possible claims against them. The injured party, however, decided later to petition to the ombudsman. In his decision<sup>2</sup> the deputy parliamentary ombudsman stated that such conduct was detrimental to the credibility of the police.

- ◆ In August a pizzeria owned and run by an immigrant in the city of Kajaani, was raided by hooligans who destroyed the interior of the pizzeria and assaulted its staff. During the ensuing investigation, the district police commander found that the local police had failed to act fast enough to the alarm that was raised. The alarm was not entered into the alarm system and not even on the following day was any unit sent to investigate.<sup>3</sup>

#### *Inhuman or Degrading Treatment*

A ECtHR judgment against Finland in a case of an asylum seeker attracted attention:

- ◆ In July, the European Court of Human Rights (ECtHR) ruled on case *N. v. Finland*<sup>4</sup>

\* Based on information from the Finnish Helsinki Committee.

finding that removal of the applicant to the Democratic Republic of Congo (DRC) at the present time would amount to a violation of article 3 (prohibition of inhuman or degrading treatment) of the ECHR. The case went back to 2001 when the Directorate of Immigration had ordered the applicant's deportation to the DRC, on the grounds that his submissions were inconsistent, that he had failed to prove his identity and that, if deported, he would not face a real risk of torture, inhuman or degrading treatment. Mr. N. appealed unsuccessfully but was allowed to stay in Finland pending a decision by the ECtHR. The court noted that despite the fact that the applicant had left the DRC eight years earlier, the current DRC authorities might still have an interest in Mr. N. due to his past activities as an infiltrator and informant in the former government's special protection force, reporting directly to very senior-ranking officers. The court also pointed out that the publicity surrounding the applicant's case in Finland might endanger him.

### Right to a Fair Trial

Six ECtHR rulings concerning the right to a fair trial (article 6.1 ECHR) revealed that Finland continued to experience difficulties in organizing proper legal proceedings. Three of the cases concerned excessively long court proceedings,<sup>5</sup> two failure of courts to inform one party about material submitted by the other party (thereby questioning procedural fairness),<sup>6</sup> and one regarding the right to examine witnesses (article 6.1 and 3(d)).<sup>7</sup>

◆ In *T.K. and S.E. v. Finland*<sup>8</sup> the ECtHR found that the proceedings that had lasted five years and eight months with regard to the first applicant, and eight years and eight months with regard to the second applicant, were excessively long. The applicants had been charged with offenses as dishonest debtors, but the charges were subsequently dropped.

◆ The case *T. and Others v. Finland*,<sup>9</sup> involved an alleged case of child abuse followed by the child S. being taken into public care by Helsinki city authorities. The applicants initiated proceedings against the city of Helsinki and eight of its officials who had taken part in implementing public care examinations and treatment of their child. The applicants accused the officials as well as S.'s therapist, among others, of having abused their public office by using inappropriate investigation methods and in drawing up false conclusions. S. had been taken into care after it was alleged that S. had been sexually abused by T., one of the applicants, who was later acquitted of incest. The proceedings before the district court were adjourned several times pending the results of the medico-legal authority's opinion, in total for approximately eight years and five months. The Supreme Court refused the applicants leave to appeal in 2002. The ECtHR found the proceedings excessively long and that they fell short of the "reasonable time" requirement. The court particularly pointed to the fact that the medico-legal authority needed almost three years to obtain different opinions to formulate its report, which largely resulted in the delays in the district court proceedings.

◆ In *M.S. v. Finland*<sup>10</sup> the applicant was convicted of aggravated sexual assault on his then 15-year-old step-daughter. The applicant's then wife later changed her position to support the applicant and retracted her previous submission. The applicant complained that he was not given an opportunity to respond to a letter, which had been submitted by his ex-wife without his knowledge to the court of appeal. The ECtHR held unanimously that there had been a violation of article 6(1) of the ECHR as the applicant had not been informed about the letter and had not been given the opportunity to comment on it.

## National and Ethnic Minorities

### *Sami Minority*

In northern Lapland, disputes related to logging and its effects on the indigenous Sami minority and their culture continued.

