

Strasbourg, 29 March 2006

CommDH(2006)9

Original version

FOLLOW-UP REPORT ON FINLAND (2001 – 2005)

Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights

For the attention of the Committee of Ministers and the Parliamentary Assembly

CONTENTS

Introduction

1 Non-discrimination and action against racism and xenophobia

2 Indigenous and national minorities

2.1 Sámi

2.2 Roma

2.3 Russian-speaking population

3 Asylum-seekers

4 Conscientious objectors

5 Rights of the child

6 Responses to violence against women

7 Responses to trafficking in human beings

Introduction

1. The Commissioner for Human Rights, Mr Alvaro Gil-Robles, visited Finland on 4-7 June 2001 on the invitation of the Finnish Government. In his report of the visit¹, the Commissioner identified a number of concerns regarding law and practice in Finland with respect to human rights and made recommendations in order to assist the Finnish authorities in their pursuit of remedying the shortcomings. The issues addressed by the Commissioner included discrimination and xenophobia, the situation of national minorities, asylum-seekers and conscientious objectors, and the rights of the child. In October 2003, following a request by the Commissioner, the Finnish Government provided information on progress made in implementing the Commissioner's recommendations in these fields until that time. Information was also received from several non-governmental organisations.

2. A follow-up visit to assess further progress made was carried out by members of the Commissioner's Office² on 29-31 August 2005. The follow-up visit also gathered information on two topics not directly covered by the Commissioner's original visit, namely, responses to violence against women as well as trafficking in human beings. The purpose of this report is to assess the extent the Finnish authorities have implemented the recommendations made by the Commissioner in his 2001 report as well as to take note of the Finnish responses to violence against women and trafficking in human beings.

3. During the follow-up visit contacts were made – following the order of the visit – with the Ministry for Foreign Affairs (Unit for Human Rights Courts and Conventions, Unit for Human Rights Policy), Office of the Minority Ombudsman, National Discrimination Tribunal, Advisory Board for Ethnic Relations, Chancellor of Justice, Swedish Assembly of Finland, Office of the Ombudsman for Equality, Ministry of the Interior (Immigration Department, Police Department, Border Guards Department, International Security Affairs Unit), Directorate of Immigration, Office of the Parliamentary Ombudsman, Ministry of Justice (Law Drafting Department, Department of Judicial Administration, Department of Criminal Policy, National Council for Crime Prevention, Administrative Unit), Advisory Board on Romani Affairs, Ministry of Social Affairs and Health (Department for Family and Social Affairs, Centre for Welfare and Health, International Affairs Unit), and informal Group on Human Rights of the Parliament (*Eduskunta*). The Office also visited the Helsinki Shelter for Women and met with representatives of non-governmental organisations working in the field of human rights. The members of the Commissioner's Office would like to express their gratitude for the assistance and openness of the representatives of the Finnish authorities and civil society they met during the visit and of those they had contacts with before and after the visit.

1 Non-discrimination and action against racism and xenophobia

4. In his report, the Commissioner called for the speedy implementation of the Government action plan against ethnic discrimination and racism (2001-2003) in order to further equality and ethnic diversity. The Commissioner also expressed a concern about a possible increase in acts of racially motivated violence in Finland in the late 1990s while taking note of plans to establish the institution of an anti-discrimination ombudsman.

Development of the situation and measures taken

5. Since the Commissioner's visit to Finland in 2001, the institutional framework and national legislation in the field of non-discrimination and fight against racism have been strengthened. Many of these developments have been the result of the implementation of the Government action plan against ethnic discrimination and racism and EU anti-discrimination directives. Finland has also ratified Protocol 12 to the European Convention on Human Rights (ECHR) on the general prohibition of discrimination.

6. A new Non-Discrimination Act (21/2004) entered into force in February 2004 with the exception of the autonomous region of Åland Islands. The Act prohibits discrimination on the grounds of age, ethnic or national origin, nationality, language, religion, belief, opinion, health status, disability, sexual orientation or any other reason related to the person.³ It prohibits both direct and indirect discrimination in the fields of employment, education and trade union activities. Furthermore, with reference to ethnic origin, it also covers social and health services, social security, conscription and housing. The Act obliges the authorities to actively promote equality and authorises affirmative action as long as it remains proportional and serves to bring about effective equality. As regards discrimination cases brought before the courts, the Act contains the principle of reversed burden of proof in civil cases, i.e. the defendant has to demonstrate that discrimination has not taken place. The courts can award a compensation of up to € 15 000 to the victim of discrimination payable by the discriminator. In exceptional cases, the upper limit of the compensation may also be exceeded. According to non-governmental organisations, a significant proportion of previous court cases involving acts of discrimination had failed due to the difficulties faced by the claimant in proving that discrimination had indeed taken place.

7. The institution of the Ombudsman for Minorities was established in September 2001 with a mandate, strengthened by the Non-Discrimination Act, to advance the status and legal protection of ethnic minorities and foreigners as well as equality, non-discrimination and good ethnic relations in Finland. The Minority Ombudsman is an independent authority attached to the Ministry of Labour empowered to issue recommendations, instructions and advice while having an extensive right to access information. He can act on complaints or requests addressed to him as well as on his own initiative. In exceptional cases, the Ombudsman can also provide legal assistance while he can refer cases to the National Discrimination Tribunal (see below). The Minority Ombudsman currently receives around 2000 enquiries per year. It should be noted, however, that his field of competence is limited to ethnic discrimination alone and does not directly cover discrimination based on other grounds. There are other non-judicial institutions empowered to address different forms of discrimination such as the Parliamentary Ombudsman, Ombudsman for Equality and, in working life, occupational safety and health authorities. The Chancellor of Justice may also be involved in certain cases.

