

Ihmisoikeusliitto – Finnish League for Human Rights

Submission to the Committee on the Elimination of Racial Discrimination

Implementation of the Convention on the Elimination of All Forms of Racial Discrimination in Finland

31.3.2017

The Finnish League for Human Rights (hereafter FLHR) is a Finnish human rights organisation and a member of International Federation for Human Rights (FIDH). FLHR focuses on human rights situation in Finland. FLHR thanks for the opportunity to provide its views to the Committee on the Elimination of Racial Discrimination concerning the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in Finland. In this submission, the FLHR comments upon the themes listed by the Committee in its document dated 27 February 2017 and raises other issues for discussion when considering Finland's report.

1. Legal, institutional and public policy framework for combating racial discrimination (arts. 2-7)

4. The nature, effectiveness and impact of specific activities to raise public awareness on racist hate speech (CERD/C/FIN/CO/20-22, para. 10; CERD/C/FIN/23, paras. 97, 99 and 104).

During the previous review, the government of Finland received many recommendations concerning racism and xenophobia. The government has launched several projects to prevent hate crimes and tackle racism. While such projects may be innovative,

short-term projects are not an adequate response to a concerning situation. Racism and islamophobia need to be recognised and tackled with a long-term commitment and systematic response at different levels of the governance, including at municipal level. The political commitment to do so should be explicitly shown at the highest political level.

The FLHR, the Non-Discrimination Ombudsman and the National Board for Ethnic Relations organised an event in November 2015 where all parliamentary groups renewed their commitment to the Charter of European Parties for a Non-Racist Society, which most of them had signed also in 2003 and 2008. Yet, members of the parliamentary parties continue to make openly discriminatory comments e.g. in social media or in public appearances, or downplay the existence of racism. The government must follow the Recommendations of the European Commission against Racism and Intolerance (ECRI) and do more to tackle racism within political parties and to condemn racist and xenophobic speech by public figures.

5. The effectiveness of Criminal Code amendment 511/2011 in detecting and combating racist hate speech (number of charges brought forward and number of alleged perpetrators prosecuted etc.) (CERD/C/FIN/CO/20-22, para. 10; CERD/C/FIN/23, para. 97).

6. The effectiveness of the training provided to police officers and members of the judicial administration concerning hate crimes, intolerance and racism (CERD/C/FIN/23, paras. 230-234).

According to most recent reports, hate crimes have increased. In 2015 the amount of suspected hate crimes that were reported to the police rose by 52% to 1 250 cases. According to Police University Academy the number year before (2014) was 822. Racially motivated crimes rose by 46% while other hate crimes by 79.9% versus 2014.¹

While the increase may positively reflect increased recognition of hate motive in criminal procedures, previous studies show that victims of hate crimes sometimes refrain

¹ Police University College of Finland, Report on Hate Crimes, 10/2016. Tero Tihveräinen. Tampere 2016.

from referring to the crimes committed against them as hate crimes because of negative previous experiences within the justice system or for lack of information; the police also appears to not always be capable of recognising hate motives behind the crime². Thus, hate motives seem not be duly taken into consideration at all phases of the criminal procedure. Law enforcement authorities and the judiciary should be trained in order to be able to develop a systematic approach to hate crimes. According to a recent shadow report by the NGO European Network Against Racism hate crimes are underreported in Finland, like in many countries in Europe.

The Finnish penal code does not recognize the term “hate crime”. Instead in section 5 in Finnish criminal code gives grounds for increasing punishment if the crime’s motive is based on race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds. Whether the current legislation is adequate to tackle hate crimes, should be carefully assessed.

We welcome the recent initiative of the Finnish Police to organise training in collaboration with the Organisation for Security and Cooperation in Europe (OSCE) on hate crimes. However, training on hate crimes without a broader understanding of human rights is too narrow. Students of the Police Academy already have human rights components in their curricula, but more senior police officers do not necessarily receive any complementary training on human rights as such training is voluntary.

We also welcome the fact that the Government in 2016 allocated 15 million euros to tackle hate speech and hate crimes. It has established in 2017 a special unit within the Police to combat hate crimes. However, the Government should from early on think of the sustainability of the Unit’s action, as the allocated resources appear planned for a short time frame. This work needs sustained actions and resources with a long-term vision.

