

*100. 44E
wid. general
15.1 4P*

The report referred to in Article 40 of the International
Covenant on Civil and Political Rights concerning the
implementation of the Covenant in Finland

In conformity with the relevant provisions of the Constitution of Finland, the provisions of the International Covenant on Civil and Political Rights, as far as they fall within the scope of legislation, were adopted into the body of Finnish law by Act No. 107 of 23 June 1975 as a prerequisite for the ratification of the Covenant.

After the ratification which included the Optional Protocol to the Covenant, both the Covenant and the Protocol, as a whole, were brought into force in Finland by Decree No. 108 of 30 January 1976.

In connexion with the ratification process, the existing legislation of Finland was carefully scrutinized. Most of the rights and fundamental freedoms envisaged in the Covenant were considered to be sufficiently guaranteed by the Constitution or by the ordinary legislation. In some cases, however, the existing legislation was found to be either insufficient or discrepant from the provisions of the Covenant. To some extent this was depending on the structural differences between the Finnish legal system and that envisaged by the Covenant. In all these cases a reservation was made in connexion with the ratification. Where it is possible, the Finnish legislation will be brought into full conformity with the Covenant and the respective reservations will then be withdrawn accordingly.

The first reservation concerns the provision of Article 9, paragraph 3, of the Covenant. According to this provision, among

other things, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.

In Finland the County Government, certain police authorities and public prosecutors have been empowered by law to issue, at the pre-trial stage, warrants for arrest or detention pending the trial before the court. It is only from the beginning of trial that the question of arrest or detention comes under the control of the court. This system which is due to the fact that in Finland there is no such institution as judge d'instruction does not fully satisfy the requirements of the Covenant. This is why a Government Bill has been prepared bringing this matter into a better harmony with the Covenant. When the Bill has been passed, the reservation will be withdrawn.

The second reservation concerns the provisions of Article 10, paragraph 2, sub-paragraph b, and paragraph 3, of the Covenant. According to these provisions, accused juvenile persons as well as juvenile offenders shall be separated from adults.

In Finland this is the practice in general. However, exceptions may be made when expediency and flexibility so require without causing harm to such juveniles. This is why the reservation was made and why it will be maintained for the present.

The third reservation concerns the provision of Article 13 of the Covenant. According to this provision, an alien lawfully in the territory of a State Party to the Covenant, who is going to be expelled therefrom, shall be allowed, except where compelling reasons of national security otherwise require, to submit the reasons against his expulsion and to have his case

reviewed by the competent authority.

In Finland the regulation of this matter differs from that provided for by the Covenant. According to Decree No. 187 on Aliens, of 25 April 1958, the Aliens Bureau of the Ministry of the Interior is empowered to order an alien to be deported from the country if he by his behaviour has shown that his sojourn in Finland is not desirable. Similarly, the Ministry of the Interior may expel an alien when the security of the State or another important reason so requires. In these cases, there is no immediate hearing before the Ministry, although the person concerned may submit the reasons against his expulsion or deportation to the appropriate executive officer, and there is no right of appeal against such decisions. This is partly due to the fact that the Ministry is considered to be a sufficiently high authority to make final decisions on these matters which sometimes require prompt measures. The reservation will be maintained for the present.

The fourth reservation concerns the provision of Article 14, paragraph 1, of the Covenant. According to this provision, among other things, any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

In Finland the possibility to limit the publicity of judgments goes a little further. According to Act No. 26 on the Publicity of Jurisdiction, of 5 February 1926, the court may decide that a trial, including the pronouncement of the judgment, shall be held behind closed doors, except for the reasons mentioned in the Covenant, also when publicity could offend

morality or endanger the national security of the State. Also in this case the reservation will be maintained for the present.

The fifth reservation concerns the provision of Article 14, paragraph 3, sub-paragraph d, of the Covenant. According to this provision, among other things, an accused should have legal assistance assigned to him in any case where the interests of justice so require.

According to Finnish law, an accused is always entitled to have legal assistance of his own choosing at his own cost. If he does not have sufficient means to pay the expences of the trial, he shall be granted a free trial and, if considered necessary, a legal counsel shall be assigned to him, in which case the fee of the counsel shall be paid from State funds. The only gap in the present law is that the court may not assign a legal counsel to assist an accused, although the interests of justice would so require, if the accused who has not been granted a free trial ~~himself~~ does not want to hire a legal counsel for himself. A Government Bill containing, among other things, the system of public defender in criminal cases will be introduced to Parliament in the near future. The reservation will be withdrawn after the Bill has been passed.

