

**IHMISOIKEUSLIITTO RY - FINNISH LEAGUE FOR HUMAN RIGHTS**

**FÖRBUNDET FÖR MÄNSKLIGA RÄTTIGHETER RF**

**COMMENTS AND ADDITIONAL INFORMATION TO THE FOURTH PERIODIC REPORT BY THE FINNISH GOVERNMENT ON THE IMPLEMENTATION OF THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Submitted by the FINNISH LEAGUE FOR HUMAN RIGHTS**

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**The Finnish League for Human Rights is a member organisation of the FIDH**

## Introduction

Finland submitted its 4<sup>th</sup> periodic report, which is an up-date report, to the Committee on Economic, Social and Cultural Rights in June 1999. In the spirit of constructive dialogue, the Finnish League for Human Rights<sup>[1]</sup> cordially requests the Committee on Economic, Social and Cultural Rights, when considering the 4<sup>th</sup> periodic report by Finland, to take into account the comments and additional information expressed in this report.

## General

The fundamental rights reform of the Finnish Constitution in 1995 took place during a period of economic recession. Thus the list of ESC-rights was smaller than in the original proposal of the Fundamental Rights Commission. In the constitutional reform of 2000, the fundamental rights were incorporated into the new constitution unaltered.

In its first years, article 15a of the Constitution (now article 19) concerning social rights has been the article most often interpreted by the Parliamentary Committee for Constitutional Law, which gives opinions on the constitutionality of government bills as part of the legislative process. Interpretation has been necessary when the Government has introduced new bills to lower the standards of protection. The central problem has been the determination of the level of protection provided for in the said article.

The Finnish League for Human Rights wishes to express to the Government of Finland its appreciation of the constitutional reform. We also welcome a new practice started by foreign minister Tarja Halonen in 1998 of presenting a periodic report on human rights and foreign policy to the Parliament's Foreign Affairs Committee (the foreign minister hears from NGOs during the drafting).

The Finnish League for Human Rights, however, wishes to express its deep concern about the Government's failure to tackle serious and longstanding problems in implementing the Covenant. During the economic recession of the early '90s, the Government could conveniently justify budgetary cuts in social expenditure with reference to the general economic situation. For the recent years the Finnish economy has flourished, yet the Government is applying a very stringent budget policy and this in turn affects the full implementation of the provisions of the Covenant.

## Concluding observations and the Government's actions

In its concluding observations of 05/12/96 the Committee pointed out the principal matters of concern.

In paragraph 10, the Committee expressed its concern that lawyers and judges may not be sufficiently aware of the rights in the Covenant. Four times a year the Ministry of Justice organizes a training course on human rights issues for judges and public prosecutors. These courses are held in Helsinki and it is left up to each court and prosecutors office to decide if they want to participate at all in this training. Furthermore they have to pay for the training out of their own budgets. Therefore the training only reaches those courts whose administrative executive values the human rights issues sufficiently to pay for someone to participate in the training. Sadly this means that many judges and prosecutors never receive the training.

In paragraph 11, the Committee expressed its concern about women encountering more obstacles than men in advancing to higher professional positions. There has been some improvement here, but the measures taken have still not been sufficient. Problems concerning this issue are dealt with in more detail in Article 3 of this report.

In paragraph 12, the Committee expressed its concern about the high unemployment level. Unfortunately the situation for immigrants and refugees is hardly any better now. Also the problem of long term unemployed is unsolved, and is becoming more difficult to tackle by the day as the mental and physical capabilities of the long term unemployed deteriorate.

Paragraph 13 concerns the minimum wage not being guaranteed by law. Unfortunately the situation is unaltered. Currently, a Government Bill for a new Employment Contract Act is pending in Parliament. The Government proposes to continue the present regime of not establishing the minimum wage by law but by collective agreements which leave certain segments of the work force without protection. The Government seeks to justify this omission by referring to the fact that Finland has not accepted the provision on minimum wage in the European Social Charter. However, it is left unnoticed that also the CESCR requires protection in the form of a minimum wage and Finland has made no reservation.