8. The Non-Discrimination Act of 2004 also established the National Discrimination Tribunal, a permanent and independent body promoting legal protection whose members are appointed by the Government for four-year terms of office. Under the Non-Discrimination Act, the Tribunal is competent to examine complaints solely relating to ethnic discrimination insofar as they do not touch on certain employment and service relationships. A decision of the Tribunal has the same legal effect as a judgment of a general court of law. The Tribunal is empowered to confirm a conciliation settlement between the parties, prohibit the continuation or repeat of a discriminatory practice, and impose a conditional fine, including ordering its payment, to enforce compliance with the decisions of the Tribunal. Moreover, the courts, the Ombudsman for Minorities, other authorities and associations may request a statement from the Tribunal on the application of the Non-Discrimination Act in cases of ethnic discrimination. The decisions of the Tribunal can be appealed to an Administrative Court. It should be noted that the Non-Discrimination Act does not provide any guidance as to the definition of ethnic origin as a ground for discrimination and has therefore left it to the practice of the Discrimination Tribunal and the courts to determine the issue. The Tribunal has so far pronounced only one condemnatory decision. In the instant case, the Board prohibited the continuation of a discriminatory practice.

9. An Advisory Board for Ethnic Relations (ETNO) was established in August 2001 by a Government Decree to develop interaction between authorities, non-governmental organisations, parliamentarians, immigrants and ethnic minorities. The Advisory Board acts as an expert body assisting Ministries in the development of ethnic equality and diversity. The Board has issued opinions on questions related to its mandate and published reports and information booklets. A recent development has been the establishment of regional boards for ethnic relations.

10. Discrimination and racism are enduring problems in Finland. According to a recent report of the Government⁴, people's attitudes towards national minorities and foreigners may still demonstrate deep-rooted prejudice and that the attitudes of school children may even have hardened. The number of racially motivated crimes reported to the police stood at 558 in 2004 while it had been 522 in 2003 and 364 in 2002.⁵ The most common category (about one third) of these had been violent crime. It should also be noted that many racially motivated crimes go unreported. Furthermore, the thresholds for reporting acts of discrimination and bringing cases to courts appear to be particularly high among immigrants. Civil society representatives had criticised the anti-discrimination legislation in place until February 2004 for being ineffective due to the relatively low level of sanctions imposed and, accordingly, for not providing a sufficient deterrent for future violations. NGOs have, nevertheless, also observed improvements in inter-ethnic relations, especially as regards the immigrant population. The security concerns of recent years appear not to have harmed inter-ethnic relations in Finland.

11. The Finnish Government has carried out specific campaigns (e.g. JOIN and STOP) to develop non-discriminatory practices and to raise awareness of discrimination. The campaigns have been aimed at local authorities, teachers, the police as well as employment, social welfare and health authorities. Civil society representatives have, however, expressed doubts as to the effectiveness of these campaigns. In the field of legislation, penal consequences for racially-motivated crimes have been made more severe through modifications of the Penal Code (Chapter 6, section 5, subsection 4, related to aggravating circumstances). The police have paid particular attention to the prevention of racism, xenophobia and discrimination in terms of awareness training, multi-ethnic recruitment policy, and increased surveillance of organised racist groups. Special efforts have been made to report and analyse racially motivated crimes on a yearly basis.

Conclusions

12. The Commissioner welcomes the new Non-Discrimination Act and the low-threshold bodies – Minority Ombudsman and the National Discrimination Tribunal – mandated to enforce the Act in the field of ethnic discrimination. The access of vulnerable groups to complaints bodies has clearly been enhanced by these measures while the Minority Ombudsman has quickly emerged as an active agent for promoting inter-ethnic equality and as an effective mediator acting on complaints addressed to him. Together with the courts and other ombudspersons and complaints bodies, the Finnish system of enforcing non-discrimination legislation seems to be well-equipped to address most concerns in an efficient manner. This is also reflected by the fact that Protocol 12 to ECHR has already entered into force in Finland. However, the Commissioner underlines that a solution should be found for extending the scope of the Non-Discrimination Act to cover the Åland Islands.

13. The Commissioner trusts that the strong message put forward by the legislator through the Non-Discrimination Act will have a preventive effect in terms of reinforcing people's understanding that discrimination and racism are illegal and, in many cases, crimes. The Commissioner welcomes the Government's recognition of the need to strengthen the prevention of racism and to change attitudes towards minorities and persons of foreign origin. While the police statistics indicate that racially-motivated violence continues to be a serious problem to be tackled with in Finland, the fact that special care is taken to compile such information demonstrates the willingness of the authorities to address the problem. The Commissioner notes that positive signs of improved inter-ethnic relations are also visible.

2 Indigenous and national minorities

2.1 Sámi

14. In his 2001 report, referring to the importance of land rights for the traditional Sámi occupations, the Commissioner called for an early resolution of the question of land rights of the Sámi, as well as for the ratification of the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. Moreover, the Commissioner noted that the definition of the term "Sámi" had generated tensions in the Sámi territory.

Development of the situation and measures taken

15. The issue of land rights of the Sámi continues to be unresolved, and therefore the Finnish Government deems that obstacles to the ratification of the ILO Convention remain. Faced with criticism by public authorities and the Sámi Parliament alike, a draft Government Bill prepared by the Ministry of Justice for the establishment of a specific advisory board in the Sámi Homeland, which would have been tasked with providing advice on the issue, was withdrawn in 2002. The Ministry of Justice has commissioned research into the history of populations and settlements and the use of land in the Kemi and Tornio regions in Lapland in order to clarify the respective claims for land rights by the Sámi and other residents in the region. The research, the results of which should be available in early 2006, has already been criticised by the Sámi Parliament for a lack of independent scientific control. It should moreover be noted that the Ministry of Agriculture and Forestry as well as the Forest and Park Service have a significant degree of authority regarding these issues.

