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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATE PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Fifth Periodic Report**

**FINLAND\***

[17 June 2003]

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\* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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## Introduction

1. The Fourth periodic report of the Government of Finland (CCPR/C/95/Add.6) refers several times to the reform of the provisions on fundamental rights in the Finnish Constitution, which entered into force on 1 August 1995. The reform updated and clarified the system of protection of fundamental rights which had been created as early as in 1919 and which had remained almost unchanged for more than 70 years. Many of the amendments made to the provisions were based on interpretations of the provisions of the repealed Constitution Act of Finland and, in that respect, the reform was mainly a codification of existing custom.
2. The emphasis in the repealed provisions was on the traditional freedoms, which no longer satisfied the needs of a modern state. The reform therefore had an objective of establishing de facto equality and economic, social and cultural rights as fundamental rights protected by the Constitution. Thus, the existing Constitution of Finland contains the most relevant provisions concerning social security, which have now been given a status of fundamental rights. The said social rights provisions place the public authorities under an obligation to take the necessary measures to implement them. Furthermore, the reform introduced new fundamental rights, such as the right to respect for private life and the right to a healthy environment.
3. One of the most important objectives with the reform was to create a fundamental rights system that would be in full conformity with the international obligations relating to the protection of human rights, binding on Finland, and thereby strengthen the national implementation of those obligations. The explanatory part of the Government Bill for the enactment of the new fundamental rights provisions includes several references to international human rights conventions, in particular to the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the explanatory part, many of the provisions to be reformed were discussed in the light of the relevant provision of the Covenant. The status of fundamental rights is also strengthened in that the new Constitution specifically mentions the duty of the Constitutional Law Committee of Parliament, the Parliamentary Ombudsman and the Chancellor of Justice to monitor compliance with the provisions on human rights and fundamental freedoms.
4. In the Constitution Act of 1919, fundamental rights were formally seen as civil rights belonging exclusively to Finnish citizens, which was typical of that time. Modern and multicultural society nevertheless required extension of the scope of protection to concern all persons residing within the jurisdiction of Finland. The only exception is the right to vote in national elections which still exclusively belongs to Finnish citizens who have attained the age of 18 years.
5. After 1995, the reform of the Finnish Constitution was continued with the remaining provisions in the then constitutional laws, which were compiled in a single instrument, the Constitution of Finland. The Constitution entered into force on 1 March 2000. The earlier amended fundamental rights provisions were included as such in the new Constitution.

6. In September 2001, the Ministry of Justice set up a working group to prepare a report on the implementation of the new Constitution. The working group gave its report in November 2002. According to the working group, the new Constitution has proved effective. Thus, there is no pressure to further amend the basic principles introduced by the reform.

7. Since 1998, Parliament has been kept informed of the main areas of the Finnish Government's human rights policy, through reports submitted by the Minister for Foreign Affairs to the Foreign Affairs Committee of Parliament. The Government intends to prepare such a report where necessary but in any case at the beginning of the term of each elected Parliament. In response to the previous report, the Foreign Affairs Committee required that the following report on the Government's human rights policy, which will most likely be submitted in 2003, not only address human rights in terms of foreign and security policy but also with regard to the internal situation of the country. In this respect, the report should focus on those issues to which international treaty bodies have drawn attention in their judgments or opinions.

8. The Parliamentary Ombudsman monitors compliance with the provisions on fundamental rights covered by the Covenant, e.g. by means of inspections. In 2003, the inspections will focus on the prevention of discrimination and enhancement of equality before the law, as well as on the prevention and investigation of cases of violence against children. In 2002, the Parliamentary Ombudsman had meetings with certain significant non-governmental organisations to hear their concerns with regard to the protection of human rights and to improve the possibilities to monitor the implementation of fundamental rights. The supervisory competence of the Parliamentary Ombudsman extends over the activities of authorities and other bodies performing public functions. Certain examples of measures taken and decisions made by the Parliamentary Ombudsman will be given account of below.

9. During the period of time covered by the present periodic report, the Human Rights Committee has forwarded its views to the Finnish Government on three communications concerning Finland (CCPR/C/58/D/671/1995; CCPR/C/65/D/850/1999 and CCPR/C/73/D/779/1997), in accordance with Article 5, paragraph 4, of the Covenant.

10. Protocol No. 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby (the European Court of Human Rights), entered into force for Finland on 1 November 1998.

#### **SUBJECTS OF CONCERN AND THE COMMITTEE'S RECOMMENDATIONS**

11. The Committee considered the fourth periodic report of Finland (CCPR/C/95/Add.6) at its 1659<sup>th</sup> and 1660<sup>th</sup> meetings, held on 1 April 1998, and it adopted the following conclusions at its 1666<sup>th</sup> meeting, held on 6 April 1998.

*(10) While noting that a recent reform of the Penal Code makes punishable the violation of several rights and freedoms, including those protected by Articles 21 and 22 of the Covenant, the Committee is concerned that criminal law may not be appropriate to*

*determine remedies for violations of certain rights and freedoms. It recommends that the Finnish authorities continue to give priority to positive measures and to civil processes which are able to determine issues of compensation or other remedies, especially in cases of discrimination.*

12. The provisions of the new Assembly Act (530/1999) and of the Employment Contracts Act (55/2001) protecting the right of assembly at workplaces, are given account of in the context of Articles 21 and 22.

13. With regard to the prohibition of discrimination, the Government refers to the information given in the context of Article 26. Although the Minority Ombudsman has no competence to give binding and enforceable decisions, he may, where necessary, concretely affect the consideration of a case concerning a victim of ethnic discrimination. As mentioned also in the context of Article 26, the purpose is to implement the EU directives relating to equal treatment, Council Directive 2000/43/EC and Council Directive 2000/78/EC, in 2003.

*(11) The Committee notes that the proposed Sámi Act, by which forests within the Sámi Homeland would be turned into commons owned by the Sámi villages, has not passed the Parliament and that the issue of land rights of the Sámi has not been resolved.*

14. In the context of providing for the cultural self-government of the Sámi people, the question of land ownership was excluded from the preparation of the legislation concerning the administrative status of the Sámi, considering that a more profound examination of certain issues relating to land ownership was necessary before any efforts to resolve the question by legislative means. The Sámi Parliament declared already in 1993 its intention to independently examine the question of land ownership. At the same time, the Ministry of Justice has actively sought to examine the question of land ownership in terms of property law and to prepare legislation on the administration of land whereby the right of the Sámi to use the land would be confirmed.

15. The Government Bill for the enactment of a new Mining Act is being prepared at the Ministry of Trade and Industry. The preparations are still at an early stage, and e.g. the Sámi Parliament will be provided with a further opportunity to submit an opinion on the Government Bill.

16. *Objectives with the legislation on the use of land.* For the purpose of preparing the afore-mentioned legislation, the Ministry of Justice invited Pekka Vihervuori, Justice of the Supreme Administrative Court, to prepare a report on the possibilities to remove the obstacles to the ratification of the ILO Convention No. 169. In his report, Mr Vihervuori proposed the establishment of a council of land rights to provide statements, apart from those of the Sámi Parliament, on projects relating to the use of land. Mr Vihervuori further proposed the establishment of a land rights fund into which part of the proceeds of the use of the land areas, including tree felling, would be channelled. His report also proposed changes to the material contents of the legislation applied to the use of land in the area with a view to strengthening the status of reindeer herding. In general, Mr Vihervuori's proposal was found unpractical and difficult to implement. Nor did the Sámi Parliament accept the proposal.

17. In 2000, the Ministry of Justice set up a committee to examine the question of land-ownership and make a proposal as to how the rights to use land administered by the State within the Sami Homeland could be provided for so that the arrangement ensures the right of the Sámi, as an indigenous people, to maintain and develop their culture and traditional means of livelihood, while taking at the same time the local conditions and the need for their development into account. The committee proposal should fulfil the minimum criteria that are required for the ratification of the ILO Convention No 169. The committee should especially assess to what extent the proposals made by Justice Pekka Vihervuori as to the establishment of a right to use the land may be implemented as such and to what extent they should be modified, paying attention to the rights of the Skolt Sámi and the special nature of those rights. The committee was also to include in its report an assessment of the costs and other effects of the measures.

18. The committee proposed the establishment of an administrative board for the Sámi Homeland, for the purpose of resolving certain relevant questions of land ownership, and consisting of representatives of both the Sámi and other local residents. The committee was not unanimous and the statements given on the proposal were also dissenting in many respects.

19. The preparation of the amendments to legislation was continued in the Ministry of Justice. Further discussions were held with both the Sámi Parliament and with the Government, and the Ministry's proposal was preliminarily supported by the Sámi Parliament. According to the proposal, an advisory board would be established for the Sámi Homeland, with a mandate to submit opinions on the most important decisions on land ownership in the area as provided for in a separate act of Parliament. According to the proposal, the National Board of Forestry could only have acted against the opinions in exceptional cases. The advisory board would have had an important role in ensuring that, in the most important decisions on the use of land, the management, use and conservation of natural resources be better coordinated and thereby the possibilities of the Sámi to maintain their culture and traditional means of livelihood be guaranteed and the local conditions and the need for their development be taken into account. The objective was to find an ecologically, socially, culturally and economically sustainable solution through coordinated measures. The advisory board would have consisted of representatives of the Sámi Parliament and of other local residents.

20. According to the proposal of the Ministry of Justice, the advisory board would have had a de facto Sámi majority, in the same way as the administrative board proposed by the committee. In the Ministry's view, the Sámi participation and influence in respect of the use of land was adequate, considering the local history, land use, structure of population and, as established over a long period of time both in practice and in legislation, the form of state administration in the area. The solution would not have affected the self-government of municipalities and nor would it have violated the rights of individual landowners. Nor would the proposed solution have increased disputes in the area. The Ministry found it justified to also guarantee the right of participation in decision-making for local residents other than the Sámi, for the reason that the Sámi had for centuries been performing their means of livelihood together with other Finns, despite that they were originally means of livelihood of the Sámi.

21. The proposal of the Ministry of Justice was sent out for comments to a large number of authorities and to relevant non-governmental organisations. The conflicting views in the statements received, concerning the effects of the question of land ownership on the arrangement of the administration of land by means of legislation led to a situation where it was no longer possible to submit the Government Bill to Parliament in 2002 as originally planned. The Sámi Parliament was also against the proposal.

22. *Reports on the question of land ownership.* The question of titles to land and water areas within the Sámi Homeland has proved so difficult that it has been considered justified to try and resolve it by means of specific measures. From a legal perspective, it would be inappropriate to have the question of the titles of the Sámi to the land resolved by means of instituting court proceedings. The outcome of the proceedings could involve uncertainties relating e.g. to questions of evidence. Instead, adequate historical research based on archives could provide a sound basis for political decision-making.

23. In order to have the issue resolved, the Ministry of Justice assigned Juhani Wirilander, LL.D., with a duty to prepare an expert's opinion on the legal significance of the reports made so far on the issue of land-ownership within the Sami Homeland. This expert's opinion was submitted to the Ministry of Justice in August 2001. According to Dr Wirilander, there is no undisputed evidence of that the Sámi villages owned the land on which they were located. Instead, there is evidence, consisting of district court records, of that families which lived in the Sámi villages had, apart from the pieces of land on which their dwellings were located, also water areas and fishing sites, hunting sites and herding areas in their possession, and these were taken into account in the distribution of tax liabilities among the village residents (heads of families). According to Dr Wirilander, there were also open land areas without any particular owners. In addition, Dr Wirilander, gives account of the increasing role of the Crown and of the later gradual establishment of state ownership. In this respect, it is also relevant that, in the context of the said development, the Sámi began to establish new farms in order to protect their own position.

24. Dr Wirilander characterises his opinion as being more of a reasoned opinion in nature, and observed in its cover note that a profound investigation of the issue would require research to be carried out on the historical sources. He listed those sources that, in his opinion, should be resorted to. Apart from proposing amendments to legislation, the afore-mentioned committee recommended that the research suggested by Dr Wirilander be initiated.

25. At the same time with the afore-mentioned measures, the Sámi Parliament continued its own investigations. In September 2002, the Sámi Parliament published the report of its working group on the question of land ownership within the Sámi Homeland (first preliminary report). The report is essentially based on the contention that the state's title to the land has no reliable basis in law, contesting the state's title to the land. The Sámi Parliament submits that the forests were not formally transferred to the state until about thirty years ago, by an amendment made to the legislation in 1976. However, the register has not and has never had any constitutive or declarative effect on land ownership. The real estate register was not originally, and nor was the prior land register, meant to cover all land areas but they only contained entries concerning privately owned farms and dwellings. Entries concerning state-owned land areas were only

made later. The fact that the registers contain no earlier indications of the state's title to land areas does not mean that the said areas had a status of *res nullius*, i.e. that they had no owner. The major reforms concerning land ownership, the general parcelling of land and other significant legislative reforms, date back to distant times.

26. Considering that the Sámi Parliament has, in connection with the afore-mentioned investigations, given up the efforts to find a solution based on the protection of an established right to use the lands and has, instead, undertaken to claim titles to the land areas, the pressure to introduce an independent study on the historical development of the situation has further increased. In a session held on 22 May 2002, the Government discussed various matters relating to the Sámi people as an entity and found it important to initiate independent research, based on archives, on the history of dwellings, populations and use of land from the mid-18<sup>th</sup> century until the beginning of the 20<sup>th</sup> century, in the areas of Kemi and Tornio in Lapland.

27. The existing reports show that the Sámi and other Finns have already for centuries lived in the same places and performed the same means of livelihood. In order to find a proportionate solution, in the light of historical facts, the facts concerning dwellings and populations as well as the development of the rights to use land play an even more significant role. As the Sámi Parliament has concentrated on finding support for the allegation that the states has no title to the land, independent scientific information concerning the afore-mentioned facts is necessary.

28. On 25 November 2002, the Finnish Parliament approved a second supplementary budget whereby financing was allocated to the research on titles to the land, i.e. to the afore-mentioned research on the history of dwellings, populations and use of land in the areas of Kemi and Tornio. The research project was initiated by an invitation for tenders that was also communicated to the Sámi Parliament. By the deadline, one tender was submitted to the Ministry of Justice, by a joint research group of the Universities of Oulu and Lapland. The tender met the conditions set in the invitation for tenders and the Ministry of Justice accepted it on 20 December 2002. The research has been started and should be completed by the end of 2004.

29. A profound historical research on dwellings and populations, as well as on the development of means of livelihood and rights to use land, has been found necessary for the resolution of the issue, irrespective of whether it is carried out on legal or political grounds.

30. The Sámi Parliament has strongly criticised the most recent legislative projects and reminded, among other things, of the following: In 1993, the examination of the question of landownership was entrusted to the Sámi delegation. However, progress was slow in this respect and the work had to be interrupted due to the inadequate resources allocated for the purpose. Despite this, the Sámi Parliament was able to submit an interim report on the use of land administered by the State. In 1998, the Deputy Chancellor of Justice requested the Ministry of Justice to consider taking measures to resolve the question of titles of the Sámi to land and to examine the possibility to ratify the ILO Convention. However, the Ministry has only partly set these aims as the goal of the historical research which has been launched. In the Report of Dr Wirilander submitted to the Ministry of Justice, it was observed that the Sámi had traditionally had titles to pieces of land used by them but that there was also land without any particular owners in Lapland. In the view of the Sámi, not even the latest efforts to find a resolution for the dispute concerning land rights would adequately secure the status of the Sámi

as an indigenous people but have, in the first hand, the objective of equal treatment of the Sámi and other local residents in the northern part of Finland. Consequently, the Sámi culture and the traditional means of livelihood of the Sámi, in particular reindeer herding, are not adequately protected. The Sámi Parliament further refers to the planned reform of the Mining Act in which, according to the Sámi Parliament, the status of the Sámi has not been taken into account in respect of questions relating to mining, as required by the ILO Convention.

*(12) The Committee notes that “important” United Nations and European conventions are translated into Sámi languages and disseminated to the Sámi, and recommends that efforts should be made to provide to the Sámi and Roma minority printed texts of all available human rights documents, translated into the Sámi and Roma languages, where possible.*

31. The text of the European Charter for Regional or Minority Languages has been published in North Sámi in the Finnish Treaty Series. Even later instruments relating to the protection of minorities will be translated into Sámi. Most recently, the recommendations given by the Committee of Ministers on the implementation of the Charter were translated into North Sámi.

32. The Ministry of Education and the National Board of Education are carrying out an assessment of the need to produce teaching materials in the Roma language. The project focuses on teaching materials but, in the light of the results obtained, the need for the materials referred to by the Committee may also be assessed. The Ministry of Education has shared the Committee’s concern about the existence of materials in the Roma language. The present supply of publications mainly consists of materials for the teaching of Roma as the only or second mother tongue. A long-term objective is to produce a series of teaching materials covering the entire comprehensive school and upper secondary school system, for children speaking Roma as their only or second mother tongue. One problem in this respect is the limited number of persons with competence to produce such materials, as there are very few teachers commanding the Roma language and capable of planning teaching materials. The fact that the language has no established usage and the lack of vocabulary place translators in an exceptionally demanding situation.

33. According to the Advisory Board for Roma Affairs, there is no urgent need to allocate resources to the translation of human rights conventions into Roma. This may be interpreted as meaning that the lack of human rights materials in the Roma language has not been seen as a significant problem. In future, however, United Nations Conventions relating to human rights might be translated into the Roma language if funds for this purpose are clearly reserved in the State budget. According to the Advisory Board, the Roma researcher working for the Research Institute for the Languages of Finland (KOTUS) has also adequate competence and skills to translate international conventions into Roma.

34. In the light of expert opinions, it may be concluded that the existing resources should mainly be allocated to the production of teaching materials in the Roma language and to the production of other literature contributing to the maintenance of the language.

*(13) While recognizing the State's efforts to extend the prohibition of sexual discrimination and achieve equality, particularly in the workplace, the Committee remains concerned at the continuing disparity in remuneration between the sexes and the relatively low proportion of women in higher levels of the public service. Further efforts are necessary to reduce these differentials.*

35. According to the final report (2/1999) on the implementation of the Equality Programme of the second Government of Prime Minister Paavo Lipponen, the Government, representing the state as an employer, was committed to promoting women's participation in decision-making. The number of women occupying high posts in state administration has steadily increased. Whereas 20% of highest state officials were women in 1988, their share was already 32% in 1995. The share of women in the whole public sector in 1995, including local authorities, was 40%. However, in state administration, the career developments of women have not been systematically followed, partly because of statistical difficulties. In 1998, Statistics Finland undertook to compile data on offices entailing decision-making powers in the public sector, and the first statistics on such office-holders were published in 1999.

36. In the context of submitting comments on the implementation of the Equality Programme, the Permanent Secretaries of the different Ministries had an optimistic view on the future development of the number of female directors. The number of female directors will without doubt increase along with the increasing respect for leadership skills typical of women and with the retirement of men belonging to the generation born after the wars. Furthermore, the increasing share of women was partly found to be due to the fact that, in many fields, women often have higher level of education and better language skills. The Secretaries General considered that the Ministries were generally in favour of promoting equality in the workplace. In 1997, the share of female directors general in state administration was 25.5%, and in 1995 first female Secretaries General were appointed (for the Ministry of the Environment and for the Ministry of Justice). All the government Ministries have elaborated equality plans as required by the Act on Equality between Men and Women, for the purpose of enhancing equality in career advancement. Specific positive measures and support for the coordination of work and family life should be considered, and the criteria applied to the recruitment of personnel should be reviewed, in order to enhance the appointment of female directors. The general attitudes in Finland are already favourable to the appointment of female directors. The present President of the Republic, Tarja Halonen, is the first female President in Finland, and was elected directly by the people. In April 2003, following the parliamentary elections, a new government was formed for the country under the leadership of the first female Prime Minister, in which half of the Ministers are women.

37. For the purpose of enhancing the careers of female directors in state administration, a contact network of female directors was created on the initiative of the Ministry of Finance. The network has been active and there have been as many as 150 female directors from the different sectors of state administration participating in its activities. The network is planning to introduce a mentoring project for female directors.

38. The average earnings of female employees, in regular full-time work, were approx. 81 per cent of those of men throughout the 1990's, although the wage differences between men and women working in the same professions were smaller than the wage differences between the sexes as a whole. The wage differences are partly explained by the

strong division between male and female jobs (professional segregation), which is typical of the Finnish labour market, and by the lower respect for female-dominated professions. In Finland, men and women have traditionally sought to find education and jobs in different fields and professions. Such segregation in the labour market is of a rather continuing nature, and is both horizontal and vertical. Accordingly, women work more often than men at lower levels in the hierarchy of professions in the labour market, and men more often occupy management levels.

39. Efforts have been made to reduce the afore-mentioned differentials by means of various projects, for example, but no specific policy addressing job segregation was introduced by the Government ending its term in 2003. However, it is worth noting that, throughout the 1990's, trade unions worked to enhance the introduction of systems for job evaluation. One of the objectives with such systems has been to reduce wage differentials between men and women. Accordingly, clauses on the payment of wage increases in female-dominated and low-pay sectors have been included in collective agreements.

40. A report on wage differentials between men and women, based on a study introduced on the initiative of the Equality Ombudsman, was published in 2001. The purpose of the study was to profoundly address the wage differentials between men and women and to present ways of compiling statistics and monitoring the situation. The results of the study indicate, among other things, that approx. 20% of the wage differentials are explained by personal factors and educational and professional choices. An English summary of a more extensive study written in Finnish is attached to the present report. (Annex 2: Vartiainen, Juhani (2001): Gender Wage Differentials in the Finnish Labour Market. No. 2002:2, Publications on Equality. Ministry of Social Affairs and Health.)

41. The afore-mentioned collective agreements entered into by the different trade unions cover a wide range of issues and are applied to most employees. Furthermore, collective agreements extending over several sectors are a useful tool to reduce wage differentials between sectors. Men and women largely work in different sectors, and therefore collective agreements may also reduce wage differentials between the sexes. Furthermore, the four latest collective agreements (concluded for the years 1995, 1997, 2000 and 2002) have provided for additional funds to reduce wage differentials between the sexes. The funds are allocated in different shares to the different sectors of working life, depending on the proportions of women and men and the general wage level in the sector in question.

42. The Equality Act places the employers under an obligation to prepare equality plans for all workplaces having more than 30 employees. A committee set up to reform the provisions of the Equality Act completed its work at the end of 2002. The committee proposes that all future equality plans to be concluded for workplaces include a table of wages and a plan for measures to remove any unjustified wage differentials between men and women. Should the committee's proposal be passed by Parliament as such, the possibilities for enhancing equality between men and women in respect of earnings will improve.

*(14) The Committee regrets the continuing de facto discrimination against members of the Roma minority, especially in the area of private housing, employment and services; it recommends that government agencies be trained to intervene positively to help overcome racist attitudes and to initiate proceedings where any pattern of discrimination is identified.*

43. In the past few years, the increasing number of people moving to cities has led to a situation where it is significantly more difficult than before to find apartments, either rental or owned ones, in the fastest growing cities. The situation of all persons seeking housing in such cities, particularly of those wishing to have small apartments, is difficult. This is also reflected in the situation of minorities, including the Roma, insofar as availability of public housing provided by the local authorities is concerned.

44. The persons seeking housing are not placed in different categories on the basis of their ethnic background. Therefore, the local authorities have no exact data on the number of Roma seeking public housing or living in apartments owned by the local authorities. However, according to a report published by the Ministry of the Environment in 1996, most Roma lived in apartments owned by local authorities or non-profit organisations. In the private housing sector, the high rents and general prejudices create problems. The Roma are usually in a weaker socio-economic position than Finns on the average, and private housing possibilities are often out of their reach.

45. A Government Decree providing for the criteria to be applied to the selection of tenants of rental apartments supported financially by the State, entered into force in December 2001. Those criteria include urgent need for housing and the income and assets of the person seeking housing. The latest handbook for the authorities deciding on and monitoring the selection of tenants, in which attention is drawn to the principle of equal treatment and to the need to take the special features of the Roma culture into account in the selection of tenants of apartments, was published by the Ministry of the Environment in 2003. The regional authorities will implement an extensive training project for housing authorities in 2003, in cooperation with regional advisory boards for Roma affairs and the Association of Finnish Local and Regional Authorities.

46. The contacts between the Roma and the Minority Ombudsman (see information given under Article 26) have mainly concerned housing problems, which is an indication of that the Roma have felt that they face discrimination in access to housing. In this respect, the Ministry of the Environment has found discrimination to exist to some extent in the selection of tenants of apartments owned by local authorities, but the situation is different in different municipalities. It takes long-term efforts, in particular provision of information and guidance, to change practices based on attitudes. The Ministry of the Environment, the Advisory Board for Roma Affairs, the Ministry of Social Affairs and Health and the Association of Finnish Local and Regional Authorities have discussed ways to eliminate discrimination in respect of access to housing. As an initial measure, training will be provided for local authorities and real estate agents.

47. The Labour Administration is represented in all bodies established to improve the situation of the Roma minority, including the Advisory Board for Roma Affairs, the Roma Training Unit and five regional advisory boards.