In 2005, the state forestry administration extended further loggings, including to areas where reindeer were held during the fall. The Sami herdsmen considered that their rights under article 27 of the International Covenant on Civil and Political Rights (ICCPR, right to enjoy their own culture) had been violated as the loggings had become so intensive that they threatened the Samis' traditional means of earning a living by reindeer herding. They complained to the UN Human Rights Committee, which issued an interim order in November 2005 to the Finnish authorities to stop the loggings until it had the possibility to investigate whether the threat was real. The state forestry administration consequently halted the loggings temporarily.<sup>11</sup>

In April, the Human Rights Committee considered case *J. and E. Länsman and the Muotkatunturi Herdsmen's Committee v. Finland*,<sup>12</sup> regarding an alleged violation of the rights of Sami as indigenous Sami reindeer herdsmen under article 27 of the ICCPR. The applicants had complained that since the 1980s, some 1,600 hectares of their herdsmen's committee grazing area in Paadarskaidi had been logged, destroying some 40% of tree lichen needed by reindeer in the winter. The ongoing logging in the area, they claimed, threatened the economic sustainability of Sami reindeer husbandry. The UN committee concluded that it was undisputed that the authors of the complaint had the right to enjoy their own culture of which reindeer husbandry was an essential element. It noted *inter alia* that while economic activities could fall within the ambit of article 27 if they formed an essential element of the culture of an ethnic community, in the *Länsman* case reindeer husbandry provided little

economic profit and thus could not be viewed as an "essential element." It further noted that although the number of reindeer had decreased as a result of the logging it nevertheless remained relatively high and considered that it was not in the position to change its earlier assessment that the situation did not amount to a violation of article 27.

The case was a follow-up complaint to an earlier complaint by the same individuals, in which the committee had concluded that certain limited logging projects within the area used by the herdsmen's committee, while having a negative effect on reindeer herding, did not amount to a "denial" of the authors' rights within the meaning of article 27. In *J. and E. Länsman and the Muotkatunturi Herdsmen's Committee v. Finland* the applicants had requested the UN committee to revisit the case as the adverse consequences of the logging had proved to be more serious than known at the time of the previous complaints.

### *Roma*

The ombudsman for minorities considered the situation of the Roma minority the most difficult human rights issue in the country. The problems of Roma extended to all areas of daily life, which easily resulted in serious marginalization, often extending to *de facto* exclusion from Finnish society.<sup>13</sup> One of the central problems was denial of services to Roma:

◆ In April 2004 three Romani men were refused service in a restaurant in Helsinki. In the ensuing trial on ethnic discrimination, the District Court of Helsinki ruled in favor of the plaintiffs, awarded them compensation and fined the defendants.<sup>14</sup> The defendants appealed the sentence – the case was pending in early January 2006.<sup>15</sup>

Statistically, problems regarding housing for Roma remained the most frequent administrative complaints lodged by Romani clients, with an increase of more

than 50% cases in 2005 (from 31 in 2004 to 70 in 2005). According to the minority ombudsman, difficulties faced by Roma in access to housing were on the rise throughout the country.<sup>16</sup>

◆ During the year, the minority ombudsman held extensive negotiations with the municipal authorities of Oulu in order to resolve the continuous problems faced by Romani inhabitants. At the time of writing, the office of the ombudsman was preparing the first complaint for the Board against Discrimination ( *syrjintälautakunta*) against one municipality in relation to housing issues involving Romani citizens.<sup>17</sup>

Complaints were also made by the minority ombudsman against the authorities of the city of Lahti regarding omissions concerning the housing of Roma. Since it was almost impossible for Roma to gain access to rented apartments in the private sector, municipally rented apartments remained their only housing possibility. A handicapped Rom had been evicted by the authorities, and several Roma had faced difficulties in renting an apartment from the city.

In 2002 the Criminal Sanctions Agency (*Rikosseuraamusvirasto*) established a working group to conduct a survey on the situation of prisoners of Romani origin in penitentiaries. The survey found that in certain prisons Romani inmates faced practices that could be attributed to ethnic discrimination.<sup>18</sup>

Despite the conclusions of the survey and the subsequent recommendations made by the working group, the Criminal Sanctions Agency had failed to take any action by the end of 2005. The issue was also raised by the UN Committee Against Torture, which requested further information from the authorities on the issue and on the measures taken to improve the situation.<sup>19</sup>

During the year, the Advisory Board on Romani Affairs (*Romaniasian neuvottelulautakunta*) and the Romani education

unit within the National Board of Education (*Opetushallituksen alainen Romaniväestön koulutusyksikkö*) prepared a common motion requiring implementation of the initial recommendations of the working group. The motion was addressed to the Criminal Sanctions Agency, to the Ministry of Justice as well as to the Ministry of Interior and delivered in January 2006.<sup>20</sup>

### Asylum Seekers

The deputy ombudsman criticized the Directorate of Immigration for delaying the decision-making process in an asylum case, which began in 2002. A decision to refuse asylum to a family by the directorate was appealed to the Helsinki Administrative Court, which considered that the applicants fulfilled the criteria for refugee status and were entitled asylum in Finland. The 2002 decision of the Directorate of Immigration was nullified and the application sent back to the Directorate of Immigration for fresh consideration. The latter requested further information and adjourned consideration of the application.

