COUNCIL OF EUROPE CONSEIL DE L'EUROPE

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2006 (Finland)

Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 of the Revised Charter

Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as general comments formulated by the Committee, figure in the General Introduction to the Conclusions[1].

The Revised European Social Charter was ratified by Finland on 21 June 2002. The time limit for submitting the 1st report on the application of this treaty to the Council of Europe was 30 June 2005 (reference period: 1 August 2002 to 31 December 2004) and Finland submitted it on 3 February 2006.

This report concerned the rights forming part of the "hard core" provisions of the Charter:
- Article 1 (right to work),
- Article 5 (right to organise),
- Article 6 (right to bargain collectively),
- Article 7 (the right of children and young persons to protection),
- Article 12 (right to social security),
- Article 13 (right to social assistance),
- Article 16 (rights of the family)
- Article 19 (rights of migrants),
- Article 20 (right of women and men to equal opportunities).

Finland has accepted all of these articles with the exception of Article 7§6, 7§9 and 19§10.

The present chapter on Finland contains 37 conclusions[2]:

- 28 cases of conformity: Articles 1§1, 1§3, 5, 6§1, 6§2, 6§3, 7§2, 7§3, 7§4, 7§7, 7§8, 12§2, 12§3, 13§2, 13§3, 13§4, 16, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§9, 19§11, 19§12 and 20;
- 6 cases of non-conformity: Articles 1§2, 6§4, 7§5, 12§1, 12§4 and 19§8.

In respect of the other 3 cases, that is Articles 7§1, 7§10 and 13§1, the Committee needs further information in order to assess the situation. It asks the Finnish Government to communicate the answers to these questions in the next report on the provisions concerned.

The next Finnish report will concern all other rights guaranteed by the Revised European Social Charter. It concerns the reference period 1 August 2002– 31 December 2004.

The report should have been submitted to the Council of Europe before 31 March 2006.

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[1] The conclusions as well as states reports can be consulted on the Council of Europe's Internet site (www.coe.int) under Human Rights.

[2] The 37 conclusions correspond to the paragraphs of the articles forming the hard core accepted by Finland with the exception of Article 1§4, which is examined with Articles 9, 10 and 15 due to the links between these provisions.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information contained in the Finnish report. In assessing the situation the Committee also referred to the National Action Plan for Employment 2004.

Employment situation

According to the Eurostat database the Finnish economy grew by 2.4% in 2003 and 3.7 % in 2004. The employment rate decreased slightly and stood at 67.6 % at the end of 2004. The unemployment rate also decreased to 8.8% in 2004 from 9.0% in 2003. Female unemployment rate stood at 8.9% in 2004. The report states that the activation rate of the unemployed increased from 23% in 2003 to 24 % in 2004.

The Committee observes from Eurostat that youth unemployment has remained high but on a downward trend - at 21.8 % in 2003 decreasing to 20.7% in 2004. As regards the employment rate among young persons, it stood at 39.7% in 2003 and decreased slightly to 39.4% in 2004. Both these indicators are higher than the EU average.

The share of the long-term unemployed in total unemployment decreased from 25.2 to 24% at the end of 2004 which is significantly lower than the EU average (45.3%).

As regards immigrants, the Committee notes from the report that in 2003 there were a total of 35,600 foreign jobseekers registered with employment agencies. As regards ethnic minorities, the Committee would like to have more information about their position in the labour market.

The Committee notes that the report does not give any statistical data on the actual employment and unemployment rates among persons with disabilities during the reference period. It asks that they be included in the next report.

Employment policy

The Committee takes note of the National Action Plan for Employment which constitutes the response of the Finnish government to the European Employment Strategy established at the Lisbon European Council of the EU in 2003. The aim of the government's new employment policy is to reduce structural unemployment and to ensure the availability of labour. The Government also aims at attaining a 25% activation rate for unemployed jobseekers by 2005.

Structural unemployment, referred to as the 'hard core of unemployment' fell rapidly over 1997 to 2001 but however, has stabilised at a relatively high level since 2002. The authorities explain that this is because of a falling demand for labour on the market and on the other hand, those who complete active measures either return to unemployment or start in a new measure. In its previous conclusion the Committee asked about the effectiveness of market subsidies which were aimed at reducing the structural unemployment. The report explains that the new proposals for reforming the market subsidies system have been prepared in 2005, so the results will be known at a later stage. The Committee would like to be informed of the results in the next report.

The Committee notes the measures taken to reduce youth unemployment through providing social guarantees for young persons in the form of a promise of an active measure should a young person's unemployment last for more than three months without interruption. The

government also intends to support the career planning and education choices of young persons.

The Committee notes from the report that 10,849 immigrants attended labour market training, which is 24 % more than in the previous year, which is in response to the government's new policy to increase the inclusion of immigrants in active measures. The report also mentions the new project for development of cultural diversity at workplaces, the purpose of which is to create a functioning model for the recruitment of immigrants. The Committee requests information on the outcome of this project in the next report. Besides, the Committee would equally like to be informed about the results of the 2005 immigration policy programme which focuses on the enhancement of work-related immigration.

For disabled persons, the report notes that the new Social Enterprises Act which entered into force in January 2004 creates possibilities for the disabled persons to find work in social enterprises.

As regards public expenditure on active and passive measures, the Committee observes from the report that public spending in total on these measures reached 3% of GDP in 2003. Spending on active measures is significantly lower than that on passive measures (0.9% against 2.1%). The Committee also notes from Eurostat that the total number of persons involved in active labour market measures increased from 91,988 persons in 2002 to 99,101 in 2003.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 1§1 of the Revised Charter.

Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee notes the information provided in Finland's report.

1. Prohibition of discrimination in employment

The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

Legislation should cover both direct and indirect discrimination. As regards indirect discrimination, the Committee recalls that Article E of the revised Charter prohibits: "all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autisme Europe v. France, Collective Complaint No 13/2000, decision on the merits of 4 November 2003, §52).

Where a state party has accepted Article 15§2 of the Charter the Committee will examine legislation prohibiting discrimination on grounds of disability under this provision. Likewise where a state has accepted Article 20 of the revised Charter it will consider the right to equal treatment and equal opportunities without discrimination on grounds of sex under that provision.

A new Non-Discrimination Act 21/2004 entered into force in 2004 in order to transpose Council Directives 2000/78/EC of 27 November 2000 establishing a general frame work for

equal treatment in employment and occupation[1] and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of race or ethnic origin[2].

This legislation supplements the existing prohibition on discrimination contained in the acts on employment and civil service relationships. Gender equality is provided for by the Act on Equality between Women and Men (609/1998). The Penal Code in addition prohibits discrimination in business activities, in the exercise of a trade and in public office.

Under the Act on Non-Discrimination the prohibited grounds of discrimination include age, ethnic and national origin, nationality, language, religion, conviction, opinion, belief, health, disability , sexual orientation or other personal characteristics.

The Act applies both to the private and public sector. Discrimination in all areas of employment including recruitment is covered by the Act.

Central and local government authorities are obliged under the Act to draw up equality plans to foster ethnic equality . Information on the provisions of the new legislation and on the duty to draw up equality plans have been disseminated widely.

Exceptions to the general prohibition on discrimination inter alia, are made for genuine occupation requirements, positive actions measures and

The Committee seeks information on how the concept of indirect discrimination has been interpreted as well as information on how the concept of age discrimination has been interpreted by the courts.

Persons who believe that they have been the victim of discrimination on prohibited grounds may take their case before the courts. Persons alleging discrimination on the grounds of ethnic origin may complain to the Ombudsman for Minorities or the Discrimination Board.

Finnish law alters the burden of proof in favour of a plaintiff in discrimination cases.

Penalties for violations of the prohibition of discrimination are provided for in the Penal Code.

The Committee recalls that under Article 1§2 of the Revised Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of pre defined upper limits to compensation that may be awarded not to be in conformity with the Revised Charter as in certain cases these may preclude damages from being awarded which are commensurate with the loss suffered and not sufficiently dissuasive.

Section 9 of the Non-Discrimination Act provides that compensation may be awarded to a person who has been discriminated against, however the maximum compensation that may be awarded under the Act is 15, 000 euros. This may be exceeded if the circum-

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[1] *Official Journal L 303 02/12/2000 p. 0016-0022*

[2] *Official Journal L 180, 19/07/2000 p. 0022-0026*

stances of the case such as the duration and severity of the discrimination and other circumstances of the case require it.

However according to the report Section 9 of the Non-Discrimination Act does not preclude a plaintiff seeking damages under the Tort Liability Act or other legislation such as the Employment Contract Acts. The Committee recalls from its previous conclusion that compensation under the Employment Contracts Act is limited to 24 months wages. Therefore it asks for information on the interaction between the different pieces of legislation and asks whether it means in effect that there are no limits to the amount of compensation that may be awarded.