48. As of 2001, the Ministry of Labour has been coordinating and implementing an information campaign against discrimination (SEIS) which is partly financed by the European Union, in cooperation with the Ministry of Education, the Ministry of Social Affairs and Health and the Police Department of the Ministry of the Interior. The campaign aims at raising awareness of discrimination and increasing equality and pluralism in society. It covers different sectors of administration and draws attention to all the prohibited grounds of discrimination set forth in Article 13 of the Treaty establishing the European Union: ethnic

origin, religion, confession, disability, age, sexual orientation and sex. The groups facing discrimination in Finland, e.g. the Roma, have participated in the planning and implementation of the campaign on equal standing with the authorities. A second phase of the campaign, SEIS II, started on 1 July 2002. The campaign was also joined by the other departments of the Ministry of the Interior. During the second phase of the campaign, the work against discrimination will be brought closer to the providers of concrete services, for example in the field of health care. Particularly at the regional level, the aim is to combine the efforts made in the different sectors of administration. The State Provincial Offices, Employment and Economic Development Centres and other regional organisations have arranged seminars relating to the second phase of the campaign in different parts of Finland during the spring of 2003.

49. Information has been disseminated within the framework of the SEIS campaign through specific Internet pages and an interactive journal addressing issues relating to discrimination, in the form of an informative brochure on the principles of non-discrimination, through a number of published articles discussing the principle of equality, and in connection with various forms of training provided for authorities, non-governmental organisations and groups facing discrimination. Members of the Roma minority have participated in the planning and management of the campaign and of the information materials. The brochure and some of the articles have also been published in the Roma language. The campaign has served as a tool to disseminate information on the Roma culture and to provide financial support for Roma giving lectures or providing other forms of training.

50. Of public authorities, the SEIS campaign has focused in particular on the teachers, the Police, the employment authorities, and the social welfare and health authorities. Information has also been produced for and used in teacher training, to increase the preparedness of teachers to identify and prevent discrimination and to intervene in cases of discrimination. This part of the teacher training consists of both theoretical and practical studies in issues relating to discrimination (principle of equality and prohibition of discrimination, other fundamental and human rights, and tools to intervene in cases of discrimination and to reduce discrimination). Members of the Roma minority have also participated in the provision of such training. For further information, see [www.join.fi/seis](http://www.join.fi/seis).

51. There is also another project partly financed by the European Union, which is designed to provide training and information for local authorities in respect of good practices, and to monitor the application of such practices. This project, coordinated by the Ministry of Labour and the Association of Finnish Local and Regional Authorities, lasts two years and focuses on education, health care and police cooperation. It is implemented in cooperation with the Irish (Dublin) and German (Hamburg and Berlin) authorities. The Finnish school authorities are particularly actively involved in the cooperation in respect of the Roma minority, and the health authorities and the police in respect of both the Roma and immigrants. Members of the Roma minority have been recruited to work for the project, and extensive educational materials have been produced concerning the history and culture of the Roma and concerning principles of non-discrimination. For further information, see [www.join.fi](http://www.join.fi).

52. Since 2001, the Ministry of Labour has been providing training for a network of national experts on ethnic equality in working life (ETNA). The network maintains web pages and has produced informative materials on ethnic equality. The network consists of experts representing

authorities, the Roma and other groups and communities. Its organisation is undergoing a reform after which it will operate at the regional level.

53. The Labour Administration has already for years been providing further professional education for adults, designed particularly for the Roma. This education mainly focuses on fields that are closely related to the Roma culture (embroidery, music, theatre and horsekeeping). The Roma have themselves participated in the planning of the education. The Roma are encouraged to apply for educational programmes which are open to all persons fulfilling the criteria for admission. The reports produced within the framework of the *Romako* project, with the support of the European Social Fund, have been communicated to the regional organisations procuring and planning education. The educational needs of minority groups are always addressed in the context of planning labour market training.

54. Since the beginning of 2003, the Ministry of Labour has included information on the special features of the Roma culture and on the specific services needed by the Roma, in the training of the personnel of employment agencies. The purpose is to have members of the Roma minority participate in the implementation of the training. During the first months of 2003, the Ministry of Labour has undertaken to assess factors affecting the employment of Roma. For the purpose of assessing the present situation and planning appropriate employment policy measures to support the employment of Roma, the regional distribution of Roma employees is examined. The proposals for the measures to be taken will most likely be elaborated by the end of 2003, and their implementation will be discussed with persons representing the Roma minority.

55. The Advisory Board for Roma Affairs has aimed at contributing to the implementation of the Committee's recommendations by arranging training e.g. for housing and school authorities and for the Police. Furthermore, anti-discrimination work is done by means of producing informative materials and by arranging lectures and seminars on the Roma culture, and through direct contacts. It is found important that the authorities actively monitor the implementation of the principle of equality in their sectors of administration. The Secretary General of the Advisory Board for Roma Affairs had a discussion with the Parliamentary Ombudsman in March 2003. The discussion concerned the most usual forms of discrimination faced by the Roma in access to services and the treatment of the Roma in prisons.

*(15) The Committee expresses concern at its understanding that, after due notice, a person charged before the Finnish courts with certain offences may be tried in absentia, if his or her presence was not necessary, and sentenced to a fine or up to three months' imprisonment with no possibility for retrial after 30 days. The Committee considers that unless the person has clearly agreed to this procedure, and the court is fully informed of the offenders circumstances, this method of trial could raise questions of compatibility with article 14, paragraphs 3(d) and (e) of the Covenant. The Committee suggests that this procedure be revised.*

56. On the average, some 20% of criminal law cases before courts of law are decided in the absence of a party concerned. Such cases mainly concern driving under the influence of intoxicants or minor property offences, for which the most usual form of punishment is a fine. The defendant is informed, in the writ of summons, that the case may also be examined in absentia. In such cases, the punishment to be imposed may only be a fine or a sentence of imprisonment not exceeding three months.

57. A working group has been set up to review the existing provisions on the criminal procedure, with a view to achieving a system where the defendant could specifically give his or her consent to the examination of the case by a court without a trial, i.e. in accordance with a written procedure. Such a system based on informed consent has less problems with regard to the principles of a fair trial.

*(16) The Committee expresses serious concern over the increase in negative attitudes and de facto discrimination toward immigrants among some of the Finnish population, and also of instances of violence. While appreciating Finland's acknowledgment of the situation and the steps Finland has taken to minimize the problem, the Committee recommends that further positive measures be taken to overcome discriminatory and xenophobic attitudes and prejudice, and to foster tolerance.*

58. The Ministry of Labour coordinates the preparation and implementation of the Government's action plan to combat ethnic discrimination and racism, as well as the implementation of the (European) Community Action Programme to combat discrimination. A provision on the promotion of good ethnic relations has been added to the Act on the Integration of Immigrants and Reception of Asylum Seekers, of which the authorities and organisations concerned have been informed and provided with training in cooperation with the Association of Finnish Local and Regional Authorities and the relevant administrations.

59. The Ministry of Labour has widely disseminated information on the Government's action plan, e.g. with the help of a publication and the Ministry's Internet pages. Both internal and external training have been arranged on the issues covered by the action plan. In connection with training provided for the personnel of employment agencies and reception centres, issues relating to ethnic relations and facing of minorities have been regularly addressed, with a view to increase the professional skills and preparedness of the personnel. Immigrants have themselves contributed to the training as lecturers and experts, and thereby their experience has been used to contribute to the implementation of non-discriminatory services and administrative practices. The Ministry of Labour has also, in cooperation with other Ministries, financed studies made on general attitudes and immigrants' experiences of discrimination, including an extensive study on victims of ethnic discrimination in the capital district.

60. The Community Action Programme to combat discrimination has been implemented, *inter alia*, through the afore-mentioned SEIS and JOIN projects. The Ministry of Labour has also provided support for non-governmental organisations in their efforts to combat racism and ethnic discrimination and has participated in the work of the European Monitoring Centre on Racism and Xenophobia.

61. The Act on the Integration of Immigrants and Reception of Asylum Seekers was amended in 2002 to the effect that the enhancement and monitoring of ethnic relations is now part of the local/regional integration programmes. The Ministry of Labour and the Association of Finnish Local and Regional Authorities have proposed that the integration programmes consist, among others, of the following elements relating to the enhancement of equality between different ethnic groups and of good ethnic relations: (1) a decision on the local body responsible for monitoring ethnic relations, (2) a plan for cooperation among various bodies, (3) joint and sector-specific measures for the enhancement of good ethnic relations, (4) concrete measures and

support to increase the participation of members of ethnic minorities in the conduct of public affairs at the local level, and (5) a plan for the prevention of problems.

62. The Ministry of Labour has included aspects of cultural diversity in the training of the Ministry's own staff. The training under the title 'Immigrants as customers' has been arranged on a yearly basis, and these aspects have been duly taken into account in a new training programme. Furthermore, the basic training of customer-service personnel includes increasing of knowledge of and positive attitudes towards different cultures, underlining the principles of non-discrimination. The Ministry of Labour has arranged seminars for employment agencies and their cooperative partners, with a view to enhancing pluralism and equality. The enhancement of pluralism and equality has also been included in an equality plan elaborated for the Labour Administration and training has been provided for the relevant contact persons of the Labour Administration.

63. The Ministry of Labour has also cooperated with the Advisory Board for Ethnic Relations (ETNO) in the prevention of racism and discrimination against immigrants. ETNO has initiated a study on cooperation between schools and immigrant families, and on attitudes and problems existing at schools, and arranged a research forum to study these issues. In cooperation with other Ministries and ETNO, the Ministry of Labour also arranged a national conference on equality - On the road to equality - in December 2002, in which lectures were held and workshops organised on the following topics: role of the media in the prevention of discrimination; access of minorities to training and services; legislative reforms; resolution of ethnic conflicts; youth and racism; and ethnic minorities and working life. In the conference, ETNO also published the names of ten good will ambassadors, representing the sectors of politics, science, culture and sports, who have made efforts through their work and leisure activities to contribute to the elimination of discrimination and racism in society. The aim with the designation of such good will ambassadors is to give publicity to the combat against discrimination and racism and enhancement of equality.

64. The Police have also paid particular attention to the prevention of racism, discrimination and xenophobia. The police officers have been provided with training to increase their capabilities to identify offences with a racist motive and to intensify the pre-trial investigation of such offences. Furthermore, the basic and further training of police officers increasingly includes courses addressing ethnicity and prevention of discrimination. The Police have, in cooperation with non-governmental organisations, arranged national and local training as well as information campaigns relating to the prevention of discrimination and enhancement of tolerance in Finnish society. For example a guide for victims of crime has been produced in cooperation with the Human Rights League. International cooperation with various organisations has also been increased. At present, the Police Department of the Ministry of the Interior is updating the instructions on the increasing of tolerance and prevention of racism among the police.

*(17) The Committee notes that the reservations entered by Finland upon ratification of the Covenant with respect to article 10, paragraphs 2(b) and 3, article 14, paragraph 7, and article 20, paragraph 1, are still in force and recommends that consideration be given to the withdrawal of these reservations.*

65. These issues are addressed below under the relevant articles of the Covenant.

*(18) The Committee expresses its continuing concern that there is still legal provision for preventive detention of certain convicted persons (“dangerous recidivists”) to be determined by the Prison Court and recommends that early consideration be given to implementing the current proposals for the reform of indefinite imprisonment as outlined in paragraph 52 of Finland’s fourth periodic report.*

66. The Incarceration of Dangerous Recidivists Act (317/1953) entered into force already in 1954 and an overall reform of the applicable legislation was carried out in 1971. The Incarceration of Dangerous Recidivists Act, in principle, makes it possible to retain a prisoner in the prison, by an order given by the Prison Court, even after the entire sentence has been served. However, since 1971, there have been no such orders to retain a prisoner in the prison for longer than the court-ordered length of sentence. Prisoners ordered into preventive detention are placed in regular prison compartments together with other prisoners. Such prisoners serve the entire sentence without a possibility for being released on parole. The present number of prisoners in preventive detention is 23.

67. There have been attempts by the Ministry of Justice to abolish the existing system of preventive detention since 1994. The attempts remained fruitless but the issue was again addressed by a committee set up in 1999 to prepare a reform of the legislation applied to prison sentences, pre-trial detention and release on parole. It is an overall reform of the applicable provisions, consisting of new acts of Parliament concerning prison sentences and pre-trial detention and of new provisions added to the Penal Code concerning release on parole. The proposals based on the committee report (KM 2001:6) are being further elaborated at the Ministry of Justice.

68. It is proposed that the existing system of preventive detention be replaced by a system where dangerous recidivists may simply be ordered to serve the whole sentence of imprisonment. According to the proposal, the competent court of law could, when imposing the sentence, order that a person who is convicted of an offence against the life or personal integrity of another, and is sentenced to imprisonment for more than four years, shall serve the prison sentence in its entirety. However, even in such a case could the prisoner be released on parole after he or she has served two thirds of the sentence if he or she is no longer found to be a threat to the life or personal integrity of another. The decision on release would be made by Helsinki Court of Appeal. If the prisoner was not released on parole, he or she could still have a possibility for probation under supervision when he or she has no more than six months left of the sentence. It is further proposed that the Prison Court be abolished.

*(19) The Committee notes with concern that Swedish-speaking persons do not always have the possibility of using their language in dealing with authorities and recommends that this possibility be put into practice.*

69. In February 2003, Parliament passed the Government Bill (HE 92/2002 vp) for the enactment of a new Language Act. The Language Act is scheduled to enter into force at the beginning of 2004, replacing the existing Language Act of 1922. The purpose of the new Language Act is to ensure the protection of language rights of the Finnish-speaking and

Swedish-speaking populations as required by the Constitution. The new Act would be generally applied to the national languages of Finland, Finnish and Swedish, and would contain references to legislation concerning other languages as well as to other legislation containing provisions on languages.

70. The new Language Act would have a wide scope of application and would be binding not only on the authorities referred to in the Act, but also on State-owned companies and, subject to certain conditions, on such service providers in respect of which the State or local authorities exercise decision-making powers. As regards the services to be provided, the Act would concern not only authorities providing public services but also any private entities exercising public administrative functions.

71. The difference between municipalities with one language and bilingual municipalities would still be maintained, and the criteria according to which the language status of a municipality is determined would also remain the same. According to the new provisions, however, public authorities would also be defined as using one or two languages. It is proposed by the Government that the authorities should, *ex proprio motu*, ensure that the citizens have an effective right to use their own language. The right to obtain services in Finnish and Swedish would be guaranteed as a fundamental right in the new Language Act.

72. The new Language Act will include specific provisions on the right to use Finnish and Swedish before courts of law and other authorities in various situations, as well as provisions on the working language and language of documents of authorities. It is proposed by the Government that an authority which has been defined as using two languages, must use both Finnish and Swedish in the provision of public information. The Act will also contain provisions on basic principles concerning the language to be used in plates, traffic signs and town names as well as in the informative labels on products.

73. The Act will further contain a specific provision on measures to be taken for the promotion of language rights. The Ministry of Justice will be responsible for monitoring the implementation and application of the Act. The Ministry of Justice should thus, where necessary, take initiatives and other measures for the purpose of ensuring compliance with the Act.

74. It was proposed in the Government Bill that a Government report be submitted to each elected Parliament on the implementation of the Language Act and language rights. Apart from Finnish and Swedish, the reports would also address at least Sámi, Roma and the sign language.

75. At the same time with the Language Act, a new Act on the Language Requirements of Public Officials will enter into force. The new Act will repeal the existing Act on Language Requirements of State Officials. The Act will provide for the language proficiency required from public officials and other personnel employed by the State, municipalities or joint municipal boards and independent public institutions. The Act will contain provisions, *inter alia*, on the obligation of authorities to ensure that their personnel have adequate language skills, to decide on details and inform of the language requirements, to verify the language skills in the context of recruitment, to decide on any exemptions from the requirements, to hold Finnish and Swedish language exams and to provide for the administration and implementation of such exams.

76. Upon the entry into force of the Language Act, certain amendments made to the Code of Judicial Procedure, Criminal Procedure Act, Criminal Investigations Act, Act on the Status and Rights of Social Welfare Clients, Act on the Status and Rights of Patients, Social Welfare Act, Public Health Act, Act on Specialised Medical Care and Act on Local Authority Boundaries, will also enter into force.

77. There are two specific bodies within the Ministry of Labour working to ensure the access of the Swedish-speaking population to services in their own language at employment agencies and the Regional Employment and Economic Development Centres. One of them, *Svenska utvecklingsgruppen*, consists of representatives of social partners and of certain Swedish-language institutions, experts of the Ministry of Labour and regional directors. This cooperative body is chaired by the Permanent Secretary of the Ministry of Labour. The other body, which is of a coordinative nature, aims at monitoring the access of the Swedish-speaking population to employment services in their own language in all bilingual or Swedish-speaking areas. Furthermore, a cooperative body has been set up for three bilingual areas, to ensure adequate implementation of services in Swedish by the employment agencies within these areas. Personnel training is regularly provided in Swedish.

78. Regional and local authorities are provided yearly language training and a large part of the instructions, brochures and other materials meant for users of employment services are translated into Swedish. The supply of employment services in Swedish is planned and implemented in cooperation between the bilingual areas of the country, and training is provided in those areas where it is necessary. The information system used by the labour authorities is bilingual, and the data concerning individual customers are entered into the registers by using the customer's own language and all print-outs are taken either in Finnish or Swedish. Also the Internet pages of the Labour Administration are in both languages. The Ministry of Labour has a translator for the purpose of ensuring services in Swedish and, at the regional level, there is a translator working for three bilingual areas.

*(20) The Committee is concerned that asylum seekers and aliens with irregular status are held in public prisons and police detention places pending inquiry as to their status and recommends implementation of the proposal to establish separate areas.*

79. A new Act on the Treatment of Aliens and Detention Units (116/2002), under which detained foreigners shall be held in special detention units, entered into force on 1 March 2002. Under the new Act, aliens are provided with lodging and full board, interpretation services and other indispensable services by the detention unit. Their rights may only be restricted to the extent it is necessary to ensure the purpose and security of the detention and to maintain security and order at the detention unit.

80. A detained foreigner may temporarily be placed in a police establishment where the special detention units are temporarily full or where the foreigner is detained in a town which is located far from the closest detention unit. Detention in a police establishment may not last longer than four days. In its order (SM-2002-1454/Tu-41, 2 July 2002), the Ministry of the Interior considered that for example a detention taking place more than 100 km from Helsinki is "far from the closest detention unit" within the meaning of the Act, although such an assessment shall be made in the light of the circumstances of each individual case. A person who is

under 18 years old may only be placed in a police establishment together with his or her family or custodian. Temporary placement of a foreigner in a police establishment shall be notified to the district court of the place of detention or, in an urgent case, to another district court.

81. An alien placed in a detention unit has the right to maintain contacts with his or her host, family member or other close person in Finland, the diplomatic representation or consular post of his or her country of origin, an authority monitoring the operation of the detention unit, the Minority Ombudsman, a legal counsel, an attorney or other lawyer protecting the interests of the alien concerned, as well as the Office of the UN High Commissioner for Refugees or a representative of the Office or any non-profit organisation providing professional legal help and advice for asylum seekers, refugees and other aliens. Such maintenance of contacts may not be subject to restrictions or control. However, before access to the detention unit is granted to a host, family member or other private individual visiting a detained alien, he or she may be required to undergo security controls.

82. One of the Deputy Parliamentary Ombudsmen made an inspection at a new closed detention unit for asylum seekers in Katajanokka, Helsinki, on 10 December 2002. The purpose of the inspection was to form an opinion of the unit and any problems relating to its operation. Although the detention unit in Katajanokka was only meant to be temporary, the Deputy Parliamentary Ombudsman found it positive to finally have an establishment for the detention of asylum seekers in a place other than prison. Furthermore, a permanent detention unit is meant to be established in Metsälä, Helsinki, before the end of 2003.

83. The Minority Ombudsman has stated that the establishment of special detention units has improved the status of foreigners in cases of detention. However, continued monitoring of the implementation of the Act is necessary as short-term detention in police establishments is still possible.

*(21) The Committee reiterates its concern, expressed during the consideration of Finland's third report, that Jehova's Witnesses are granted by domestic law preferential treatment as compared with other groups of conscientious objectors and recommends that the State Party review the law to bring it into full conformity with article 26 of the Covenant.*

84. The derogation from the military obligation, based on the Act on the Release of Jehova's Witnesses from Military Obligations in Certain Cases (645/1985) was enacted in accordance with section 67 of the former Parliament Act which was a constitutional law. The provisions of law applied to Jehova's Witnesses have not been amended during the period of time covered by the present report. The Ministry of Defence has the intention to review those provisions at the same time with assessing whether there is general need to amend the Military Obligations Act.

*(22) The Committee recommends that the laudable efforts already made in connection with the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocols should be further pursued and that appropriate publicity be given to these Concluding Observations.*

85. A press conference was arranged on account of the consideration of Finland's previous report. The recommendations given by the Committee were translated into Finnish and were widely disseminated among interested bodies. The Ministry for Foreign Affairs has, where necessary, sent materials to any person on request and has provided information on the Internet databases of the United Nations. Since 2000, the Finnish-language versions of all the relevant instruments relating to the reporting have been placed on the Ministry's web site at <http://formin.finland.fi>, including Finland's reports and recommendations obtained. The web site also contains instructions on how to lodge complaints with the international treaty bodies monitoring the implementation of human rights conventions. In the spring of 2003, the possibility of non-governmental organisations to present their views on issues that should, in their opinion, be included in the periodic reports, was informed of on the Internet. Such views were presented by three organisations in respect of the present report: the Refugee Advice Centre, the Mannerheim League for Child Welfare and the Central Union for Child Welfare in Finland. The Ministry for Foreign Affairs considers that non-governmental organisations play an important role in that they represent the views of the public at large and also in that they further transmit information to the public.

## Article 1

### Paragraph 1. Right of self-determination

86. *Åland Islands.* Section 120 of the Constitution of Finland contains a provision on the special administrative status of the Åland Islands, which has been given account of in previous periodic reports. The details concerning the arrangement are provided for in the Act on the Autonomy of Åland, the amendments of which made in 1991 were addressed in the fourth periodic report. The right of self-governance of the Islands is, for historical reasons, based on the need of the Swedish-speaking population on the Islands to maintain their Swedish culture and other traditions.

87. The Act on the Autonomy of Åland contains an exhaustive list of the sectors of law falling within the legislative powers of the Åland Islands and those in respect of which the legislative powers are exercised by the State. The Act also lists those sectors of law in respect of which the legislative powers may be transferred to the Åland Islands through the enactment of an ordinary act of Parliament. However, the Åland Islands have been given certain possibilities to affect the national legislation in matters of particular interest to the Islands. The Åland Legislative Assembly may submit legislative motions, the opinion of the Åland Islands must be obtained in legislative projects which are of particular importance to the Islands, and in certain cases concerning landownership an act of Parliament will not enter into force without the consent of the Åland Legislative Assembly. In administrative matters, the division of competence mainly corresponds to that in respect of the legislative powers.

88. Upon the accession of Finland to the European Union in 1995, the status of the Åland Islands as an autonomous province was taken into account in the EC Treaty under which the Treaty shall not apply to the Åland islands, unless The Government of Finland gives notice to the contrary, by a declaration deposited when ratifying the Treaty. Once the question had been discussed by the competent organs of the Åland Islands, the President of the Republic deposited such a declaration. The Treaty shall, however, only apply to the Åland Islands in accordance with the provisions set out in Protocol No 2 to the Act of Accession. The said restrictions relate

to the right of natural persons who do not enjoy *hembygdsrätt/kotiseutuoikeus*<sup>1</sup> (regional citizenship) in Åland, and of legal persons, to acquire and hold real property on the Åland Islands. The right to vote and to stand as a candidate in municipal elections on the Åland islands is addressed in Declaration No. 32 to the afore-mentioned Act of Accession. Under the Act on the Autonomy of Åland, the said right is linked with the regional citizenship.

89. The Act on the right of persons not having the regional citizenship of Åland to vote and stand as a candidate in elections (63/1997) was passed by the Åland Legislative Assembly in 1997. The Act affords the right to vote and to stand as a candidate in elections for all those who have resided on the Åland Islands without interruptions for at least three years before the election year, irrespective of nationality, even where they have no regional citizenship.

90. Although part of the legislative and administrative powers of Finland and of the Åland Islands have, upon Finland's accession to the European Union, been transferred to the Union's institutions, the EU membership does not affect the provisions of the Act on the Autonomy of Åland concerning the distribution of competence between the State and the Islands. The province of the Åland Islands bears itself the main responsibility for the implementation of Community legislation in those sectors of law as fall within the competence of the Islands. The Autonomy Act further provides for the participation of the Åland Islands in the preparation of Finnish positions relating to EU matters. When matters of special importance to the Islands have been discussed at the EU level, the Finnish delegations attending the meetings have included representatives of the Åland Government.

91. Despite the special status enjoyed by the Åland Islands, Finland is clearly responsible for the correct application of Community legislation on the Islands.

92. In 2000, certain technical amendments (75/2000) required by the entry into force of the new Constitution were made to the Act on the Autonomy of Åland. These amendments related to the procedures to be applied to the consideration of issues relating to the autonomy, to the implementation of international agreements on the Islands, and to the procedure applied to the enactment of the Autonomy Act. At the beginning of 2003, Parliament passed another amendment to the Autonomy Act but the bill was left in abeyance, over the parliamentary elections. The amendment would improve the possibilities of the Åland Islands to participate in the discussion of EU matters. The Act also contains a provision on the international responsibility of the Åland Islands for EU matters. However, in order for the amendment to enter into force, the newly elected Parliament must pass the bill without changes and the consent of the Åland Legislative Assembly is needed.

93. *Sámi*. Section 17, subsection 3, of the Constitution guarantees the Sámi, as an indigenous people, the right to maintain and develop their own language and culture. The status of the Sámi people is discussed under Article 27. The question of landownership is discussed in the context of the recommendations given by the Committee, under paragraph 11.

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<sup>1</sup> Italics added.