The questions in paragraph 14 concerning the Sickness Insurance Act and the National Pension Act are discussed

in detail in this report under Article 11. There are some alarming problems in this area.

In paragraph 16 the Committee regrets the lack of official statistical data and other information with regard to problems such as domestic violence, child abuse etc. Regarding the problem of violence against women, positive measures have been taken. In 1998, a survey of male violence against women in Finland, and in the year 2000 a study of the cost of this violence were published.

## Article 1

As indicated in the government report, the Ministry of Justice is setting up a commission to “discuss” the proposals concerning Sami affairs made by the Ministry’s reporting official. The Sami Parliament has criticized both the composition and the terms of reference of the planned commission. The view of the Sami Parliament is that the Sami would not be adequately represented on the commission. The ministry has planned for the commission to discuss the “possibilities” and **not the rights** of the Sami. The objective of the commission is thus not the protection of the land, water, or traditional rights of the Sami. The Sami Parliament has announced that it will not take part in the commission. The view of the Finnish League for Human Rights is that the work of the commission is unlikely to lead to any concrete results.

## Article 2

The Act on Services for the Disabled (vammaispalvelulaki) specifies the level of services to be provided for the disabled. One of the objectives of the Act is to promote equality and equal enjoyment of the fundamental rights of the disabled compared with the rest of the population. The level of services sank during the economic depression, and the minimum level stipulated in the act is still more often than not also regarded as the maximum level.

According to a Finnish NGO specializing in issues concerning the disabled (Kynnys) services are still being refused by municipalities under the excuse of lack of funds. However, municipalities have a responsibility to assess the need for certain services, and to allocate the necessary funds. Case law attests that a certain municipality refused services pleading lack of funds even after the case was decided against the municipality in an administrative court. In this case the county government pointed out that there was a breach of the Constitution. The Parliamentary Ombudsman has drawn attention to the practice of municipalities on several occasions.

The municipalities are also limiting the right of the disabled to choose where they wish to live. By refusing supporting services for living at home the municipalities force disabled persons to move into institutions. A growing problem is that disabled people have been refused the possibility to change their place of residence from one municipality to another. Also persons whose actual place of residence has been different than the registered place have been refused services in the place of residence even though they have been living there for tens of years.

Some rights to services are guaranteed by law as subjective rights. In 1997 the Deputy Parliamentary Ombudsman stated that certain municipalities had placed illegal limitations on these rights.<sup>[2]</sup> Still, this continues to be a problem.

## Article 2.2

In Question 8, the Committee asks the government whether its “efforts to combat all manifestations of xenophobia, and of racism and discrimination against the Roma and the Sámi have yielded real results.” In its written answers the Government of Finland refers to the latest examination of its state report by the CERD Committee, and asserts that the recommendations of the said Committee have “been brought to the attention of the competent authorities”, in addition to which the Government of Finland lists a number of publications concerning the Roma. In effect, the government fails to respond to the question itself – for obvious reasons. The government also reveals its lack of ambition in another instance. The wording of the written answers specifically states that the “purpose of various measures ... has been to achieve a situation where no population group would *feel*<sup>[3]</sup> discrimination” - as if racism and discrimination would be something that the minorities only *feel* and not really experience in their daily lives.

The reluctance of the government to answer the question is due to the fact that the situation in Finland, as regards the prevalence of racist attitudes and incidents as well as discrimination or the general socioeconomic situation of minorities has not improved to any extent in recent years. There has been no decrease in the level of *racist* attitudes among the majority population, although a small improvement in the area of *willingness to receive* immigrants can be observed.<sup>[4]</sup>

Correspondingly, the number of racist incidents shows no significant decrease, and the League is convinced that the number of racist incidents involving the Roma as well as other visible minorities will rise considerably this year: this can be established from the reports received by the League from various minority and immigrant sources.