Section 9 of the Non-Discrimination Act does not apply to unlawful termination of employment. As regards compensation for unlawful dismissal the Committee recalls that it had previously noted that in such cases compensation is under the Employment Contract Acts, subject to a ceiling. The situation is not in conformity with the Revised Charter in this respect.

The Committee asks whether interested groups have the right to obtain a ruling that the prohibition of discrimination has been violated and whether any other specific independent bodies have been established to promote equal treatment.

As regards discrimination on grounds of nationality the Committee recalls that under Article 1§2 of the Revised Charter, while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States parties in general from occupying jobs for reasons other than those set out in Article G: restrictions on the rights guaranteed by the Revised Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only job from which foreigners may be banned are therefore these that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

The Committee previously sought further information on the employment of foreign nationals on Finnish vessels. According to the report legislation prohibits discrimination on grounds of nationality and requires equal treatment in employment on board sea vessels. The requirement of equal treatment in the Seaman's Act means that the conditions of employment are the same irrespective of nationality or national or ethnic origin of the worker. On board Finnish vessels the terms and conditions of employment are those in Finnish law.

However section 1 of the Maritime Act provides that only Finnish citizens may serve as the master of a Finnish Vessel. The Committee accepts that in masters of vessels may exercise public powers in certain circumstances and therefore this restriction may be justified by Article G of the Revised Charter. Nevertheless before concluding on this issue it wishes to receive further information on the nature of a masters powers and duties and whether these restrictions apply to masters in charge of any ship or whether the ship must fulfill certain criteria.

2. Prohibition on forced labour

The Committee notes the information provided in the report on prison work/prison activities.

The Committee invites the Government to reply to its question in the General Introduction to these Conclusions on this issue.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Service in place of military service

Under the Military Service Act the length of military service is either 180, 270 or 362 days. According to the report the majority of conscripts perform at least 270 days (52.3%) and 47.7% perform 180 days. The duration of unarmed military service is 330 days and alternative civilian service 395 days.

The Committee has previously found that the situation is not in conformity with the Revised Charter on the grounds that the length of alternative service was more than double the length of compulsory service performed by the majority of conscripts (at that time 64,2% of conscripts performed 180 days of military service. Although the situation has altered slightly during the reference period ,(see above), the Committee notes that it has only altered slightly and that the length of civilian service remains more that double the minimum period of military service which is under taken by almost half of all conscripts.

Therefore the Committee maintains that the length of alternative civilian service remains a disproportionate restriction on a worker's right to earn a living in an occupation freely entered upon.

The Committee invites the Government to reply to its in the General Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment.

4. Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 1§2 of the Revised Charter on the following grounds :

– compensation payable in cases of unlawful discriminatory dismissal is subject to a ceiling
– the length of civilian service alternative to military service is a disproportionate restriction on a worker's right to earn a living in an occupation freely entered upon.

Paragraph 3 – Free placement services

The Committee takes note of the information provided in the Finnish report.

The employment services continue to provide services free of charge for the unemployed as well as for persons searching for jobs or needing training, vocational counselling and rehabilitation. There are no fees imposed on employers either.

As regards the total number of placements made, the Committee notes that in 2004 the total number of jobseekers was 804,600 of which 571,000 were unemployed. Out of 344,800 vacancies announced in 2004, only 141,300 were filled with the help of employment agencies. This situation corresponds to a placement rate of around 41%, which,

compared to that of 93% reported for the previous cycle, represents a significant reduction. However, as explained in the report, the reduced extent to which the placements result directly from the mediation efforts of the employment services relates to the fact that job seeking practices are changing in pace with the advent of electronic applications: the vacancies are filled without involvement of employment agencies.

The Committee notes the steps the authorities are taking with a view to coordinating free employment services. The Ministry of Labour collects information on a regular basis on the activities of both private job exchange service-providers as well as human resource businesses. This information is then analysed at national, regional and local levels and is used for developing co-operation.

The Committee concludes that the situation in Finland is in conformity with Article 1§3 of the Revised Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the Finnish report.

The Committee has already examined the situation with respect to the forming of trade unions and employer associations (Conclusions XV-1, pp. 197-199), the freedom to join or not to join trade unions (Conclusions XIII-5, pp. 57 and 58), trade union activities (Conclusions XVII-1, p. 167, and XIV-1, pp. 214-216) and personal scope (Conclusions XVI-1, p. 206), and considered that the situation is in conformity with Article 5.

In its previous conclusion (Conclusions XVII-1, p. 184), the Committee noted that section 3 of Chapter 13 of the Contracts of Employment Act (no. 55/2001), on elected trade union representatives, stipulated that employees who did not have a trade union representative under the relevant collective agreement, in accordance with the Collective Agreements Act, could elect their own representative.

In answer to the Committee, the report states that where collective agreements make no provision for shop stewards, the employees are entitled to elect representatives from their own number and that these so-called elected representatives are quite distinct from shop stewards. Their status is laid down in the relevant collective agreements. Employees may decide, by a majority, to authorise their representatives to represent them on matters relating to working conditions and employment relationships. The representatives are entitled to any information they require to perform their functions and to be compensated by their employer for any resulting loss of earnings. Chapter 7, Section 10 of the Employment Contracts Act prevents employers from dismissing shop stewards or elected representatives unless they are in serious breach of their obligations and a majority of the employees they represent approve.

The Committee considers that the protection afforded to trade union representatives is compatible with Article 5 of the Charter.

The Committee considers that the situation in Finland is in conformity with Article 5 of the Revised Charter.

Article 6 – Right to collective bargaining

Paragraph 1 – Joint consultation

The Committee notes from the Finnish report that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§1 of the Charter (Conclusions XVI-1, pp. 207).

The Committee concludes that the situation in Finland is in conformity with Article 6§1 of the Revised Charter.

Paragraph 2 – Negotiation procedures

The Committee notes from the Finnish report that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§2 of the Charter.

The Committee concludes that the situation in Finland is in conformity with Article 6§2 of the Revised Charter.

Paragraph 3 – Conciliation and arbitration

The Committee notes that the Finnish report does not indicate any changes to the situation as regards conciliation and arbitration which it had assessed in Conclusions XIII-3, p. 277-278, and held to be in conformity with Article 6§3 of the Charter. The Committee had in particular observed that the decisions reached within mediation procedures pursuant to the Act on Mediation in Labour Disputes (420/1962) involving National or District Conciliators were not binding on the parties and that recourse to arbitration in accordance with the Arbitration Act (67/1992) is possible only on a voluntary basis (Conclusions XIII-5, p. 60-61).

The Committee notes from the information provided in the report in reply to its corresponding question, that in the year 2003 the National Conciliator mediated in a total of 12 labour disputes and 1 in 2004. District conciliators were involved in 18 labour disputes in 2003 and 4 in 2004.

The Committee concludes that the situation in Finland is in conformity with Article 6§3 of the Revised Charter.

Paragraph 4 – Collective action

The Committee takes note of the information provided in the Finnish report.

Permitted objectives of collective action

The Committee held in its previous conclusion that the situation was not in conformity with the Charter on the ground that civil servants can not call a strike in pursuance of objectives which are not covered by the collective agreement.

According to the report, strikes may be called in the event of disputes regarding issues which may be regulated in a collective agreement in accordance with the provisions of the Civil Servants Collective Agreements Act. The report further states that “strikes pursuing objectives others than those covered by the collective agreement” are prohibited. The Committee recalls that in order to be in conformity with Article 6§4 the right to strike should be guaranteed in the context of any negotiation between employers and employees in order to settle an industrial dispute and that prohibiting strikes not aimed at concluding a

collective agreement is not in conformity with Article 6§4. The Committee therefore considers that the situation is still not in conformity with Article 6§4 of the Revised Charter in this respect.

Who is entitled to take collective action

The Committee noted in its previous conclusions (see e.g. Conclusions XVII-1, pp. 169-170) that state civil servants and municipal officials may only take part in strikes that have been called by trade unions. The Committee recalled that the reference to "workers" in Article 6§4 relates to those who are entitled to take part in collective action but says nothing about those empowered to call a strike. In other words, this provision does not require states to grant any group of workers authority to call a strike but leaves them the option of deciding which groups shall have this right and thus of restricting the right to call strikes to trade unions. However such restrictions are only compatible with Article 6§4 if there is complete freedom to form trade unions and the process is not subject to excessive formalities that would impede the rapid decisions that strike action sometimes requires (see Conclusions 2004, p. 565). The Committee has previously found that trade unions or associations may be formed without undue formalities or requirements for the purpose of initiating collective action (Conclusions XV-1, pp. 201 – 206). It considers the situation to be in conformity with Article 6 para. 4 of the Revised Charter in this respect.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 6§4 of the Revised Charter on the ground that civil servants cannot call a strike in pursuance of objectives which are not covered by a collective agreement.