## Article 2

### **Paragraph 1. Respect for and ensuring of the rights recognized in the Covenant without distinction of any kind**

94. The prohibition of discrimination is provided for in section 6 of the Constitution, which is discussed in more detail under Article 26. The provisions on fundamental rights in the Constitution apply to all persons within the jurisdiction of Finland.

95. The new provisions prohibiting discrimination, including discrimination at work as referred to in the fourth periodic report, were inserted into Chapter 11, section 9, and Chapter 47, section 3, of the Penal Code (Act No. 578/1995), and entered into force on 1 September 1995.

96. In the European Union, a proposal for a Council framework decision on combating racism and xenophobia is under discussion. According to Article 4, paragraph a, of the draft framework decision, the Member States shall ensure, *inter alia*, that public incitement to violence or hatred for a racist or xenophobic purpose is punishable as criminal offence. Such an offence may already be punished in Finland pursuant to the provisions of Chapter 17, section 1, of the Penal Code, as public incitement to an offence. However, depending on the final wording of the provision in the framework decision, it might be necessary to adjust the wording in the Penal Code to some extent. The Council framework decision is scheduled to be adopted in May 2003.

### **Paragraph 2. Giving effect to the rights recognized in the Covenant**

97. An international treaty which has been ratified and implemented by a national act of Parliament or decree is applicable law in Finland. Thus, the treaty provisions may be directly applied by courts of law for the purpose of reasoning their decisions.

98. In older national case law, however, courts have only seldom referred to human rights conventions. This may be partly explained by some kind of a transitional period. Not even the fundamental rights provisions in the Constitution have achieved a status of rights that may be invoked by individuals until in the past two decades when courts, the Parliamentary Ombudsman and Chancellor of Justice have started to directly apply them in their decisions. Earlier, fundamental rights provisions were mainly referred to at high political levels, in particular by the legislature. Indeed, one of the aims with the fundamental rights reform was to increase their direct applicability by courts of law and other authorities, as well as to improve the possibilities of individuals to directly invoke fundamental rights provisions in support of their claims. Especially the supreme courts have increasingly referred to these provisions in the administration of justice. In at least 27 decisions of the Supreme Court, issued after the entry into force of the fundamental rights reform, have the provisions of the Constitution (or the earlier Constitution Act of Finland) been referred to. Most of the references concerned section 21 of the Constitution, providing for fair trial rights (as guaranteed by Article 14 of the Covenant). As far as the latter are concerned, the Supreme Court has often referred both to the Covenant and to the European Convention on Human Rights. During the same period of time, the Supreme Administrative Court has applied fundamental rights provisions in at least 28 cases.

99. Another relevant objective with the fundamental rights reform was to review and implement the changes to legislation made necessary by the international human rights obligations binding on Finland. It was found important to clearly define the fundamental rights as it also helps individual persons to identify their rights and position with regard to public authorities, society and surroundings.

### **Paragraph 3. Right to an effective remedy**

100. The provisions of section 21 of the Constitution, concerning fair trial rights, and the legislation implementing them are given account of under Article 14. As mentioned in section 2 above, the Covenant is part of the Finnish legal system.

101. The amended provisions of the Code of Judicial Procedure concerning appeal (Act No 165/1998) entered into force on 1 May 1998. The main principles concerning the right of appeal remained unchanged, including the right to express one's dissatisfaction with a decision within a set time limit and the right to appeal from a district court decision to the court of appeal and to further request leave to appeal to the Supreme Court, both in civil and criminal law cases. Evidence must be presented again to the court of appeal and, under the main rule, the court of appeal may only take into account such evidence as has been presented to it. Apart from the written procedure, the court of appeal may decide to hold an oral (main) hearing where it is found to help resolve the case. An oral hearing must be arranged, subject to certain conditions, where a party to civil proceedings or the plaintiff or the defendant in a criminal case so requests.

102. The Criminal Judicial Procedure Act (689/1997) entered into force on 1 October 1997. Even in criminal proceedings, the provisions applied to appeal are those included in the relevant chapters of the Code of Judicial Procedure amended in 1998. The purpose of the new provisions on criminal judicial procedure is to provide courts with possibilities to examine criminal law cases more profoundly in an oral, immediate and concentrated hearing. Evidence must be produced immediately and orally, directly to the judges deciding the case. It is not allowed to use written observations in an oral hearing and the case must be examined without interruptions to the extent possible, and therefore it is usually not allowed to adjourn the consideration of the case. Thereby individuals may be guaranteed an effective remedy within a reasonable time and at reasonable costs.

103. Appeal against administrative decisions is based on a two-instance system of administrative courts. The Administrative Judicial Procedure Act (586/1996), which entered into force on 1 December 1996, compiles the most relevant provisions on administrative appeal. The said provisions fulfilled already earlier the requirements of the International Covenant on Civil and Political Rights, as well as those of Article 6 of the European Convention on Human Rights, with the exception of the requirement of an oral hearing. The new Administrative Judicial Procedure Act, however, also guarantees a right to an oral hearing, and thus made it possible for Finland to withdraw the reservation made to Article 6 in respect of oral hearing.

### Article 3

#### Equality

104. The prohibited grounds of discrimination, as set forth in section 6 of the Constitution, include sex. Further provisions on the enhancement of equality between the sexes in society and work, in particular concerning remuneration and other conditions of work, are given by an act of Parliament.

105. The Act on Equality between Men and Women (the Equality Act) has been in force since 1 January 1987, and was last amended in 1995. On 13 December 2000, the Ministry of Social Affairs and Health set up a committee to draft a proposal for the amendment of the Equality Act. The intention is to amend and supplement the Act so as to bring it into conformity with the EC legislation and case law of the European Court of Justice, as well as to remove any problems and deficiencies in the application of the Act. At the same time, attention is to be paid to the provisions of the Constitution, prohibiting discrimination on account of sex and enhancing equality between the sexes. The committee submitted its report to the Minister of Basic Services, Eva Biaudet, in November 2002, with a view to have the Government Bill submitted to Parliament in 2003.

106. The case law of the Supreme Court contains a few precedents concerning equality between the sexes in the context of appointments for public offices. In a decision (KKO 2002:42) given in 2002, the Supreme Court found that the authority appointing the official had no reason to assess the competence of a candidate on the basis of the application only. As the appointing authority had not shown any acceptable ground other than the applicant's sex to decide in favour of another applicant who was less competent, the authority was found guilty of discrimination.

107. A local authority appointed a person (B), who had substituted for a dentist during a year, for a permanent position of a dentist, although another applicant (A) was found to be more competent by all the court instances. The local authority had found B, who had already taken care of the dentist's duties, more suitable for the position than A. The latter had not been interviewed, but on the basis of her written application, a conclusion had been drawn that she was not in reality interested in the position. In the opinion of the local authority, the application was very brief and the applicant was performing the duties of a senior dentist in another municipality. The Supreme Court found, however, that the reasons for which the local authority had turned A's application down were not acceptable. Therefore, the local authority had not shown any acceptable ground other than the applicant's sex for giving priority to B's application over that of A. The local authority was ordered to pay A compensation referred to in the Equality Act, amounting to EUR 3363.76.

## Article 4

### Paragraph 1. Derogations

108. Section 23 of the Finnish Constitution sets forth the grounds on which temporary derogations from the fundamental rights provisions may be provided for by an act of Parliament. Such derogations may be enacted in case of an armed attack against Finland or other serious and exceptional threat against the nation. Any derogations must be in conformity with the international human rights obligations binding on Finland.

109. The possibility to enact derogations from the Constitution in accordance with the procedure meant for the amendment of the Constitution was maintained in the new Constitution. This possibility is provided for in section 73 of the Constitution. Any such derogations must, however, be restricted. Despite that the possibility for derogating from the Constitution was maintained, it is meant to be an exception that may only be resorted to in exceptional situations and for compelling reasons. Should derogations be used in a context other than obligations under international agreements, they should be temporary in nature. Thus, the Finnish Constitution embodies a principle of avoiding derogations from human rights obligations, which has usually also been complied with.

110. In its report concerning the reform of the Constitution, the Constitutional Law Committee of Parliament called for the Government to review the need to maintain in force such Acts of Parliament derogating from the Constitution as had been enacted before the entry into force of the new Constitution, as well as their relation with the provisions of the new Constitution, and to take the necessary measures to bring the existing legislation into conformity with the new provisions (Report PeVM 10/1998 vp).

111. The Emergency Powers Act (1080/1991) requires that the basic necessities of the population, the maintenance of law and order and the protection of the territorial integrity and independence of Finland be ensured in emergency situations. Section 9 (198/2000) specifically provides that the rights protected by the Constitution or other recognised rights may only be restricted under the Emergency Powers Act to the extent it is necessary in order to control the situation. The prohibited grounds of discrimination are listed in the Act in the same way as in the Constitution (see information given under Article 26). A corresponding provision is included in section 7 (199/2000) of the Defence Act (1083/1991). The Emergency Powers Act may not be applied with a view to restricting the right to life and integrity of person. Furthermore, the freedom of religion and conscience must be respected in emergency situations and no one may be subjected to inhuman or degrading treatment. Sections 13 and 14 of the Defence Act provide for a possibility to restrict the freedom of expression in certain situations.

### Paragraph 2. Prohibited derogations

112. The reference to the international human rights obligations in the Finnish Constitution may be interpreted as meaning that the restrictions set forth in Article 4 are to be taken into account in the enactment of derogations referred to in section 23 of the Constitution.

113. It is provided in section 10 of the Emergency Powers Act that, in the application of the Act, the restrictions on the scope of application of Finnish laws based on international conventions or recognised rules of public international law must be taken into account. A corresponding provision is included in section 7 (199/2000) of the Defence Act.

## Article 5

### **Absolute nature of fundamental human rights**

114. According to section 106 of the Finnish Constitution, “if, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution”. Furthermore, according to section 107 of the Constitution, “if a provision in a Decree or another statute of a lower level than an Act is in conflict with the Constitution or another Act, it shall not be applied by a court of law or by any other public authority”.

115. In connection with the reform of the fundamental rights provisions, the Constitutional Law Committee of Parliament expressed its opinion on the general conditions under which fundamental rights may be restricted (Report No. PeVM 25/1994). When restrictions are made, at least the following conditions must be met:

(a) *Based on law.* Any restriction on a fundamental right, including concrete measures entailing restrictions, must be based on law, i.e. on an act of Parliament.

(b) *Clearly defined.* Any restriction on a fundamental right must be clearly defined.

(c) *Acceptable.* The reason for which a fundamental right is restricted must be acceptable in view of the purpose of the protection of the right in question. In this respect, the fundamental rights provisions of the Constitution must, in the opinion of the Constitutional Law Committee, be interpreted in conformity with the provisions of international conventions so that restrictions may only be placed on rights for reasons which are acceptable under the relevant treaty provisions.

(d) *Principle of non-derogation from the core of the right.* No restrictions may be placed on the core of a fundamental right by an ordinary act of Parliament. The requirement of non-derogation from the core of the right sets special requirements as to the preciseness and clarity of the provisions of law restricting the right.

(e) *Proportionality.* Any restriction on a fundamental right must be necessary and proportionate to the legitimate aim pursued, and in balance with the weight of the right restricted.

(f) *Legal remedies.* In respect of restrictions on fundamental rights, adequate legal remedies must be available.

(g) *Requirement of compliance with human rights obligations.* Any restriction on a fundamental right must be in conformity with the international human rights obligations binding on Finland.

## Article 6

### Paragraph 1. Right to life

116. Section 7, subsection 1, of the Constitution provides for the right to life. In the light of the preparatory work, the provision is meant to guarantee the minimum conditions of life or living. This right has a close link with the social rights (the right to indispensable subsistence and care) guaranteed by section 19 of the Constitution. According to the explanatory part of the Government Bill, the provision is nevertheless not meant to change the regulation as to when life is considered to begin or end, nor the regulation of gene therapy and euthanasia. Nor does the provision aim at changing the existing provisions of law on the termination of pregnancy (Act No. 305/1970).

117. The explanatory part of the Government Bill further states that Article 6 of the Covenant has served as a basis for an obligation on the State to take effective measures to reduce infant mortality, combat contagious diseases and to increase the average life expectancy.

118. The Act on the Status and Rights of Patients (Patients Act, 785/1992) and the Act on the Status and Rights of Social Welfare Clients (Social Welfare Clients Act, 812/2000) have many links with fundamental rights provisions. The first-mentioned Act provides for the right of patients to good health care and treatment. The latter Act provides for the right of social welfare clients to good-quality social welfare and good treatment. The treatment of patients and social welfare clients must not violate their human dignity.

119. Both Acts also provide for a right to decide and participate in the decision-making concerning one's treatment or care. Under the Patients Act, the care of a patient shall be decided in mutual understanding with the patient. Should a patient refuse a certain treatment or care, he or she must, to the extent possible, be provided with alternative medically acceptable treatment or care. The Social Welfare Clients Act contains a provision according to which, in the implementation of social welfare services, the client's own wishes and opinion must be a primary concern and the client's right to decide for oneself must also otherwise be respected. The client must be provided with an opportunity to participate in and affect the planning and implementation of the services to be given to him or her.

### Paragraphs 2 and 4 to 6. Death penalty

120. The possibility to impose and enforce a death penalty during peace was removed from the Finnish legislation in 1949. The death penalty was entirely abolished in 1972.

121. The inclusion of an absolute prohibition on death penalty in the Finnish Constitution means that the prohibition, which had already been included in an ordinary act of Parliament and had been strengthened by the implementation of the Second Additional Protocol to the Covenant and the Sixth Protocol to the European Convention on Human Rights, was given a higher-level guarantee.

122. Section 9 of the Constitution, providing for the freedom of movement, prohibits the expulsion, extradition or return of an alien to an area where he or she would face a threat of death penalty, torture or other degrading treatment.

123. In 2002, Finland signed the 13th additional protocol to the European Convention on Human Rights (ETS 187), prohibiting death penalty under any circumstances. Finland aims at ratifying the Protocol before the end of 2003.

### **Paragraph 3. Genocide**

124. The reformed provisions of Chapter 11 of the Penal Code concerning war crimes and crimes against humanity entered into force in 1995, prohibiting preparation and commission of the crime of genocide. The Convention on the Prohibition of the Crime of Genocide entered into force for Finland in 1960.

## **Article 7**

### **Prohibition of torture and other cruel, inhuman or degrading treatment and punishment**

125. Section 7, subsection 2, of the Constitution provides for a prohibition of death penalty, torture and other inhuman treatment, supplementing the general provision guaranteeing integrity of person. Although the repealed Constitution Act of Finland did not contain any explicit provision guaranteeing the right to human treatment, the right to integrity of person was also meant to provide protection against such inhuman treatment as would be carried out by interference with the physical integrity of a person without his or her consent. The specific prohibition of torture in the existing Constitution underlines that treatment inflicting physical or mental suffering upon a person may not be allowed in any circumstances.

126. The prohibition of inhuman treatment refers to both physical and mental treatment. The provision is meant to cover any forms of cruel, inhuman or degrading treatment or punishment. The wording of the provision corresponds to the provisions of Article 7 of the Covenant and those of Article 3 of the European Convention on Human Rights.

127. The prohibition of inhuman treatment has further been taken into account in the provisions of the Aliens Act relating to expulsion (see information given under Article 13).

## **Article 8**

### **Paragraphs 1 and 2. Prohibition of slavery, slave trade and servitude**

128. It was not considered necessary to specifically mention slavery and servitude in the list of rights guaranteed by section 7 of the Constitution as the prohibition of slavery and servitude, which is without any doubt in force in Finland in the same way as the general prohibition of interference with the integrity of person, may undisputedly be derived from the general provision in section 7, subsection 1, of the Constitution.

129. The new provisions on offences against personal liberty entered into force on 1 September 1995, being part of Chapter 25 (578/1995) of the Penal Code which underwent an overall reform.

**Paragraph 3 (a) Prohibition of forced labour**

130. Forced labour is also considered to amount to such an interference with the integrity of person that it is prohibited under the general provision in section 7 of the Constitution. According to section 127 of the Constitution, Finnish citizens are under an obligation to contribute to national defence. This obligation is provided for by an act of Parliament.

a) The obligation to contribute to national defence may be satisfied by performing either military or non-military service under the Military Service Act, work, or civil service referred to in the Civil Service Act. Under section 35 of the Military Service Act (amended on 21 April 1995), a person convicted or accused of treason or high treason may be ordered to perform work serving the interests of national defence, instead of regular military service or reserve obligations. A conscript refusing to perform the obligations relating to military service may also be ordered to such work (section 36 of the Military Service Act).

b) The provisions of the Emergency Powers Act (see information given under Article 4), concerning the use of force in emergency situations, were amended in 2000. A person residing in Finland, who is at least 17 but less than 65 years old, may be ordered to perform work which is required by the necessity of the situation in accordance with the purpose of the Act, and which the said person may be expected to perform in view of his strength and capacity. When such an order is given, the person's age, family relations and health as well as other personal circumstances shall be taken into account. A compensation corresponding to the remuneration required by existing collective agreements shall be paid for the work.

**Article 9****Right to liberty and security of person**

131. Section 7, subsection 1, of the Constitution further guarantees the right to liberty and security of person, thus specifically affording protection against unlawful and arbitrary deprivation of liberty and violations of the integrity of person. Protection against such unlawful acts has traditionally been afforded by the provisions of the Penal Code. The provision of the Constitution, however, also guarantees the right to the liberty and security of person vis-à-vis authorities. At the same time, the provision requires that the State take legislative measures to provide protection against violations of the right to liberty and security of person committed by others.

132. The afore-mentioned guarantee was included in section 7, subsection 1, in order for the provision to be in conformity with Article 9 of the Covenant and Article 5 of the European Convention on Human Rights. The fact that the right to liberty and security of person is specifically mentioned underlines the obligation of authorities to take positive measures in order to protect members of society against offences and other unlawful acts, be the offenders persons exercising public powers or private individuals. The provision also requires measures to protect the rights of victims of crime.

133. Under the Finnish Constitution, no arbitrary or unlawful interference with the integrity of person or deprivation of liberty is allowed. A punishment entailing deprivation of liberty may only be imposed by a court of law. The lawfulness of any deprivation of liberty may also be

challenged before a court of law. The Constitution also requires protection of the rights of persons deprived of their liberty. The purpose has been to ensure that those rights are guaranteed by law as required, *inter alia*, by international human rights conventions.

134. By way of derogation from the technique used in the European Convention on Human Rights, the Finnish Constitution does not contain any list of acceptable grounds of deprivation of liberty. Partly for this reason has it been necessary to provide for an explicit prohibition of arbitrary deprivation of liberty. It also restricts the possibility of Parliament to enact provisions on acceptable grounds of deprivation of liberty and ensures access to legal remedies in respect of deprivation of liberty. The same applies to any interference with the integrity of person. For example an order on the involuntary treatment of a mentally ill patient (deprivation of liberty) or any physical restraint on him or her during the treatment must satisfy the requirements set forth in the Constitution. The Mental Health Act contains provisions designed to ensure this.

135. According to the Constitution, any punishment entailing deprivation of liberty shall be ordered by a court of law. The provision covers any deprivations of liberty considered punishments and its scope of application is thus wider than the relevant provisions of the Penal Code.

136. In 1995, a new Chapter of the Penal Code concerning offences against personal liberty entered into force. The maximum sentence for kidnapping and hostage-taking is ten years' imprisonment. The other criminal offences under the new provisions include deprivation of personal liberty, aggravated deprivation of personal liberty, abduction of a child, negligent deprivation of personal liberty, menace and coercion.

137. Persons maybe taken into police custody under the Police Act for a maximum of 6, 12 or 24 hours, depending on the ground on which the person in question has been arrested. The person arrested, or his or her representative, must be informed of the reason for his or her arrest unless it is impossible because of the condition of the person in question or due to other circumstances. Furthermore, under the Treatment of Intoxicated Persons Act (461/1973), a person may be held in police custody for a maximum of 12 hours. Persons deprived of their liberty may also be detained by the Frontier Guard for a maximum of 24 hours.

138. Where a person has been apprehended pursuant to the Coercive Measures Act (450/1987), a decision on release or arrest must be made within 24 hours of the apprehension. If no order on detention is given, the arrested person must be released within three days of the date of apprehension. An apprehended or arrested person must be informed of the reason for the deprivation of liberty immediately.

139. Persons who are under arrest on a suspicion of an offence or otherwise deprived of liberty are covered, where appropriate, by the provisions of the Criminal Investigations Act (615/1974) concerning the treatment of detained persons who are suspected of an offence. In 2001, the Police Department of the Ministry of the Interior issued instructions on the treatment of detained and apprehended persons (excluding intoxicated persons).

140. The provisions in Chapter 7 of the Enforcement of Sentences Act (580/2001), concerning the prisoners' right of appeal, were amended with effect as of 1 August 2001. Under the amended provisions, a prisoner may appeal to a district court against a decision on disciplinary

measures or suspension of release on parole. Although appeal is, under the provisions of law concerning the enforcement of sentences, only possible in these two cases, the right of appeal is in practice stronger as a prisoner may lodge an appeal directly under the provisions of the Constitution. According to section 21 of the Constitution, “everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.” The reform of the constitutional provisions on fundamental rights in 1995 and the entry into force of the new Constitution have also in other respects strengthened the rights of persons deprived of their liberty.

141. The organisation of the Ministry of Justice was reformed by the Prison and Probation Services Act (135/2001) which entered into force on 1 August 2001. Through the Act, the then Probation Association and the Prison Department of the Ministry of Justice were abolished, and new Prison and Probation Services and a Criminal Sanctions Agency responsible for the central administration these Services were created. At the same time, the Prison Department was replaced with a new Criminal Policy Department which provides, among other things, general instructions for the enforcement of sentences.

142. In 2001, the Prison Training Centre Act was supplemented with provisions on a polytechnic-level degree in prison administration. The degree may be passed in a public polytechnic college, and it provides competence for various management and expert duties in the field of prison administration. The first students were taken in the autumn of 2002, from among persons who already worked in the field. The studies last 18 to 24 months. At a later stage, students will be admitted in connection with the general intake of students, to study for a degree consisting of approx. 36 months of studies.

143. The Community Service Act (1055/1996) entered into force at the beginning of 1997. The Act gave community service, which had been experimented with since 1991, a permanent status. Community service may be ordered instead of an unconditional prison sentence. This form of a sanction consists of at least 20 but no more than 200 hours of unremunerated work, to be performed under supervision.

144. The pending overall reform of the provisions on the enforcement of prison sentences will be given account of under Article 10.

145. On 31 December 1998, a Deputy Parliamentary Ombudsman gave a decision on the use of isolation as a form of psychiatric hospital treatment, assessing whether it has been implemented by ensuring human treatment and good-quality health and medical care. According to the decision, deficiencies were observed, *inter alia*, in that, in some cases, patients who had voluntarily sought hospital treatment were isolated from other patients, although the law only allows the isolation of a patient who is under observation or who has been ordered to be given hospital treatment. In some cases, it seemed that isolation had been used as a means of punishment in violation of the provisions of law. Furthermore, not all decisions on isolation had been made by a doctor, although it is required by the law, and the rooms used for isolating patients in hospitals were not always appropriate.

146. In his decision, the Parliamentary Ombudsman stated that more specific provisions of law were necessary in respect of the use of isolation in psychiatric hospital treatment. The provisions of the Mental Health Act have in fact been amended after the decision was given, identifying more clearly the acceptable restrictions on the patients' right to decide on their treatment. These amendments entered into force on 1 June 2002.

## **Article 10**

### **Paragraph 1. Principle of human treatment of persons deprived of their liberty**

147. In accordance with section 7, subsection 2, of the Finnish Constitution, treatment violating human dignity is prohibited.

148. Chapter 1 of the Enforcement of Sentences Act provides for the most important principles concerning the enforcement of sentences (principle of normal prison conditions, principle of human treatment and prohibition of discrimination) which were already included in the Prison Decree of 1975. However, during the period of time covered by the present report, several amendments have been made to the Enforcement of Sentences Act, some of which were required by the new provisions on fundamental rights in the Constitution. In 1995, the fundamental rights provisions relating to the treatment of prisoners were added to the Enforcement of Sentences Act (by Act No 128/1995). Prisoners have a right to fair and human treatment. The enforcement of sentences must not entail any other punishment but the deprivation of liberty. Other restrictions on freedom may be used to the extent it is necessary for the maintenance of order in the prison. The Act also contains a provision, according to which prisoners must be heard in respect of decisions on their placement in prison compartments and work or on other treatment. In the same way as section 6, subsection 2, of the Constitution, the Enforcement of Sentences Act contains a list of prohibited grounds of different treatment of prisoners. Such prohibited grounds include race, national or ethnic origin, colour of skin, language, sex, age, family relations, sexual orientation, health, religion, political opinion, political or professional activity and other comparable grounds. The list is more detailed than the one in the Constitution. Due to the nature of imprisonment, it has been found important to underline the principle of equal treatment. Furthermore, one objective with the new provisions was to improve the protection of prisoners and to underline the importance of human treatment.

149. In the context of the amendment of the Enforcement of Sentences Act, the provisions of law applied to the prisoners' right of communication were made more precise. Under the new provisions, any correspondence between a prisoner and an authority supervising the prison or an international body monitoring the implementation of a human rights convention, to which the prisoner has a right to complain or appeal, shall be delivered without delay. At the same time, the provisions on security controls, including bodily search, were specified.

150. The earlier obligation of prisoners to participate in work in prison was changed into an obligation to participate in work, education or other rehabilitative activities. To this effect, there are e.g. programmes designed to increase the physical, mental or social preparedness of prisoners to participate in various activities, which have significantly increased in number in the past few years.