The deputy ombudsman considered that the Directorate of Immigration did not have the authority to reject the decision of the administrative court arguing that in a rule of law state the authorities are obliged to follow the court decisions, which have legal force regardless of whether the authorities consider these decisions to be correct.<sup>21</sup>

### Trafficking in Human Beings

In August 2004, new criminal law provisions on trafficking in human beings entered into force, making trafficking of persons for the purposes of sexual exploitation, forced labour, or for the removal of body organs for commercial gain, criminal offences. An inter-ministerial working group was established to prepare a national action plan against trafficking in human beings, which was published in March 2005.

The national action plan was the first ever proposal for comprehensive measures to combat human trafficking. It includes concrete measures to identify victims, prevent trafficking, assist victims, prosecute perpetrators, and to increase public awareness of trafficking.<sup>22</sup>

In October, the Ministry of the Interior prepared a complementary plan on the implementation of the action plan, including training on victim identification for all interior ministry officials dealing with trafficking issues; efforts to identify human trafficking in countries of origin through increased cooperation between border control authorities and Finnish representations abroad; and making awareness raising activities part of civilian crisis management training.<sup>23</sup> The plan also emphasized the importance of raising awareness among aliens about their rights and obligations. Amendments to the Aliens Act were also proposed to help victims by making it possible to grant them temporary residence permits and thereby lower the threshold for them to come forward with information on trafficking. The plan also envisaged enhancing police efforts in prevention, monitoring and uncovering trafficking and phenomena around it.

A wide range of governmental and non-governmental actors were invited to comment on the action plan. While it was commended as the first step in the right direction, civil rights organizations stressed that proper identification methods, as well as common understanding of the phenomenon, including proper statistics and studies would be crucial to protect and assist victims and prosecute traffickers. In addition, they regarded the measures set out by the plan for the reduction of "demand" for trafficked people and for the protection of the rights of trafficked children as insufficient.

In December, a government proposal on criminalizing the buying of sexual serv-

ices was submitted to parliament. Intended to be another step toward fighting trafficking in human beings, the proposal aimed at decreasing prostitution and thereby promoting sexual autonomy, social equality and equality between the sexes, as well as at weakening the preconditions for crimes in human trafficking and pandering.<sup>24</sup> NGOs, however, remained divided on the effectiveness of such a law on trafficking, and its wider impact.

It appeared that the whole range effects of trafficking was only gradually coming into the open and awareness of both the authorities and the public. While there were indications that trafficking of women and minors for the provision of sexual services in Finland was taking place, there were increasing signs that a wider problem lay in the use of Finland as a transit country.

The scale of the issue became evident in March when a group of 48 women and four men originating from Georgia traveling in a charter bus were stopped on the Russian-Finnish border and interviewed on suspicion of trafficking. The women were returned to Georgia and the men released due to lack of evidence. The group had been intending to continue its journey through Sweden to Italy, claiming to be on a shopping trip. The suspicion of trafficking was based on the fact that the women had very little money, their passports were being held by the men, and not all of the women were aware of their travel route. The suspicions were enhanced by the fact that Greek officials had noticed in similar cases that numerous tourist buses that had arrived via Finland and other EU states had returned more or less empty to Georgia through Greece and Turkey. The issue of the legality of the expulsion was taken to an administrative court. At the time of writing, the parliamentary ombudsman was investigating whether the treatment of the women by the border guards was conducted in an appropriate way.<sup>25</sup>

While many criminal cases in 2005 included several features of trafficking cases, by the end of 2005, no cases had been prosecuted or sentenced on basis of the 2004 Law on Trafficking in Human Beings.<sup>26</sup> Several cases were, however, tried under other provisions, such as pandering and arrangement of illegal immigration.