Article 7 – Right of children and young persons to protection

Paragraph 1 – Prohibition of employment under the age of 15

The Committee takes note of the information in the Finnish report.

It has previously found that the situation in law is in conformity with this provision of the Charter (Conclusions XIII-5, pp. 64-66).

In practice, the Finnish labour inspectorate does not conduct specific investigations into underage working and there are no statistics on the employment of children aged under 15. The Committee emphasises the importance of precise information on compliance with the legislation banning children under 15 from working, including work in family businesses, and the scale of illegal work, to enable it to assess compliance with Article 7§1 of the Revised Charter (see, *mutatis mutandis*, European Roma Rights Centre v. Italy, Complaint No.27/2004, decision on the merits, §23). It asks for information in the next report on surveys carried out by the labour inspectorate of workers aged under 15 and statistics on the illegal employment of children in this age group.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Prohibition of employment under the age of 18 – for dangerous activities

The Committee takes note of the information in the Finnish report.

The Committee previously (Conclusions XV-2, p. 149-150) noted that in accordance with the Decree on the Protection of Young Workers (No. 755/1996), workers under the age of 18 may not perform work which involves harmful exposure to toxic or carcinogenic agents, cause heritable genetic damage or endanger unborn children, or pose a long-term risk to human health. However, workers aged 16-18 years old may perform such tasks if the necessary steps have been taken, in co-operation with occupational health care personnel, to eliminate specific accident or health risks. The competent occupational safety and health authority (OSH) must be notified in advance.

In its last conclusion (Conclusions XVII-2, p. 218), the Committee took note of the low level of occupational accidents among workers aged under 18 and asked for up-to-date information on the number of such accidents among young workers. In the absence of information on this subject, the Committee repeats its question.

Pending receipt of the information requested the Committee concludes that the situation in Finland is in conformity with Article 7§2 of the Revised Charter.

Paragraph 3 – Prohibition of employment of children subject to compulsory education

The Committee takes note of the information in the Finnish report.

The Committee previously noted that children over the age of 15 and still subject to compulsory education may begin work at 6 a.m. on school days whereas those under 15 may only start work at 6 a.m. if “impelling reasons related to the organisation of work” may be cited by the employer (Conclusions XVII-2, pp. 219-220). The previous report stated that the only paid work identified by the competent supervisory authorities performed by children in this age group still subject to compulsory education was the delivery of advertisements

and free newspapers. This work is carried out on weekdays after school and on Saturdays for a maximum of 2 to 2½ hours per day.

As the Committee indicated in its previous conclusion, it understands that these children may not work in the morning before classes and that any activity lasting more than two hours is performed on non-school days, especially on Saturdays. The Committee asks once again if this information is correct.

Pending receipt of the information requested the Committee concludes that the situation in Finland is in conformity with Article 7§3 of the Revised Charter.

Paragraph 4 – Length of working time

The Committee notes from the Finnish report that there have been no changes in the situation it previously considered to be in conformity (Conclusions XVII-2, p. 220).

The Committee concludes that the situation in Finland is in conformity with Article 7§4 of the Revised Charter.

Paragraph 5 – Fair pay

The Committee notes the information in the Finnish report.

With regard to apprentices, the Committee has deferred its conclusion twice (Conclusions XV-2, pp. 152-154 and Conclusions XVII-2, pp. 220-221) in the absence of information:

– on the lowest allowances paid to apprentices and the lowest adult workers' wages and their corresponding net values;
– on whether most apprentices' allowances come to at least a third of the basic or minimum wage of an adult at the beginning of an apprenticeship and increase to at least two-thirds by the end.

The Committee concludes that the situation is not in conformity with Article 7§5 of the Revised Charter on the grounds that it cannot determine whether apprentices' allowances come to at least a third of the basic or minimum wage of an adult at the beginning of an apprenticeship and increase to at least two-thirds by the end.

Paragraph 7 – Paid annual holidays

The Committee notes from the Finnish report that there have been no changes in the situation it previously considered to be in conformity (Conclusions XIII-5, p. 70).

The Committee concludes that the situation in Finland is in conformity with Article 7§7 of the Revised Charter.

Paragraph 8 – Prohibition of night work

The Committee notes from the Finnish report that there have been no changes in the situation it previously considered to be in conformity (Conclusions XV-2, p. 154).

The Committee concludes that the situation in Finland is in conformity with Article 7§8 of the Revised Charter.

Paragraph 10 – Protection against physical and moral dangers

The Committee notes that no new information was provided in Finland's report on this provision. The Committee therefore asks the next report to complete the information provided in previous reports with information on all new measures taken during the reference period.

Protection from sexual exploitation

The Committee recalls that a person who has sexual intercourse with a child younger than 16 years of age or otherwise performs a sexual act with a child under this age may be guilty of sexual abuse, and that the purchase of sexual services from a minor (a person under 18 years of age) is a criminal offence. The production, dissemination and possession of child pornography is also a criminal offence.

It notes that amendments to the Penal Code introducing the crime of trafficking in human beings entered into force in 2004, it asks for information on the new provisions[1].

The Committee notes that in 2005 the Government approved a National Plan of Action Against Trafficking in Human Beings which adopts a multi-dimensional and human rights approach to trafficking in human beings and pays particular attention, *inter alia,* to child sensitive issues[2]. The needs of child victims for special protection and child specific assistance is recognised in the Plan of Action.

The Plan of Action will be assessed by a steering group which will also prepare a more detailed Plan of Action by the end of 2006. The Committee asks to be informed of any assessment of the Plan and the adoption of any new Plan.

Finland cooperates with neighbouring states, in order to combat the trafficking in human beings.

The Committee asks for information on the incidence of the sexual exploitation of children in Finland.

Protection of children against other forms of exploitation, ill treatment and abuse

The Committee reiterates its request for information on the protection of children from other forms of exploitation, such as trafficking for the purposes of economic exploitation. It also asks for information on street children; incidence of street children in Finland and measures taken to assist such children and, where appropriate their families.

Protection against the misuse of information technologies

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[1] UN Committee of the Rights of the Child Concluding Observations : Finland 20 October 2005, CRC/C/15add.22

[2] Ministry for Foreign Affairs of Finland website: formin.finland.fi

The Committee notes from other sources[1] that the non-governmental organisation Save the Children maintains a child welfare hotline on the Internet (The Northern Hotline). The purpose of the Hotline is to eliminate child pornography from the Internet and protect persons from harmful and illegal use of the Internet. The Hotline works in close cooperation with the law makers, guardians of the law and representatives of education health and welfare as well as Internet service providers.

Conclusion

Pending receipt of the information the Committee defers its conclusion.

[1] Third periodic report of Finland under the UN Convention on the Rights of the Child , CRC/C/129/add 5

Article 12 – Right to social security

Paragraph 1 – Existence of a social security system

The Committee takes note of the information provided in the Finnish report.

The Committee notes that social security system covers an adequate number of branches. It is also based on collective funding as it is funded by contributions (employers and employees) and by the state budget.

The Committee recalls that, under Article 12§1, the social security system should protect a significant proportion of the population in the following branches: health care, sickness, unemployment, old age, employment injury, family, and maternity. The Committee notes from the information provided in the report and in official sources appended to it[1], that all residents are covered by social security schemes which govern basic pensions (national pensions), sickness and maternity benefits, and unemployment benefits. In addition, all employees are entitled to benefits based on employment, such as earning-related pension and benefits for employment-related injuries. In 2003, there were around 900,000 pension recipients, 572,000 daily unemployment allowance recipients, and 326,000 daily sick allowances recipients. In 2004, 56,500 maternity benefits were paid to women. The Committee asks the next report to provide figures, for the period of reference, for every branch in percentages in order to be able to assess the effective coverage of the total population (health care, sickness insurance and family benefits) or of the active population (sickness and maternity benefits, unemployment benefits, pensions, and work accidents or occupational diseases benefits).

The sickness insurance scheme covers part of the cost of medical care and sickness allowance. Health care is mainly provided by public local health care services. In reply to the Committee, the report indicates that the fees charged to patients in these services a ceiling has been set: (590 € per year). Once this ceiling has been reached, the services are provided free of charge for the rest of the year. Sickness insurance covers part of the costs of medicines, accommodation and travel within pre-set limits. According to the report, the ceiling for payments alleviate the financial burden for certain groups, but the system is still under reform. The Committee asks to be informed on further developments.

Sickness benefits are meant to compensate for the income lost due to temporary incapacity for work. The allowance is proportional to the applicant's earnings. The employer continues to pay the salary for the first nine days; then the benefit is paid up to 300 days over a two year period. The Committee refers to its conclusion on Article 12§3 for recent changes to the system.