16. The tensions about the relatively broad definition of a Sámi in the Act on the Sámi Parliament of 1995 (974/1995), which were brought to light during the elections to the Sámi Parliament in 1999 and by the court cases that ensued, were clearly less evident during the elections in 2003. While in the elections of 1999, there were 1 128 persons who wished to register as voters based on non-linguistic criteria, the number had fallen to 50 in 2003. The Sámi Parliament has emphasised the importance of linguistic criteria in the definition of a Sámi.

Conclusions

17. The Commissioner regrets that the issue of Sámi land rights still has not been resolved and that Finland has not yet ratified the ILO Convention No. 169. He urges the different parties to the question, including among others the Ministry of Agriculture and Forestry, the Forest and Park Service and the Sámi Parliament, to join efforts to actively seek a solution to this long-standing problem. The Commissioner recommends that the Finnish authorities draw inspiration from the expert recommendations regarding land rights which have been recently issued in the framework of the on-going negotiations for a Nordic Convention on the Sámi.⁶

2.2 Roma

18. In his report, the Commissioner noted the existence of *de facto* discrimination against the Roma on the part of society, in particular as regards access to education, private housing, employment and public spaces.

Development of the situation and measures taken

19. The new Non-Discrimination Act of 2004 (see above) and the low threshold bodies entrusted with the task of enforcing it in the field of ethnic discrimination have provided new opportunities for tackling discrimination against the Roma.⁷ The Regional Advisory Boards for Romani Affairs, which were made permanent by a Government Decree in 2004, have also been active in addressing discrimination in co-operation with national, regional and local authorities. The National Advisory Board for Romani Affairs has reported that significant progress has been achieved at local level in the fields of municipal housing and pre-school education.

20. Regarding public housing, the Ministry of Environment has issued guidance documents and carried out training of public authorities outlining the principle of non-discrimination as well as providing information on the specific needs of Roma residents. However, the authorities acknowledge that the Roma continue to have difficulties in accessing the private housing market due to high prices and prejudice. On the other hand, the Minority Ombudsman has been particularly active in addressing Roma complaints about housing. On the initiative of the Minority Ombudsman, the Ministry of Labour has also studied the employment needs of the Roma while providing specialised training to the staff of employment agencies to

provide an adequate service to the Roma. Adult education programmes, supported by the EU, have targeted the Roma for their integration in the labour market.

21. In the field of education, special projects have been carried out to support school and pre-school class attendance of Roma children and parental involvement in their education. However, a report based on the school year 2001-2002, published by the National Board of Education, indicated that the level of absenteeism and school drop-outs among the Roma has remained exceptionally high. The report also demonstrated that up to fifty percent of Roma children had taken part in special education. The Finnish authorities have reported that the number of Roma children receiving education in Romani language has dropped significantly in recent years. The reasons given for the decline included cuts in municipal budgets and the shortage of qualified teaching personnel.

22. The Roma continue to face difficulties in accessing public premises. Discrimination of this kind has been particularly severe towards Romani women wearing their traditional dress. According to non-governmental organisations, there are approximately 20 cases a year involving discrimination in access to public premises which are taken to courts. The Minority Ombudsman has also addressed these issues and the National Discrimination Tribunal is empowered to issue fines in such cases. The non-discrimination legislation and enforcement system in place before February 2004 had been criticised by civil society representatives for applying insufficient penalties to act as an effective deterrent to discrimination especially against the Roma. For instance, there have been cases where the same restaurant keeper or doorman has been repeatedly fined for denying access to the Roma.

Conclusions

23. The Commissioner welcomes the Non-Discrimination Act of 2004 and its enforcement system which have noticeably improved the safeguards against discrimination of the Roma. The Regional Advisory Boards for Romani Affairs also appear to make a difference when they are supported by public authorities. Yet, discrimination against the Roma in the fields of employment, private housing, education and access to public places appears to persist reflecting deeply rooted prejudice which subjects the Roma to multiple forms of discrimination simultaneously. While the Commissioner welcomes the positive initiatives launched by the Government to counter such discrimination and prejudice, he calls for greater attention to be paid, for example through the means of affirmative action, to the prevention of everyday discrimination and racism encountered by the Roma. In this respect, the wide dissemination of objective information about Roma culture and traditions as well as the diversity of Roma identities is essential. The Commissioner trusts that further efforts are also put to the training of teachers with Romani language skills.

2.3 Russian-speaking population

24. In his 2001 report, the Commissioner noted that the theoretical distinction between the "Old Russians" and more recent immigrants from Russia should be reassessed, particularly as regards the application of the Framework Convention for the Protection of National Minorities. The Commissioner also voiced concerns about the negative media images of the Russians in the Finnish media and the need to better cater for the needs of Russian-speaking school pupils.

Development of the situation and measures taken

25. In 2003, an *ad hoc* working group assigned by the Advisory Board for Ethnic Relations to assess the cultural and linguistic needs of the Russian-speaking population in Finland delivered its report along with a series of recommendations. The *ad hoc* working group recommended, *inter alia*, that the cultural and linguistic rights of the Russian-speaking population should be recognised through law accepting Russian as a national minority language alongside with the Sámi and Romani languages. The report also proposed the establishment of a separate Russian advisory board under the auspices of the administration.