151. The provisions of law applicable to the enforcement of sentences and detention (Act on the Enforcement of Sentences, 580/2001; Detention Act, 615/1974) have been amended. The amendments entered into force on 1 June 1999. The purpose of the amendments was to provide more effective means to prevent the abuse of narcotics and intoxicants and to reduce crime in prisons. A further objective of the amendments was to enhance the reintegration of released prisoners into society, by means of placing them temporarily outside the prison, and by providing treatment for intoxicant abusers or other therapy improving the prisoner's social skills. The prevention of crime in prisons also contributes to the safety of prisoners, their families and prison staff.

152. The Ministry of the Interior is preparing a bill for the enactment of an act of Parliament applied to persons detained by the police. The new act would provide for the general principles of treatment of persons deprived of their liberty and for their rights and obligations, as well as for those measures that the police may resort to in order to restrict the liberty of a person held in detention by the police. The act would also apply to the treatment of persons detained by the frontier guard. In the preparation of the bill, the provisions of the Covenant have been duly taken into account. The Government aims at submitting the bill to Parliament before the end of 2003.

*Overall reform of the provisions of law on the enforcement of sentences of imprisonment*

153. The Ministry of Justice is currently preparing an extensive reform of the provisions of law applied to the rights and obligations of prisoners and to the restrictions of their rights, to enact precise provisions in accordance with the requirements set by the Finnish Constitution and by international human rights conventions. At the same time, changes that have taken place in the number of prisoners, prison administration and criminal policy may be taken into account.

154. It is proposed that the objectives of imprisonment be more clearly set out in the law, underlining the objective of preventing repeated commission of offences and of promoting the released prisoner's possibility to get hold of life and reintegrate into society. All prisoners would be provided with an individual plan, setting forth the terms and conditions of imprisonment, activities during imprisonment, transfers, permissions to leave the prison premises and the possibility for release on parole. The plan would contribute to the enforcement of the prison sentence in accordance with individual needs, on the basis of the information obtained in respect of the prisoner in question. By complying with the terms and conditions set forth in the plan, the prisoner would achieve certain benefits, including transfer to an open ward, permissions to leave the prison premises, earlier release on parole (under supervision) and placement in an institution other than the prison. The plan would also provide for a schedule for the prisoner's release which would be prepared in cooperation with other relevant authorities and bodies. Were the committee's proposal accepted, the prisoners' right of appeal would be further strengthened. It is proposed that the prisoners be given a right to appeal against most decisions concerning their rights and obligations.

155. In the context of the afore-mentioned reform, the provisions applied to persons held in pre-trial detention will also be amended. Through the amendments, the presumption of innocence could be better taken into account in the treatment of such persons and certain obligations based on international conventions could be codified in national law. It is proposed that the maximum duration of pre-trial detention in police establishments be laid down in the

law. A court would decide on the place of detention of persons held in pre-trial detention, as well as on any restrictions on the right of communication of the detained person with others during pre-trial investigation and consideration of the need for prosecution and trial. The restrictions, together with the decision on detention, would have to be reviewed at regular intervals provided in the law. At the same time, the requirement of segregation of accused persons from convicted persons set forth in Article 10 of the Covenant is proposed to be included in the provisions of national law.

156. It is further proposed that the provisions on release on parole be amended, with the exception of those concerning the main rules. A prisoner would have a possibility for release on parole after he or she has served two thirds of his or her sentence. Prisoners who have been convicted for the first time would have a possibility for release on parole after they have served half of their sentences. The proposal entails a new system of release on parole under supervision which would enhance the reintegration of prisoners into society. It would be possible to release the prisoner on parole under supervision when he or she has no more than six months left of his or her prison sentence.

157. Under the existing provisions of law, it is only possible to release prisoners on parole upon a pardon by the President of the Republic. Were the proposal of the committee accepted, it would be possible to release on parole even prisoners who are serving a life sentence. Under the main rule, release could be considered where the prisoner serving a life sentence has served at least 12 years of his or her sentence. The decision would be made by a court. In cases where it is not possible to release the prisoner, because of the serious nature of the offence he or she has committed or because of a danger that the released prisoner could cause to the public, the court would nevertheless review the possibility for release on parole every two years. The purpose of this proposal is to increase foreseeability and to reduce the suffering caused by uncertainty as to the date of release. However, as the provisions on pardon are not planned to be amended, the possibility of pardon by the President of the Republic would coexist with the new system of parole under supervision.

158. As explained in the context of the Committee's recommendations (paragraph 18), the Dangerous Recidivists Act is planned to be repealed and the Prison Court, which currently decides on the place of detention of such prisoners, would be abolished.

159. The entry into force of the proposed provisions of law would improve the legal status of and remedies available to prisoners and persons held in pre-trial detention. The Government aims at submitting the bills to Parliament before the end of 2003.

#### **Paragraph 2 (a). Accused persons**

160. The bill for the enactment of a new Pre-trial Detention Act contains extensive provisions on the legal status of accused persons. The treatment of accused persons should, in view of the principle of presumption of innocence, entail fewer restrictions on the liberty of such persons and, in some respects, leave them more rights than for convicted persons. However, the purpose of pre-trial detention - to prevent obstruction of criminal investigations and trial - necessarily requires certain restrictions on the rights and liberties of accused persons. Therefore, it is proposed that the law specifically defines the situations in which the Prison Act or the Pre-trial Detention Act be applied.

161. In accordance with the requirement of segregation of accused persons from convicted persons set forth in the Covenant, a provision to that effect has been included in the bill. It has been considered justified to provide for such segregation in an act of Parliament as, in the opinion of the committee preparing the bill, the Covenant's requirement has not been earlier taken into account in Finland to an adequate extent.

162. A Deputy Parliamentary Ombudsman drew attention to conditions in police establishments where accused persons are held, in a decision given in March 2003 (No. 458/4/01). He observed, *inter alia*, that accused persons should be transferred from police establishments to prisons as soon as possible.

### **Paragraph 2 (b). Accused juvenile persons**

163. Under the existing Pre-trial Detention Act, accused juvenile persons (under Finnish law, persons between 15 and 21 years of age) shall, where possible and necessary, be segregated from other prisoners. During transfer and on court premises, accused juvenile persons shall be kept in isolation from other prisoners and the public. It is proposed that the existing provision be amended so that the obligation of segregation only concerns accused persons under the age of 18 years. Thus, the provision would meet the requirement set forth in Article 37 of the Convention on the Rights of the Child and the corresponding requirement in the Prisons Act. The Covenant does not define the age of accused juvenile persons. However, given the provisions of Article 6, paragraph 5, the upper age limit should be at least 18 years.

164. Finland has made a reservation to paragraph 2 (b) of Article 10, which makes it possible to derogate from the absolute requirement of separation of juvenile accused persons from adults. In its recommendations given on the basis of the fourth periodic report of Finland, the Committee has recommended that consideration be given to the withdrawal of this reservation. Considering that the Finnish law defines young persons, for the purposes of criminal liability, as meaning persons between 15 and 21 years of age, it is not possible to withdraw the reservation without amending the said definition. The committee preparing the afore-mentioned amendments decided not to recommend such amendment, for criminal policy reasons that are given account of under paragraph 3 below and under Article 14, paragraph 4.

165. On 15 October 2002, there were 42 accused juvenile persons (under the age of 21) in Finnish prisons, of whom eight were under the age of 18 years.

### **Paragraph 3. Prison conditions**

166. The Finnish legislation has for a long time provided for a principle of normal prison conditions, meaning that the conditions in prison should, to the extent possible, reflect the normal living conditions in society.

167. The aim with the enforcement of sentences of imprisonment is, under the proposed new provisions, to increase the preparedness of prisoners to give up the criminal way of life, by enhancing their reintegration into society. Thus, the objective is a decent way of life without crime. The capability for work and social skills of prisoners may be improved in prison by providing them with suitable work, training and other activities. Their preparedness to give up the criminal way of life may be enhanced e.g. by various cognitive programmes that have been

developed within the prison administration in the past few years. With regard to the objective of integration into society, it is also important to support the maintenance of contacts between prisoners and their family members and other close persons during the service of the sentence. The proposed new provision does not significantly differ from the existing one expressing the objectives of imprisonment. However, the emphasis in the proposed provision is more clearly on the aim to prevent repeated commission of offences. It is specifically stated in the explanatory part of the Government Bill that the set objectives are meant to correspond to the recommendations set forth in Article 10, paragraph 3, of the International Covenant on Civil and Political Rights.

168. Programmes designed to increase the capability of prisoners to participate in various activities and to prevent repeated commission of offences, as well as to provide rehabilitation for intoxicant abusers, have significantly increased in number in the past few years.

169. All Finnish prisons regularly assess the life situation of each prisoner, possible problems with intoxicants, the existence of any security risks, and the prisoner's capability to work (see *annex*). Since the beginning of 2001, all prisons have also made assessments of the factors that have contributed to the prisoner's criminal way of life, of the prisoner's social and financial background, of the existence of problems with intoxicants, and of the prisoner's social and cooperative skills, for the purpose of assessing whether there exist any risks of repeated commission of offences and whether there is need for rehabilitation.

170. *Preventive detention.* The system of preventive detention and the plans to abolish the system are given account of in the context of responding to the Committee's recommendations (paragraph 18).

171. The Supreme Court specifically referred to the Covenant in its decision KKO 2001:104, in deciding whether a person may be ordered to preventive detention in view of the need, at the same time, to guarantee certain fundamental and human rights.

The District Court had, in the light of the nature of the offences and of evidence concerning the offender's personality, found that the offender was particularly dangerous for the life and health of others. Therefore, the District Court had decided that the offender could be ordered to preventive detention and that, due to his dangerous character, his possibility for being released on parole could be suspended. The District Court reasoned its decision by noting that the applicable provisions, in respect of the decision on preventive detention and suspension of release on parole, were in conformity with the provisions of the international human rights conventions. The Court of Appeal upheld this part of the judgment, noting that the Prison Court must, when ordering suspension of release on parole or preventive detention, pay attention to the international human rights conventions binding on Finland as well as to any conflict between them and the Finnish legislation, particularly where the preventive detention is ordered to be continued after the prison sentence has been served. The Supreme Court observed, in the statement of reasons for its decision, that the enforcement of preventive detention does not significantly differ from the service of sentences of imprisonment in general. In practice, an order on preventive detention means that the total term of imprisonment must be served. Preventive detention may not be considered an inhuman, cruel or degrading punishment. With reference to two decisions of the European Commission of Human

Rights given concerning Finland in 1994 and 1997 (application Nos. 20560/92 and 29328/95), respectively, in which the Commission had found that the requirement to serve the total term of imprisonment did not disclose any appearance of a violation of the European Convention on Human Rights, the Supreme Court found that nor could it be considered a violation of the International Covenant on Civil and Political Rights. In the light of the foregoing, the Supreme Court found that an order on the preventive detention of the offender in question could be given, even in the light of a need to guarantee certain fundamental and human rights.

172. During on-site inspections, the Deputy Parliamentary Ombudsman has drawn attention to the non-satisfactory conditions in certain old prisons, in particular to deficient hygiene, which have repeatedly been criticised. In these prisons, the conditions may not be considered to correspond to the normal living conditions in society to an adequate extent. The same deficiencies were also addressed in the opinion of the Deputy Parliamentary Ombudsman (No. 1981/05/01) given on a committee report concerning sentences of imprisonment (Committee Report No. 2001:6). As a positive development, the Parliamentary Ombudsman names the new prison opened in Vantaa in the summer of 2002, providing safe and appropriate conditions for prisoners.

173. On 19 December 2000, the Ministry of Justice and the then State Real Property Agency\* concluded a contract for the renovation of those prison premises that were in a non-satisfactory condition, to be completed in 2001-2010. The conclusion of the contract should significantly improve the quality and general condition of the places of detention and thus also the conditions of prisoners and remand prisoners. A significant improvement was already made on 1 May 2002 when the remand prison in Helsinki was closed down and the prisoners placed in the prison were transferred to a new one in Vantaa. The renovation of Vaasa Prison (in 2000) and the ongoing renovations of Helsinki Prison and Riihimäki Prison have already contributed and will further contribute to better conditions in prisons. Furthermore, the Turku Prison and Remand Prison will be closed down and replaced with a new one the construction of which should be completed by 2005.

174. *Juvenile prisoners.* Under Article 37 (c) of the International Convention on the Rights of the Child, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. In order to ensure compliance with this obligation, instructions (5/011/94) have been issued on the treatment of prisoners under 18 years of age. The instructions provide for the placement and stay in prisons, activities and treatment of such persons. According to the main principle, under 18-year-old prisoners must be separated from adults, unless it is in the best interests of the child not to do so. Participation of juvenile prisoners in different activities together with adults must be considered case by case, and such activities must be supervised by the prison staff. In practice, the best interests of the child shall

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\* In 1999, the State Real Property Agency was changed into a state-owned company, and in 2001 it was given the name "Senate Properties".

be assessed in each individual case. The special needs of juvenile prisoners have also been taken into account in the national legislation (placement in open prisons; Chapter 4, section 2, of the Enforcement of Sentences Act). However, in practice the prisons have not applied the provisions as strictly as required by the Covenant on Civil and Political Rights.

175. Finland has made a reservation to paragraph 2 (b) of Article 10, which makes it possible to exceptionally place a juvenile prisoner among adults. In practice, such exceptions are made where it is considered to be in the interests of the juvenile prisoner or where possible negative effects of such placement have been eliminated. The possibility to place a juvenile prisoner among adults is assessed case by case. In respect of juvenile offenders, it is found particularly important to ensure a possibility for individual planning of the enforcement of the sentence, with a view to the objective of guiding the offender to give up the criminal way of life.

176. The committee which prepared the overall reform of the provisions on the enforcement of sentences of imprisonment did not propose any specific provision concerning the placement and separation of juvenile prisoners (persons under the age of 21 years). There is no intention of including such a provision in the new Prison Act or Pre-trial Detention Act. This choice was affected by the difficulties in segregating juvenile prisoners in practice, as well as by other relevant facts relating to the service of sentences. The aim of the reform is that the placement of prisoners in and within establishments be based on an individual plan for the service of the sentence, to be prepared for the prisoner. The plan would be based on an assessment of security risks and of the individual needs of the prisoner. The purpose of such plans is to enhance the achievement of the objectives of imprisonment, and the benefits relating to the implementation of the plan are meant to increase the motivation of prisoners to comply with it. A system based on the placement of juvenile offenders in a certain establishment on the basis of their age might thus be in conflict with the objectives of the reform. Nor may strict segregation of juvenile prisoners from adults in all situations serve the interests of the child.

177. However, there is an intention to codify the provisions on the segregation of prisoners under 18 years of age from adults in national legislation (Prison Act and Pre-trial Detention Act), in accordance with the requirements imposed by international conventions.

178. On the afore-mentioned grounds, the Ministry of Justice has been of the opinion that there is no need to make the reservations made to Article 10, paragraphs 2(b) and 3, of the Covenant more precise nor change them.

179. On 15 October 2002, there were 79 prisoners under the age of 21 in Finnish prisons, two of whom were younger than 18.

180. The number of prisoners decreased in Finland until 2000 when it began to increase again. In 2001, the number of prisoners was 10 % higher than in 2000, increasing up to 3,135. Almost all categories of prisoners increased in number, in particular those of persons in pre-trial detention and of foreign prisoners. The number of persons convicted of narcotics offences increased by 20 % and the number of young prisoners by 25 %. On 1 October 2002, there were in total 3,256 prisoners in Finland. Despite the recent increase, the proportional number of prisoners (60/100,000 inhabitants) is still small in Finland when compared e.g. with other European states.

## **Article 11**

### **Prohibition of imprisonment on the mere ground of inability to fulfil a contractual obligation**

181. Under section 7, subsection 3, of the Constitution, no one shall be deprived of his liberty except on such grounds as are established by law.

## **Article 12**

### **Paragraph 1. Liberty of movement**

182. Section 9, subsection 1, of the Finnish Constitution contains a general provision on the freedom of movement within the country and on the freedom to choose one's place of residence.

183. Under the Coercive Measures Act, a person may be ordered not to leave the country, subject to certain conditions provided by law, where there is reason to believe that he or she has committed an offence.

184. Furthermore, under the Aliens Act, an alien residing lawfully in Finland may freely move within the country and choose his or her place of residence, unless otherwise provided by law or ordered under a specific provision of law. A bill for the enactment of a new Aliens Act is under preparation in Finland (see information given under Article 13), in the context of which the Government will most likely propose that the last-mentioned restriction of the free movement of aliens be removed from the Act. It is considered that the wording of the restriction allows too wide an interpretation and is therefore not in conformity with the objectives of the fundamental rights reform. Removal of the restriction from the Act would not, however, mean that the movement of aliens may not be restricted by other provisions of law in emergency situations, in the same way as the movement of Finnish citizens. Such restrictions based on the law should pursue a legitimate aim, taking due account of the requirements set by the provisions on fundamental rights.

185. The Aliens Act has only contained very brief provisions on the liberty of movement based on the Treaties establishing the European Communities. However, the new Aliens Act will probably contain provisions on the right of residence of EU citizens in Finland. The same provisions would also apply to citizens of Iceland, Liechtenstein, Norway and Switzerland, in accordance with the Agreement on the European Economic Area and the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons.

186. In 2003, the Constitutional Law Committee of Parliament drew the attention of the Ministry of the Interior to that the existing Frontier Zone Act (403/1947) is not in all respects in conformity with the fundamental rights provisions in the Finnish Constitution (731/1999). The criticism is mainly related to the liberty of movement in frontier areas. The Government intends to remove the deficiencies pointed out by the Constitutional Law Committee in the context of reforming the Frontier Guard Act, and preparations to that effect have already been initiated.

**Paragraph 2. Freedom to leave any country, including his own**

187. According to section 9, subsection 2, of the Finnish Constitution, everyone has the right to leave the country. Limitations on this right may be provided by an Act if they are necessary for the purpose of safeguarding legal proceedings or for the enforcement of penalties or for the fulfilment of the duty of national defence. Subsections 3 and 4 of section 9 apply to the transfrontier movements of Finnish citizens and Aliens, respectively.

188. It is provided in the Aliens Act that aliens must usually enter the Finnish territory and leave the country through agreed border-crossing points. Exceptions to this main rule may be provided by an international agreement or by EC legislation. Authorities may issue temporary permits for the crossing of Finnish borders.

**Paragraph 3. Restrictions to the liberty of movement and the freedom to leave the country**

189. Under section 9, subsection 2, of the Constitution, limitations on this right may be provided by an Act if they are necessary for the purpose of safeguarding legal proceedings or for the enforcement of penalties or for the fulfilment of the duty of national defence.

190. Under the Coercive Measures Act (450/1987), a person may be ordered not to leave the country, subject to certain conditions provided by law, where there is reason to believe that he or she has committed an offence. A similar order may be issued under the Bankruptcy Act to a person having unpaid debts subject to certain conditions provided by law. Persons who have been ordered not to leave the country may not be issued a passport pursuant to the Passport Act. Passport may also be refused for a person who has been convicted of an offence but has not served his or her sentence, or where there are reasonable grounds to believe that a serious offence has been committed. A conscript, who is at least 28 years old, must submit evidence on that the non-performed military service is not an obstacle to the issue of the passport. This restriction no longer applies at the end of the year during which the conscript reaches the age of 30 years.

**Paragraph 4. Deprivation of the right to enter one's own country**

191. According to section 9, subsection 3, of the Finnish Constitution, Finnish citizens shall not be prevented from entering Finland nor deported, extradited or transferred from Finland to another country against their will.

**Article 13**

**Expulsion**

192. According to section 9, subsection 4, of the Constitution, the right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

193. The conditions of entry into and departure from the Finnish territory are provided for in the Aliens Act (378/1991). An alien who has stayed in Finland with a residence permit may be deported if he stays in Finland without the required passport or residence permit, has committed

an offence for which the statutory punishment is one year of imprisonment or a heavier penalty, or has demonstrated by his behaviour that he is a danger to the safety of others. An alien may also be deported if he has engaged in or may, on account of his previous activities or otherwise justifiably, be assumed to engage in sabotage, espionage or illegal intelligence-gathering activities in Finland or in activities which may endanger Finland's relationship with a foreign state. Even the fact that the alien has rendered himself unable to support himself during the course of a short stay, may constitute a ground for deportation. The last-mentioned ground is planned to be excluded from the new Aliens Act which is under preparation.

194. An alien who has the right of residence based on the Agreement on the European Economic Area may be deported only on grounds of public policy, public security and public health.

195. A decision on deportation under the aliens Act is made by the Directorate of Immigration. The alien in question and the Minority Ombudsman (see information given under Article 26) shall always be provided with an opportunity to be heard. The Minority Ombudsman may give his opinion in respect of any proposed deportation to the Directorate of Immigration. In 2002, the Minority Ombudsman gave 117 such opinions. The decision of the Directorate of Immigration is subject to appeal.

196. No one may be deported to an area where he may be subjected to persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or is in risk of facing capital punishment, torture or other inhuman or degrading treatment. An armed conflict or environmental catastrophe would also constitute an obstacle to deportation. Nor may anyone be deported to an area from which he could be further sent to such an area where he could face one of the afore-mentioned risks.

197. Under the Aliens Act, aliens' rights may only be restricted to the extent it is necessary. According to the explanatory part of the Government Bill (HE 47/1990), this provision reflects the generally applied administrative law principle of proportionality and provides guidance for those applying the Act. It is observed, in particular, that with regard to the application of the principle of proportionality, the international human rights conventions binding on Finland are of relevance.

198. The provisions on the prohibition of entry and deportation in the existing Aliens Act, which entered into force in 1991, have been amended several times in the past ten years. When the scope of application of the fundamental rights provisions was extended, in the context of the fundamental rights reform of 1995, to also concern aliens residing in Finland, other legislative means have also been employed to improve the legal status of such aliens. However, the several amendments and additions to the Aliens Act, part of which have been necessary because of international developments, have made its provisions less clear and understandable. The recent Government Bill for an overall reform of the Aliens Act lapsed for the reason that Parliament was not able to discuss it before the parliamentary elections held on 16 March 2003.

199. *Asylum procedure.* The provisions on the procedure applied to the consideration of applications for asylum were amended by an act of Parliament (648/2000) which entered into force on 10 July 2000. It was observed in the explanatory part of the Government Bill (HE 15/2000 vp) that the period of time used for the processing of applications in Finland was

lengthy when compared with several other European states. Even in the accelerated procedure, the processing of application could last from 5 to 16 months. The lengthiness of the processing was considered to be partly caused by both ineffectiveness of administration and by the procedural rules in the Aliens Act. According to the explanatory part of the Government Bill, there were signs of that asylum seekers had chosen to apply for asylum in Finland for the very reason that the processing time was long and the social benefits were good. The objective with the amendment was to accelerate the processing of applications for asylum, with a view to reducing the number of ill-founded applications.

200. New grounds on which the accelerated procedure could be resorted to (safe country of asylum, safe country of origin, manifestly ill-founded application), as well as procedural rules for the processing of applications under that procedure, were added to the Aliens Act by the amendment. Furthermore, the provisions on appeal and enforcement of decisions were amended. Decisions made under the accelerated procedure are enforceable either immediately after the service of the decision or eight days after its service, unless otherwise ordered by the Administrative Court of Helsinki.

201. The experience gained so far from the application of the new provisions has proved that the number of manifestly ill-founded applications has reduced in Finland. However, the accelerated procedure also raised criticism. The Refugee Advice Centre has drawn attention to that the accelerated procedure does not always meet the fair trial requirements under Article 14. The eight-day time limit for the lodging of a request for stay on the enforcement of expulsion and for the submission of evidence in support of the request is too short. In the view of the Refugee Advice Centre, the asylum seeker should have the right to remain in the country until the Administrative Court of Helsinki has examined the request for stay on the enforcement. The adequacy of the legal guarantees related to the procedure, in view of the requirement of adequate remedies in Article 13 of the European Convention on Human Rights, was discussed by the Constitutional Law Committee of Parliament at the beginning of 2002. The Committee noted in its opinion of 2 April 2002 that the deportation of aliens from the country while appeal was still pending was not in conflict with Article 13 of the Convention, unless the Act was applied mechanically without taking the requirements of the Constitution into account.

202. During the period of time covered by the present report, the Refugee Advice Centre has not been informed of cases of violation of the prohibition of return. Instead, the Refugee Advice Centre has expressed its concern over the increasing need to lodge complaints with the international monitoring mechanisms in cases where the Finnish legal system has not guaranteed adequate protection against return (refoulement). Between December 2001 and February 2002, the Refugee Advice Centre has lodged two applications with the European Court of Human Rights (application Nos. 78063/01 and 38885/02). There is also one case pending before the UN Commission against Torture (communication No. 197/2002). No relevant cases have been submitted to the Commission of Human Rights.

## Article 14

### Paragraph 1. Equality before the courts and tribunals

203. Section 21 of the Finnish Constitution provides for the right of everyone to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

204. The repealed Constitution Act of Finland did not contain any provision corresponding to the afore-mentioned one, although it did have elements from which the said requirements could be derived. However, the right of individuals to have a decision on their rights or obligations reviewed by a court or another judicial body has always been fairly well guaranteed. The general right to appeal against an administrative decision to a judicial body has existed for a long time.

205. Apart from the provisions of Article 14 of the Covenant, the relevant provisions on fair trial rights in Article 6, paragraph 1, of the European Convention on Human Rights have been taken into account in the drafting of the new provision in the Finnish Constitution. For the purposes of the Constitution, 'a court of law or other independent organ for the administration of justice' refers to a body and a procedure fulfilling the requirements set forth in the said treaty articles. Although section 21 of the Constitution does not specifically refer to the examination of criminal charges, the provision is meant to also cover that element of the right to a fair trial as required by the Covenant and by the European Convention.