The Committee recalls that Article 12§1 of the Revised Charter requires that social security benefits are adequate, which means that, when they are income-replacement benefits, their level should be fixed such as to stand in reasonable proportion to the previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. During the reference period, the minimum daily sickness allowance was 11.40 € and the average daily sickness allowance was 43.30 € paid five days a week; this means, respectively, 251 € and 952.60 € per month. Considering that the poverty threshold calculated as defined above was 693.30 € in 2004, the Committee notes that the average sickness allowance is above the poverty threshold, but not the minimum one. Moreover, it

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[1] Ministry of Social Affairs and Health, Finnish Social Protection in 2003.

notes that the minimum sickness allowance is below the poverty threshold even when this is calculated as 40% of the median equivalised income. Therefore, it concludes that the minimum sickness allowance is manifestly inadequate.

As regards maternity benefits, the Committee notes that the employer continues to pay the salary. As regards the minimum benefit, its amount is the same as the daily sickness allowance and therefore manifestly inadequate. Therefore the Committee reiterates its questions mentioned above.

In reply to its question, the Committee notes from the report that the Unemployment Security Act (1290/2002) entered into force on 1 January 2003 (see its conclusion under Article 12§3). During the reference period, the basic unemployment benefit amounted to 23.10 € per day, that is 509.50 € per month; the basic part of the earnings-related unemployment benefit was at least equal to the basic benefit supplemented by a possible child benefit. The average earnings-related unemployment benefit was 45.20 € per day, that is 994 € per month. The Committee notes that the basic unemployment benefit stands between 40% and 50% of the median equivalised income and that even with the addition of the child supplement (6.40 € for two children) the benefit was still below the poverty threshold. The further combination of the basic unemployment benefit with child benefit would bring the situation into conformity; nonetheless, the Committee concludes that, at least for single persons, the benefit is inadequate unless it may be completed with other supplements, including social assistance. It therefore reserves its position on the conformity of the situation with the Revised Charter upon receiving the information about available supplements to the unemployment benefit.

The report indicates that there are two separate pension schemes: the employment pension scheme and the national pension scheme. Both schemes pay old-age, disability and survivors' pensions. The national pension scheme provides pensions on the basis of residence to guarantee a minimum income, whereas the other scheme is based on employment and related to earnings. The national pension is coordinated with pension from the earnings-related scheme and paid to persons with a low or no earnings-related pension. When the latter achieves a certain amount, there is no entitlement to the national pension. While national pensions are administered by the Social Insurance Institution (Kela), the earnings-related pension schemes are managed by private insurance institutions. The Committee notes that a reform of the pension system was carried out during the reference period (see its conclusion under Article 12§3).

The report indicates that the earnings-related pension is calculated on the basis of the wages of each year on the basis of an accumulation percentage corresponding to age. There is no indication of the minimum national pension. The Committee notes from another source[1] that, in 2004, the minimum full national pension for a single recipient varied from 475.70 € to 469.30 € according to the municipality of residence. The Committee notes that these levels are manifestly inadequate.

In case of work accidents, the daily allowance paid in compensation by the employer is equal, during the first four weeks, to the salary paid by the employer during sickness leave. If no salary is paid during sickness leave, the amount is set on the basis of the Employment Accidents Act (608/1948). After four weeks and up to one year, the amount of the daily allowance is 1/360 of the worker's annual income; afterwards the payment of accident pension starts.

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[1] www.kela.fi/in/internet/english.nsf/NET/081101151613EH?OpenDocument.

The Committee recalls that the scope and level of family benefits are assessed under Article 16.

The Committee concludes that the situation in Finland is not in conformity with Article 12§1 of the Revised Charter on the ground that the sickness and maternity allowances and the minimum national pension for single persons are manifestly inadequate.

Paragraph 2 – Observance of the European Code of Social Security

The Committee takes note of the information provided in the Finnish report.

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No 102; six of the nine contingencies must be accepted although certain branches count for more than one part (old-age counting per three for example).

The Committee notes that Finland has not ratified the European Code of Social Security. Nonetheless, its social security system covers all the nine branches. From the information in the report, the Committee notes that all residents are covered by social security schemes which govern basic pensions (national pensions), sickness and maternity benefits, and unemployment benefits. The report also indicates the minimum levels of benefits and adds that the Government is proceeding with the assessment of the compliance of the social security system with the requirements of the European Code of Social Security. The Committee asks the next report to inform them of the results of this assessment.

Pending receipt of the requested information, the Committee concludes that the situation in Finland is in conformity with Article 12§2 of the Revised Charter.

Paragraph 3 – Development of the social security system

The Committee takes note of the information provided in the Finnish report.

The new Sickness Insurance Act entered into force on 1 January 2005. It aimed at clarifying the situation in respect to the security of income during disability and parenthood. The amounts of the sickness and parental allowances now contain a wage criterion; this is an improvement for the insured, including those who have short periods of employment or have been out of work following the birth of children. Since 2005 the minimum daily amount of the sickness allowance was raised to 15.20 €.

The report describes the changes introduced to the unemployment benefits scheme by the Unemployment Benefits Act (1290/2002). There are two kinds of benefits: the basic unemployment benefit and the earnings-related unemployment benefit. The former may be paid to anyone between 17 and 64, who is available for work, is resident in Finland and fulfills the criterion of prior employment, and is not registered with any unemployment fund. The latter is paid to persons whom along with the criteria above are also registered with a fund for at least ten months before unemployment. A person applying for the basic unemployment benefit must have been in paid work for 43 weeks during the 28 prior months. The length of previous employment has been reduced to 34 weeks for the earnings-related unemployment benefits. Unemployment benefits are paid for 500 days; in case of unemployed who are close to the retirement age, additional days are given up to retirement. As of 2005, the unemployment pension has been replaced by the extended

unemployment benefits, which can be paid under certain circumstances to unemployed persons up to 68 years.

The earnings-related unemployment benefit consists of a basic part (equal to the basic unemployment benefit) and an additional part determined on the basis of earned wages (45% of the difference between the daily wages and the basic part). A further raised earnings-related part is paid to persons who have been employed for at least 20 years and member of a fund for at least 5 years or have been dismissed for reasons relating to the productivity or finances of the company. It is paid for 150 days.

Finally, a labour market subsidy may be paid for five a days a week to unemployed jobseekers between 17 and 64 years of age, resident in Finland, who need financial support and who have not worked at least 10 months during the 28 preceding months. A labour subsidy may be paid in addition to unemployment benefit. The amount of the subsidy is equal to the basic unemployment benefit.

The Committee notes from the report that the labour subsidy may be paid to young people (18-24 years) only to the extent that they engage in training or professional education, they have not refused employment or training offered by the employment office, and have not failed to seek suitable professional training. The Committee asks whether there is an initial period where jobseekers may refuse to take up an offer of a job on the grounds that it does not meet his/her occupational requirements or experience without risking losing his/her unemployment benefits.

In reply to the Committee, the report describes the pension reform carried out during the period of reference and which entered into force on 1 January 2005. The main aim of the reform was to ensure the solvency of the earning-related pensions systems as life expectancy grows, to encourage people to stay in work longer, and to simplify the pension system. The options for early retirement have been made stricter, while the age limit for old age pension has become flexible (between the age of 62 and 68). Between 62 and 68 years of age, pensions grow at an increased rate. Pensions also accumulate during periods where an individual is in receipt of earnings-related benefits and are accrued for periods of child care leave and study. The retirement age for national old age pensions based on residence remains 65 years; that for disability pension 63 years.

In reply to the Committee, the report indicates that amendments (70/2002) to the National Pension Act and the Disability Allowance Act clarified the conditions for the suspension of the disability pension. The pension may be suspended for five years, two of which covered by the special disability allowance, if the person with disability starts a working experiment. The maximum income for receiving the allowance is still set at 588.60 € and it is not yet tied to the cost of living index, though the Ministry of Social Affairs and Health is currently assessing whether to link it.

The Committee asks how social security benefits are adjusted.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 12§3 of the Revised Charter.

Paragraph 4 – Social security of persons moving between states

The Committee takes note of the information provided in the Finnish report.

The Committee notes that relations with the other member states of the enlarged EU in the field of social security are governed by Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72. During the reference period Regulation (EC) No. 859/2003 entered into

force. The Committee notes that this regulation makes Regulation No. 1408/71 applicable to third country nationals, as well as to their family members, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State (Article 1). This means that EU member States must guarantee to at least those nationals of other States parties to the Charter and to the revised Charter equal treatment with respect to social security rights provided they are legally resident. The Committee asks the next report to provide information about the extension in practice of the equal treatment principle to the third country nationals.

The report indicates that Finland pays family benefits to third country nationals who have been resident in Finalnd and move within the European Union. The Committee asks the next report to provide information about the extension in practice of the equal treatment principle with respect to the other benefits.

Finland is also bound by the Nordic Convention on social security governing relations with Denmark, Norway, Iceland and Sweden, and applies also to third country nationals moving within the Nordic countries.