26. The recommendations of the report have been subjected to a debate within the administration. The authorities have concluded that the specific needs of the Russian speaking population should be attended to through the development of immigration policy and integration measures while they could also be taken into account in the planning of services targeting different immigrant groups. The administration has not supported the establishment of a specific Russian advisory board as it prefers to address the question by developing the activities of the Advisory Board for Ethnic Relations (see above). The new Language Act (423/2003), which entered into force on 1 January 2004, stipulates that the reports by the Government on the application of this law shall at least discuss the Sámi, Romani and sign languages in addition to Finnish and Swedish but the Act does not directly mention Russian. According to the Government, the term 'at least' signifies, however, that the status of the Russian language could be discussed in the reports presented to the Parliament.

27. NGOs representing the Russian-speaking population have urged a more detailed discussion in the state administration about the report and its recommendations. They have also criticised the fact that the discussion has so far focused on immigrant issues at a general level while many concrete recommendations concerning the Russian-speaking minority have apparently gone unnoticed. It should be noted in this context that the Russian-speaking people constitute the largest non-territorial language group in Finland and their number was estimated at 33 400 in 2004.

28. Although Russian is often taught in Finnish schools as a foreign language, there are concerns that the needs of the Russian-speaking population are not adequately met in education. While university courses and research programmes are available in the field of Russian language and culture, main-stream education does not make specific provision for pupils whose mother tongue is Russian. ECRI has also reported that Russian-speaking children are harassed in schools and that the stereotypes presented in the media tended to increase prejudice against the Russian-speaking population.⁹

Conclusions

29. Taking into account the significant number of Russian-speaking people living in Finland, the Commissioner urges the Finnish authorities to thoroughly consider the recommendations of the *ad hoc* working group assigned by the Advisory Board for Ethnic Relations. The Commissioner is not persuaded that the special needs of the Russian-speaking population could be catered for in an efficient manner solely by general policy initiatives regarding or consultative bodies representing minorities and immigrants in general. Further measures are required to address the problems encountered by Russian-speaking school

pupils while the awareness of media professionals of any prejudice on reporting about the Russian-speaking population should be improved.

3 Asylum-seekers

30. In his 2001 report, the Commissioner voiced concern over the accelerated procedure laid out in the amendments to the Aliens' Law in 2000 and, in particular, regarding judicial remedies available for those who wished to appeal a decision on refusal of entry or removal from the territory. The Commissioner has assessed these issues in detail in an Opinion on the proposal for a new Finnish Aliens Law he provided to Finland following a request by the Constitutional Law Committee of the Parliament.⁹ The Opinion of the Commissioner was clearly reflected in the recommendations of the Constitutional Law Committee regarding the Government's proposal, although most of the recommendations of the Committee did not meet parliamentary approval in the final version of the Aliens Act (301/2004) which entered into force on 1 May 2004. Accordingly, this report will focus on certain aspects of the implementation of the Aliens Act of 2004.

Development of the situation and measures taken

31. The Aliens Act grants asylum-seekers the right to appeal most decisions regarding asylum applications – including dismissed applications and those processed through the accelerated procedure (Section 103 of the Act) – to the Helsinki Administrative Court. While decisions on removal may not be enforced before the final decision of the Administrative Court, decisions on refusal of entry may be enforced either immediately for Dublin cases¹⁰ and repeated applications or on the eighth day of serving the decision to the applicant in other cases. In principle, the Administrative Court has the power to prevent the enforcement of return decisions in all cases and the Act also provides for the possibility of appeals from abroad. Moreover, the Aliens Law (Sections 147 and 200(2)) stipulates that decisions cannot be enforced if there is reason to believe that returning the alien to his or her country of origin or another country may expose him or her to the death penalty, torture, persecution or other treatment violating human dignity. A decision of the Administrative Court may be further appealed to the Supreme Administrative Court if the latter gives leave to appeal.

32. NGOs working with refugees in Finland have expressed their general satisfaction at the current functioning of the judicial appeals procedure and the special expertise accrued by the Helsinki Administrative Court in this field. Civil society representatives have also pointed out that, in the main, the new Aliens Act is sufficiently detailed to clarify the respective competences of different authorities in this field. However, NGOs have voiced concerns regarding the immediate enforcement of refusals of entry based on the Dublin procedure and the apparent lack of guidance for authorities, especially the police, for serving and carrying out these decisions. An appeal to the Administrative Court, which in principle should have the authority to delay enforcement, while the applicant is still in Finland would appear to be extremely difficult in these cases.

33. NGOs have also reported that there has recently been a marked shift by the Directorate of Immigration towards granting an increasing number of temporary residence permits to asylum-seekers, including unaccompanied minors, with reference to the Section 51 of the Aliens Act instead of granting continuous permits with reference to other sections of the Act. Under Section 51, aliens residing in Finland can be issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country. The Directorate of Immigration has confirmed the change and the fact that in most cases such temporary permits are granted to failed asylum-seekers originating from Somalia, Iraq and Afghanistan while underlining that it was following current Nordic practice in the matter.

34. NGOs have pointed out that the temporary residence permits do not authorise their holders to work nor grant the right to family reunification. In addition, municipalities do not have an obligation to receive holders of temporary permits as their residents a situation which usually precludes them from being eligible to most social and welfare services and benefits which are normally conditional on a continuous residence status. As a result, holders of temporary permits would usually have to stay in reception centres for asylum seekers even if they are no longer formally regarded as asylum seekers.