² Aaltonen, M; Heino, P; Villa, S. 2013: "Riitelemine on pienelle ihmiselle raskasta" - Selvitys syrjinnän uhrien oikeusturvakeinojen saavutettavuudesta ja vaikuttavuudesta. Sisäministeriön julkaisu 13/2013 (With abstract in English).

Recommendations:

- Ensure that law enforcement officials at all levels receive systematic and mandatory training on human rights, including anti-discrimination and hate crimes; specific training should be provided so as to ensure the development of specialised units with expertise on human rights, anti-discrimination and hate crimes within the Police and other law enforcement bodies;.
- The government must ensure that hate crime and speech are adequately and promptly investigated and prosecuted; racist and xenophobic discourse should be addressed by the authorities. The Government should also review existing legislation concerning hate crimes and quickly consider necessary amendments.

Other legal and institutional issues

FLHR welcomes the adoption of the new, broader Non-Discrimination Act in 2015. However, it is problematic that the Non-Discrimination Ombudsman's supervision mandate excludes discrimination in employment. The National Non-Discrimination and Equality Tribunal can examine cases of discrimination in employment but only regarding gender-based discrimination and discrimination based on sexual orientation and gender identity. The current legislative and policy framework makes it difficult to recognise multiple discrimination. For an individual experiencing discrimination, the asymmetric mandates of the Ombudsman and the Tribunal may be confusing and hinder access to justice.

Recommendation:

- Expand and harmonise the mandates of the Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal so as to include discrimination in employment, and on all grounds.

2. Situation of the Sami (arts. 2-7)

7. Any efforts to revise the Sami Parliament Act (since the cancellation of bill 167/2014 in March 2015) and to incorporate into domestic law the Nordic Sami Convention that was signed on 13 January 2017 (CERD/C/FIN/CO/20-22, paras. 11-12; CERD/C/FIN/23, para. 140).

8. Legislative measures to protect the rights of the Sami people in their traditional lands and to resume consideration of the proposal to ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (CERD/C/FIN/CO/20-22, para. 13; CERD/C/FIN/23, paras. 256-259).

9. Measures to protect the traditional Sami livelihood activities of fishing and reindeer husbandry (CERD/C/FIN/CO/20-22, para. 13).

Since the previous report, the policies of the government of Finland regarding the Sami people have moved in a problematic direction. Ratifying the ILO Convention 169 failed under the previous Government, and the current government did not include ratification in its Strategic Program. In other legislation, notably the new (March 2016) Finnish Forest and Park Enterprise Act, the provisions on protecting the rights of the Sami people were removed. In contrast with what is provided for in the Mining Act, under the Forest and Park Enterprise Act the Sami Parliament and the Skolt Sami Village Council do not have an independent right of appeal concerning permits granted on ground that the proposed activities undermine the rights of the Sami as an indigenous people. More recently Finnish and Norwegian governments signed a treaty on fishing in Teno (Deatnu) river in September 2016. The Sami Parliament in Finland was consulted only after the treaty was signed. In March 2017, a week after the Parlia-

ment had ratified the agreement, the Chancellor of Justice gave its ruling on the negotiations criticising the Ministry of Agriculture and Forestry for neglecting its obligation to consult the Sami Parliament in due time. In both legislative developments and in processes leading to decisions on projects that affect the Sami, authorities have not followed the principles enshrined in Article 19 of the Declaration on the Rights of Indigenous Peoples to seek free, prior and informed consent.

Recommendations:

- The Government should proceed with the ratification of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
- Authorities must ensure free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect the Sami; Sami people must be consulted throughout the process leading to adoption of legislation or other decisions that might affect them.

10. The nature of and progress made in implementing the specific measures set out in the action plan for the revival of Sami languages, and measures taken to train additional Sami language teachers (CERD/C/FIN/CO/20-22, para. 14; CERD/C/FIN/23, paras. 163-164 and 170).

11. Measures taken, through the SaKaste or other projects at the national or municipal level, to provide adequate health and social care services in Sami languages (CERD/C/FIN/CO/20-22, para. 14; CERD/C/FIN/23, paras. 180-183).