The report provides no information on bilateral agreements existing with the other states party to the Charter and to the Revised Charter not covered by Community legislation. The Committee asks whether there is any agreement with the following countries (Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, “the former Yugoslav Republic of Macedonia”, Moldova, Romania, and Turkey) and whether they guarantee equal treatment, accrued retention of benefits and aggregation of insurance or employment periods. The Committee recalls that States party can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures.

According to the information provided in the report, most social security benefits are based on residence.

As regards the payment of family benefits, the Committee considers that according to Article 12§4, any child resident in a state party is entitled to the payment of family benefits on an equal footing with nationals of the state concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, state party are under the obligation to secure through unilateral measures the actual payment of family benefits to all children residing on their territory. In other words, imposing an obligation of residence of the child concerned on the territory of the state is compatible with Article 12§4 and its Appendix. However since not all countries apply such a system, States applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. The Committee therefore asks the next report to indicate whether such agreements exist with the following countries: Albania, Armenia, Georgia and Turkey, or, if not, whether it is envisaged to conclude them and in what time delay.

Length of residence requirements apply to parental allowance (see conclusion under Article 16 in this volume), national pensions and unemployment benefits. Residents of Finland, of other EU Member States and countries with whom a social security agreement has been concluded have the right to national pension if they have resided in Finland after the age of 16 years for at least three years without interruption. Residence in another EU country is taken into account for the purpose of meeting the requirement. Other foreigners have the right to national pension if they have resided for at least five years without interruption. This rule also applies to the other pensions paid under the national pension scheme, such as the

disability pension, unemployment pension, survivors' pension and orphans' pension. The report finally indicates that the Government intends to submit a bill to generalize the three years requirement. The Committee considers the length of residence requirement not excessive.

The Committee also notes that the amount of the national pension is adjusted to the duration of residence if the applicant for the old age pension has not lived in Finland for at least 40 years. Similarly, the amounts of other pensions are also adjusted if applicants have not lived in Finland for at least 80% of the period between the age of 16 and the age of retirement. This means that the rules governing entitlement to the full old-age pension affect migrant workers, who may end up receiving a lower pension than nationals since they have more difficulties to comply with the residence requirement. The Committee asks the next report to clarify whether non-nationals are at least entitled to the minimum pension and, if this is not the case, to provide information on the measures planned to redress the situation.

As regards family benefits, the Committee examines the issue under Article 16.

In reply to the Committee, the report confirms that, unless provided differently by any agreement, the retention of a pension under the national pension scheme is guaranteed only for one year. In case the beneficiary has resided at least ten years in Finland and there is a family reason for his moving, the pension may be continued for a certain period of time. The report indicates that the reason for such restriction is the "guaranteed income" nature of these benefits and the residence criterion governing their allocation. The Committee recalls that under Article 12§4 invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are to be maintained whatever the movements of the beneficiary. Therefore, it considers that the situation is not in conformity with the Revised Charter.

The Committee recalls that in its previous conclusion (Conclusion XVII-1, p. 174) it found the situation not in conformity as regards accumulation of insurance or employment periods for nationals of other states party not covered by Community legislation of by any agreement. The report indicates that the situation has not changed. The Committee therefore also maintains its conclusion of non conformity on this point.

The Committee concludes that the situation in Finland is not in conformity with Article 12§4 of the Revised Charter on the following grounds:

– the legislation does not provide for retention of accrued benefits when persons move to a state party not covered by Community regulations or bound by agreement with Finland;
– the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Finland.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion by Mr Jean-Michel BELORGEY, joined by Mr Nikitas ALIPRANTIS, Mrs Csilla KOLLONAY-LEHOCZKY and Mr Lucien FRANÇOIS, is appended to this conclusion. A dissenting opinion by Mr Tekin AKILLIOGLU is also appended.

Article 13 – Right to social and medical assistance

Paragraph 1 – Adequate assistance for every person in need

The Committee notes the information in the Finnish report.

Types of benefit and eligibility criteria

In answer to the Committee, the report states that homeless persons have the same legal and practical entitlement to income assistance (*toimeentulotuki*) as persons residing in municipalities. In such cases, the allowance is intended to secure a minimum essential income (Section 14§3 of the Income Allowance Act, 1412/1997).

The Committee has already noted in previous conclusions (Conclusions XV-1, pp. 216-219 and Conclusions XVI-1, pp. 213-215) that up to 20% of benefit can be withheld from recipients who, without justification, refuse work or an employment policy measure that would secure a living for a reasonably long period (Section 10§1 of the Income Allowance Act). The reduction is accompanied by an action plan to promote the individual's capacity for independent living (§2). In cases of repeated refusal the reduction may be increased to 40% (§3). The reduction must not constitute a threat to health or human dignity and may not last more than two months (§4). On 6 March 2000, the supreme administrative court authorised a reduction for an additional two months. Such a reduction would only be applicable if the beneficiary had not registered with an employment office and must otherwise comply with section 10§4.

It is compatible with Article 13 to establish a link between social assistance and willingness to seek work or to undertake vocational training, so long as the conditions are reasonable and fully consistent with the objective of providing a lasting solution to the problems the individual faces. However, reducing or suspending social assistance benefits is only compatible with the Revised Charter if this does not deprive that individual of means of subsistence (General statement on Article 13, General Introduction to Conclusions XIV-1, p. 52; Conclusions 2006, Estonia). Moreover, there must be a right of appeal against any decision to suspend or reduce benefits (Conclusions XIII-2, Denmark, pp. 124-126; Conclusions XIV-1, France, pp. 271-273).

The Committee considers that the arrangements for ensuring means of subsistence and the provision of support measures are compatible with Article 13. However, it requires further information for a complete assessment of the Finnish situation. It asks what conditions any offer of employment must meet and what reasons for refusing an offer are acceptable. It also asks whether there is a right of appeal to an independent body against decisions to reduce assistance (see below).

In answer to the Committee, the report explains why the use of preventive income allowance has increased significantly since 2001 (see Conclusions XVII-1, p. 176), namely an amendment to Act 1412/1997 that came into force that year clarifying the circumstances in which municipalities could grant this assistance, including activating measures, housing problems, insolvency and sudden financial difficulties.

As Finland has accepted Article 23 of the Revised Charter (elderly persons' right to social protection), the Committee will examine the guaranteed income of elderly persons under this provision.

Level and duration of social assistance

To assess the situation during the reference period, the Committee takes account of the following information:

– basic benefit: according to MISSOC[1], the monthly social assistance benefit for single persons in 2004 was 377.15 € in category I municipalities and 360.92 € in category II ones;
– supplementary benefits and medical assistance: additional assistance may be granted for housing and child care costs, additional medical expenses and other expenses deemed to be essential. According to the report, such costs average 900 € per month. The Committee asks whether this means that a typical recipient receives an average of 900 € per month over and above the monthly assistance allowance. If not, it again asks for information to enable it to assess the assistance paid to a typical recipient living alone (basic benefit plus supplements). The Committee points out that this information should not be provided in the next report it would be unable to assess the situation;
– poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: estimated at 684.30 € per month in 2003.

Pending receipt of the information requested, the Committee defers its conclusion on this point.

Right of appeal

The Committee has previously noted (Conclusions XVI-1, p. 176) that a request for the amendment of a decision on income allowance may be made to the local social welfare board within 14 days from the date of the decision. Thereafter, an appeal may be made to an administrative court within 30 days, and then to the supreme administrative court if the latter grants leave to appeal.

The Committee asks for the next report to state whether:

– there is a right of appeal to the administrative courts against any decisions not to grant or continue assistance, including decisions to reduce benefits in case of refusal of a job or an employment policy measure (Conclusions XIII-2, Denmark, pp. 124-126; Conclusions XIV-1, France, pp. 271-273);
– the courts have jurisdiction to rule on points of law as well as on the merits of cases (Interpretative statement on Article 13, Introduction to Conclusions XIII-4, p. 56; Conclusions XVIII-1, Hungary).

It also asks whether free legal aid is available to enable applicants to exercise fully their right of appeal (Conclusions XVI-1, Ireland, p. 356-358).

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[1] Publication of the European Commission, MISSOC, Social Protection in the Member States of the European Union, of the European Economic Area and in Switzerland, Situation on 1 May 2004, comparative tables (http://europa.eu.int/comm/employment_social/ publications/2005/keae04001_en.pdf).

Personal scope

The Committee notes that Act 1412/1997 does not impose any nationality condition for eligibility for assistance. Assistance may be granted to any resident in Finland. It asks whether residence status in Finland is subject to a prior length of stay condition and if so how long that is.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Non-discrimination in the exercise of social and political rights

The Committee notes from the Finnish report that there has been no changes to the situation which it had previously found to be in conformity (Conclusions XIV-1, p. 232).

It therefore concludes that the situation in Finland is in conformity with Article 13§2 of the Revised Charter.