35. The Ministry of the Interior has found the Aliens Act to lack provisions for enabling an efficient exchange of information between the staff of the reception centres for asylum-seekers, on the one hand, and the Directorate of Immigration, the police and the frontier guards, on the other. Accordingly, the Ministry has prepared amendments to the Aliens Act and the Act on the Registration of Aliens (1270/1997) of 1997. The stated purpose of the amendments is to develop information exchange between authorities dealing with questions related to aliens and in particular, although not exclusively, as regards unaccompanied minors and the tracing of their parents or other guardians. The proposal for the amendments also refers to needs to establish the best interests of the child and to protect children from trafficking in human beings.

36. The amendments would oblige the staff of reception centres to provide information to the above mentioned authorities on asylum seekers' date of birth, family members and their whereabouts as well as other comparable information related to their personal situation as far as this is necessary for elucidating the identity of the applicants or the conditions for granting them protection. The information could be provided without the consent of the asylum seekers concerned, although they and the guardians of unaccompanied minors would be informed of the information exchange. Currently, the scope of information exchange between the authorities and professionals concerned are clearly limited by confidentiality clauses of the Integration Act (493/1999) of 1999. It should also be noted that reception centres in Finland operate under the auspices of the Ministry of Labour while the authorities mentioned in the proposed amendments are under the authority of the Ministry of the Interior.

37. NGOs, which have been consulted by the Ministry of the Interior on the proposed amendments, have expressed doubts whether the benefits of the legislation would in fact outweigh its potential adverse consequences. They have pointed out that the proposed obligation of the staff of reception centres to inform the authorities would put them in a very ambiguous position regarding the determination of the best interests of the child in their own work since it was hardly clear whether the information exchange would in fact always be in accordance with that principle. NGOs have also deemed the proposed amendments potentially unconstitutional with reference to the right to privacy and, in particular, the secrecy of correspondence, telephony and other confidential communications (Section 10 of the Constitution of Finland). Furthermore, it has been claimed that the current text of the proposal remained too general and imprecise to be practicable especially in view of the fundamental rights issues it raised. Several NGOs have noted that the legitimate need for information exchange would be better served through individual and precise requests for information by the authorities, supported by relevant legislation, rather than a blanket obligation to inform.

Conclusions

38. The Commissioner welcomes the fact that the Helsinki Administrative Court has emerged as an efficient and expert judicial body of first instance for appeals in the field of asylum. He is not persuaded, however, that an effective judicial remedy is yet available for appealing decisions related to Dublin cases. The Commissioner recommends that further guidance is issued to relevant authorities for serving and carrying out these decisions. In particular, before their transferral the rejected applicants should, as a minimum, have the possibility to request the suspension of the implementation of their transfer before the Administrative Court in accordance with the Aliens Act (Section 201) and Articles 19 (2) and 20 (1.e) of the Council Regulation No 343/2003.

39. As concerns the granting of temporary resident permits in accordance with Section 51 of the Aliens Act, the Commissioner underlines that it should always be verified that the section is not applied in contradiction with other provisions of the Act which would grant a continuous residence permit on the grounds of a need for protection (Section 88). Taking into consideration the practical consequences of the temporary residence status on opportunities to accessing employment, health and social services as well as right to family reunification, a restrictive rather than wide interpretation of the application of Section 51 is to be preferred. The Commissioner notes that Section 52 of the Act stipulates that a continuous residence permit can be granted to aliens on compassionate grounds with reference to their health, vulnerable position or the circumstances they would face in their home country.

40. The Commissioner also urges the Finnish authorities to reconsider the proposal to amend the Aliens Act concerning information exchange between the staff of reception centres and the authorities. While the improvement of information exchange between authorities and professionals is a laudable objective, any legal obligation on reception centre staff to inform the authorities should be stipulated in sufficient detail to safeguard the rights of both asylum seekers and staff. The Commissioner emphasises that it is particularly important to examine whether the proposed legislation is compatible with the human rights provisions of the Finnish Constitution.

4 Conscientious objectors

41. In his 2001 report, the Commissioner voiced concern over the duration of alternative civilian service and the term of imprisonment for absolute objectors. The Commissioner drew the attention of the Finnish authorities to the Maccocchi Resolution (7 February 1994) of the EU Parliament according to which the length of civilian service should not exceed that of military service. He also referred to the Committee of Ministers Recommendation Rec(87)8 and Resolution 1998/77 of the UN Commission on Human Rights which state that the duration of civilian service, in order to be deemed reasonable, should not be punitive in comparison with military service. The Committee of Ministers Recommendation moreover stipulates that conscientious objectors performing alternative

service should not have less social and financial rights than those performing military service. Finally, the Commissioner considered it important to seek other methods than the strict application of the Penal Code to absolute objectors, which in his opinion was not the appropriate way to deal with this question.

Development of the situation and measures taken

42. There has been no change in the duration of the civilian service in Finland since the Commissioner's visit: it stands at 395 days, which is significantly longer than average military service.¹¹ Furthermore, the penalty for total refusal continues to be imprisonment for the duration of half of the time remaining from the mandatory service period, i.e. a maximum of 197 days. The prison sentence is usually served in open prisons with the possibility to work or study outside the prison. However, according to the law, the prison sentence cannot be conditional, and the prisoner can only be released on probation if he wishes and can serve the remaining time of his civilian service. In 2004, 71 persons were sentenced to prison terms due to their refusal to take up military or civilian service.