The socioeconomic situation of minorities and immigrants is also deplorable. According to a recent survey, three out of four immigrants felt that professional capacities and skills acquired abroad were not appreciated by employers. When asked to provide reasons for the poor situation of ethnic minorities in the labour market, 63% of *employment agency workers* mentioned prejudice as the single most important factor for non-recruitment. According to the same study, 20% of immigrants and 50% of *Roma* reported unequal treatment by employers.<sup>[5]</sup> Another survey<sup>[6]</sup> found that one in two immigrant origin job seekers had experienced discrimination due to their origin in access to work. In the view of the Finnish League for Human Rights, the discrepancy between the unemployment rate among immigrants and minorities compared with the majority population<sup>[7]</sup> is clearly to a great extent a direct result of the existence of prejudice and outright ethnic discrimination, which are complemented by ethnocentrism, which in turn is reflected in underappreciation of professional skills acquired abroad.

The reply to the question 8, to which the government of Finland failed to provide an answer, is thus that the various measures *have not* been successful in producing real results.

#### Question 10

The Finnish League for Human Rights wishes to forward to the Committee the results of the latest Eurobarometer 53 opinion poll.<sup>[8]</sup> According to this, altogether 11% of all Finns (over 15 years old) found "the presence of people of another race" to be disturbing. While 11% might seem to be a marginal group, this is not the case, rather this is a highly racist population segment comprising a total of 458 000 people. This is a considerable section of the society, and the League is afraid that it may already be too late to take concrete measures to prevent these racist sentiments being turned into political support for xenophobic far-right movements, which in turn would serve to legitimate discriminatory practices.

#### Article 3

The quota system has been effective in promoting gender equality in state agencies and institutions.<sup>[9]</sup> But there are still many problems left. Only 42 per cent of state level working groups meet the quota obligation and in 12 per cent of working groups there are no women. The situation is worrying because the various administrative sectors set up considerably more working groups than commissions. Also the composition of the jointly appointed co-operation bodies in municipalities do not always meet the quota obligation. Another problem is that the quota provision does not cover all institutions even when they are public.

If a state agency or institution, a company managed by the state, or a municipality has an administrative board or some other executive body consisting of elected or appointed representatives, the organ should comprise an equitable (at least 40 per cent) proportion of women and men unless there are special reasons to the contrary. Still, the female participation in the executive and administrative bodies of state-owned companies is very low. Only in three companies does the composition of the executive body comply with the quota provision. The proportion of women in the executive bodies is only 24 per cent.

In the view of the equality ombudsman vertical segregation is the main reason for the pay gap between women and men in the public sector. According to a recent study on the balanced participation of women and men in decision making in the EU countries, Finnish women hold only 6 per cent of the second highest posts within the government administration. This is the lowest figure in the EU. There seems to be a contrast between the high level of political power achieved by women politicians in Finland and the impenetrable "glass ceiling" in the public sector. The proportion of women in the highest positions in ministries is still less than 20 per cent.

According to a recent study the unemployment figures for young women are still closer to those of the depression years than of the preceding period of high employment. In 1999 men entered permanent employment more often than women (the figures for periodic employment for men and women are 48 per cent and 60 per cent). Unemployment among single mothers is twice as high as for other mothers.

The Equality Act states that if an employer regularly employs a staff of at least 30, the employer has to draft an equality plan. The provision does not, however, define the content, form or minimum standards for the content of the plan. Nor are there any sanctions on employers who fail to draft a plan.

Violence against women is a severe problem in Finland. A third of Finnish women have been victims of physical violence perpetrated by men. Annually, 90,000 women experience physical violence in their relationships. Only one out of ten women reports the most severe cases of assault and battery to the police. Violence against women is also a very expensive problem for society. According to the latest research, violence against women was

responsible for approximately FIM 300 million (USD 43 million) in direct costs to society in 1998, while the estimated indirect costs ranged from FIM 360 to 660 million (USD 52 to 95 million). In reality the figures are even higher since these estimates are very cautious.<sup>[10]</sup>

## **Article 9**

According to a recent study<sup>[11]</sup>, almost half of pre-school children were cared for at home. Of the parents of small children 28 per cent of the mothers were on parental or care leave, while only one per cent of the fathers were. The Finnish pension system does not take child care periods into account for employment pension unless the parent was already employed at the beginning of the care period. Furthermore the care period has to be less than one year, and the parent has to return to work for the same employer. For those with an employment contract of definite duration, which is periodically renewed, and for those who have chosen to have children before entering working life, no employment pension periods accrue from the periods of child care. This means that women especially are left with reduced employment pensions. The Ministry of Social Affairs and Health is not currently preparing any proposals or bills to tackle this problem.