Paragraph 3 – Prevention, abolition or alleviation of need

The Committee notes from the Finnish report that there have been no changes in the situation, which it has previously considered to be in conformity (Conclusions XIV-1, p. 233). It has also recently found that the eligibility criteria for general social services, which are responsible for Article 13§3 services, are in conformity with Article 14§1 (Conclusions XVII-2, pp. 232-235).

The Committee concludes that the situation in Finland is in conformity with Article 13§3 of the Revised Charter.

Paragraph 4 – Specific emergency assistance for non-residents

The Committee notes the information in the Finnish report.

Section 14§3 of the Income Allowance Act, 1412/1997, grants everyone in urgent need the right to social and medical assistance from the municipality in which they are located. The Committee understands from previous reports that this is the basis on which foreign nationals lawfully present in Finland but not resident are entitled to emergency assistance. It asks whether this interpretation is correct.

The Committee notes that under the Appendix to Article 13§4, states such as Finland that are not parties to the 1953 European Convention on Social and Medical Assistance are nevertheless required to grant treatment in accordance with this Convention (interpretation of Article 13, general introduction to Conclusions XIII-4, p. * and to Conclusions XIV-1, p. 54). The Committee asks what steps have been taken to bring Finnish law into line with the repatriation provisions of the 1953 Convention. The next report should also indicate whether nationals of states party have been repatriated solely because they needed assistance and, if so, whether the conditions laid down in articles 7 to 10 of the 1953 Convention were met.

The Committee invites the Government to reply to its question in the general introduction to these Conclusions on the social and medical assistance to which foreign nationals unlawfully in the country are entitled.

Pending receipt of the information requested the Committee concludes that the situation in Finland is in conformity with Article 13§4 of the Revised Charter.

Article 16 – Right of the family to social, legal and economic protection

The Committee takes note of the information provided in the Finnish report.

Social protection of the family

Housing

The Committee notes the measures taken by the government to facilitate access to housing for families during the reference period, particularly the low interest rates applied to mortgages.

In accordance with the guidelines on the interpretation of Article 16 in the general introduction, the Committee has considered the housing situation of Roma families, in particular whether suitable temporary and permanent housing is provided for them and whether it is prohibited to evict them without complying with the relevant procedural safeguards.

The Committee notes from other sources[1] that the Roma minority in Finland would still be disadvantaged and marginalised compared to the rest of the population, particularly where access to housing is concerned.

The Committee notes, nonetheless, that the legal situation has recently improved, particularly as a result of the new Non-Discrimination Act (no. 21/2004). Its aim is to promote and safeguard equality in all sectors of society. Under the Act, direct or indirect discrimination is prohibited, as are harassment or instructions or orders entailing discrimination. The Act applies mainly to employment but it also prohibits discrimination on grounds of ethnic origin in the areas of social services, social welfare, social benefits and other forms of assistance. This applies to the supply of or access to moveable or immoveable property, particularly housing. Under the Act, local authorities and central government have a duty to draw up a plan to promote ethnic equality in the course of their activities. The Act also provides for penalty of up to 15 000 € to be paid by offenders.

In the housing field, the application of this Act is monitored by the Ombudsman for Minorities[2] and the Discrimination Board, both of which were established by Act No. 660/2001. The Ombudsman is entitled to make recommendations and issue instructions but also to encourage the parties concerned to reach an agreement and compensate victims for any damage caused. He or she is assisted by an advisory committee on minority issues, made up of representatives of the authorities, non-governmental organisations and associations of ethnic minorities. Cases referred to the Ombudsman may be passed on to the Discrimination Board, which is responsible for ensuring ethnic equality. At the request of a party or the Ombudsman, this Board, which is attached to the Ministry of Labour, may confirm conciliation settlements between parties or prohibit any continued or repeated behaviour that infringes the prohibition of discrimination or reprisals. It also has the power to impose fines but it is not entitled to review the decisions of other public authorities.

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[1] ECRI (European Commission against Racism and Intolerance), second report, CRI(2002)20, adopted on 14 December 2001, consulted on http://www.coe.int/T/E/Human%5FRights/Ecri/

Advisory Committee for the Protection of National Minorities, Second Cycle Report, ACFC/SR/II(2004)012, received 10 December 2004, consulted on http://www.coe.int/T/E/Human%5FRights/Minorities/

[2] Web site : http://www.mol.fi/mol/en/01_ministry/03_organization/02_minorities/index.jsp

The Ministry of the Environment, which is in charge of housing, also pays particular attention to the prohibition of discrimination in its March 2003 guide on the criteria for the selection of public housing office tenants or recipients of loans at preferential interest rates. The guide insists among other things on the need to take particular account, as far as possible, of Roma culture when allocating them housing. The Ministry, working in co-operation with the Advisory Council for Roma Affairs, had already published a guide in 2000 on features unique to Roma culture, aimed at the main bodies responsible for housing, including municipalities, to help them to find suitable housing for Roma. Various training courses on equal treatment are run by the local authorities and other bodies dealing with housing issues.

In the light of all these recent changes in practice and in law, the Committee asks for more information on the results achieved ethnic discrimination, particularly against Roma.

Childcare facilities

The Committee asks for up-to-date information in the next report.

Family counselling services

The Committee asks for up-to-date information in the next report.

Legal protection of the family

Domestic violence against women

Several laws in Finland guarantee women legal protection against domestic violence.

For instance, the criminal provisions of Act no. 578/1995 on offences of assault were amended by Act no. 650/2004, thus enabling the public prosecutor to bring charges not only for aggravated assaults but also for non-aggravated assaults on private premises, even if the victim does not request prosecution. It was already possible for the public prosecutor to prosecute in such cases if the victim made a specific request to that effect. Prosecution in respect of petty assaults is still a matter for the victim to decide (unless he or she is a minor). Under the Police Act (no. 493/1995), it is also possible for the police to take action in violent situations to prevent offences from occurring.

Furthermore, under the Criminal Procedure Act (no. 689/1997), all victims of sexual or domestic violence must have access to public assistance or support persons. The Act also provides for a mediation and legal advice service for victims of violence.

Other recent legislative amendments include one adopted in 2004, amending the Restraining Orders Act (no. 898/1998) to make it possible for an offender to be ordered to leave a home shared with a victim in need of protection. These “inside-the-family” orders are issued to prevent violations of the life, health or freedom of a person or the threat thereof. They last three months (renewable).

The Committee also notes that services to prevent violence and protect and provide psychological support for such victims of ill-treatment are provided by a health care centre and by family counselling clinics. The Committee asks for more detailed information on the functions of these services.

The Committee asks for the next report to contain up-to-date information on the co-ordination of non-governmental organisations' work and associations and on the main health, psychological support and rehabilitation services for victims of violence.

Economic protection of the family

Family benefits of a sufficient amount

The Committee considers that, to comply with Article 16, child allowance must be an adequate income supplement representing a significant percentage of the monthly median equivalised net income. According to MISSOC[1], the universal monthly child allowance paid in respect of children up to the age of 17 depends on the number of children in the family and ranged from 100 € to 172 € for the first to the fifth child in 2004. Child allowances amounted to 8.4% of monthly median equivalised net income as calculated by Eurostat for 2003. Taking account of other family benefits, the Committee considers that the amount is sufficient.

The Committee asks once again for more information on supplementary financial support other than housing allowances, focusing on support for families with children in particular, as no information on the subject has been given in respect of the current reference period.

Vulnerable families

The Committee recalls that any child resident in a defined country, according to Article 12§4, is entitled to the payment of family benefits on a equal footing with nationals of the country concerned. It recalls as well that imposing an obligation of residence of the child concerned on the territory of the state, as regards contributory benefits, is compatible with Article 12§4 and its Appendix. Nevertheless, the Committee reserves the right to assess whether the requirement is proportionate to the aim pursued. It considers that its rules of interpretation apply *mutatis mutandis* to Article 16.

According to the report, a length of residence requirement for child allowance is required. Under Act no. 1573/1993 of 30 December 1993, foreign nationals must be resident in Finland for six months before they are entitled to benefits. The Committee notes that the length of residence requirement apply both to nationals and nationals of other States Parties to the Revised Charter.

The Committee finds that the length of residence requirement of six months for child allowance is in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 16 of the Revised Charter.

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[3] Publication of the European Commission, MISSOC, Social Protection in the EU Member States, the European Economic Area and Switzerland, Situation on 1 May 2004, comparative tables (http://europa.eu.int/comm/employment_social/missoc/missoc2004_may_en.pdf).

Article 19 – Right of migrant workers and their families to protection and assistance

Paragraph 1 – Assistance and information on migration

The Committee notes the information provided in the Finnish report.

The situation as regards the operation of adequate and free services to assist migrant workers remains to a large extent unchanged, and has in the past been found to be in conformity with the the Charter.