43. Both the UN Human Rights Committee and the European Committee of Social Rights have recently found that the length of civilian service in Finland was punitive and discriminatory. The Human Rights Committee has also expressed its concern that the preferential treatment accorded to Jehovah's Witnesses in exempting them from military and civilian service has not been extended to other groups of conscientious objectors.¹²

44. Non-governmental organisations have also drawn attention to problems caused by accommodation costs during the civilian service, and the insufficient number of places to perform civilian service. Although the public authority or service where civilian service takes place is required by law to provide accommodation to civilian service men this obligation does not always appear to be honoured in practice. Moreover, a number of conscientious objectors do not consider civilian service as an appropriate alternative, since it exempts persons from military service only during peace time.

45. Although the Civilian Service Decree was amended in 2002 by a new provision regarding safety at work, no substantial improvements have taken place in the situation of conscientious objectors in recent years. The Government proposals to shorten the length of civilian service have not yet met with Parliamentary approval. Recently, a working group under the auspices of the Ministry of Labour has been set up to study possible modifications to the civilian service, yet the issue of the length of service has been ruled out of its mandate.

Conclusions

46. The Commissioner regrets the lack of progress made in resolving the long-standing problems faced by conscientious objectors and therefore reiterates his recommendations made in the 2001 report. It is clear that the current length of civilian service is punitive and discriminatory in comparison with the length of military service while it is detrimental to equal opportunities for work and study among civilian and military service men. The social and financial rights of civilian service men should be protected in a comparable way with those of conscripts. Although the Commissioner notes the exemption of Jehovah's Witnesses from military and civilian service, he considers that a similar provision should also be applied to other persons objecting to military and civilian service on the ground of belief. The Commissioner urges the Finnish Government to draw inspiration from its Anti-Discrimination Act and Protocol 12 to the ECHR in speedily addressing the situation of conscientious objectors while actively persuading the Parliament to back a long-awaited reform in this field.

5 Rights of the child

47. In his 2001 report, the Commissioner underlined the necessity to re-assess criteria regarding the placement of children in extra-familial care to preserve, as far as possible, the proper balance between public intervention and the right to private and family life as well as the best interests of the child. The Commissioner also emphasised the need to provide adequate treatment and care for children with mental health problems.

Development of the situation and measures taken

48. The number of children placed in extra-familial care in Finland has continued to rise over recent years including the number of children taken into custody involuntarily.¹³ The Finnish authorities have pointed out that the economic depression of the 1990s appears to have a delayed effect on the child welfare system. The longer the parents have been unemployed, the harder their financial situation has become, often leading to increasing mental health and substance abuse problems. It should also be noted that periods of extra-familial care for children taken into custody are particularly long because of the seriousness of the problems faced by these children and their families.

49. The Child Welfare Act (683/1983), the reform of which has recently been initiated by the Government, acknowledges the interests of the child as its point of departure. Currently it is the municipal Social Welfare Board, comprised of laymen appointed by the Municipal Council, which has the authority to decide on custody cases and determine the best interests of the child in each case. However, the Board must attempt to work in co-operation with the child's parents and other legal guardians. If children are placed in a care institution, the head of the institution is also involved in decisions regarding the nature of contacts between the children and their parents and other close persons. Social workers responsible for child welfare have an obligation to monitor that the best interests of the child are realised in care. Children aged 12 and above are provided an opportunity to be heard about decisions affecting them and they are entitled to appeal against custodial decisions by the Social Welfare Board.

50. Civil society representatives have pointed out that the threshold for social welfare services to report child welfare problems to the Social Welfare Board was particularly high and that some municipalities lacked qualified personnel to carry out monitoring functions adequately. This could easily lead to situations where the possible range of interventions by the Social Welfare Board is extremely limited due to the belatedness of the intervention and the seriousness of the case at hand. NGOs have also called on the Finnish authorities to consider the transferral of custodial decisions to the courts since the decisions concern the legal protection of both the children and their families. Nevertheless, many NGOs acknowledge that most placements of children in extra-familial care in Finland are justified on the grounds of the best interests of the child. The current reform of the Child Welfare Act is also aimed at improving the legal protection of children taken into custody and clarifying the monitoring function of the authorities.

51. The Finnish authorities acknowledge that there was a shortage of psychiatric services for children and adolescents in Finland during the 1990s. Because of this, the Government started, in 2000, to grant yearly special grants for priority areas within child and adolescent mental health and social services.¹⁴ Since 2001, a system of service guarantees has been established to set maximum delays for the assessment of the need for care or treatment and for the starting date of treatment by the health services. However, according to an estimate by the authorities, in 2003 only 50% of child and adolescent psychiatric units had been able to meet the targets for service guarantees. Information from 2005 demonstrates that the situation has improved, although the guarantees are still not met in certain regions.¹⁵ Particular priority has been given to the treatment of violent and difficult-to-treat children and adolescents for whom two new units have been set up. The mental health of children and young people is also addressed by the National Development Project for Social Services (2003-2007).

52. The Finnish Government has established the institution of an Ombudsman for Children as of September 2005. The Ombudsman for Children is entrusted with the task of promoting the best interests and rights of the child at the general level of administration, social policy and legislation. The Ombudsman may issue recommendations, guidelines and advice but she cannot receive individual complaints. Civil society representatives have pointed out that the annual budget allocated to the Ombudsman for Children (€ 285 000 for 2006) appeared very constrained in comparison with the budgets of children's ombudspersons in other Nordic countries. It should be noted, however, that the Parliamentary Ombudsman will also retain her mandate regarding children and will continue to act on individual complaints addressed to her.

Conclusions

53. The Commissioner welcomes the current efforts of the Government to reform the Child Welfare Act which should improve the legal protection of children taken into custody and clarify the manner how their care and best interests are monitored. It is essential that all interested parties are heard in the reform process and that the rights of family members are given due consideration to ensure the practicability of the resulting legislation. As custody decisions are directly related to the fundamental rights of all family members it would also be apposite to reconsider whether the courts should be involved in making the initial decision. The participation of children themselves in the decision-making procedure regarding their placement in extra-familial care or custody is particularly important and it should be examined whether the reformed act could enable children younger than 12-years' old to be heard in the process.

