

Analytical Report on Legislation

RAXEN National Focal Point FINLAND

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1. EXECUTIVE SUMMARY

This study is based on administrative documents, legislation, and existing research and analysis. The aim is to sketch the present and upcoming legislation, find out possible tendencies in immigration and minority issues, and evaluate the position of immigrants and ethnic minorities. It will also presents lobbying campaigns and potential measures that could be used in order to improve the situation of immigrants. In addition, there are some court cases and surveys dealing with legislation described. Lastly, there are conclusions and recommendations.

Immigration and minority issues are quite recent topics in Finland. Compared to other EU countries, the proportion of immigrants to natural born citizens is very low in Finland. At the end of 2002, the number of foreigners living in Finland was 102,000, or approximately 2% of the population.¹ Of these, the largest national groups were Russians, Estonians, Swedes, and Somalis.

As for other ethnic groups, Finland is home to an indigenous population known as the Sami and other traditional minorities, such as the Roma, Tatars, Jews, and a long-established Russian population.

Formally, Finland has clear and copious anti-discrimination legislation, but in practice there are certain problems. For example, over the years there have been only few court cases dealing with discrimination. The monitoring system needs to be developed as it currently covers only a few fields. Finland also lacks a sophisticated statistical or data collection system. Moreover, the general tendency in immigration and minority issues seems to have contradictory characteristics. First, there are efforts to combat discrimination by improving national legislation, such as implementing the Race and Employment Directives. On the other hand, there is a clear attempt to restrict immigration policy – especially concerning the position of asylum-seekers.

The Finnish asylum policy is following Western European trend: over the past few years there have been amendments to the Aliens Act to make it more strict. For example, the controversial accelerated asylum procedure was introduced in 2000. In addition, the draft law for total revision of the Aliens Act seems to be quite control-oriented and follow that trend.

The position of Sami is still questionable as it comes to the land-owning rights. Being an indigenous people afforded particular special rights under international covenants in which Finland has participated, the Sami people have contested the lack of government protection for land rights to their traditional territories and their traditional livelihood.

Strict criticism on Finland's policy towards Sami land issues circulated as early as the 1970's when its own parliamentary committee expressed concern that Finland's current policies do not fully comply with Article 27 of the CCPR. Most recently, Finland's

¹ Please note that this figure covers only those immigrants who have received a residence permit or refugee status. Those who are waiting for a residence permit decision, or whose appeal is pending in court are excluded.

policy has been criticized by multiple groups for its failure to institute the provisions of the International Labor Organization's Convention No. 169.

Although the government has taken action to improve the conditions of Roma, their socio-economic position is still clearly below that of the average population. In addition, Roma face everyday discrimination and exclusion.

There have been some positive legislative reforms as well. An amendment to Penal Code introduces a severing motive for crimes committed for racist or equivalent motives and proposes using this criterion for pronouncing appropriate punishment. The reform will be in force January 1, 2004.

Generally speaking, the most vulnerable immigrant groups are women, children, and asylum-seekers – in particular minors who have come to Finland without a custodian.

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2. DEFINITIONS AND CONCEPTS

Concerning the concept ‘racism,’ this report enlists the definition used in the UN treaty ICERD (International Convention for Eliminating Racial Discrimination). In this report we have also taken a broader view in incorporating the definition of discrimination as mentioned in the ‘Race Directive’ (2000/43/EC). We have also included religious and linguistic aspects in our concept of discrimination.

The phrase ‘good practice’ has been used to mean non-discriminatory, respectful behavior that encourages positive action.

The term ‘Immigrants’ refers to persons who are living in Finland. An immigrant may not have a residence permit (for example, an asylum-seeker or a person appealing to the court after a negative decision). Immigration is a rather recent phenomenon in Finland, and therefore second-generation migrants are almost non-existent.

‘Asylum seeker’ refers to a person who seeks protection in a foreign country because they have been persecuted in their own country for one or more of the following reasons: race, religion, nationality, political opinion, or membership of a particular social group. As party to the Geneva Convention, Finland has undertaken to provide asylum to those needing it. The Finnish Aliens Act embodies the terms of the Geneva Convention. The term ‘asylum seeker’ implies that a person’s application for asylum is still pending.

‘Refugees’ refers to persons who have applied for asylum and have met the above-mentioned criteria. Apart from asylum seekers who have been granted refugee status, Finland also accepts so-called “quota-refugees.” These are persons granted refugee status by the UNHCR, and who are chosen according to a quota set annually by the Finnish government. In 2002, the quota was 750 persons.