Under the laws on Public Employment Service (1295/2002) and the Act on the Integration of Immigrants and Reception of Asylum-Seekers (493/1999), migrant workers with a continuous residence permit can benefit from a number of employment services, information on the labour market and a variety of other measures for their rapid integration in the country.

The position of migrant workers whose residence is considered to be temporary is however quite different: they are not able to be registered as job-seekers, have no right to employment services, such as for instance finding and presenting vacancies, nor are they entitled to the array of integration measures foreseen for migrants with a continuous residence permit.

The Committee would like to know which migrants are considered as being "temporary", and what type of assistance and information services they are are entitled to upon entering, and whilst they remain in Finland.

The Committee notes that a large amount of the information available to immigrants concerning work in Finland or their integration in the country is produced in their own language.

Protection against misleading propaganda

In previous reports by Finland it has been mentioned that there were no specific legislative provisions to combat misleading propaganda relating exclusively to immigrants. Where necessary, however, the labour authorities can intervene and correct any misleading information in public.

In response, the Finnish report makes reference to a number of campaigns and projects between 2001-2004 which have been introduced to combat discrimination, to strengthen awareness of minority groups of their rights, to enhance equality at the local level and mainstream non-discriminatory practices in the provision of employment services.

The Committee also notes from another source[1] that the Penal Code of Finland contains provisons to fight against human trafficking and the arrangement of illegal immigration. As regards the latter, a person who brings or arranges transport to Finland of a foreigner without a valid passport, visa or residence permit or with falsified documents, may be sentenced to a fine or to imprisonment for at most two years. New provisions on aggravated forms of illegal immigartion were incorporated into the Penal Code in July 2004: when such an offence is committed in the context of operations of organised crime, the penalties go from four months imprisonment to six years.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 19§1 of the Revised Charter.

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[1] Ministry of Justice, Finland, website: http://www.om.fi

Paragraph 2 – Departure, journey and reception

The Committee notes from the Finnish report that there have been no changes in the situation which it has previously found to be in conformity with the Charter.

The Committee therefore concludes that the situation is in conformity with Article 19§2 of the Revised Charter.

Paragraph 3 – Co-operation between social services of emigration and immigration states

The Committee notes from the Finnish report that there have been no changes in the situation which it has previously found to be in conformity with the Charter.

The Committee therefore concludes that the situation is in conformity with Article 19§3 of the Revised Charter.

Paragraph 4 – Equality regarding employment, right to organise and accommodation

The Committee notes the information provided in the Finnish report.

Several legal texts, *inter alia*, the Constitution, the Penal Code and the Employment Contracts Act (55/2001) prohibit discrimination, and thus protect migrant workers in the areas covered by this provision.

The Employment Contracts Act establishes that an employer shall not exercise unjustified discrimination against employees on the basis of national or ethnic origin, and thus lays down the principle of equal treatment between migrant workers and Finnish nationals in the area of employment. The Committee wishes to know whether problems have been identified as regards migrants access to employment and their fair remuneration in comparison to nationals.

In the area of access to housing, the Committee takes note of the new Non-Discrimination Act No. 21/2004, which implements EU Directives on equal treatment and non-discrimination[1], and extends, *inter alia,* to the supply and access to housing.

The Committee notes that there is no distinction in domestic legislation between Finnish nationals and foreigners with a view to obtaining housing allowances. It also notes that the authorities follow-up the housing situation of immigrants by surveys and individual contacts, and that when deficencies are found in the sector of housing, there is the possibility of intervention and protection by the Parliamentary or Minority Ombudsman, or the Chancellor of Justice.

Pending receipt of further information on the practice of non-discrimination in the area of employment, the Committee concludes the situation in Finland is in conformity with Article19§4 of the Revised Charter.

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[1] Council Directive (2000/43/EC) implementing the principle of equal treatment of persons irrespective of racial or ethnic origin, and, Council Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation.

Paragraph 5 – Equality regarding taxes and contributions

The Committee notes from the Finnish report that there have been no changes in the situation which it has previously found to be in conformity with the Charter.

The Committee therefore concludes that the situation is in conformity with Article 19§5 of the Revised Charter.

Paragraph 6 – Family reunion

The Committee takes note of the information provided in the Finnish report.

Family members taken into account

The Committee notes that under the new Aliens Act (301/2004) which has been adopted during the reference period the migrant's family members which can benefit from family reunion are the following: the spouse, unmarried children under 18 years of age, the guardian of a minor residing in Finland, a same sex registered partner or a partner in a marriage-like relationship when the persons have lived together for at least two years. The Committee considers that the broad definition of persons that can benefit from family reunification, as well as the age limit of 18 years for dependant and unmarried children, are in conformity with the requirements of the Revised Charter.

Refusal on grounds of insufficient means

In this respect, the Committee recalls that it has in the past two cycles deferred its conclusion on this provision given the lack of information on the question of the "level" of resources needed by the migrant worker making the application for family reunion.

The Committee acknowledges that a regular and stable level of resources can be considered a requirement for family reunion so that the migrant worker will be able to support his family. It notes that such a requirement is reflected in the legislations of many countries. This being said, the Committee considers that the level of resources required should not be so restrictive as to prevent any family reunion. It therefore reiterates its request for explanations on this point, and in particular whether a migrant worker receiving welfare support is prevented from exercising the right to family reunion.

Refusal on grounds of health reasons

The Committee notes that under the new Aliens Act (301/2004) aliens may enter Finland if they are not considered a danger to public order, security or health or Finland's international relations. In response to the Committee's question in the last cycle of which diseases were considered as jeopardising public health, reference is made to the Annex of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health. The Committee notes that the diseases set out in the said Appendix match those which are accepted by the Revised Charter for the purposes of refusal of family reunion. Hence, the situation under this item is in conformity with the Revised Charter.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 19§6 of the Revised Charter.

Paragraph 7 – Equality regarding legal proceedings

The Committee notes from the Finnish report that there have been no changes in the situation which it has previously found to be in conformity with the Charter.

The Committee therefore concludes that the situation is in conformity with Article 19§7 of the Revised Charter.

Paragraph 8 – Guarantees concerning deportation

The Committee takes note of the information provided in the Finnish report.

The report reiterates that when the person expelled is the sole custodian of a child under the age of 18 years, the expulsion order usually applies to the child as well. The Government maintains that this is in the child's best interest and underlines that all facts of relevance are taken into account when assessing the need of expulsion of the child, such as the length of the child's residence in Finland and other conditions and ties to the country. The Committee has previously found that such a situation is not in conformity with Article 19§8.

In effect, the Committee believes that the rule in this area should be to disconnect the expulsion of the migrant worker from that of the rest of the family members. An expulsion order is an individual measure which in principle should solely affect the migrant worker who has endangered national security or offended against public interest or morality. When a court imposes such a drastic measure on an individual, this should not automatically bear consequences on the other family members, even when the person to be deported is the sole custodian of a child under 18 years.

If the principle of not linking the migrant worker's expulsion with that of his child under 18 years is maintained, nothing would prevent such a child from returning with his parent to the country of origin if that was his/her desire.

The Committee therefore concludes that the situation in Finland is not in conformity with Article 19§8 of the Revised Charter on the ground that a migrant worker's minor children who have settled on Finnish territory as a result of family reunion may be expelled when the migrant worker is expelled.

Paragraph 9 – Transfer of earnings and savings

The Committee notes from the Finnish report that there have been no changes to the situation which it has previously found to be in conformity.

The Committee therefore concludes that the situation in Finland is in conformity with Article 19§9 of the Revised Charter.

Paragraph 11 – Teaching language of host state

The Committee notes the information provided in the Finnish report.

The Basic Education Act provides that school attendance is obligatory for six-year old children - including immigrant children - and that the teaching of the Finnish language is considered a priority. Once pupils with an immigrant background advance to normal basic education, they are taught Finnish or Swedish as a second language when their skills in these languages have not advanced to a native-speaker level. In 2004, there were

approximately 5,500 pupils with immigrant background in basic education, and more than half of them studied Finnish or Swedish as a second language.

Foreign students and immigrants may also participate, on an equal footing with nationals, in vocational education, provided they have sufficient language skills. The languages of education may be Finnish, Swedish, Sámi or Roma. A plan for the arrangement of education for immigrant students is required. Whilst native languages may be provided in the context of vocational education, students or their parents generally prefer to focus on Finnish or Swedish studies.

The Committee considers that the legislation and practice described in the report at first hand to be in conformity with Article 19§11, in particular as regards the children of migrant workers in the school system. The Committee would nevertheless like to ascertain that programs for learning the host language also exist for other possible family members of the migrant worker, such as his wife or parents, and for the migrant worker himself.

Pending receipt of the information requested, the Committee concludes that the situation is in conformity with Article 19§11 of the Revised Charter.

Paragraph 12 – Teaching mother tongue of migrant

The Committee notes the information provided in the Finnish report.