206. Section 21 further requires that the guarantees of a fair trial and good governance be laid down by law. The provision sets forth, *inter alia*, the most important elements of a fair trial, including the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal. This list is nevertheless not exhaustive. Such guarantees as the right to an oral hearing, the right to legal counselling and the right to choose one's legal counsel are not explicitly mentioned in the provision. However, these elements of protection under the law are as such part of the other guarantees of a fair trial within the meaning of the Constitution.

207. The explanatory part of the Government Bill provides a list of such guarantees referred to in the relevant treaty articles as are not specifically mentioned in section 21 of the Constitution but are to be considered elements of a fair trial.

208. *Provisions on criminal procedure.* The reform of the provisions on criminal procedure, referred to in the fourth periodic report, in so far as the Criminal Procedure Act (689/1997) is concerned, entered into force on 1 October 1997.

209. The Act on Cost-free Legal Proceedings was replaced with a new Legal Aid Act (257/2002) which entered into force on 1 June 2002. The maximum level of income in respect of cost-free legal proceedings was reduced from the earlier one, and in consequence the number of persons entitled to partly or entirely cost-free legal proceedings significantly increased (by approx. 27%) and at present some 67% of the population are entitled to cost-free proceedings. Despite this change, the main principles of the legal aid system remained unchanged.

210. The Ministry of Justice is preparing a bill for the enactment of a new publicity of proceedings act, entailing an overall reform of the provisions applied to the publicity of court proceedings. The purpose of the reform is to increase the publicity of proceedings, in particular of the written procedure, as well as of court decisions. According to the proposal, court decisions would always be public unless otherwise ordered by the court subject to the fulfilment of certain conditions provided by law. At the same time, the conditions under which an oral hearing may be ordered to be held in camera are made subject to strict scrutiny. The proposal is subject to further development and the Government Bill is scheduled to be submitted to Parliament in 2004.

**Paragraph 3 (a) and (f). Procedural rights relating to the language of the proceedings**

211. In connection with the enactment of the new Language Act (see paragraph 19 in the Committee's recommendations), certain provisions of the Code of Judicial Procedure, the Criminal Procedure Act and the Criminal Investigations Act were amended. The Acts amending the said provisions will enter into force after they have been approved by the President of the Republic.

212. As for the Code of Judicial Procedure, a new chapter concerning the language of the proceedings was added to the Code. However, this entails no substantial changes to the present practice. The new provisions are more precise and should therefore improve the protection of individual persons under the law. The language of the proceedings depends on the provisions of the Language Act, with the exception that it is also possible to accept documents and witness statements in foreign languages as evidence on grounds other than those set forth in the Language Act, provided that the rights of the parties to the proceedings and the administration of justice are not jeopardized.

213. In civil cases, the arrangement of interpretation or translations of documents in a language other than Finnish, Swedish or Sámi is usually at the responsibility of the parties and they bear the costs themselves. In certain cases, such as difficult international cases relating to family law, the court may nevertheless, where necessary, order the State to cover the costs of interpretation or translation or otherwise provide for these services.

214. A new chapter was also added to the Criminal Procedure Act, concerning the language of the proceedings. The purpose of the new provisions is to improve the protection of individuals under the law, through more precise provisions insofar as the translation and interpretation are concerned.

215. The language of legal proceedings is usually either Finnish or Swedish, or in exceptional cases Sámi. The language depends on the provisions of the Language Act, applied to criminal law cases. In such cases, a person speaking a language other than one of the afore-mentioned languages has a right to interpretation and translation services at the costs of the State. In cases where the public prosecutor proceeds with prosecution despite not being requested by the victim, the latter has a right to interpretation and translation services to be arranged and paid by the State.

216. The court shall ex officio ensure the availability of translation and interpretation services in the same way as earlier.

217. In the same way as the afore-mentioned new provisions, the amendment to the Criminal Investigations Act aims at clearer provisions. A person speaking a language other than Finnish, Swedish or Sámi, heard in the pre-trial investigations, has a right to interpretation to be paid by the State. The provision applies equally to suspects and witnesses. In this case, the investigative authority shall ex officio ensure the availability of interpretation. The authority may also choose to itself arrange the interpretation in case it has competent staff for that purpose. Thus, the person to be heard has no right to demand that external interpretation services be used. Nor do persons speaking a language other than Finnish, Swedish or Sámi have an absolute right to interpretation in their own languages. The interpretation shall be provided in a language understood and adequately spoken by the person to be heard, without endangering the protection of his or her rights under the law. The investigative authority is also under an obligation to ensure the availability of interpretation services in cases where interpretation is necessary because of a sensory handicap or speech defect of the person to be heard or for other comparable reason.

218. The records of interrogations shall be drafted in the language used by the person to be heard. Should there be several persons heard, who use different languages, the records concerning each person must be drafted in the language used by the person in question. The records of interrogation shall be included in the investigation file in the original language irrespective of the normal language of documents in the file. With the exception of records of interrogations written in a foreign language, the investigation records shall be written in either Finnish or Swedish, or partly in Finnish and partly in Swedish. However, translations shall be made of documents written in other languages for the parties to the proceedings pursuant to the provisions of the Language Act, to the extent it is necessary to ensure their rights under the law. The translations shall be provided before the deadline for comments on the evidence included in the case file.

219. Since the entry into force of the amendments to the Criminal Investigations Act, the investigative authorities have been under an obligation to indicate both the victim's language and that of the suspect in the investigation records. The Act has not earlier contained any corresponding provision. The purpose of the reform is to avoid situations where it is necessary to change the language of the proceedings at a later stage.

#### **Paragraph 4. Juvenile persons**

220. In the case of criminal proceedings involving juvenile persons, their age and the desirability of promoting their rehabilitation shall be taken into account. Thus, the avoidance of unnecessary delays in the examination of such cases is one of the most important aims, in view of the objective of preventing repeated commission of offences. Pre-trial investigation should be carried without unnecessary delays in respect of any offences (section 6 of the Criminal Investigations Act; 449/1987) but where the suspect is younger than 18 years, the prosecutor should decide whether to bring charges or not as a matter of urgency (Chapter 1, section 8a, of the Criminal Procedure Act). Where a juvenile person is accused of an offence for which the sentence is more than six months' imprisonment, the main hearing shall be held within two weeks from the date of institution of criminal proceedings. However, this deadline has proved too strict in extensive cases where there number of accused or other persons invited to attend the hearing is large, and the consideration of the problem has been assigned to the working group assessing the provisions on criminal procedure in general.

221. Act No. 1058/1996 (as amended by Acts No. 307/1999 and No. 139/2001) brought about an experiment with a new sanction, a juvenile sentence. By the amendment made in 2001, the experiment was extended until the end of 2004. The juvenile sentence is meant to be adapted to the personal circumstances of juvenile offenders, used as an alternative to conditional imprisonment. The juvenile sentence consists of control visits including instruction as well as of either unremunerated work or a community service programme.

222. The Ministry of Justice is preparing a reform of the sanctions system and the provisions of law on pre-trial investigation and court proceedings applied to juvenile persons (younger than 21 years). The committee preparing the reform proposed in its report that the juvenile sentence be applied to such persons who have committed the offence before reaching the age of 21. Due to the negative implications of unconditional sentences of imprisonment and the high risk of repeated offences, the committee recommends emphasis on such forms of sentences as may be served in freedom. The committee also underlines the roles of conciliation, home, school and child welfare authorities in respect of children who are under the age limit for the attribution of criminal liability (15 years). The relevant Government Bill is planned to be submitted to Parliament in 2004.

#### **Paragraph 5. Right to have a conviction or a sentence reviewed by a higher tribunal**

223. The right to have a judgment reviewed by a higher court or administrative court is an established part of the legal remedies available under the Finnish legal system. The applicable provisions on appeal are usually included in the relevant Act of Parliament defining the competence of the appellate body. The provisions on the right of appeal from district court decisions to a court of appeal are set forth in Chapter 25 of the code of Judicial Procedure, as amended in 1998. The corresponding provisions concerning appeal against court of appeal decisions are set forth in Chapter 30 of the Code of Judicial Procedure.

#### **Paragraph 7. Prohibition of reversal of a final decision on conviction or acquittal**

224. Finland has made a reservation to this paragraph of Article 14, making it possible to pursue the existing practice according to which a sentence can be changed to the detriment of the convicted person if it is established that a member or an official of the court, the prosecutor or the legal counsel have through criminal or fraudulent activities obtained the acquittal of the defendant or a substantially more lenient penalty, or if false evidence has been presented with the same effect. This is, however, only possible in respect of an aggravated criminal case which may be taken up for reconsideration if, within a year, until then unknown evidence is presented, which would have led to conviction or a substantially more severe penalty.

225. According to section 5 (as amended by Act No. 692/1997) and section 7 of the Criminal Investigations Act of 1987, apart from the elements of crime, both the evidence for and against the suspect shall be examined carefully. Under section 15 (as amended by Act No. 692/1997) of the Act, the prosecutor may issue instructions and orders on the facts to be established in the pre-trial investigation. When the investigation is carried out pursuant to these provisions, it is possible to obtain adequate evidence before deciding on prosecution and instituting the court proceedings.

226. When the objectives of pre-trial investigation have been satisfied, and the evidence is adequate, it is possible to have the criminal case examined already in the first court hearing. An effective system of criminal investigations has partly contributed to that the afore-mentioned reservation has only rarely been applied. In 2000 and 2001, there were no cases in which a sentence was changed to the detriment of the convicted person.

227. However, it is worth ensuring that the provisions of law allow attribution of criminal liability also where no adequate evidence was available during the original court hearing. In such cases, a rehearing should be possible despite a final decision, in view of the rights of the victim of crime.

228. In the light of the foregoing, the Government still finds it necessary to maintain the afore-mentioned reservation, although it is only applied in exceptional situations. Under the Government Bill which is currently being prepared, the time limit for the submission of a request for reversal of a judgment would, however, be shortened from the present 12 months to 6 months, starting on the date on which the new or newly discovered evidence is found.

229. The Government notes that states which have a legal system - in particular in respect of the procedural rules - having similarities with the Finnish one, such as the Nordic Countries and Austria, have made a corresponding reservation.

## Article 15

### Paragraph 1. *Nullum crimen sine lege*

230. The principle of legality in criminal law (*nullum crimen sine lege*) is provided for in section 8 of the Finnish Constitution, according to which no one shall be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which has not been determined punishable by an Act at the time of its commission. The penalty imposed for an offence shall not be more severe than that provided by an Act at the time of commission of the offence.

231. The corresponding obligations in Article 15 of the Covenant and in Article 7, paragraph 2, of the European Convention on Human Rights, respectively, are absolute. The reference to human rights conventions in section 23 of the Finnish Constitution means that derogation from the provisions of Article 15 is not possible, not even in exceptional situations.

232. In the spring of 2003, in connection with the reform of the Penal Code, specific provisions on the principle of legality and temporal restrictions as to the application of the penal provisions, were added to the Penal Code. The new provisions are scheduled to enter into force at the beginning of 2004. According to the new provisions in section 1 of Chapter 3 of the Penal Code, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time of its commission. The sentence or any other criminal law sanction must be based on law. New section 2 in the same Chapter concerns the temporal restrictions, providing, *inter alia*, for the principle of the lighter penalty referred to in Article 15. However, the relevant bills (HE 44/2002) passed already by Parliament are still waiting for approval of the President of the Republic.

**Paragraph 2. Punishment of acts constituting crimes under international law**

233. Section 8 of the Finnish Constitution does not contain a provision corresponding to paragraph 2 in Article 15 of the Covenant, providing for a possibility of punishment of acts or omissions that were, at the time of their commission, criminal according to the general principles of law recognized by the community of nations. This has not been considered necessary because the Finnish Penal Code establishes as criminal offences most acts which are considered international crimes, and for the reason that the Geneva Conventions of 1949 have been implemented by acts of Parliament and are thereby applicable law in Finland.

**Article 16**

234. The new Guardianship Act (442/1999) entered into force in December 1999, repealing the earlier Act of 1988 (34/1988). The Act applies to the representation of minors and such adults as are, because of an illness, mental disturbance, weakened health or other comparable reason, incapable of protecting their own interests. The Act takes into account the principles of protection vulnerable groups referred to in international instruments. Such instruments include the UN Declaration on the Rights of Mentally Retarded Persons (20 December 1971), the UN Declaration on the Rights of Disabled Persons (9 December 1975) and the UN Resolution on the protection of persons with mental illness and the improvement of mental health care, adopted in 1992.

**Article 17****Paragraph 1. Prohibition of arbitrary and unlawful interferences with privacy**

235. Section 10 of the Finnish Constitution guarantees the protection of privacy. In accordance with the requirements of international human rights conventions (the Covenant, the European Convention on Human Rights), the protection of privacy under the Constitution covers the inviolability of private life, honour and home. Apart from the secrecy of correspondence, the provision protects the confidentiality of telephone calls and other communications.

236. However, section 10 also provides for a possibility to restrict inviolability of home and the confidentiality of communications. Such restrictions may be imposed by law where it is necessary for the purposes of protecting other fundamental rights or of investigating crime.

237. Under subsection 1 of section 10, further provisions on the protection of personal data shall be provided by an act of Parliament. Such provisions of general application are included in the Personal Data Act (523/1999) which entered into force on 1 June 1999. The Data Protection Ombudsman monitors the handling of personal data to ensure compliance with the provisions of the Act, and the Data Protection Board discusses questions which are of importance for the application of the Act.

238. New Chapter 24 (531/2000) of the Penal Code, which entered into force on 1 October 2000, compiles provisions on offences against privacy, public peace and personal reputation. These provisions apply to invasion and aggravated invasion of domestic and public premises, eavesdropping and illicit observation as well as preparation of eavesdropping or illicit observation, invasion of personal reputation, defamation and aggravated defamation.

239. Affected by international conventions, the Finnish legislation increasingly underlines the protection of fundamental rights which has restricted the powers of authorities based on customary law and established case law. For example, the Police Act (493/1995), which entered into force on 1 October 1995, is largely based on the need to ensure protection of liberty and privacy. In the same way, the Frontier Guard Act (320/1999), which entered into force on 21 March 1999, is meant to implement the changes made necessary by the fundamental rights reform. When these two Acts and the Police Personal Data Files Act (509/1995) were enacted, the provisions of the Covenant and the European Convention on Human Rights concerning the protection of liberty and privacy were taken into account.

## **Paragraph 2. Protection of law against interference or attacks**

240. The provisions of the Penal Code on data and communications offences were amended in 1995. The existing provision on message interception (531/2000) protects all forms of communications introduced by technological developments.

241. A new Act on the Protection of Privacy in Working Life (477/2001) entered into force in 2001. The objective of the Act is to implement the protection of private life and privacy in working life and to enhance appropriate handling of personal data. The Act applies equally to public officials and other employees and persons to be recruited, supplementing the Personal Data Act (523/1999) which is of general application.

242. The employer may only treat such personal data as are relevant for the employment, relating to the rights and duties of the employer and employees or to benefits offered by the employer to the employees, or are necessary because of the nature of the work. Not even the consent of the employee entitles the employer to derogate from this requirement of necessity.

243. The Act on the Protection of Privacy in Working Life lays down the procedures to be applied by employers to the compilation and treatment of personal data relating to the employment. It contains provisions, *inter alia*, on information relating to psychological tests, health controls and other tests, as well as to the state of health of employees. These provisions aim at increasing the reliability of psychological tests and the protection of employees under the law. The right of the employer to handle data on the state of health of employees is restricted, and has no right to treat results of genetic tests.

244. The Act also increased the number of issues that must be discussed in joint consultations between the employer and employees, such as the data to be compiled at the beginning of and during the employment and issues relating to technical supervision by the employer and to the use of the Internet and e-mail. The data to be compiled in connection with the consultation procedure must also be necessary for the purposes of the employment.

245. Fines may be imposed on an employer who intentionally or of gross negligence violates the provisions of the Act on the Protection of Privacy in Working Life.

246. In 2002, the Supreme Court gave a decision relating to the protection of privacy (KKO 2002:55), which may be summarised as follows.

A person in an important public position had been interviewed in a live television programme transmitted on a national TV channel. The interview concerned an incident which had already earlier gained wide publicity and had been subject to court proceedings. During the interview, the reporter mentioned twice the name of a woman who was involved with the interviewed person, and referred to a particularly sensitive detail concerning their relationship. The District Court had noted that there was neither direct nor indirect consent given by the said woman to the disclosure of her name. The person in question was not a public figure and nor had she appeared in public or been in a public position before. The disclosure of her identity was not related to her conduct in a public position or duties, in business life, political activities or other comparable activities. The only reason for the disclosure of the said person's identity was the intention to publish information relating to her private life, which had caused her mental suffering and gave rise to liability for damages. The Supreme Court reasoned its decision by noting that the earlier publication of the name was not an acceptable reason for repeated interference with her privacy. The fact that one medium has earlier published information on someone's private life does not relieve the others from the obligation to comply with the provisions on the protection of privacy. The reporter was ordered, pursuant to section 3a (908/1974) in Chapter 27 of the Penal Code, to pay twenty unit fines. The reporter and the television company were ordered to jointly pay damages for the mental suffering inflicted upon the person in question, amounting to EUR 8,000.

In a case concerning invasion of private premises, the Supreme Administrative Court referred in its decision (KHO 2002:23) to section 10, subsection 1, of the Constitution, finding that the fishermen had carried out fishing, under their licence for lure fishing issued in accordance with the Fishing Act, too close to the property of a landowner. As the fishermen had refused to comply with the landowner's request and move away from the area, they were found to have invaded private premises and the landowner was found to have a right to prohibit fishing in the area in question.

## **Article 18**

### **Paragraph 1. Right to freedom of thought, conscience and religion**

247. According to section 11 of the Finnish Constitution, the freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community.

248. In connection with the reform of the fundamental rights provisions, the provisions on the freedom of thought, conscience and religion were extended to cover not only religious denominations but also other philosophies of life. Furthermore, the existing provisions are applied to any persons within the jurisdiction of Finland, irrespective of nationality, in accordance with the general principles applied in the reform.

249. Of other fundamental rights, the principle of equality before the law, in particular, is closely related to the freedom of religion and conscience. No one shall be placed in a position different from others on the grounds of religion, beliefs or opinions, for example. The relevant provision of the Constitution places public authorities under an obligation to treat all persons

equally despite that they may represent different religions or beliefs. The provisions of the Constitution on the freedom of assembly and freedom of association also have relevance for the implementation of the freedom of religion and conscience.

250. At the beginning of 2003, the Finnish Parliament passed a new Freedom of Religion Act which will enter into force on 1 August 2003 and thereby repeal the existing Act of 1922. The Act is meant to implement the requirements set by the Constitution as to the respect for the freedom of religion and conscience and to respond to the new situation as political attitudes towards the status of religion have changed and the number of religious denominations in Finland has increased, due to immigration. The reform of the Freedom of Religion Act is expected to have, in particular, a positive impact on the status of religious minorities in Finland. The possibilities of registered religious communities to more independently organize their activities have already improved as certain provisions of law setting restrictions thereon have been repealed. Considering that in most cases persons representing minority religions also belong to an ethnic or racial minority, the guarantees of the freedom of religion also contribute to the prevention of intolerance and ethnic or racial discrimination.

251. Apart from the Evangelical Lutheran Church of Finland, religious denominations in Finland include the Orthodox Church and a number of registered religious communities. Of the Finnish people, approx. 85% belong to the Evangelical Lutheran Church and 1% to the Orthodox Church. In addition, there are at present 52 registered religious communities whose members constitute approx. 1% of the entire population.

252. The provisions on certain offences relating to the professing of religion were amended in 1998 and included in the reformed Chapter 17 (563/1998) of the Penal Code. The provisions entered into force on 1 January 1999. Breach of the sanctity of religion and prevention of worship, as well as an attempt to prevent worship, are established as criminal offences.

#### **Paragraph 2. Prohibition of coercion**

253. Section 11 of the Constitution specifically provides that no one is under the obligation, against his or her conscience, to participate in the practice of a religion.

#### **Paragraph 3. Limitations on the freedom to manifest one's religion or beliefs**

254. The provision in section 23 of the Constitution is addressed in the context of information given under Article 4. In the light of that provision, the right to freedom of thought, conscience and religion may, even in emergency situations, be only limited to the extent it is acceptable in view of the provisions of Article 17 of the Covenant.

#### **Paragraph 4. Liberty of parents**

255. The Finnish Constitution sets no age limits, and thus the right to freedom of thought, conscience and religion belongs equally to adults and children. Through accession to the Convention on the Rights of the Child, Finland has agreed to respect the child's right to the freedom of thought, conscience and religion, as well as the rights of parents and custodians of children.

256. Under the new Freedom of Religion Act, the child's religious status is no longer automatically determined by that of his or her custodians. The child's membership in a religious community or withdrawal from such membership is always based on a specific declaration of intent by the parents or custodians. Thus, the provisions of the Act are based on the idea of supporting the religious unity of the family and the permanency of the child's religious status, as well as of ensuring the child's own right to choose his or her religion, and protecting minors.

257. The parents' decision on the child's religious status, or consent to the change of religion of a child who is at least fifteen years old, is partly guided by the objectives of child custody as defined in the Child Custody and Right of Access Act. Thus, any such decision should be based on the objective of ensuring the child's balanced development and welfare in accordance with his or her individual needs and wishes. Registration of a child with such a community to which he or she has no natural ties cannot usually be considered to meet this objective.

258. As a decision on religion usually requires particular maturity, it has been decided that a person may not independently make such a decision until at the age of 18 or, subject to the parents' consent, at the age of 15. The new Freedom of Religion Act will not change these age limits. In order to ensure the permanency of the child's religious status and the child's right to decide for oneself, however, the possibilities of children under the age of fifteen years to express their opinions have been increased so that the religion of twelve-year old child may not be changed without his or her consent.

259. The effects of the Freedom of Religion Act on religious education at schools will be addressed in the third periodic report on the implementation of the Convention on the Rights of the Child, to be given in July 2003.

## **Article 19**

### **Paragraph 1. Right to hold opinions**

260. The provision on freedom of expression, which was part of the earlier fundamental rights provisions, was in essence meant to protect freedom of expression as a political right. Its most important aim was to ensure the right to freely hold opinions, which is a prerequisite for democratic society, and the possibility to an open public debate, free development of the mass media and their freedom of expression of opinions, as well as the possibility to public criticism against those using public powers. However, it has been considered that the relevant provision also guarantees the freedom of opinions other than political ones irrespective of their nature.

### **Paragraph 2. Freedom of expression**

261. Section 12 of the new Constitution is more precise as to the contents of the freedom of expression, corresponding better to the definitions given in international human rights conventions. The freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. Freedom of expression is understood widely, in accordance with an earlier adopted view of the Constitutional Law Committee of Parliament. The explanatory part of the Government Bill (HE 309/1993 vp) indicates that the provision on the freedom of expression in the Act is not

meant to be interpreted restrictively. Thus, the freedom of expression is not attached to any particular means of communication but it is protected irrespective of the means of communication or publication.

262. The provision in the new Constitution maintains the possibility for controlling the use of freedom of expression afterwards, by means provided for in the Penal Code and in the Tort Liability Act (412/1974), as well as for issuing regulations concerning the use of freedom of expression with a view to maintaining public order. However, the constitutional nature of the freedom of expression sets limits even on the possibility to restrict it afterwards. It is stated in the explanatory part of the Government Bill that too far-reaching or loosely formulated provisions criminalizing the expression of certain opinions may be problematic with regard to the provision on the freedom of expression in the Constitution.

263. *Publicity and confidentiality.* Political rights, in particular the right to freedom of expression, have traditionally been associated with the principle of publicity. Adequate guarantees of publicity are necessary for the possibility of individuals to affect decision-making and participate in society. Publicity is also necessary to guarantee the possibility for criticising authorities in public and exercising control over their activities. In administrative matters, the principle of publicity means particularly the right to have information or a copy of public documents or records held by authorities. Therefore, section 12 of the Constitution also contains a provision on the publicity of documents and recordings in the possession of authorities. For the purposes of the Constitution, 'recordings' mean both traditional documents and technical recordings. Thus, even such recordings are covered by the provision as may only be read, listened to or otherwise understood by technical means. The publicity of documents and recordings may, for compelling reasons, be restricted by law. Any restriction on publicity must meet three conditions: (1) it is necessary for compelling reasons (2) which are defined by an act of Parliament (3) specifically restricting the publicity. Consequently, it is only possible for Parliament to impose such restrictions on publicity as may be found necessary for compelling reasons within the meaning of the Constitution.

264. The most relevant provisions on the publicity of official documents are compiled in the Openness of Government Activities Act (621/1999) which entered into force on 1 December 1999. The Act provides for a right to have information on public documents in the possession of authorities, for the obligation of officials not to disclose confidential information and for the secrecy of documents, as well as for other restrictions on the right to have information on official documents held by authorities, necessary for the protection of private or public interests. The Act also provides for a detailed list of documents to be held secret, for reasons of foreign policy, national security, economic interests and other relevant interests, criminal investigations and police operations, conservation of the environment, interests of education and protection of privacy.

265. In most cases, the authority is expected to make an assessment in each individual case, of the damage that might be caused by the disclosure of information. Thus, in each situation, the information is only required to be kept confidential to the extent it is necessary for the protection of the interests involved. The provisions of the Act are based on the premise that a document is either public or confidential. In the first mentioned case, a document is ordered to be kept

confidential if the disclosure of information would cause damage on the interests to be protected. In the latter case, information may be disclosed if it is apparent that it will not cause such damage.