As indicated in the previous report, from 1996 onwards persons with no income were no longer entitled to a minimum sickness allowance. During the preparation of the bill the Parliamentary Committee for Constitutional Law pointed out that this would create groups who would fall between different benefits. Thus some groups were included in the benefit system, but, for instance, mothers (and fathers) engaged in the home were excluded. They are only allowed a means-tested sickness allowance after a 60-day waiting period. This is a departure from the Nordic system of guaranteeing fundamental rights to all individuals. The amendment especially affects persons with a low or no income who are subject to prolonged periods of sickness. Those in question are mostly under 30 years of age and many suffer from mental illnesses. The majority of them are unmarried men.

An amendment of the National Pensions Act made the situation of in-between groups especially difficult when waiting for disability pensions. The waiting period is 300 days, and was originally meant to be covered by the sickness allowance. The Parliamentary Committee for Constitutional Law stated that the amendment affects the fundamental right to social security because of the prolonged waiting period, during which the person is not entitled to the benefit that is supposed to cover the risk of sickness.

All Finnish persons are entitled to a means-tested last resort social assistance (living allowance).

## **Article 10**

Protection for the family is only granted to those families that are considered to be families by the legal system. This means that those families that do not fall under the definition of a single-parent or two-parent (heterosexual couple) family, are left without protection. The non-biological parent in families where the parents are of the same sex is not allowed to adopt the child. Thus the state refuses the rights of children to one of their parents.

In these cases the children cannot inherit from their non-biological parent. A will can be made, but a triple tax has to be paid compared to inheritances from the biological parent. Also, the non-biological parent has no legal obligation to provide for the subsistence of the children. The situation is especially problematic in the case of death of the biological parent. The children are left without a legal parent and their relationship with their non-biological parent is not protected.

## **Article 11**

Since rent control ceased in 1995 the position of tenants has weakened substantially. Tenants should be protected from unreasonable rents, but this protection is extremely difficult to enforce. In suits brought against lessors the courts have been reluctant to take a stand on what is an "unreasonable" amount of rent. Unreasonable profiteering is extremely hard to prove, and the Central Association of Tenants does not know of a single successful case. Since the tenant usually has no other option than to seek cheaper accommodation, the Union fears that towns will be divided into neighbourhoods for the well-off and others for the poor. The view of the Finnish League for Human Rights is that this has already happened in many towns.

The proportion of young people (18 to 24 years of age) who are homeless is larger than the proportion they represent of the population (16 per cent compared to 9 per cent respectively). The high proportion of mentally ill people among the homeless in general is alarming. Mental illness can lead to homelessness when the tenant is no longer capable of paying the rent regularly or of taking care of an apartment appropriately. According to one estimate, about 20 to 30 per cent of the occupants of a shelter for the homeless in Helsinki are mentally ill.

According to a health survey of 100 homeless persons, 98 per cent were substance abusers (45% alcoholics, 16% drugs abusers, 37% mixed users). 39% per cent had mental health problems, 9% were HIV-infected and 38% were infected with hepatitis-C.

In ten years, the capacity for treatment in mental care institutions has decreased from 20 000 patients to under 6000. Patients released from mental care institutions are mainly placed in open care. The quality of open care varies from municipality to municipality and far too often patients are left without sufficient support. Another problem is the high price of new and advanced drugs. Many patients cannot afford, and the state does not reimburse them for, these new drugs, which have less side effects than the older ones. Many psychiatrists are worried that patients in open care avoid taking the older drugs with many side effects, and are thus actually left without proper treatment.

Homelessness among the mentally ill is concentrated in the larger cities. In addition to mental illness and substance abuse, domestic violence is another reasons for homelessness among women. The lack of reasonably priced rental apartments in the Helsinki metropolitan area is a major problem for the homeless, as well as for many other people seeking to move to Helsinki.