54. The Commissioner urges the authorities to persist in their efforts to improve mental health care for children and to monitor that the service guarantees are fully met in this field. The Commissioner welcomes the establishment of the institution of the Ombudsman for Children and encourages the authorities to review its resource needs.

6 Responses to violence against women

55. Although the Commissioner did not raise the issue of violence against women in his original report on Finland in 2001, he has paid particular attention to this enduring problem in member states during the course of his mandate. In most of his reports, the Commissioner has assessed the responses of member states to violence against women while issuing recommendations regarding further measures. It is therefore useful to take note of the Finnish responses to this problem as well.

Development of the situation and measures taken

56. The Government report of 2004 on human rights policy underlined that violence against women continued to be a serious human rights problem in Finland. A dedicated survey on violence against women conducted in 1997 indicated that 40 % of the women taking part had experienced threats of violence or actual physical or sexual violence perpetrated by a man since the age of 15. The dedicated survey will be repeated in 2006. In 2003, 2 801 cases of domestic violence against women were recorded by the police while it is estimated that only about a tenth of cases are actually reported to the police. Although general victimisation surveys from 1997 and 2003 would appear to indicate that domestic violence against women has decreased substantially, violence against women at work seems to have increased dramatically.¹⁶ Moreover, a survey on the cost of men's violence against women, based on data compiled in 1998, was published in 2001. It is estimated that the direct and indirect costs of violence against women incurred by society may reach € 160 million annually.

57. The Government has taken several legislative measures to address violence against women. Rape in marriage was criminalised in 1994 and since 1995 (the measure was re-enforced in 2004) the prosecutor has been able bring charges for non-aggravated assaults which take place in private premises without the consent of the victim. Restraining orders to perpetrators of violence became possible in 1999 while these were extended to cover a shared home in 2005. Assistance and support to victims of sexual and domestic violence have also been provided for by the law.

58. In 1998-2002 a national Campaign for the Prevention of Violence against Women was carried out by the Government with an emphasis on awareness raising and pilot projects. Currently, violence against women is addressed by a number of governmental programmes. The Internal Security Programme of 2004, which sets objectives until 2015, puts forth the reduction of violent crime as its priorities with a particular emphasis on the prevention of domestic violence and improvements in the care of its victims. A national programme for the reduction of violence is currently being prepared under the auspices of the Ministry of Justice and it should prioritise inter-agency co-operation, the provision of shelters and special needs of immigrants as responses to violence against women. Furthermore, the Ministry of Social Affairs and Health co-ordinates an Action Programme for the prevention of intimate partner and domestic violence (2004-2007). The Programme aims to improve networks which provide support to victims of violence especially through enhanced regional and municipal co-ordination while giving a particular emphasis to children and young people as victims of violence. The Programme has been allocated € 300 000 per year from 2005 to 2007. The police are also implementing their own plan of action against domestic violence through the improvement of police training and police responses to domestic violence.

59. The Commissioner's Office visited a shelter for women victims of violence in Helsinki (*Pääkaupungin turvakoti*). The shelter was run by an NGO supported by municipal and national funds. Operating as an open emergency shelter, it was able to accommodate ten individuals with children for average stays of 18.5 days. Social and psychological services were provided for both women and children. The representatives of the shelter pointed out that of their customers about 20 % were return customers, 16 % came from other places than Helsinki while 35 % were immigrant women. They also underlined that restraining orders, although quite easily obtainable by the victims of violence, had probably so far not had a significant effect in stemming violence and that the awareness of the police of violence against women continued to be improved through training in which NGOs also participated. Moreover, they informed the delegation that a new working group to study honour-related violence had been set up by NGOs and other interested parties and that NGOs in Finland had started offering treatment to men as perpetrators violence.

60. Civil society representatives have criticised the current Government programmes aimed at preventing violence for a lack of focus on women and their special needs. NGOs have expressed their disappointment at the apparent shelving of a specific and detailed national action plan addressing violence against women for 2004-2007, even if elements of the draft plan can currently be found in the new Action Plan against trafficking in human beings (see below) and the Action Programme for the prevention of intimate partner and domestic violence. A recent campaign (*Joku Raja!*) carried out by Amnesty International in Finland has highlighted shortcomings in the awareness of municipal authorities of responses to violence against women prompting calls for better co-ordination at the local level in this field. NGOs have also raised concerns about the vulnerable situation of immigrant women who may be reluctant to leave violent relationships due to fears about losing their resident status in Finland if they do so. The Ministry of Social Affairs and Health in co-operation with NGOs has recently published a guidance document for social and health services regarding immigrant women and violence.

Conclusions

61. The Commissioner welcomes the efforts of the Government to monitor and respond to violence against women in Finland. He encourages the authorities to persist in these efforts and to review whether the current Government programmes aimed at addressing violence are sufficiently specific and adequately funded to cover violence against women. The authorities should also ensure that the specific needs of immigrant women as victims of violence are addressed. In particular, they should be able to access information about their rights and victims' support services and have the possibility to stay in Finland after leaving a violent relationship.

7 Responses to trafficking in human beings

62. Although the Commissioner did not address trafficking in human beings in his original report on Finland, he regularly does so in his current reports. Trafficking in human beings is a serious and complex human rights problem with a clear international dimension requiring continuous action at both national and international levels. In his reports, the Commissioner has paid particular attention to legislation criminalising trafficking and the provision of services and protection to its victims. Accordingly, it is worthwhile to assess the Finnish approach to tackling this problem.