266. The Provision of Information Society Services Act (458/2002) entered into force on 1 July 2002. The Act implements Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). For the purposes of the Act, 'information society services' mean on-line services provided on the request of the recipient of the service, usually against payment. A court may, upon request, order a service provider responsible for maintaining data to prevent the disclosure of entered data where keeping the data available to the public or its transmission is apparently punishable. The Act also provides for a possibility of the service provider to ex officio prevent access to such data. In such case, the data includes pictures or visual recordings referred to in the Penal Code, depicting children, violence or bestiality in an obscene way. The same applies such transmission of materials as is punishable as incitement to hatred against an ethnic group within the meaning of section 8 in Chapter 11 of the Penal Code. The Act also contains provisions on the removal of data violating copyrights or neighbouring rights.

267. The European Convention on the Participation of Foreigners in Public Life at Local Level entered into force for Finland on 1 May 2001. The Convention is applied to all foreigners residing lawfully in Finland, and guarantees the most important civil rights and political rights (freedoms of expression, assembly and association).

### **Paragraph 3. Limitations on the freedom of expression**

268. *Prior censorship of films.* The possibility to restrict the scope of application of the provision on freedom of expression, in the Constitution, is limited to only concern such censorship of films as is necessary for the protection of children. In the Film Censorship Act (775/2000), the possibility to censor films was restricted to concern films which are intended to be distributed to minors, i.e. to persons under the age of 18. The grounds on which films may be censored include violence, sexual elements or horror, or comparable elements which may be detrimental for the children's development.

269. The relationship between the freedom of expression and the protection of private life has been subject to public debate in the past few years. An example of efforts to coordinate the freedom of expression with other important interests and values in society is that the spreading of information on the private life of another person, so that the act is conducive to causing damage or suffering, was established as a criminal offence in section 8 (531/2000) of Chapter 24 of the Penal Code. However, for the purpose of discussing an issue involving significant public interests, it may sometimes be necessary to refrain from the punishment of such offences. Such cases usually involve a person with an important political, business or other public position, and the information in question affects the assessment of the performance of the functions of such a person. The Act contains a provision ensuring the possibility for the provision of information in such situations.

270. In practice, it is for independent courts of law to address, afterwards, problems observed in the use of the freedom of expression. In their case law, courts have needed to weigh the importance of the freedom of expression e.g. in relation to the right to respect for privacy. The decision (KKO 2002:55) of the Supreme Court given account of under Article 17 concerned a series of events that led to the firing of a person having a significant position in society, and its discussion in public. The different court instances reached differing conclusions. The Supreme Court underlined the right to the respect for privacy and noted that the disclosure of the identity of the person in question was not necessary for the purpose of assessing the activities of a person having a significant position in society.

## Article 20

### Paragraph 1. Prohibition of propaganda for war

271. Propaganda for war during military action or an international political crisis concerning Finland was established as a criminal offence by an amendment made to the Penal Code in 1995. In order for the act to be punishable, it is required that its purpose is to lead Finland to war or make the country a military target and that it clearly increases such a risk. Thus, the prohibition of propaganda for war under the Finnish Penal Code only applies to a crisis or a threat thereof and does not cover all kinds of propaganda for war as required by Article 20.

272. Finland made a reservation to Article 20 for the reason that its requirement was not in conformity with the principle of the freedom of expression set forth in Article 19. However, society has undergone a number of changes in the past twenty years, and the use of freedom of expression by new technological means has brought about a new dimension to the debate on the freedom of expression as a fundamental right. In connection with the enactment of the new provisions on fundamental rights, efforts were made to define the rights so that the provisions provide concrete guidance for the authorities applying them. The instructions given by the Constitutional Law Committee of Parliament as to the possibility of restricting fundamental rights are given account of under Article 5. Finland's accession to international human rights conventions has also increased scientific research and theoretical debate on human rights in Finland.

273. In accordance with the Committee's recommendation, consideration has been given to the withdrawal of Finland's reservation to Article 20, paragraph 1, and to the possibility to amend legislation to that effect. In principle, it would be possible to prohibit all kinds of propaganda for war by law, provided that this prohibition fulfilled the general conditions set for the restriction of fundamental rights (see information given under Article 5). In this respect, particular attention should be paid to the preciseness of the provisions of law and to the prohibition of interference with the core of the freedom of expression. Thus, should a general prohibition of propaganda for war be adopted in the Finnish legislation, it would have to be in conformity with the provisions on the freedom of expression. The difficulty in harmonising this kind of a prohibition with the freedom of expression was referred to by the Government and Parliament when discussing the proposal of the European Commission for a Council framework decision on combating racism and xenophobia (Parliament documents U 17/2002 vp, LaVL 6/2002 vp, PeVL 26/2002 vp). The Ministry of Justice has observed that the need for prohibiting all kinds of propaganda for war may not be examined before the new provisions of law on the use of freedom of expression by the mass media have been adopted. Parliament

passed the relevant bill in February 2003 and the Act is scheduled to enter into force by the end of 2003. Thus, the Government will be able to consider the issue in near future. Considering that the grossest forms of propaganda for war have recently been established as criminal offences in Finland, and there has appeared no need for extending the scope of application of the relevant provisions, Finland does not consider it necessary, for the time being, to take the legislative measures required for the withdrawal of the reservation.

## **Paragraph 2. Prohibition of incitement to discrimination, hostility or violence**

274. The reformed Chapter 11 of the Penal Code, which entered into force in 1995, establishes e.g. discrimination, preparation of genocide and incitement to hatred against an ethnic group as criminal offences. For the purposes of the Penal Code, an ethnic group means any national, racial, ethnic or religious group or a comparable part of the population. The Provision of Information Society Services Act entered into force on 1 July 2002. It contains a provision under which the service provider may prevent access to registered data where the data is apparently not in conformity with the prohibition of incitement to hatred against an ethnic group in section 8 of Chapter 11 of the Penal Code.

## **Article 21**

### **Right of peaceful assembly**

275. According to section 13, subsection 1, of the Constitution, everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them. The specific reference to demonstrations was added in connection with the fundamental rights reform. However, it is an established principle that the organization of and participation in demonstrations is an acceptable form of using the freedom of assembly and the freedom of expression guaranteed by the Constitution. To prepare for the accession to the European Convention on Human Rights in 1989, the restrictions on the right of assembly of foreigners in the Finnish Public Meetings Act of 1907 were repealed. The European Convention on the Participation of Foreigners in Public Life at Local Level entered into force for Finland in 2001.

276. The new Assembly Act (530/1999), providing for guarantees of the freedom of assembly and for the issue of rules and regulations on the arrangement of public events, entered into force on 1 September 1999. The Act applies to both meetings and other public events, harmonising the rules and regulations concerning such events so that the purpose of the event does not affect the issue of a permission for the event unless it is necessary. However, in some respects, the applicable rules and regulations differ in respect of different events.

277. For the purposes of the Assembly Act, a public meeting means a demonstration or other assembly arranged for the exercise of the freedom of assembly, open for participation or observation also to persons who have not been expressly invited to it. These may include meetings, lectures, parades or religious events arranged for the purpose of public worship. Even one person's demonstrations may enjoy protection under the Assembly Act, provided that the Police are informed beforehand. The Assembly Act does not apply to private meetings. For the purposes of the Act, a public event means an amusement, contest, performance or other comparable event that is open to the public, but is not considered to be a public meeting.

278. The right to participate in a public meeting belongs to all, including foreigners and persons without full legal capacity. A public meeting may be arranged by any person, association or foundation, having full legal capacity. The organizer of the meeting is not required to have Finnish nationality or residence in Finland. Even a fifteen-year-old person who has no full legal capacity may arrange a public meeting unless it is apparent that he or she is not capable of assuming responsibility for the duties belonging to a person arranging such a meeting. A person who is under the age of fifteen years may only arrange a public meeting together with a person having full legal capacity. The Police shall be informed of any public meeting to be held outdoors, in a public place, at least six hours prior to the meeting.

279. The Order Supervision Personnel Act (533/1999) entered into force at the same time with the Assembly Act. The general objective of this Act is to increase the safety of participants in public meetings and events by providing for a possibility to have security officers in such events.

280. The Employment Contracts Act (55/2001), which entered into force in 2001, guarantees the right of workers to convene a meeting at a workplace for the purpose of discussing issues relating to employment and working conditions. The provision is applied to all workplaces irrespective of the number of workers. The Act places employers under an obligation to allow employees and their organizations to use suitable facilities under the employer's control free of charge during breaks and outside working hours in order to deal with employment issues and matters forming part of the functions of trade unions. Exercise of this right of assembly must not have any harmful impact on the employer's operations.

281. The provisions establishing violations of political rights as criminal offences, given account of in the fourth periodic report, entered into force in 1995. For example preventing a person from participating in an assembly arranged for the purpose of discussing matters of general interest and prohibiting the organization of such an assembly constitute such offences.

## **Article 22**

### **Paragraph 1. Freedom of association**

282. According to section 13, subsection 2, of the Constitution, everyone has the freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to participate in the activities of an association. The preparatory work for the Constitution indicates that the Law Committee and the Constitutional Law Committee have underlined the significance of the right to remain outside an association as an element of the freedom of association protected by the Constitution. Thus, this right is specifically mentioned in the said provision of the Constitution. Section 13, subsection 2, of the Constitution further guarantees the freedom to form trade unions and organize in order to look after other interests.

283. The various elements of the freedom of assembly in the reformed provisions are wider in scope than earlier. However, in case law, the repealed provisions of the Constitution Act had already earlier been given a wide interpretation. In this respect, the development of case law was merely codified in the Constitution.

284. The freedom of association is based on the right of associations to decide on their own rules and organization and to choose their members. Therefore, the right to belong to an association, within the meaning of the Constitution, does not entail an absolute right to belong to any association.

285. The freedom of association guaranteed by the Constitution primarily concerns ideological associations referred to in the Associations Act (503/1989) but does not preclude the establishment of public law associations under the law, for the performance of public functions.

286. The relevant provision of the Constitution means that no permit shall be required for the establishment of an association. Nor must the requirement of registration of associations constitute a de facto impediment to the use of freedom of association. Therefore, the registration of an association is not at the discretion of the competent authority but any association fulfilling the requirements set by law must be registered.

287. There is no age limit for the right to use freedom of association. Thus, the provision in the Finnish Constitution satisfies the requirement of Article 15 of the Convention on the Rights of the Child, under which the rights of the child to freedom of association and to freedom of peaceful assembly shall be recognized. However, the Constitutional Law Committee of Parliament has considered it possible, irrespective of the provision in the repealed Constitution Act, to enact such restrictions on the rights of the child as are justified for acceptable reasons. In any case, children must also have the right to the freedom of association to the fullest extent possible.

288. The provisions establishing violations of political rights as criminal offences, given account of in the fourth periodic report, entered into force in 1995. For example preventing a person from establishing an association for the purpose of handling matters of general interest constitutes such an offence.

### **Paragraph 2. Prohibition of restrictions on the right to exercise the freedom of association**

289. Under section 13, subsection 3, of the Constitution, more detailed provisions on the exercise of the freedom of assembly and the freedom of association are laid down by an Act.

290. The Associations Act prohibits the establishment of military organizations and makes the establishment of associations involving use of weapons for purposes other than hunting subject to the condition of prior authorisation. These restrictions, which are narrow in scope and defined by law, are considered possible for the maintenance of public order and meet the requirements of Article 5.

### **Paragraph 3. Prohibition of legislative measures which would prejudice the guarantees provided for in the ILO Convention concerning Freedom of Association**

291. The ILO Convention concerning Freedom of Association and Protection of the Right to Organize entered into force for Finland in 1949 (Finnish Treaty Series No. 45/1949). As mentioned under Article 2, the Convention is applicable law in Finland.

292. The right of workers to organize is an essential element of the freedom of association. Participation in the activities of a trade union or in lawful collective action, or a refusal to join or participate in a trade union or collective action, is not an acceptable reason for dismissal or different treatment in working life. According to Chapter 13, section 1, of the Employment Contracts Act (55/2001), “employers and employees have the right to belong to associations and to be active in them. They also have the right to establish lawful associations. Employers and employees are likewise free not to belong to any of the associations referred to above. Prevention or restriction of this right or freedom is prohibited.” Furthermore, “any agreement contrary to the freedom of association is null and void”.

## Article 23

### Paragraph 1. Protection of the family

293. Section 19 of the Constitution compiles the most relevant fundamental rights provisions pertaining to social security, guaranteeing the right to indispensable subsistence and care. In particular the provision in subsection 2 is relevant for the protection of the family. According to subsection 2, everyone shall be guaranteed the right to basic subsistence, *inter alia*, at the birth of a child or in the event of the loss of a provider. Furthermore, according to subsection 3, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the well-being and personal development of the child.

294. The repealed Constitution Act of Finland did not contain any provision corresponding to the afore-mentioned one but, in the past decades, the guarantees of social security have been improved at the level of ordinary acts of Parliament. Thus, the new provision did not as such entail changes to legislation. Upon accession to a number of international agreements, Finland has undertaken to maintain and develop social security. In the preparatory work for the said provision of the Constitution, reference is made, in particular, to Articles 9 to 12 of the Covenant on Economic, Social and Civil Rights, Articles 7 and 8, 11 to 17 and 19 of the European Social Charter, and Article 4 of the Additional Protocol to the Charter. The provision in the Finnish Constitution is based on these international obligations.

295. During the period of time covered by the present Report, the Finnish legislation applied to parental leaves and parenthood in general has been developed so as to provide families with more flexible possibilities to coordinate work and family life. In the past few years, particular attention has been paid to the possibility of fathers to participate in child care. The latest amendment entered into force at the beginning of 2003, concerning different family-related leaves. The amendment makes it possible for the father to keep take a leave of 24 subsequent days for the purpose of looking after the family. No difference is made between biological and adoptive fathers. The parental leave (following the maternity leave) may also be taken part-time, in which case both the father and the mother may be on part-time parental leave at the same time.

296. In the light of studies and statistical data, the well-being of most Finnish children is guaranteed. However, mental health problems of children and the number of children placed in public care have increased in the past few years. This apparently is a consequence of increasing challenges faced by parents, financial and social problems of families and reduced services supporting parents.

297. The afore-mentioned reform, as well as other forms of support for families with children (maternity allowance, adoption allowance, children's day care and financial support for the purpose of looking after the children at home) will be discussed in more detail in the third periodic report of the Government of Finland on the implementation of the Convention on the Rights of the Child, to be submitted in July 2003.

298. *Indicators of children's and adolescents' well-being.* The National Research and Development Centre for Welfare and Health, Statistics Finland and the local authorities have together developed indicators to describe the well-being of children and adolescents. The indicators have been developed on the basis of corresponding European models. They are tested and reviewed with the help of strategies of well-being of children and adolescents prepared by the local authorities. Data on children and adolescents are being extensively compiled in the context of a project called '*Tieto 2005*', in the framework of which the production of information within the whole social welfare and health care sector is being assessed.

299. *Handbooks and quality standards.* Public care of children and the parents' divorce are crisis situations touching upon the whole family. They are also difficult for the competent authorities. In 1999, the National Research and Development Centre for Welfare and Health published a handbook on the general principles applied to the public care of children (*Huostaanotto. Lastensuojelun asiantuntijaryhmän suositus huostaanottoprosessin laatua ohjaaviksi yleisiksi periaatteiksi.* STAKES. Handbook No. 33). The purpose of this handbook is to improve the quality of child welfare measures and the protection of the persons involved under the law. In 2001, the Centre published another relevant handbook, concerning the protection of the best interests of the child in divorce situations (*Lapsen etu. Opas sosiaalitoimelle.* STAKES. Handbook No. 46). Its purpose is to provide support for the local social welfare authorities in dealing with such situations.

300. Moreover, quality standards have been introduced as a means of ensuring high-quality services. So far, such standards have been developed for the mental health services of children, and standards concerning school health care services are being prepared.

301. In 2002, an expert group set up by the Ministry of Social Affairs and Health prepared a publication for the arrangement of family counselling services (*Lastenneurolat lapsiperheiden tukena. Suositukset lastenneurolatoiminnan järjestämiseksi kunnissa*). The aim has been to create a more effective network of family counselling clinics providing a variety of services.

302. The Central Union for Child Welfare in Finland is implementing an extensive project for the improvement of the quality of public care of children, by developing national quality standards and a model for the external assessment of quality. There are 70 service-providers participating in the project which is implemented in cooperation with the Ministry of Social Affairs and Health, the National Research and Development Centre for Welfare and Health, the Association of Finnish Local and Regional Authorities, and the State Provincial Offices.

303. *Commission for Children.* A high-level Commission for Children was established on 21 March 2003 in Finland, to implement the recommendation in the Outcome Document of the United Nations Special Session on Children, as to the establishment of a national body for the promotion and protection of the rights of the child.

304. The Mannerheim League for Child Welfare has drawn attention to the significance of Article 23 for ensuring the provision of care for small children. Article 23 further sets requirements as to the development of various forms of support for parents. According to the Mannerheim League for Child Welfare, the authorities should enhance the possibilities of providing for the care of children at their own homes, and strengthen the support for parents. In this respect, the Government refers to the third periodic report on the implementation of the Convention on the Rights of the Child to be submitted in July 2003.

305. Insofar as the matrimonial property regime is concerned, the provisions on conflict of laws in the Finnish legislation were amended by Act No. 1226/2001 which entered into force on 1 March 2002. The amendment repealed the earlier arrangement under which the matrimonial property regime was subject to the laws of the State whose national the husband was at the time of entering into marriage. Under the amended provisions, the applicable law shall be the law of the State where both spouses have their permanent residence immediately after the marriage was contracted. Subject to certain restrictions, the spouses may also choose the applicable law.

306. Since 1999, the Aliens Act has contained provisions on the conditions under which a residence permit may be issued to a person residing abroad on the basis of family ties (section 18c). It is observed in the explanatory part of the relevant Government Bill (HE 50/1998) that a decision on family reunification shall be made on the basis of an overall assessment, taking into account both facts for and against the issue of the residence permit, in the light of the case law concerning the application of the European Convention on Human Rights. The purpose of the new provision is to protect de facto family life and close family ties. Any decision on a residence permit shall be based on a presumption of real family life.

307. The Refugee Advice Centre has criticised the delays there have been in the procedure applied by the Directorate of Immigration to the examination of applications for a residence permit on the basis of family ties. The processing of applications may take more than eight months or, in respect of refugee families, even more than two years. This is particularly problematic for minors who have arrived in Finland alone to apply for asylum.

The Supreme Administrative Court gave a decision (KHO 2002:84) on 9 December 2002, quashing the decision of the Directorate of Immigration to refuse a residence permit for the spouse of a person residing in Finland. The Supreme Administrative Court found that, in view of the restricted possibility for have family life before marriage as determined by the culture of the person who had arrived in Finland as a refugee, and the restrictions that his refugee status imposed on his possibility to meet his wife in his country of origin after entering into marriage, the application for a residence permit could not be refused for weighty reasons as referred to in section 18c of the Aliens Act, on the mere ground that the spouses had not spent family life.

**Paragraph 2. Right to marry**

308. The age limit for contracting marriage in Finland, for both men and women, is 18 which is also in most other respects the age of majority. An act of Parliament concerning registered relationships, allowing two persons of the same sex who are at least 18 years old to register their relationship, entered into force on 1 March 2002. The registration of such a relationship has legal effects similar to those of marriage. For special reasons, the Ministry of Justice may authorise a person under the age of 18 to enter into marriage.

309. The impediments to marriage include already existing marriage or registered relationship, and blood relations. In respect of the latter, the Ministry of Justice may in certain cases authorise marriage, for exceptional reasons.

310. In the view of the Refugee Advice Centre, the possibility of asylum seekers to enter into marriage has become significantly more difficult during the period covered by the present report. The District Registrars in the Helsinki region mainly require examination of impediments to marriage and a valid passport, with a visa or residence permit, before marriage may be contracted. Considering that the asylum seeker often needs to enter the country without a travel document and/or visa or residence permit, marriage may in practice not be contracted before the lawfulness of the asylum-seeker's residence is confirmed and he or she is issued an identity document (usually an alien's passport). Should the application for asylum be refused, however, it may in practice be impossible to marry during the stay in Finland.

**Paragraph 3. No marriage without the free and full consent of the intending spouses**

311. The Finnish law requires that those intending to marry or register their relationship act on mutual consent.

312. Finland acceded to the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages in 1964.

**Paragraph 4. Equality of rights and responsibilities of spouses**

313. The equality of rights and responsibilities of spouses is ensured by the Finnish family law. The provisions on matrimonial property regime apply equally to men and women, and both spouses are under an obligation to participate in the maintenance of the family according to their capacities. An important reform relating to the custody of children was carried out in 1984 when joint custody over the children after divorce or other separation was made possible. In such situations, the parent with whom the child does not live shall be under an obligation to pay maintenance for the child. Should the maintenance debtor fail to comply with this obligation, the municipality of residence of the child shall pay maintenance support which may not be more than EUR 122.53 per month (since 14 June 2001).

314. The Mannerheim League for Child Welfare has expressed concerns over the effect of the great number of divorces and separations on children's status and has called for measures to ensure their welfare.

## Article 24

### Paragraph 1. Right of the child to protection without any discrimination

315. The fundamental rights provisions apply to all persons irrespective of their age, with certain exceptions (the right to vote and to be elected at elections). Furthermore, section 6 of the Finnish Constitution specifically provides for the equality between children and adults as individuals. The prohibited grounds of discrimination, given account of under Article 26, also apply to children. With regard to the basic welfare of children, see information given in the context of Article 23.

316. An Act on the Status and Rights of Social Welfare Clients (812/2000) entered into force at the beginning of 2001. The Act provides for the most important principles of law applied to the participatory rights, treatment and protection of social welfare clients. The Act aims, in particular, at improving the status and rights of children as social welfare clients and to underline the right of the child to decide for himself or herself on matters concerning him or her. In the provision of social welfare services, the wishes and opinion of a minor shall be heard and taken into account in accordance with his or her age and maturity. In all public or private social welfare measures, the best interests of the child shall be a primary concern. This principle, which is the underlying principle in the Finnish legislation concerning children, is also provided for in the Act on the Status and Rights of Social Welfare Clients. For important reasons, a minor may prohibit the authorities from disclosing confidential information to his or her custodian or other legal representative. In such a case, the child's age and maturity shall be paid attention to. It is further required that the withholding of information is not manifestly against the best interests of the child. In cases of conflicts of interests of the child and his or her custodian, the Act provides for a possibility to order the child a guardian referred to in the Guardianship Act (442/1999).

317. The Ministry of Social Affairs and Health has published a handbook on the Social Welfare Clients Act (Handbooks of the Ministry of Social Affairs and Health, 2001:11), to provide guidance for the public and private service providers and social welfare clients.

318. There is a recent report on the effects and achievement of the objectives of the Social Welfare Clients Act, at the initial stage of its application (STAKES, Finnish Federation for Social Welfare and Health; FinSoc Reports 1/2003).

319. Between 11 October 2000 and 17 October 2001, the Parliamentary Ombudsman carried out inspections at all the six state-financed community homes (with education on the premises). In the light of the inspections, the Parliamentary Ombudsman is preparing an extensive report on the methods of education applied at community homes, including the use of isolation and restrictions on the children's right to decide for themselves. The rights of children were interfered with, *inter alia*, when the staff needed to resort to physical restraint, intensive treatment periods, restriction of liberty, or narcotics tests in difficult situations. Such measures restrict the personal freedom, integrity and private and family life of children, including the right to maintain contacts with close family members. The Parliamentary Ombudsman observed that

any restrictions must be based on law, also where they are made on the basis of a need for treatment. The public authorities are responsible for the implementation of rights of children placed in community homes. The Parliamentary Ombudsman urged the enactment of a new child welfare act.

320. The Ministry of Social Affairs and Health is preparing a Government Bill for the amendment of the Child Welfare Act and certain other relevant acts. It is proposed that the provisions on the restriction of liberties of children taken into public care, and placed in a child welfare institution, control on such measures, and the protection of such children under the law, be supplemented and made more precise. Under section 19, subsection 1, of the Constitution, those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. In order to guarantee this strong fundamental right, however, certain restrictions on other rights may be necessary. Any such interferences must be based on law.

321. It is further proposed that the provisions on the maintenance of contacts between a child placed in substitute care and his or her parents or other close persons be made more precise and that the protection of the child under the law in such situations be strengthened. Particular attention would be paid to decision-making and the right of appeal.

322. Furthermore, it is proposed that the Child Welfare Act be amended so as to make it possible, in conflict situations, to place an at least twelve-year old child in public care as a support measure even against the custodians' consent, provided that the child himself or herself consents to it. Under the existing provisions of law, the custodians' consent is always necessary in such situations, in the same way as in respect of other support measures.

323. *State subsidies to services for children who are socially excluded or in need of mental health care.* In the State budget for 2000, an allocation of FIM 70 million (approx. EUR 11.8 million) was reserved for the provision of support for municipalities and joint municipal boards for the purpose of supporting the mental development of children and adolescents, prevention of mental disorders and ensuring of mental health services.

324. In 2001, the afore-mentioned allocation was FIM 45 million (approx. EUR 7.6 million), of which FIM 5 million was reserved for the improvement of services responding to national needs. The state subsidies reserved for 2002 amounted to EUR 3,160,000.