◆ In the spring two men received effective prison sentences and one woman a suspended sentence for pandering and aggravated forms of pandering in the city of Joensuu. In the case at issue pandering had continued for several years (2001-2004) through regular publication of advertisements in local newspapers, a telephone center operated in Helsinki and through contact persons in Estonia and the Russian Federation. Up to 10,000 acts of buying of sexual services were estimated to have taken place, which yielded profits worth EUR 500,000.<sup>27</sup>

◆ In August, two South Korean men were sentenced to prison terms for “aggravated arrangement of illegal immigration.”<sup>28</sup> The men had assisted or were intending to assist illegal immigration of several Chinese women into Finland, and further on to Italy. According to the prosecutor, the case showed several features of trafficking: even though the women had left their country voluntarily, they were fully dependent on the organizers of their travel, and they were due to pay over EUR 10,000 per person for the journey once in Italy.

◆ In December, a Finnish man was found guilty of over 160 cases of sexual offences, including aggravated sexual abuse of children and adolescents, and buying sexual services from minors in Thailand and was sentenced to 11 years’ imprisonment.<sup>29</sup>

## Endnotes

<sup>1</sup> Decision of the Deputy Chancellor of Justice on 17 March 2005, dnro 92/1/03.

<sup>2</sup> 2 June 2005, dnro. 295/1/04

<sup>3</sup> *Helsingin Sanomat*, 25 August 2005, *Iltalehti*, 3 August 2005.

<sup>4</sup> Application no. 38885/02, ECHR judgment, 26 July 2005.

<sup>5</sup> In addition to the two cases cited below, see *Ruoho v. Finland* (application no. 66899/01).

<sup>6</sup> In addition to the case cited below, see also *Lomaseita Oy and Others v. Finland* (application no. 45029/98).

<sup>7</sup> *Mild and Virtanen v. Finland* (application nos 39481/98 and 40227/98)

<sup>8</sup> Application no. 38581/97

<sup>9</sup> Application no. 27744/95

<sup>10</sup> Application no. 46601/99

<sup>11</sup> See *Helsingin Sanomat*, 23 November 2005, and 9, 12 and 17 December 2005.

<sup>12</sup> *Jouni Länsman, Eino Länsman and the Muotkatunturi Herdsmen’s Committee v. Finland*. Communication No. 1023/2001. Views adopted by the Human Rights Committee on 15 April 2005.

<sup>13</sup> Interview in *Viikkolehti*, 30 December 2005.

<sup>14</sup> Helsingin Käräjäoikeus, osasto 7/10, Tuomiolauselma, dnro R 05/3596.

<sup>15</sup> Helsingin Hovioikeus, dnro R05/3260.

<sup>16</sup> *Helsingin Sanomat*, fall 2005.

- <sup>17</sup> Phone conversations and e-mail exchange between the Finnish Helsinki Committee and the officials of the Office of the Ombudsman for Minorities in December 2005 and January 2006.
- <sup>18</sup> *Romanien asema ja olosuhteet vankiloissa sekä yhdyskuntaseuraamusten suorittajina. Työryhmän raportti 20.1.2003.* (Rikosseuraamusviraston monisteita 2/2003).
- <sup>19</sup> For details, see *Finland. 11/02/2005. CAT/C/33/L/FIN.* (List of issues)
- <sup>20</sup> Information from the acting secretary general of the Advisory Board of the Romany Affairs and the assistant of Minna Lintonen to the Finnish Helsinki Committee, 12 January 2006.
- <sup>21</sup> Decision of the Deputy Ombudsman on 20 December 2005, dnro 1434/4/04.
- <sup>22</sup> Ministry for Foreign Affairs, press release 254/2005, 25 August 2005.
- <sup>23</sup> Ministry of the Interior, press release, 28 October 2005.
- <sup>24</sup> Ministry of Justice, press release, 20 December 2005, at [www.om.fi/34090.htm](http://www.om.fi/34090.htm).
- <sup>25</sup> *Helsingin Sanomat*, 5 April 2005.
- <sup>26</sup> In Latvia, however, a Finnish man was taken to court for trafficking dozens of women, including minors, to Finland. He is suspected to have been working as part of a criminal group.
- <sup>27</sup> *Helsingin Sanomat*, 10 March 2005; Finnish News Agency, 18 May 2005.
- <sup>28</sup> *Helsingin Sanomat*, 12 August 2005.
- <sup>29</sup> *Helsingin Sanomat*, 3 December 2005.