The sixth reservation concerns the provision of Article 14, paragraph 7, of the Covenant. According to this provision, no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Although the concept of res judicata is recognized in Finland, certain exceptions are feasible. Thus, according to Chapter 31, Article 8, of the Code of Procedure, a judgment in

a criminal case, which has already attained legal force, that is to say, an ordinary appeal against it is no more possible, may be reversed to the advantage of the accused if

(a) a member or an official of the court, public prosecutor or the representative or counsel of a party to the trial has, in connexion with the trial, made himself guilty of a criminal conduct which may be assumed to have affected the result of the judgment;

(b) a document which has been used as an evidence in the case has turned out to be false or its content, to the knowledge of its presenter, to be discrepant from the truth or if a party to the trial who has been questioned under the obligation of truth or a witness or an expert witness has wilfully given an untrue testimony, and the document or the testimony may be assumed to have affected the result of the judgment;

(c) a fact or an evidence which has not been presented at the trial is referred to, and its presentation at the trial, in all likelihood, would have led to the acquittance of the convicted person or to the application of lighter penalty stipulations, or there are otherwise weighty reasons to have it be tried again whether the convicted person has committed the criminal act for which he has been sentenced;

(d) the judgment obviously is based on a wrong application of law.

According to Chapter 31, Article 9, of the Code of Procedure, a judgment in a criminal case, which has already attained legal force, may be reversed even to the disadvantage of the accused if

(a) a fact mentioned above under Article 8, sub-paragraphs (a) and (b), is existing and it may be assumed to have affected the judgment of the court so that the accused has been acquitted or sentenced in accordance with an essentially lighter penalty stipulation than what should have been applied;

(b) a fact or an evidence is referred to, which has not been presented at the trial concerning a crime for which, according to the regular scale of penalties, a more severe penalty than two years imprisonment or dismissal from office could follow, and its presentation at the trial, in all likelihood, would have led to the sentence of the accused for the crime in question or to the application of essentially more severe penalty stipulations.

However, a judgment may not be reversed on the ground mentioned in sub-paragraph (b) unless it is proved plausible that the party to the trial has not been able to refer to such a fact or evidence at the first trial or by appealing ~~from~~ the judgment of the trial court to the higher court, or that he otherwise for a valid reason has failed to do so.

According to Chapter 31, Article 10, of the Code of Procedure, an application aiming at the reversal of a judgment to the disadvantage of the accused in a criminal case shall be made within a year from the day when the applicant learned of the fact or evidence, to which he is referring or, if the application is based on the criminal conduct of another person, from the day the judgment concerning such a conduct attained legal force.

Since these provisions summarized above still correspond to the general sense of justice in Finland, the reservation will be maintained.

The seventh reservation concerns the provision of Article 20, paragraph 1, of the Covenant, according to which any propaganda for war shall be prohibited by law.

When this provision was dealt with in the General Assembly of the United Nations, Finland voted against its adoption for the following reasons.

First of all, this provision may come into conflict with Article 19, paragraph 2, of the Covenant, recognizing the right of everyone to freedom of expression. Since the concept of war propaganda is somewhat vague, it would be difficult to draw a definite line between lawful expression of opinions and ideas, on the one hand, and forbidden propaganda, on the other.

Secondly, a prohibition by law, in order to be effective, should be sanctioned by penalizing the breach against it. This would cause difficulties since, according to the principles recognized in the Finnish criminal law, the characteristics of a punishable crime or offence must be accurately defined. The provision contained in Article 20, paragraph 1, of the Covenant does not fulfil this requirement.

Consequently, the reservation will be maintained for the present.

The following administrative regulation influenced by the Covenant may be mentioned in this report. According to Article 24, paragraph 2, of the Covenant, every child shall be registered immediately after birth and shall have a name. Previously, when religious communities were mainly responsible for keeping registers of their members, the provisions as to how soon the birth of a child should be registered were either lacking or unsatisfactory. This gap was amended by Decree No. 824 on the

Registration of Birth and Death, of 23 December 1970. According to this Decree, the doctor, midwife or nurse who has assisted a mother or attended her at the childbirth shall immediately issue a birth-certificate which he shall forward, not later than the following day, to the appropriate registrar. In due course, every child shall be given a name.

Finally, it may be mentioned that in connexion with the ratification of the Covenant, Finland, in accordance with Article 41 of the Covenant, declared that it recognizes the competence of the Human Rights Committee envisaged in Article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.