325. The State budget for 2003 includes an allocation of EUR 15 million to be distributed to municipalities and joint municipal boards for the purpose of covering the costs of services provided for children and adolescents who are in danger of social exclusion. The grounds on which subsidies may be granted are defined by a Government Decree issued on 30 January 2003. The state subsidies are meant to strengthen cooperation among the various professionals working with children and adolescents, to support children and adolescents and to increase the welfare of families. This cooperation includes in particular maternity and family counselling services, day care and education, early intervention and prevention of social exclusion in respect of children needing special support.

326. The Mannerheim League for Child Welfare has drawn attention to the increased psycho-social problems of children and called for the public authorities to improve the supply of preventive services, in order to observe and tackle such problems at an early stage and to ensure the protection of the rights of such children to the fullest possible extent.

327. The Central Union for Child Welfare in Finland has underlined the requirement of recognising and respecting the right of participation of children. The right of a child to affect decisions concerning him or her does not only contribute to the protection of the child under the law but also develops the child's ability to assume responsibility for matters concerning himself or herself. Thus, the guarantees of this right are an investment for future. The Ministry of the Interior is responsible for the management of a framework project under which measures to enhance the participation of children have been introduced by local authorities. In addition, many youth associations have introduced projects teaching children how to affect decision-making.

328. The Government refers to the third periodic report on the implementation of the Convention on the Rights of the Child, to be submitted in July 2003, in which these fundamental rights of children will be addressed in more detail.

329. The Child Custody and Right of Access Act was amended by an Act (619/1996) which entered into force on 1 December 1996. The purpose of the amended provisions is to improve the implementation of decisions on child custody and right of access and the protection of children in connection with such decisions. At the same time, attention was paid to the prevention of the misuse of the right of access for the purpose of international child abduction.

330. The Convention on protection of children and co-operation in respect of intercountry adoption, done at The Hague on 19 May 1993, entered into force for Finland on 1 July 1997. The Convention establishes safeguards to ensure that intercountry adoptions take place in the best interests of the child.

331. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force for Finland on 1 July 1997. The Optional Protocol on the sale of children, child prostitution and child pornography was signed by Finland in 2000. The latter will be ratified once national provisions of law prohibiting trafficking in human beings have been enacted.

## **Paragraph 2. Registration and name of the child**

332. Every Finnish child shall have a family name and a first name (Names Act 694/1985). The parents shall register a born child with the authority maintaining the population register. The names to be registered on that occasion may only be changed through a procedure provided for in the law.

## **Paragraph 3. Right to nationality**

333. On 24 January 2003, Parliament passed a new Nationality Act. The Act has not been approved by the President of the Republic yet. Upon Presidential approval, the date of entry into force of the Act will be confirmed. At the earliest, the Act will enter into force on 1 June 2003.

334. Under the new Nationality Act, a child will still acquire Finnish nationality at birth, through legitimation, or upon declaration or application. A child whose parent is a Finnish national at the time of his or her birth shall always have the right to Finnish nationality. A child born in Finland, whose father is Finnish, shall acquire the nationality of the father directly by operation of law. A child with a Finnish father, born abroad, shall have such a right where the father is married to the child's mother.

335. A child born out of wedlock, whose father is Finnish at the time of birth of the child and the mother has a foreign nationality, shall acquire Finnish nationality upon establishment of paternity where the child is born in Finland. According to the law, paternity must be established before the child reaches the age of 18 years or enters into marriage. Thus, it is no longer necessary for the child's parents to enter into marriage with one another or give a declaration concerning the child's nationality. A child born out of wedlock abroad shall acquire the father's nationality either upon declaration or through marriage between the parents.

336. The new Nationality Act further improves the status of adopted children. An adopted child under the age of 12 years acquires Finnish nationality through adoption, and an older child upon declaration. It is nevertheless required that the adoption may be recognised as being valid in Finland. It is further necessary that at least one of the adoptive parents is a Finnish national.

337. Pursuant to the principle of country of birth, a child of foreign parents, born in Finland, shall acquire Finnish nationality where the child does not acquire, or has no right to acquire, the nationality of his or her parents directly by operation of law.

## Article 25

### **(a) and (b). Right to take part in the conduct of public affairs, and to vote and to be elected at genuine periodic elections**

338. According to section 2, subsection 2, of the Constitution, democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions.

339. The primary means of affecting political decision-making is to use the right to vote. Furthermore, the law guarantees the possibility of citizens to express their opinion on certain matters of general interest, such as land use and construction. The Land Use and Building Act (132/1999) contains provisions on the expression of opinions on plans drafted for land use. In this respect, the authorities shall take the principle of transparency and adequate provision of public information into account at all stages of decision-making.

340. With regard to minors having the Finnish nationality, the Government refers to information given under Article 24, concerning projects to enhance the participation of children.

341. Section 14 of the Constitution provides for electoral and participatory rights. Every Finnish citizen who has reached the age of 18 years has the right to vote in national elections and referendums. Under section 27 of the Constitution, any person who has the right to vote and who has full legal capacity is eligible to stand for office in national elections. However, a person holding a military office or the office of the Parliamentary Ombudsman or the Chancellor of

Justice, of a Justice of the Supreme Court or the Supreme Administrative Court or of the Prosecutor General, may not be elected to Parliament. Any Finnish national who is at least 18 years old and a foreigner having habitual residence in Finland has the right to vote in local elections and referendums.

342. Since Finland's accession to the European Union, European Parliament elections have been conducted in 1996 and 1999. The provisions on these elections were initially included in a separate European Parliament Elections Act (272/1995) passed in 1995, but have later been compiled, together with the provisions on other elections, in the Elections Act (714/1998). The Finnish nationals have the right to vote in the European Parliament elections in the same way as in national elections. Furthermore, the right to vote in the European Parliament Elections may be exercised in another Member State of the European Union provided that the person wishing to do so has habitual residence in the State in question. However, the right to vote may not be exercised at the same time in two States but the person concerned must choose the State in which he or she wishes to vote. The same provisions apply to nationals of other Member States of the European Union, concerning the exercise of the right to vote in European Parliament elections in Finland. However, should the minimum age for voting in the other Member State be higher than in Finland, the said EU citizen may exercise the right to vote on the same grounds as Finnish citizens, i.e. he or she may vote if he or she reaches the age of 18 years by the election day.

343. The provisions on the right to stand for office in national elections also apply to the European Parliament elections. Nationals of other Member States of the European Union, who have the right to vote in European Parliament elections in Finland, are eligible in the elections on the same grounds as Finnish nationals.

344. Any EU citizen having habitual residence in Finland has also, since 1995, the electoral rights in local elections on the same grounds as Finnish nationals.

345. The right of citizens of the Union to vote and to stand as a candidate at municipal elections in the Member State in which he resides as well as the right to vote and to stand as a candidate in elections to the European Parliament are based on the provisions of paragraphs 1 and 2 of Article 19 of the Treaty establishing the European Community and the detailed arrangements for that purpose on Council Directives 94/80/EC and 93/109/EEC, respectively.

346. The European Convention on the Participation of Foreigners in Public Life at Local Level entered into force for Finland on 1 May 2001. Pursuant to the provisions of this Convention, foreigners who are lawfully and habitually resident in Finland shall have the right to vote and stand for election in local authority elections in Finland.

347. In 1995, the reformed provisions of Chapter 14 of the Penal Code, concerning offences against democracy, entered into force. A person who by violence or the threat of violence influences or attempts to influence another person voting or running for office in a general election or referendum shall be sentenced for an electoral offence. The other prohibited acts include, *inter alia*, violation of political freedom by preventing a person from expressing his/her opinion of public affairs in a meeting or other gathering, participating in a meeting, march or other gathering or founding an association intended for the exercise of influence over public affairs.

**(c) Access to public service on general terms of equality**

348. The general qualifications for public office are provided for in section 125 of the Constitution. According to the provision, it may be stated in an Act that only Finnish citizens are eligible for appointment to certain public offices or duties. As provided in the Constitution, the general qualifications for public office include skill, ability and proven civic merit. The State Civil Servants Act of 1994 (750/1994) includes further provisions on the qualifications and criteria for appointment, including an exhaustive list (amendment 281/2000) of those offices for which Finnish nationality is required. Such offices include those of the Parliamentary Ombudsman and the Chancellor of Justice, offices within the Foreign Service, the Ministry of Defence, the Defence Forces and the Frontier Guard, as well as the offices of judges. The list is considerably shorter than earlier.

349. The Act on Language Requirements of State Officials requires such office holders, for which a higher university degree is required, to have perfect command of the language spoken by the majority of the local residents in the district of the office (either Finnish or Swedish). This requirement creates problems in practice for the election of foreigners to public offices.

350. The Act on the Right of Finnish Citizens to Serve Their Country Irrespective of Their Religion (173/1921) was repealed upon the entry into force of the Freedom of Religion Act. Consequently, a teacher giving religious education at school in accordance with the teachings of the Evangelical-Lutheran or Orthodox Church no longer needs to be a member of the said Church. The contents of religious education is determined by the school curricula based on the law, and not by the personal beliefs of the teacher. Thus, the professional skills of the teacher have been found more important than his or her own religion. Furthermore, the restriction which only concerned two religions was hard to justify in view of the equality requirement.

**Article 26****Prohibition of discrimination**

351. Section 6 of the Finnish Constitution provides for the requirement of equality before the law and also expresses a principle of de facto equality. Section 6 consists of provisions on equality, prohibition of discrimination, equality between the two sexes and on the equal treatment of children as individuals.

352. The general requirement of equality entails a prohibition of arbitrariness and a requirement of equal treatment of similar cases. Traditionally, the requirement of equality before the law has mainly meant equal application of law but the provision also applies to the legislature, which has been confirmed, since the 1970's, by the opinions of the Constitutional Law Committee of Parliament. According to the Constitutional Law Committee, an act of Parliament may be in conflict with the Constitution if it, without an acceptable reason i.e. arbitrarily, places individual citizens or groups of citizens in a more favourable or weaker position than others. However, it has been considered acceptable in certain cases to treat people differently by law where, for example, the purpose of the law is to reach de facto equality. Thus, it is impossible to set strict limits on the discretionary powers of the legislature, in an effort to achieve laws meeting the requirements of society.

353. The general equality provision is supplemented by the prohibition of discrimination. Following the model set by the international human rights conventions, the Finnish Constitution lists certain prohibited grounds of different treatment. It is stated in the explanatory part of the Government Bill that the list is not meant to be exhaustive, as it has not been considered possible to predict all possible situations of discrimination. The list includes such prohibited grounds of discriminatory treatment as may be considered the core of the prohibition in Finland. These grounds include sex, age, origin, language, religion, conviction, opinion, health and disability.

354. A general provision prohibiting discrimination was added to Chapter 11 of the Penal Code in 1995. The provision concerns discrimination that takes place in the victim's trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting, without a justified reason. 1) Refusal of service in accordance with the generally applicable conditions; 2) refusal of entry to or removal from public amusement or meeting; and 3) placement of someone in an unequal or an essentially inferior position, are considered discrimination within the meaning of the Penal Code where they take place because of the person's race, national or ethnic origin, colour, language, sex, age, family ties, sexual preference, state of health, religion, political opinion, political or professional activity or another comparable reason.

355. In case the act of discrimination fulfils the elements of discrimination in employment, it shall be punished under a special provision contained in Chapter 47, section 3 of the Penal Code. Under the said provision, an employer, or a representative thereof, may be found guilty of discrimination if he or she without an important and justifiable reason puts a job-seeker or an employee in an inferior position when announcing vacancies or recruiting employees, or during employment, because of 1) race, national or ethnic origin, colour, language, sex, age, relations, sexual preference or health; or because of 2) religion, political opinion, political or professional activity or a comparable reason.

356. The Employment Contracts Act (55/2001) is an act of general application, containing the most important provisions applied to employment, binding on the employer and the workers. The Employment Contracts Act requires equal treatment of workers and prohibits discrimination. The provisions of this new Act are more precise than those of the earlier Act.

357. According to Chapter 2, section 2 of the Employment Contracts Act, an employer may not, without acceptable grounds, place workers in a different position on account of their age, health, national or ethnic origin, sexual orientation, language, religion, opinions, family ties, trade union or political activity, or other comparable reason. This provision also concerns recruitment of employees. The conditions of work of temporary and part-time workers may not be more unfavourable than normal on the mere ground of an employee's shorter duration of employment or shorter hours of work, unless there are reasonable grounds justifying such less favourable treatment. Employers are also in other respects under an obligation to treat their employees equally, unless different treatment is justified because of the duties and status of some employees. The prohibition of discrimination on account of sex is provided for in the Act on Equality between Men and Women (609/1986).

358. An employer who, intentionally or of negligence, violates or fails to comply with the obligations based on an employment contract or the Employment Contracts Act, shall be liable for compensating damage caused to a worker by such a violation or failure.

359. *Minority Ombudsman.* The Minority Ombudsman Act (660/2001) entered into force on 1 September 2001, whereby the office of the Minority Ombudsman was established and the earlier office of the Ombudsman for Aliens was abolished. The duties of the Minority Ombudsman are to enhance good inter-ethnic relations and the status and rights of ethnic minorities and immigrants in society, to monitor the implementation of equality among different ethnic groups and compliance with the prohibition of discrimination on account of ethnic origin, as well as to inform of and report on developments in these matters. The Minority Ombudsman shall also submit proposals for eliminating discrimination and removing deficiencies observed, provide information on legislation concerning ethnic discrimination and the status of minorities and foreigners as well as on its application. Furthermore, the Minority Ombudsman has a duty of monitoring the implementation of equal treatment irrespective of ethnic origin, in cooperation with other authorities, and has certain responsibilities provided for in the Aliens Act (see information given under Article 13). To this effect, the Minority Ombudsman has access to decisions made pursuant to the Aliens Act.

360. Action in a discrimination case may be initiated through the Minority Ombudsman. On the consent of the person concerned, the Minority Ombudsman may transfer the case to a competent authority, and may in this connection submit his opinion on the case. The said competent authority must inform the Minority Ombudsman of any measures taken on account of the case. Should the Minority Ombudsman find that the case involves a significant interest of preventing ethnic discrimination, he may assist or order another official to assist the victim of such discrimination or, where necessary, find a legal counsel, to ensure the protection of his or her rights. The present competence of the Minority Ombudsman does not, however, include powers to give binding and enforceable decisions in discrimination cases.

361. When observing discrimination on account of ethnic origin, the Minority Ombudsman shall, by means of instructions and advice, try and contribute to the prevention of continued or repeated discrimination. He has aimed at enhancing good ethnic relations and improved status of foreigners and ethnic minorities through various initiatives, opinions, interviews, publicity and participation in the preparation of legislation. The Minority Ombudsman has also arranged seminars and training for officials.

362. The contacts taken by Roma with the Minority Ombudsman have related to problems faced by the Roma in respect of housing, living, employment and discrimination in access to services. Through cooperation with other authorities, the Minority Ombudsman has sought to resolve such problems, aiming, in particular, at drawing attention to the special characteristics of the Roma culture which partly explain the problems faced by them. In order to enhance the employment of Roma, the Minority Ombudsman submitted an initiative to the Ministry of Labour, containing proposals as to more effective employment services. On the basis of this initiative, the Ministry of Labour has introduced an initial survey of the number of Roma seeking employment in the various districts and has undertaken to find ways of enhancing the employment of Roma.

363. On 20 December 2002, the Government submitted a Bill to Parliament for the enactment of an Act providing for guarantees of equality, and for the amendment of certain related acts of Parliament. The new Act and the said amendments will implement the provisions of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of race or ethnic origin, and Council Directive 2000/78/EC

of 27 November 2000 establishing general framework for equal treatment in employment and occupation. The Directives are essentially based on the Presidency Conclusions of the Tampere European Council of 15-16 October 1999. In its the conclusions, the Council calls for the fight against racism and xenophobia to be stepped up, as a part of the creation of an area of freedom, security and justice in the European Union. The Member States are under an obligation to the issue the laws and regulations required by the first-mentioned Directive by 19 July 2003 and, in respect of the latter Directive, by 2 December 2003.

364. Parliament was not able to discuss the afore-mentioned Government Bill, however, before the Parliament elections of 16 March 2003, and therefore the Bill lapsed. The new Government was expected to submit a new Bill for the implementation of the provisions of the Directives during the spring of 2003.

365. *Government Action Plan to Combat Ethnic Discrimination and Racism.*

On 22 March 2001, the Government adopted an Action Plan to Combat Ethnic Discrimination and Racism (Towards Ethnic Equality and Diversity). The purpose of the Action Plan is to support and develop measures promoting good ethnic relations and preventing ethnic discrimination and racism in Finnish society. The measures defined in the action plan apply to new immigrants, to immigrants who have resided in Finland for many years, to second-generation immigrants and to established ethnic minorities. The measures are divided into national, regional and local measures. The local-level measures are of crucial importance, and municipal integration programmes - based on the Act on the Integration of Immigrants and Reception of Asylum Seekers - must also clearly state the measures to combat ethnic discrimination and racism.

366. It is recommended in the Action Plan that municipalities arrange meeting places, assembly premises and community centres for immigrants and other residents of the municipality where these parties can meet. Municipalities are also encouraged to adopt a set of criteria on the basis of which they will assist and support non-governmental organisations doing multicultural work in the municipality and immigrant and ethnic minority organisations. It is further recommended that, in order to promote multiculturalism, municipalities recruit to their permanent staff persons with immigrant or minority backgrounds.

367. According to the Action Plan, educational authorities are to ensure that interaction between schools and the parents of ethnic minority pupils is functional and regular. Municipalities must also pay attention in accordance with the new educational legislation to the status of immigrant and minority pupils and school drop-outs in order to prevent displacement. Schools must monitor and intervene in ethnic school harassment with active measures when necessary.

368. *Studies and case law concerning discrimination.* In the light of a study published in 2002, foreigners face discrimination relatively often. In the study on 'Discrimination and Racism in Finland', half of job-seekers with immigrant backgrounds had felt at least once that they had not been given the job because of their backgrounds. Of immigrants working in Finland, 24% told that they had been refused a possibility to advance in their careers, 6% told that they had been dismissed and 31% told that they had been subjected to insults and harassment because of their foreign backgrounds.

369. The study also addressed the afore-mentioned experiences during the twelve months immediately prior to the moment of the study. During that period of time, 80% (790 persons) of all immigrants seeking employment told that they had faced discrimination. Of immigrants working in Finland, 79% told that they had been refused a possibility to advance in their careers, 55% told that they had been dismissed and 81% told that they had been subjected to insults and harassment because of their foreign backgrounds in the past twelve months.

370. The labour protection authorities monitor compliance with the provisions relating to working conditions. At the end of 2002, the Minority Ombudsman submitted an initiative to the Ministry of Social Affairs and Health for measures to enhance the prevention and monitoring of discrimination of foreigners and persons with minority backgrounds.

371. Since 1997, the Ministry of the Interior has had reports prepared on offences with racist motives brought to the attention of the police. The latest report available concerns the year 2001. According to the report, the number of offences (448) with a racist motive had reduced from that of the previous year (495). Most of the racist offences were committed against Somalis and in nearly half of the cases the offender did not know the victim. Approximately half of the racist offences were committed in the Province of Southern Finland where most foreigners live.

372. The Police Department of the Ministry of the Interior has also had a study made of the experiences that immigrants have of racist offences in Finland. The study consisted of interviews of 3,595 immigrants representing seven different ethnic groups (Arabs, Albanians of Kosovo, Somalis, Vietnamese, Russians, Estonians and immigrants of Finnish origin). According to the study, nearly one third of the interviewed persons had been victims of a racist offence in the twelve months immediately prior to the moment of the interview. The immigrants had mostly faced petty offences, such as racist insults and threats. The more serious ones of the racist offences included assaults. The share of assaults of all the offences with racist motives was 10%. The study further indicated that immigrants only rarely contacted the police as a result of a racist offence or discrimination faced by them. Even 71% of the victims of crime failed to report the offence. They either considered the offence to be of a minor importance or suspected that the reporting of the offence would not lead to investigation or prosecution.

373. In the context of inspections made at prisons, the Parliamentary Ombudsman always pays particular attention to the situation of the Roma, foreigners and persons belonging to other minorities. Individual complaints have been made of the inappropriate treatment of Roma prisoners, but investigations made have indicated that problems are rather caused by the attitudes of other prisoners than those of the prison authorities. During the inspections, the Parliamentary Ombudsman has drawn the staff's attention to their duty to ensure the safety of prisoners of Roma origin or belonging to other minorities, and to prevent pressure by other prisoners. In the view of the Parliamentary Ombudsman, certain prisons have succeeded better than others in maintaining non-discriminatory attitudes towards the Roma. Thus, sharing of information among the different prisons might be a way to improve the status of persons belonging to minorities in prisons.

In its decision KHO 2002:70, the Supreme Administrative Court referred to section 6 (prohibition of discrimination on account of health) and section 7, subsection 1 (right to liberty and integrity of person), as well as to section 7, subsection 3 (right to have the lawfulness of deprivation of liberty challenged before a court of law), of the Constitution.

The National Authority for Medico-legal Affairs had not upheld a decision made by a senior physician at a psychiatric hospital maintained by the State, to terminate the involuntary psychiatric treatment of a patient, but had ordered the treatment to be continued on medical grounds referred to in the decision. The Supreme Administrative Court found that the criteria for continued involuntary psychiatric treatment under the Mental Health Act were not met and repealed the decision of the National Authority for Medico-legal Affairs. The case was referred back to the Authority for the purpose of confirming the decision made by the physician and for other possible measures made necessary by the decision of the Supreme Administrative Court.

Decisions KHO 2002:43 and KHO 2002:61 of the Supreme Administrative Court concern the obligation of local authorities to provide medical rehabilitation services. In both cases had a complaint been made on account of discrimination based on age. In the first-mentioned case, the Supreme Administrative Court found that the local authority had no right to refuse physiotherapy for the reason that the person concerned belonged to a certain age group. In the latter case, the local authority had an acceptable reason for applying an age criterion because it had shown that the individual needs of the person applying for the services had been taken into account.

374. In 2000, Finland signed Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning a general prohibition of discrimination. The Government intends to ratify the Protocol in near future.

## **Article 27**

### **Minorities**

375. Section 17 of the Constitution provides for the right of everyone to use his or her own language. According to subsection 1, the national languages of Finland are Finnish and Swedish. Pursuant to subsection 2, the public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

376. Subsection 3 of section 17 guarantees the right of groups other than the two afore-mentioned ones to maintain and develop their own language and culture. The provision specifically mentions two traditional minorities of Finnish society, the Sámi and the Roma. The 'other groups' referred to in the provision mainly include national and ethnic minorities, although the provision is not restricted to only concern the traditional minorities in Finland. It is stated in the explanatory part of the Government Bill that, in order to fall within the scope of the provision, the group must have a certain degree of permanency. Thus, the groups having this right guaranteed by the Constitution would largely fall within the definition of 'minority' in international human rights conventions.

377. The Constitution affords the sign language a status corresponding to those of spoken languages. Under section 17, the rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act. However, no such act of Parliament has been passed so far, which deficiency is also drawn attention to in the Government Bill for the enactment of the new Language Act. In its opinion on the Government Bill, the Constitutional Law Committee of Parliament urged the preparation of the necessary

legislation. With regard to court proceedings and pre-trial investigations, the Government refers to information given under Article 14, paragraphs 3(a) and 3(b). In the Government Report to be submitted to each Parliament, concerning the application of the language-related legislation and the implementation of language rights, the rights of those using sign language must also be addressed. Upon the entry into force of the Public Services Act on 1 January 1999, the Finnish Broadcasting Company undertook to regularly broadcast news in the sign language on television.

378. When Finland ratified the framework Convention, it did not provide a list of national minorities falling within the scope of the Convention. In accordance with the Constitution, the basic idea was to avoid giving a binding definition of a minority because new minority groups may emerge as changes take place in society. In practice it has been considered that the framework Convention would cover the Sámi people, the Roma, the Jews, the Tatars, the so-called Old Russians and *de facto* also the Swedish-speaking Finns.

379. Upon ratifying the European Charter for Regional or Minority Languages, Finland declared that it will apply 65 of the provisions under Part III of the Charter to the Swedish language (less widely used official language) and 59 to the Sámi language (regional language). In respect of Swedish, the level of protection chosen is the highest possible, with the exception of the Charter's provisions on the mass media in respect of which the level of protection may still be improved. Furthermore, Finland declared that it undertakes to apply, *mutatis mutandis*, the principles listed in Part II of the Charter to the Roma language and other non-territorial languages. In the context of monitoring the implementation of the Charter, the committee of experts visited Finland in December 1999. During the visit, the committee addressed not only Swedish, Sámi and Roma, but also Russian, Yiddish and Tatar to which Finland applies the objectives and principles set forth in the Charter. These languages are represented in the Finnish section (FiBLUL) of the European Bureau for Lesser Used Languages (EBLUL). The Bureau operates in Finland as a registered association, aiming at sharing information and experience among persons speaking one of the historical minority languages in Finland. FiBLUL acts in cooperation with various institutions, organisations and authorities to guarantee and improve the status of historical minority languages. It is also a consultative body monitoring the implementation of international conventions related to languages and enhancing the application of national language legislation. Finland submitted the second periodic report on the implementation of the European Charter for Regional or Minority Languages to the Council of Europe in December 2002 (<http://www.coe.int>).

380. *Swedish-speaking Finns.* Of the Finnish population, 5.6% speak Swedish as their mother tongue. Because Swedish is one of the two national languages of Finland, with far-reaching historical, cultural and sociological origins, the Swedish-speaking Finns are not a minority in the proper sense but rather a *de facto* language minority. The Swedish-speaking Finns have a strong Finnish identity and have a culture of their own. After Finland became independent in 1917, the status of Finnish and Swedish as the national languages of Finland was established in the Constitution Act of 1919. However, language questions and the status of the two national languages were subject to a lively debate during the first decades of independence. When the new Constitution was enacted, the provisions of section 17, concerning the national languages and the right to use one's own language, were adopted as such without questioning their contents. This is an indication of an established harmony between the two national languages since the World Wars.