The report contains information on how state subsidies are paid for the maintenance, *inter alia*, of immigrants' own native languages, as a supplement to basic education. A minimum of four students are necessary for a group to be arranged.

Whilst there is no obligation under law to arrange such education, around 80% of immigrant pupils are at present taught in their own native languages (covering a range of 50 different languages). Local authorities, however, are sometimes unable to find a teacher for a given language.

Native languages can also be used in the context of vocational education. Allocations were used for the pupose of supporting the teaching of immigrants' native languages in the context of a project which was carried out to develop school curricula. Other examples where native languages have a role to play are in student counselling and remedial education.

The Committee concludes that the situation in Finland is in conformity with Article 19§12 of the Revised Charter.

Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination

This conclusion has not yet been adopted by the Committee and will be forwarded as soon as possible.

Dissenting opinion by Mr Jean-Michel BELORGEY, joined by Mr Nikitas ALIPRANTIS, Mrs Csilla KOLLONAY-LEHOCZKY and Mr Lucien FRANCOIS

Under Article 12§4 a of the European Social Charter, the parties undertake: "*to take steps, by the conclusion of appropriate bilateral and multilateral agreements* ***or by other means****, and subject to the conditions laid down in such agreements, in order to ensure: a. equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;"*

These provisions should not be interpreted in the light of the European Code of Social Security, reference to which is confined to Article 12§2. Article 12§2 requires parties' social security systems to be maintained at a level at least equal to that necessary for ratification of the Code.

Admittedly, the appendix to the Charter concerning Article 12§4 states that "*with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties*". The distinction between contributory and non-contributory systems is not only clearly outdated. It also cannot be superimposed on the alternative, albeit related, distinction between systems based on the principle of the residence of the beneficiary and ones based on the status of worker of the beneficiary - a distinction that if not outdated is at least ambiguous and not provided for in the Charter.

This means that it is directly incompatible with both the letter and the spirit of the Charter:

1. to conclude that the length of residence to which the payment of benefits may be subject must comply with the conditions laid down in the European Code of Social Security;

2. when determining whether or not states are in compliance with their undertakings, to base the assessment on:

   – a distinction between systems based on the principle of the residence of the beneficiary and ones based on the status of worker of the beneficiary;

   – and the conclusion of bilateral or multilateral agreements which are considered to be the only instruments to ensure equal treatment between nationals of each of the parties when the co-existence of the two kinds of systems mentioned-above creates a possibility that members of a single family dispersed over several countries will be eligible for overlapping benefits.

This patent violation of the spirit and letter of the Charter is simply exacerbated when, on the grounds that the admission of new countries to the Charter cannot be followed immediately by the conclusion of appropriate agreements, a transitional period (of indeterminate length) is accepted, period in which states are exempt from any obligation to deal with the cases of nationals of new member states who find themselves in the position of claiming family benefits.

It should also be added that the principle of equal treatment is not satisfied by bilateral or multilateral agreements providing for the payment, by the countries of residence of all or part of separated families whose head is resident in another country, of benefits that are the same as those of these countries of residence but

below those of the country where the head of family resides. The negotiators' scope for initiative must be considered to be circumscribed by the Charter.

Besides, the Charter is designed not for governments' convenience but to confer rights on their citizens. States must take full account of any consequences of these conferred rights in their dealings with each other.

Ultimately, States are not allowed by the Charter to thwart non-citizens or non-residents, particularly ones from poorer countries; and this can go as far as to imply a revision of the principles on which their social security system lies– employment/residence or contributory/non-contributory (distinctions which at any event are meaningless in mixed systems financed partly from contributions from income and partly from taxes). The Court of Justice of the European Communities and the European Court of Human Rights have also penalised the application of such distinctions based purely on expediency, as in the case regarding disabled persons' allowances. The fact that, for the purposes of the Human Rights Convention's provisions on property rights, the ECHR draws a distinction between so-called contributory benefits, which give rise to a body of property rights, and other social rights is a quite different matter.

At all events, the importance of the Charter lies in its multilateral nature, with no reciprocity condition. If this principle is breached, its articles concerned with social protection might just as well be repealed.

Moreover, accepting length of residence conditions over and above the minimum necessary to complete administrative formalities for ordinary run-of-the-mill benefits other than minimum income and pensions, particularly family benefits, means that it is not just nationals of other Charter parties who are being penalised but also nationals who have left the country for a certain period of time and then come back.

For all these reasons, the reversing of the Committee's previous case-law on Article 12§4 regarding the exportability of benefits, and an unjustifiable level of tolerance regarding residence conditions are legal mistakes and a blow to the spirit of the Charter, and to the Charter itself. They also represent:

– an unseemly concern for the interests of governments at the expense of individuals, whose rights under the Charter are being denied by those same persons whose duty it is to ensure they are enforced;

– an outdated and politically counterproductive conception of the relationship between the heart of Europe and its periphery.

Dissenting opinion of Mr Tekin AKILLIOĞLU

Conclusion relating to Article 12§4

I do not agree with the majority for the following reasons:

The majority have just reversed the Committee's case-law for no valid reason, other than to give credence to the notion of the non-exportability of non-contributory rights under social security systems.

The Committee refused to accept the non-exportability principle for more than thirty years, on the grounds that the notion was a political and regional one (relating specifically to the Nordic countries) and as such could not take precedence over the respect of equal treatment, which is one of the pillars of the Charter.

There were two aspects to the Committee's previous case-law under Article 12§4a on child benefits. The first was that any residence condition had to be reasonable. The second was that non-resident children could not be totally excluded from eligibility for the benefit in question.

In other words, the Committee acknowledged that a permanent residence condition for children constituted indirect discrimination, since immigrant workers were those most affected by the difficulties (incidental or intended) of securing family reunion.

Now, according to the new approach adopted by the majority, "imposing an obligation of residence of the child concerned on the territory of the state is compatible with Article 12§4 and its Appendix". However, since they recognise that this is incompatible with the spirit of Article 12§4, the majority seek to make the effect of their decision more acceptable by adding: "states applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle". According to the majority, countries that are unable to take unilateral measures must settle the problem "within a reasonable period of time" by resorting to bilateral or multilateral agreements. In other words, they are encouraging states to reach agreement on matters that fall entirely within their own discretion. The result is that their concern to enforce the principles of equal treatment and non-discrimination is effectively nullified by an inherent contradiction, namely that resorting to international agreements also leaves open the possibility of not concluding an agreement, since this is entirely at the discretion of the states concerned.

Yet the majority are supposed to be aware of those obligations of states that flow directly from the wording of Article 12§4, namely that of ensuring "equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties". Article 12§4, on the one hand, takes into account the movements on the Parties' territories of the persons concerned, and, on the other hand, applies to all rights, with no distinction between ones that are and ones that are not exportable, since it requires equal treatment between countries' nationals and those of other parties.

This equal treatment requirement means that where there is no agreement between parties, each country concerned must take unilateral measures to prevent any

indirect discrimination under the guise of equality. This has been the Committee's approach until now.

It has now been overturned by the majority, with their emphasis on bilateral and multilateral agreements. States that fail to take steps to eliminate indirect discrimination (for they are not obliged to do so) may conclude an agreement! This implies that:

– Article 12§4 leaves it entirely to states' discretion to choose between unilateral measures and international agreements,

– international agreements are preferable, since they are subject to reciprocity.

According to the majority, states cannot be required to pay child allowances to nationals of states party when there is no corresponding entitlement. This is incompatible with the principle that equal treatment cannot be made subject to exceptions or reciprocity conditions.

Finally, this reversal of its case-law is hardly consistent with the seriousness of purpose expected of the European Committee of Social Rights. The Committee's original case-law has been much appreciated by various international forums, including the European Parliament, which has lent its weight to precisely the principle the majority has destroyed: "[the European Parliament] deplores the fact that a large number of Member States (Austria, Belgium, Germany, Luxembourg, Ireland, Spain and Greece) refuse to pay family allowances in cases where dependent children of migrant workers do not live on their territory or have a minimum period of residence or employment requirement which places non-nationals at a disadvantage"[16].

Finally, I should add that the majority have failed to take account of judgments of the major European courts, which have reached the same conclusion as our now defunct case-law. To quote just a few: Sürül v. Germany and Eila Päivikki Maaheimo v. Finland of the Court of Justice of the European Communities and Gaygusuz v. Austria and Koua Poirrez v. France of the European Court of Human Rights, all of which give absolute precedence to equal treatment.

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[16] PR\498934EN.doc PE 329.88 Draft report on the situation as regards fundamental rights in the European Union (2002) (2002/2013(INI)) Part I, 4 June 2003, European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Rapporteur: Fodé Sylla PE 329.881 2/20 PR\498934FR.doc. PR\498934FR.doc 3/20 PE 329.881.