## Article 12

Health care issues have been the subject of intense discussion over the last few years. There seems to be a conflict between municipal self-government and the responsibility of municipalities to provide adequate services. This has resulted in insufficient services and inequality depending on the place of residence. For example, certain municipalities are currently postponing medical care due to lack of funds. As the Constitution states that municipalities have to provide adequate services, the current practice can be perceived as a violation of the law. Complaints have been submitted to the Parliamentary Ombudsman that municipalities in southern Finland continue to allocate too little funds for health care. Specially affected groups are persons in need of mental health care (see previous paragraph), children, the disabled (see paragraph on article 2) and the aged.

The aging of the population calls for special attention to the health care of the aged. The situation of the aged especially in institutions varies greatly depending on their place of residence. The main problem seems to be the lack of personnel in health care and also the lack of specialized education in geriatrics and gerontology. The aged in institutions are given excessive doses and too many drugs, e.g. psycho-pharmaceutical drugs, as a matter of routine.<sup>[12]</sup> As there are not enough personnel for even basic care work, rehabilitation often cannot be provided.

## Article 13

The student allowance is about FIM 1300 (USD 185) per month (compare with the last-resort living allowance of FIM 2000, USD 285, per month). This means that most students work to support themselves. The situation of unemployed students is problematic since students are not entitled to unemployment benefits unless they pledge not to study at all for at least a one year period. If a person has been regarded as having worked full-time at the beginning of the unemployment period, he or she is entitled to unemployment benefits. Thus people in similar situations are treated unequally. This is seen as discouraging unemployed students from studying.

[1] The Finnish League for Human Rights is a national independent human rights organization based in Helsinki. It is a general human rights NGO, with an interest in promoting all human rights for everyone. Lately it has focused strongly on such issues as racism and ethnic discrimination in Finland, the rights of indigenous peoples - the Sami in particular - and human rights and election observation in new democracies, along with more general human rights issues. The Finnish League for Human Rights is affiliated to the FIDH.

[2] Decision number 290/4/95, 31.12.1997.

[3] Emphasis added.

[4] Magdalena Jaakkola: Maahanmuutto ja etniset asenteet. Työpoliittinen tutkimus 213, työministeriö 1999, Helsinki. [Immigration and Ethnic Attitudes. Studies in Labour Policy 213, Ministry of Labour, 1999, Helsinki]

[5] Timo Jaakkola: Maahanmuuttajat ja etniset vähemmistöt työhönotossa ja työelämässä [Immigrants and Ethnic Minorities – Access to Work and Work Conditions] Työministeriö 218, 2000 [Ministry of Labour Publication No 218, 2000]

[6] Inga Jasinskaja-Lahti and Karmela Liebkind: Maahanmuuttajien sopeutuminen pääkaupunkiseudulla. Helsingin

kaupungin tietokeskuksen tutkimuksia, 1997:9 [The Integration of Immigrants in the Greater Helsinki Region. City of Helsinki Urban Facts, 1997:9]

[7] The latest available figures regarding the unemployment rate for immigrants are from 1998 (Ministry of Labour), and show that the unemployment level is 2.5 times higher (39% for immigrants and 15% for Finns) among immigrants than among Finns. There is no reason to suggest that the situation among the Roma is better than that of the immigrants in this respect.

[8] Eurobarometer 53. European Commission, 2000. Available on the Internet: [www.europa.eu.int/comm/dg10/epo/](http://www.europa.eu.int/comm/dg10/epo/)

[9] Information in this section is primarily based on the information obtained from the Equality Ombudsman.

[10] Väkivallan hinta ("The Price of Violence", in Finnish) published by the Ministry of Social Affairs and Health, Helsinki 2000.

[11] Pentti Takala, Lastenhoito ja sen julkinen tuki ("Childcare and Public Support for it", summary in English), published by the Social Insurance Institution in Finland and the National Research and Development Center for Welfare and Health, Helsinki 2000.

[12] Research by Akseli Kivioja, University of Kuopio, abstract in English.