Access to services in Sami languages remains limited. Even though Sami language day care and primary and secondary education opportunities are in place in the Sami Homeland (municipalities of Enontekiö, Inari and Utsjoki and northern parts of Sodankylä), most Sami children live outside the Homeland where day care and educational opportunities in Sami languages remain scarce. Even in the Sami Homeland mental health services and elderly care are not sufficiently available.

3. Situation of the Roma and other ethnic minorities (arts. 2-7)

12. Specific measures and their effectiveness in enhancing employment, education and housing opportunities for ethnic minorities, including the Roma, and to promote the teaching of the Romani language (CERD/C/FIN/CO/20-22, para. 15; CERD/C/FIN/23, paras. 48-49, 69-70, 89-92 and 94).

13. Concrete results of the first integration programme (2012-2015) under the Promotion of Integration Act and of the action plan on integration adopted on 27 November 2015 (CERD/C/FIN/CO/20-22, para. 16; CERD/C/FIN/23, paras. 52-56).

14. Any new efforts to reduce bullying of children belonging to ethnic minorities in school, in the light of information indicating that the incidence of bullying has not decreased (CERD/C/FIN/CO/20-22, para. 17; CERD/C/FIN/23, paras. 225-229).

In a recent survey nearly 70% of Roma respondents reported that they have experienced discrimination in some area of life during the last year. In the same survey 40% of respondents stated that in the last five years they or their family have been negatively affected by customs belonging to the Roma culture.³ We welcome the decision of the Government to establish a Second National Plan for Roma minority and call for

³ Ombudsman for Minorities 2014: Being Different in Everyday Life – Survey on Roma’s Experiences of Discrimination (Summary). Available at: <https://www.syrjinta.fi/vahjulkaisut>

a plan based on universal human rights. The plan should include measures to combat discrimination within the Roma community in addition to addressing discrimination experienced by the Roma.

Recommendation:

- Adopt a Second National Plan for Roma minority with focus on human rights.

4. Situation of non-citizens, including immigrants, migrant workers, asylum seekers and refugees (arts. 5-7)

19. Availability of non-emergency health services to migrants in an irregular situation and to asylum seekers (CERD/C/FIN/23, para. 190).

The amount of undocumented migrants is likely to grow in Finland due to rejected asylum applications and many asylum seekers becoming undocumented migrants.

There is no legislation securing undocumented migrants' access to health care in Finland. The Health Care Act secures access to emergency health services, but the care is not state-subsidised. In practice, undocumented migrants can be charged a fee up to the real costs of the services, and thus many of them do not have real access to health care. Moreover, services of prenatal clinics and treatment of serious chronic illnesses are not regarded as emergency services.

In practice, the need for health care of undocumented migrants is now addressed mostly by Global Clinic, an NGO-based clinic run by volunteers in five cities. Decisions at the local level about providing public health care services for pregnant women and minors have been taken in Helsinki and Turku. Moreover, Helsinki provides emergency services for all undocumented persons with the same fees as to residents.

The Ministry of Social Affairs and Health in 2014 prepared a bill on undocumented migrants' access to health services but the bill did not pass parliamentary scrutiny. The Finnish state does not take responsibility for securing undocumented migrants' right

to health; this is a violation of their fundamental right to have access to the highest possible standard of health as recognised by the Universal Declaration of Human Rights, the International Covenant on Economic, social and cultural rights and the European Social Charter.

5. Other issues

In its concluding observations of August 2003 the Committee welcomed the introduction of a provision punishing participation in organizations which promote or incite racial discrimination. The FLHR also welcomes these legislative developments. However, provisions that currently implement the Article 4(b) of the CERD have not been applied thus far. The first case against a racist organization (the Nordic/Finnish Resistance Movement) is now under consideration in the Pirkanmaa District Court. Current provisions address activities of criminal organizations in general; they are not specifically aimed at organizations that promote and incite racial discrimination. One way to ensure more systematic enforcement of the Article 4(b) would be new legal provisions specifically targeting organizations that promote and incite racial discrimination. Since the issue is connected to other human rights and fundamental freedoms, namely freedom of speech, freedom of assembly and freedom of association, specific provisions could ensure that these rights are not unduly restricted when organizations that promote and incite racial discrimination are prohibited.

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