Development of the situation and measures taken

63. The Finnish authorities acknowledge that Finland is a destination and transit country for trafficking in human beings mainly for the purposes of labour and sexual exploitation. The authorities estimate that the number of victims of trafficking in Finland may reach several hundreds per year. Legislation criminalising trafficking entered into force in August 2004. The additions to the Penal Code have been inspired by the definitions found in the UN Convention against Transnational Organized Crime (Palermo Convention) and the EU Framework Decision on Combating Trafficking in Human Beings. In 2005, the police have already investigated a few suspected cases with reference to the new legislation.

64. In August 2005, the Government adopted an extensive Plan of Action against Trafficking in Human Beings which takes a human rights and victim based approach while also incorporating a gender-perspective. The Action Plan, which has been prepared by a working group under the auspices of the Ministry of Foreign Affairs, sets out measures the authorities will undertake for the identification of victims of trafficking, prevention of trafficking, provision of assistance to its victims, prosecution of traffickers, and dissemination of information about trafficking. The implementation of the Action Plan will be monitored by an inter-ministerial steering group under a rotating chairmanship of the Ministry of Labour and the Ministry of the Interior. It is expected that the steering group, which will be joined by NGO representatives and experts, will prepare a more detailed action plan by the end of 2006. According to the Action Plan, the Finnish authorities will prepare for the signing and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. The Government also intends to criminalise the buying of sexual services as a preventive measure against trafficking.

65. Civil society representatives have welcomed the Government's action plan against trafficking and the fact that many NGOs were able to participate in its preparatory work. Yet they have underlined that particular efforts will be needed to ensure adequate assistance to the victims of trafficking. Currently, the provision of many health and social services in Finland are dependent on residence status and it is likely that many victims of trafficking will not have a regularised residence status in Finland. Although the Government has taken note of this problem in the Action Plan and intends to modify the Aliens Act so that temporary residence permits can be speedily issued to victims of trafficking, temporary residence permits may in fact not grant their holders sufficient residence status for necessary services either (cf. above paragraphs 34 and 39). The Action Plan also proposes that a special financing mechanism would probably have to be set up to cover certain expenses of the assistance provided.

Conclusions

66. The Commissioner welcomes the new legislative measures to criminalise trafficking in human beings in Finland and the Government's Plan of Action against Trafficking in Human Beings. He also encourages the Government and the Parliament to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings. In particular, the Commissioner invites the Finnish authorities to verify that the victims of trafficking can be granted adequate protection and assistance based on an individual assessment of their needs.

oo

¹ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Finland, 4-7 June 2001, for the Committee of Minister and the Parliamentary Assembly, (CommDH(2001)7). The report was presented to the Committee of Ministers on 19 September 2001, and can be found on the Commissioner's website at www.commissioner.coe.int. ² Mr. Markus Jaeger, Mr. Lauri Sivonen and Ms Sirpa Rautio. ³ Discrimination based on gender is addressed by the Act on equality between women and men of 1986 as amended in 1992, 1995 and 2005. ⁴ Government Report to Parliament on the Human Rights Policy of Finland 2004. ⁵ Information provided in yearly reports of the police on racially motivated crime. ⁶ A group of experts, consisting of representatives from the relevant Nordic countries, presented its proposal for a Nordic Sámi Convention on 17 November 2005. ⁷ The number of Roma living in Finland is estimated at 10 000. ⁸ Second Report on Finland, adopted on 14 December 2001. European Commission against Racism and Intolerance (ECRI). CRI (2002) 20. ⁹ *Opinion of the Commissioner for Human Rights on certain aspects of the proposal by the Government of Finland for a new Aliens Law*, 17 October 2003, CommDH(2003)13. ¹⁰ Decisions made in accordance with the EU Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State Responsible for examining an asylum application lodged in one of the Member States by a third-country national. ¹¹ Under the current law, the minimum length of regular military service is 180 days, and the maximum 363 days. Most conscripts serve the minimum length of service. Non-governmental organisations have called for the shortening of the duration of the civilian service to 240 days which is the estimated average length of military service. ¹² Concluding Observations of the Human Rights Committee: Finland, 2 December 2004. CCPR/CO/82/FIN. European Social Charter – European Committee of Social Rights, Conclusions XVII-1 (Finland). ¹³ The number of children placed in extra-familial care in Finland was 12 835 in 2000, 13 453 in 2001, 14 164 in 2002, 14 364 in 2003 and 14 704 in 2004. The number of children taken into custody was, respectively, 7 290 in 2000, 7 396 in 2001, 7 911 in 2002, 8 350 in 2003 and 8 673 in 2004. The number of children taken into custody involuntarily was 1 311 in 2000, 1332 in 2001, 1492 in 2002, 1668 in 2003 and 1740 in 2004. It should also be noted that 59 912 children and young people received community care in 2004. Child welfare 2004 – statistical summary 14/2005, STAKES. ¹⁴ These special grants amounted to € 11.8 million in 2000, 7.6 million in 2001, 3.16 million in 2002, 18.7 million in 2003, 7 million in 2004 and 5 million in 2005. ¹⁵ In one hospital district, 80 % of the children concerned had waited longer than the three-week maximum delay for a medical examination while, in another district, 58 % of the children had not accessed care within the maximum delay of three months. Information provided by the Ministry of Social Affairs and Health. ¹⁶ The number incidents of domestic violence in 1997 was 57 000 and 38 300 in 2003. The number of violent events at work reached 140 000 in 2003.