381. *Sámi*. There are approx. 7,500 Sámi living in the northernmost part of Finland. They are part of the indigenous people of 75,000 to 100,000 persons living in the areas of Finland, Sweden, Norway and Russia, whose share of the Finnish population is approx. 0.15%. Slightly less than 4,000 of the Sámi in Finland live within the Sámi Homeland in the municipalities of Enontekiö, Inari and Utsjoki, and in the area covered by the reindeer herding association of Lapland in the municipality of Sodankylä. Only in Utsjoki do the Sámi constitute a majority of the local residents. Thus, as a whole, the Sámi constitute one third of the residents within the Sámi Homeland.

382. Of the Sámi living in Finland, approximately half speak one of the Sámi languages. Of a total of ten different Sámi languages, the Sámi in Finland speak North Sámi (70 to 80%), Inari Sámi (less than 15%) and Skolt Sámi (less than 15%).

383. An amendment made to the Finnish Constitution, which entered into force at the beginning of 1996, afforded cultural autonomy for the Sámi people within the Sámi Homeland. The Sámi Parliament Act (974/1995), which entered into force at the same time with the said amendment, contains further provisions on the cultural autonomy. The Sami Delegation, which had been established by a decree in 1973 and elected from among the Sámi themselves, was replaced by the Sámi Parliament. The Act provides for Sámi Parliament elections to be held every four years.

384. The duties of the Sámi Parliament are largely the same as those of the former Sámi Delegation. The Sámi Parliament may submit initiatives and proposals to various authorities and give opinions on matters touching upon the Sámi. Furthermore, the Sámi Parliament decides on the use of funds allocated by the State for the supporting of the Sámi culture. In other respects, the competence of the Sámi Parliament shall be provided for by an act of Parliament. The Sámi Parliament also represents the Sámi in national and international cooperation in matters concerning the Sámi.

385. The Sámi Parliament Act places the authorities under an obligation to consult the Sámi Parliament in respect of all extensive and significant measures which may directly and particularly affect the status of the Sámi as an indigenous people, and which have effects within the Sámi Homeland on: (1) social planning, (2) the management, use, leasing and disposal of state-owned land, nature conservation areas and wilderness, (3) claims to mines and applications for the establishment of mines, (4) legislative or administrative changes concerning the means of living which constitute an essential part of the Sámi culture, (5) development of teaching in and of the Sámi language, or of social welfare and health services, or (6) other issues affecting the Sámi language or culture or their status as an indigenous people. The obligation to consult the Sámi Parliament is fulfilled if the Sámi Parliament is provided with an opportunity to be heard and discuss the matter, even if the Sámi Parliament decides not to use it.

386. The Sámi Parliament Act contains a definition of the Sámi. Pursuant to the provisions of the Act, a person who or one of whose parents or grandparents has learned Sámi as the first language is considered a Sámi. The criteria are slightly looser than in the earlier provisions. However, it is still necessary that the person concerned himself or herself considers that he or she is a Sámi, and a language connection with the Sámi is still required.

387. On 4 April 2003, the Sámi Parliament provided an opinion in which the definition of the Sámi included in the Sámi Parliament Act was strongly criticised. In the view of the Sámi, the definition was in 1995 made, contrary to the opinion expressed by the then Sámi Delegation, so loose that it serves as no basis for identifying the group which may exercise the rights belonging to the Sámi as an indigenous people. Therefore, the Government found it justified to include in the present report a detailed explanation of the provision, as provided by the Ministry of Justice.

388. A new criterion was added to the Act in 1995, according to which it is necessary that the Sámi is a descendant of a person who has been entered into the land, tax or population register as a mountain, forest or fishing Lapp. Thus, a person who wishes to be registered as a Sámi person does not need to present evidence on his or her language skills or on those of his or her parents or grandparents. The purpose was to give further provisions by a decree, according to which registers made earlier than in 1875 could no longer be invoked. However, the Constitutional Law Committee of Parliament found that the Act contained nothing to authorise such issue of provisions by a decree.

389. Furthermore, under the law, also a person one of whose parents has been registered or could have been registered as a person entitled to vote in the elections to the Sámi Delegation or to the Sámi Parliament, shall be considered a Sámi. This criterion is meant to be applied to such persons whose parents would have had a possibility to request registration on the basis of their language but decided not to do so.

390. The afore-mentioned definition of the Sámi was for the first time applied in the Sámi Parliament elections of 1999. The elections proved that the definition had apparently been made too loose insofar as the criterion relating to the entry of mountain, forest or fishing Lapps into the land, tax or population register was concerned. On this basis, a total of 1,128 persons requested registration of their right to vote in the elections. Nearly all of them referred to land register entries made between 1739 and 1825, concerning persons who were born in the 17th or 18th century. The oldest entry dated back to 1695. The newest entries had been made between 1826 and 1857 and were only referred to by 54 persons.

391. The electoral board rejected most requests made on the afore-mentioned basis, finding that the persons requesting registration were not Sámi but Finnish-speaking persons. Of these, 56 requests were nevertheless approved on the basis of their Sámi language skills. Appeal against the decision was made by 765 persons. Of the appeals, 740 were dismissed by the board for the reason that no new evidence affecting the assessment of the requests had been adduced. However, 25 appeals were approved on the basis of the Sámi language skills of the appellants. Of the persons whose appeals were dismissed, 726 lodged a request for reversal of the decision to the Board of the Sámi Parliament, which dismissed the requests with the exception of one in support of which adequate evidence had been submitted on the Sámi origin. Most of further appeals (nearly 700) to the Sámi Parliament, against the decisions of the Board, were dismissed, although approx. thirty of them were approved on the basis of language skills. Despite this, 657 persons lodged further appeal with the Supreme Administrative Court.

392. The dispute concerning the definition of the Sámi was finally resolved by a decision given by the Supreme Administrative Court on 22 September 1999. Most of the afore-mentioned appeals were dismissed. According to the Supreme Administrative Court, the definition allowed different interpretations insofar as the historical entries of Lapps into the

registers was concerned. Thus, the Court found that the dispute could not be resolved exclusively on the basis of the wording of the provision. In interpreting the provision, the Supreme Administrative Court also paid attention to the rights guaranteed for the Sámi people by the Constitution, as well as to the purpose of the Sámi Parliament Act to protect the cultural autonomy of the Sámi. Considering that the language criterion could not be applied to ancestors who are more distant than the grandparents of the person in question, the Supreme Administrative Court found that nor could the criterion relating to the registration of Lapps be extended further than the language-based criterion. Therefore, most appeals were dismissed for the reason that the entries in the land or tax register concerned too distant generations.

393. As the question concerning the definition of the Sámi had been authoritatively interpreted by the Supreme Administrative Court, the Government reached a conclusion that there was no longer need to change the definition in section 3 of the Sámi Parliament Act. Due to the relatively small number of requests for registration of a right to vote in the Sámi Parliament elections of 2003 (approx. 50 requests), no significant number of appeals is expected this time, considering also that the appeal procedure has been made less complicated by an amendment to the Sámi Parliament Act.

394. A protocol on the Sámi people (Protocol No 3) was attached to the Act concerning the conditions of accession and the adjustments to the Treaties on which the European Union is founded (the Act of Accession), in the context of the accession of Finland to the EU. The obligations and commitments of Finland with regard to the Sámi people under national and international law are recognised in the protocol. It is noted, in particular, that Norway, Sweden and Finland are committed to preserving and developing the means of livelihood, language, culture and way of life of the Sámi people.

395. In the State budget for the year 2003, Parliament passed an allocation of 300,000 euro for the purpose of ensuring the provision of social welfare and health services for the Sámi in their own language. The allocation may be used to pay state subsidies, through the Sámi Parliament, to local authorities referred to in section 4 of the Sámi Parliament Act (974/1995) within the Sámi Homeland, for ensuring the provision of such services.

396. *Sámi Language Act.* The Act on the Use of the Sámi Language before Authorities (516/1991) is undergoing a reform on the basis of a proposal made by the Sámi Parliament. The new Act should eliminate the deficiencies observed in the implementation of the Act. The Government intends to bring the Act into force at the same time with the Language Act at the beginning of 2004.

397. Under the Comprehensive Schools Act (628/1998), pupils speaking Sámi as their mother tongue have the right, within the Sámi Homeland, to have most of their school education in Sámi. The State shall cover the costs of remuneration of teachers incurred upon the local authorities for the arrangement of comprehensive school, upper secondary school and vocational education, by means of specific funds reserved for the purpose (Act on the Financing of Education and Culture, 635/1998).

398. The Minority Ombudsman has found it important to strengthen the use of Sámi in the provision of children's day care and education, with a view to ensuring the maintenance of the Sámi language and culture. In his view, the local authorities within the Sámi Homeland have

lacked financial resources for the provision of day care in Sámi. Therefore, specific funds should be reserved for the purpose by the State. Under the Children's Daycare Act (36/1973, as amended by Act No. 875/1981), the local authorities shall provide for children's day care in the children's mother tongue, Finnish, Swedish or Sámi. According to the Minority Ombudsman, it would also be important to increase the use of Sámi in upper secondary school so that the whole upper secondary school education could be completed in Sámi. He further considers that there should be a possibility to take the matriculation examinations in their entirety in Sámi. At present, it is only possible to take the mother tongue and literature exam in Sámi or an exam of Sámi as a foreign language.

399. The afore-mentioned issues will be addressed in more detail in the third periodic report on the implementation of the Convention on the Rights of the Child, to be submitted in July 2003.

400. *Russian-speaking population.* In the immigration of Russians into Finland before World War II, three phases may be identified. The first phase was the transfer of peasants to certain parts of the territory of Sweden-Finland, conquered in Karelia in the 18th century. The said areas were placed under the control of Russia, to be administered by the Governor of Vyborg, and were given the name 'Old Finland'. As Old Finland was annexed to the rest of Finland in 1812, the peasants of Russian origin became nationals of the Grand Duchy of Finland. The second-phase immigrants included Russian officials, soldiers, priests of the Orthodox Church and merchants who were allowed to settle in the Grand Duchy during the period of autonomy. Throughout that period, the share of Russians of the Finnish population was approx. 0.2%. When Finland was declared independent in 1917, there were some 6,000 Russians living in the country, of whom some 1,000 returned to Russia. The third phase of immigration consists of those who escaped the revolution in Russia. In 1922, the Russian population in Finland was at its largest, amounting to 33,500 persons. Thereafter, the number of refugees began to decrease as many of them continued to the largest European cities. This population and their descendants are called Old Russians, their present number being between 3,000 and 5,000 persons.

401. At the beginning of World War II, there were approx. 20,000 Russians in Finland. Since 1940, the number of Russians, according to the statistics available, decreased clearly until the 1960's when the number of immigrants began to increase again. The latest immigrants may be divided into three different groups. The largest group consists of the Ingrian Finns and other returnees of Finnish origin who speak mainly Russian. The second largest group is the Russians who have immigrated into Finland for work or family reasons usually from Russia or Estonia. The third and smallest group consists of citizens of the former Soviet Union who are neither Russians nor Estonians but mainly speak Russian.<sup>2</sup>

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<sup>2</sup> Hannikainen, Lauri: The Russian-speaking and Ethnic Russian Minority in Finland in the Light of Finland's International Obligations. In: Finnish Yearbook of International Law (Vol. XI, 2000). Kluwer Law International, 2002, 471-486.

402. According to statistics, there were 22,720 Russian nationals living in Finland at the end of 2001. The number of those who had named Russian as their mother tongue was 31,090. In recent years, the number of Russians has increased by 2,000 persons per year, and the increasing immigration from Russia is expected to continue in near future.

403. A large part of Ingrian Finns belong statistically to the Russian minority. 'Ingrian Finns' mean those Ingrians (Finno-Ugric population) who are of Finnish origin. This population originally moved to Ingria in the 17th century from a part of Finland which had been ceded to Sweden in connection with the Stolbova peace. The total number of Ingrian Finns living in different parts of the former Soviet Union is estimated to be between 60,000 and 80,000. One third of them live in the areas of St. Petersburg and the region of Leningrad, one third in Carelia and one third in Estonia. There were some 19,000 Ingrian Finns waiting for a permit to immigrate to Finland in 2002.

404. The oldest generation of Ingrian Finns were born before World War II, and spent their childhood in a Finnish village community in Ingria and went to a Finnish school. They have a clear Finnish identity, speak fluent Finnish and belong to the Evangelical-Lutheran Church. The second-generation Ingrian Finns were born in different parts of the former Soviet Union and many of them have needed to hide their origin. Thus, they only have a limited knowledge of the Finnish language and culture. They often face problems of unemployment, inadequate language skills and uncertainty as to their own identity in Finland. The third generation of Ingrian Finns consists of young adults who were born and grew in either Estonia or Russia. Their integration into Finnish society may be compared to that of Russians and Estonians.

405. At the beginning of the immigration of Ingrian Finns at the end of the 1980's, there was an economic boom in Finland and a shortage of labour. The return of Ingrian Finns was seen as a positive phenomenon with regard to the needs of both the labour market and whole society. Due to the shortage of labour, the Ingrian Finns had no difficulties in finding work. When the Finnish economy faced a depression, the immigration continued at the same pace, despite that the returnees were aware of the high rate of unemployment. The strong immigration has brought about problems mainly because there was no preparedness to receive such a large number of immigrants, and nor was it expected that the immigrants mainly spoke Russian. The Ingrian Finns have to participate in preparatory training in their country of origin in order to be able to obtain a residence permit for Finland. In January 2003, Parliament passed an amendment to the Aliens Act, according to which it is required that the Ingrian Finns wishing to immigrate to Finland must have a certain knowledge of the Finnish or Swedish language before being issued a residence permit. The amendment entered into force on 1 October 2003. Language tests to that effect will most likely be introduced in September 2003.

406. Considering that the Russian-speaking persons in Finland have different backgrounds and situations, it has been difficult to draw any conclusions as to their common needs. As the Russian-speaking minority is currently the second largest language minority in Finland, after the Swedish-speaking Finns, there is need to reassess their status and needs. Therefore, particular attention has been paid to the status of the Russian language e.g. in the context of preparing the new Language Act. The intention is to address not only the languages referred to in the Act, but also the status of Russian in the first report to be submitted to Parliament concerning the implementation of the Act that will enter into force on 1 August 2003.

407. On the initiative of the Union of Russian Associations in Finland, a decision was made on 21 February 2002 to set up a working group within the framework of the Advisory Board for Ethnic Relations, to assess the status of the Russian-speaking population in Finland and to submit recommendations as to further measures. The working group submitted its report (*Questions relating to the Russian-speaking population in Finland 2002*) to the Advisory Board on 27 February 2003. The report, which covers a wide range of issues and information, compiles 37 recommendations of different levels. Several ones of the measures proposed would concern all immigrants and are related to the Government's immigration policy. The afore-mentioned information on the Russian-speaking minority is to a large extent based on the report.

408. *Roma*. The estimated number of Roma living in Finland is 10,000 (0.19% of the population). The Roma are specifically mentioned in section 17, subsection 3, of the Constitution, as a group having the right to maintain and develop its own language and culture. There is an Advisory Board for Roma Affairs working under the auspices of the Ministry of Social Affairs and Health, coordinating cooperation between the Roma and authorities. The duties of the Advisory Board include enhancement of the Roma language and culture. In 1997, a Roma Language Board was established within the framework of the Research Institute for the Languages of Finland, having a duty of developing the Roma language, providing linguistic counselling and carrying out research on the language. There are currently two researchers employed by the Roma Language Board, of whom one is of Roma origin.

409. Most of the Roma live in the largest cities in Southern Finland. Most of the Roma having the best command of the language are old. Middle-aged persons and young adults mainly use Finnish in every-day communication but are able to understand Roma.

410. The Roma have traditionally transmitted information orally. The language has been used as some kind of a code language that the majority of the population is not able to understand, and the Roma have been reluctant to teach the language to outsiders. It has only been taught to persons of Roma origin. The Roma community in Finland has reached an understanding with the National Board of Education on restricted distribution of a textbook of Roma, by invoking paragraph 5 of Article 7 of the European Charter for Regional or Minority Languages, for the purposes of application of paragraph 1 (g) of the Article.

411. The teaching of the Roma language at schools began in 1989. This has contributed to increased use of the language and increased the number of articles published in the language in Roma newspapers. Under the Comprehensive School Act amended in 1995 and the Children's Daycare Decree, provision of support for the Roma language and culture shall be one of the educational objectives. The amendment of the Comprehensive School Act made it possible to teach Roma as the mother tongue. It is not possible to study Roma at universities. However, research and development of the Roma language is possible within the framework of the Research Institute for the Languages of Finland.

412. The Roma language is still not used in public life with the exception of the media, the press and religious service. The amendments to the Act on Yleisradio Oy (*the Finnish Broadcasting Company*) (1380/1993) entered into force on 1 January 1999. As special duties involving public service, the company shall, according to section 7 of the Act, "...(4) treat in its broadcasting Finnish and Swedish-speaking citizens on equal grounds and produce services in the Sámi and Romany languages and in sign language as well as, where applicable, also for other

language groups in the country". The most popular radio channel in Finland, *Radio Suomi*, broadcasts a twelve-minute news programme in Roma each week. Other programmes concerning the Roma culture or the Roma in general are broadcast on the Finnish and Swedish radio and television channels. The Roma news on a national radio channel have contributed to the development of the language and its vocabulary and to an increased interest in the Roma language. The Roma Training Unit and the Advisory Board for Roma Affairs have discussed the possibility of increasing the production of programmes in Roma with the Finnish Broadcasting Company.

413. There are three regular Roma newspapers, in which the articles are nevertheless mainly written in Finnish. The Ministry of Education has provided financial support for the publication of the newspapers within the framework of an allocation reserved for the supporting of cultural papers.

414. The Evangelical Lutheran Church has aimed at increasing the number of religious services in Roma. Within the framework of the social work of the Church, a specific working group, 'The Church and the Roma', was set up in November 1994, for the purpose of developing the contacts between the Church and the Roma and preventing racism and discrimination. The working group pursues an objective of translating various texts and songs relating to religious ceremonies. For example, parts of the New Testament have been translated into Roma. The Gospel according to Saint Luke has been distributed to Roma prisoners and to some 2,000 Roma homes.

415. *Jews*. The first Jews arrived in Finland already in the 19th century and their present number is approx. 1,300. Yiddish used to be the official language of the Jewish community in Finland, but it has later been replaced by Finnish, Swedish, Hebrew and English. At present, Yiddish is mainly used in communication between private individuals. The estimated number of such persons is less than 50. They are mainly older persons who are able to both speak and understand Yiddish.

416. *Tatars*. There are approximately 900 Tatars, of Turkish origin, in Finland. They are descendants of Tatars who moved to Finland from Russian Tatar villages at the beginning of the 20th century. They speak Tatar which is part of the Turkish language group. Most of Tatars live in the Helsinki area. Their culture and language is maintained by the Islamic Congregation in Finland that accepts new members mainly through marriage. Command of the Tatar language is required from new members. The congregation maintains a cultural society and a sports club.

417. *Immigrants*. During the period of time covered by the present report, the number of foreigners residing in Finland has strongly increased. On 30 September 2002, the number of foreigners was already 102,723 which is approx. 2% of the population. The largest groups of foreigners are the Russians (23,928), Estonians (12,288), Swedes (8,050), Somalis (4,504) and Iraqi (3,292).

418. The Act on the Integration of Immigrants and Reception of Asylum Seekers entered into force on 1 May 1999. The purpose of the Act is to enhance the integration, equality and freedom of choice of immigrants through measures supporting the achievement of knowledge and skills needed in Finnish society. The Act also applies to children and adults and other persons outside the labour market. Under the Act, integration also entails a possibility to maintain the

immigrant's own language and culture. Society should not only provide support but also enhance pluralism, ethnic equality, interaction and tolerance. The Government's immigration and refugee policy for the year 1997 defines the most relevant objectives and principles of the immigration policy. The basic objective is to ensure flexible and effective integration of immigrants into Finnish society and into the labour market. Another objective is to make it possible for immigrants to maintain their own languages and cultures and profess their own religions.

419. In the view of the Constitutional Law Committee of Parliament, the right of everyone under section 21, subsection 1, of the Constitution to have his or her case dealt with appropriately requires a possibility to also use a language other than Finnish or Swedish. Accordingly, the new Language Act contains references to the Sámi language and other languages. The reference to other languages mainly means foreigners residing in Finland. Due to the increasing number of persons speaking languages other than Finnish or Swedish, it is necessary to pay more attention to their needs in administrative and judicial procedures. The Government is under an obligation, based on law, to submit a report to Parliament on the application of language legislation and the implementation of language rights. Apart from Finnish and Swedish, the report must address at least the Sámi and Roma languages and the sign language. Where necessary, the report may also address the legal or de facto status of other language groups, e.g. of immigrants, from a linguistic perspective.

420. A new Act concerning the provision of special assistance for immigrants (1192/2002) will enter into force on 1 October 2003. The Act creates a new form of financial assistance whereby such elderly or unemployed immigrants residing in Finland as are in need of long-term subsistence allowance, are provided with guarantees of basic subsistence. The special assistance paid from public funds is a social benefit based on an assessment of real need and is not taxable income. A person entitled to the assistance must be at least 65 years old or incapable for work. It is further required that the beneficiary has resided in Finland for at least five years without interruptions before obtaining the assistance. The amount of assistance depends on the income and assets of the beneficiary and his or her spouse.

421. The new Freedom of Religion Act (see information given under Article 18) is also expected to have a positive impact particularly on the status of religious minorities in Finland. The more flexible possibilities to organise the contacts between a registered religious community and its local congregations remove obstacles to the registration of certain communities as religious denominations.

422. *State subsidies for minority cultures and combat against racism.* The general forms of cultural support and services are available to all persons residing in Finland irrespective of their ethnic origin. In addition, the Ministry of Education grants subsidies for the supporting of minority cultures and prevention of racism. In the State budgets for the years 1999 to 2003, a yearly allocation of 252,000 euro has been reserved for the purpose. The specific allocation may be considered special treatment of minorities, the purpose of which is to improve the possibilities of persons belonging to minorities to maintain and develop their own cultures.

423. The purpose of the state subsidies is to strengthen the right of ethnic minorities to maintain their own languages and cultures alongside with the majority culture and more widely spoken languages. Furthermore, the state subsidies should contribute to a more positive attitude towards ethnic minorities.

424. Subsidies are granted for various cultural activities and publications of ethnic and language minorities, including in particular immigrants, refugees and asylum-seekers. During the 1990's, persons representing new ethnic minorities have created associations for the purpose of arranging cultural activities. For the purpose of granting subsidies, cultural activities are understood in a wide sense: subsidies may be granted for arts, youth activities, strengthening of the cultural identity of minority groups, various clubs, and provision of public information on the minority cultures.

425. Other ethnic groups entitled to state subsidies for cultural activities include the traditional minorities, such as the Roma, the Sámi and the Jews. As regards Swedish culture, the needs of the Swedish-speaking Finns are taken into account in general in the policy of the Ministry of Education when granting subsidies.

426. Apart from the afore-mentioned allocation, another specific allocation is included in the budget of the Ministry of Education, to provide support for cultural and association activities of the Sámi. In accordance with the cultural autonomy of the Sámi, the Ministry of Education transfers the funds to the Sámi Parliament. The cultural committee of the Sámi Parliament invites applications for support and makes the decisions in individual cases. In the past few years, the allocation has amounted to 168,000 euro.

427. People have recently become increasingly interested in the Sámi culture. There are lively arts activities, associations and transfrontier cooperation. The allocation granted for the supporting of the Sámi culture is of great importance for the Sámi and has contributed to increased use of the Sámi language in cultural activities. The criteria for granting subsidies are defined in the Rules of Procedure of the Sámi Parliament. According to the Rules of Procedure, subsidies may be granted for cultural activities (in the form of support for various projects or in compensation for work or travel costs) as well as for activities and publications of Sámi associations. Furthermore, the cultural committee may grant a special cultural award.

428. Apart from the specific allocation, the Ministry of Education has provided additional support for transfrontier cooperation in the field of culture, including the activities of arts associations of the Sámi and of the Finnish section and member association of the Sámi Council.

429. The subsidies granted by the Ministry of Education are mainly addressed to different associations, for projects of preventing racism and xenophobia. However, support has also been given for projects of local authorities. These projects are mainly development projects and experiments the purpose of which is to enhance tolerance e.g. through cooperation among minorities and the majority population and through the provision of public information on different cultures, religions and traditions. When decisions on subsidies have been made, special attention has been devoted to projects which aim at keeping adolescents away from groups having racist views.

430. Since 1996, the Ministry of Education has, in cooperation with the Finnish Sports Federation and various sports associations, been implementing a programme against racism in the field of sports. Within the framework of this programme, financing has been provided for various local, regional and national projects enhancing tolerance through sports activities. Apart from supporting such projects, information, training, international cooperation and research has been provided in respect of immigrants and different cultures. According to studies made, sports activities are an important way for immigrants to participate in Finnish society.

431. Under Article 27, two communications concerning Finland have been made to the Committee (CCPR/C/58/D/671/1995 and CCPR/C/73/D7779/1997).

### **List of Appendices**

1. The Constitution of Finland (731/1999)
2. Gender Wage Differentials in the Finnish Labour Market; Ministry of Social Affairs and Health; Publications on Equality 2002:2

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