If an asylum seeker does not meet the criteria for refugee status, she/he can be granted a residence permit based on the need for protection due to the threat of inhumane treatment on return to her/his home country. In some cases, this permit may grant only temporary protection where there is the threat of armed conflict or an environmental catastrophe. An “ordinary” residence permit can be granted for an asylum seeker for various reasons, including studying, family ties, or other grounds.

The term return migrant, or *paluumuuttaja*, refers to a person of Finnish citizenship or foreign citizenship, but of Finnish ethnic and/or linguistic/cultural identity who returns or enters Finland after having spent a period of time outside the country (or they might have been born outside Finland). Return migrants of Russian citizenship are mainly Ingrian Finns.

Legislation has been understood broadly, not only including laws, but preparatory works such as draft laws, working group reports, and parliamentary committee statements. In court praxis, all these documents are referred to as legally binding.

3. INTRODUCTION

This report, based on the most recent available data and research, explores legislation, court cases and specialised bodies as well as traces good practices and measures aiming to improve the situation of immigrants. This report both builds on the analysis of previous research and utilizes statistical sources and administrative documents.

Furthermore, it contains statistics presented on asylum-seekers, court decisions in criminal cases, and residence permit appeals. Although these statistics were chosen because of their availability, general interest, and overall usefulness, there are some limitations in the use of statistics that will be explained in later chapters.

Academic research dealing with immigration law and discrimination legislation in Finland has been virtually non-existent until recently. Today sound analysis of these topics remains scarce. There is significantly more research focused on employment and racism in the field of political science than on legislation.

More space is given here to present legislation and proposals at the cost of strategies and initiatives and good practices for developing legislation. This liberty has been taken in order to have a comprehensive picture of the current legislative situation. Good practice and strategies for developing legislation are also directly or indirectly mentioned in other parts of the report. Thus the chapter dealing with strategies is shorter than in the EUMC guidelines. This is due to the fact that there are very few examples of good practices and strategies that relate directly and explicitly to legislation.

The main chapters follow each other in the order set out by the EUMC in order to ensure comparability with other countries' analyses. In Chapter One, the theoretical and methodological approach is explained, and Chapter Four presents an insight to the current situation in Finland. In Chapter Five and Six, existing and new legislation, including proposals, are presented. Chapter Seven shows statistical information, and Chapter 8 briefly analyzes hate speech on the Internet. After Chapter Nine's examination of relevant court cases, the current issues of the Roma and the Sami are addressed in Chapters Nine and Ten. Positive action, including lobbying and awareness-campaigns, is presented in Chapter 11. Finally, conclusions are presented in Chapter 12.

4. BACKGROUND ON MINORITY POPULATIONS

Immigration and minority issues are quite recent topics in Finland. Compared to other EU countries, the proportion of immigrants to natural born citizens is very low in Finland. At the end of 2002, the number of foreigners living in Finland was 102,000, or approximately 2% of the population.² Of these, the largest national groups were Russians, Estonians, Swedes, and Somalis.

As for other ethnic groups, Finland is home to an minority population known as the Sami and other traditional minorities, such as the Roma, Tatars, Jews, and a long-established Russian population.

Concerning indigenous people, there are approximately 6,000-7,000 Sami in Finland, two-thirds of which live in the North, in what is known as Sami homeland. Others live in urban areas. Only a minority of the Sami practice their traditional livelihood, reindeer herding and fishing. In Sami homeland, legislation entitles them to use their own language, Sami, with officials. The majority of Sami speak fluent Finnish. Sami people also have the constitutional right to maintain and develop their own culture and language (See Section 17 of the Constitution).

Another long-established minority are the Roma people. The Finnish Roma are members of the Kaale (Cálo) group found widely across Europe and other parts of the world. They originally migrated eastwards in the 17th century when they were ordered by the Swedish Crown to settle in the outskirts of its realm, which is present-day Finland. There are approximately 10,000 Roma and about 3,000 Finnish Roma who emigrated to Sweden in the 1960's and 70's. Today, the Roma maintain their culture, such as wearing traditional dress and other cultural traditions. The Roma live mostly in urban areas, mainly in Southern Finland. Like the Sami, most Roma speak Finnish as their mother tongue.

The Russian-speaking minority, numbering around 31,000 people, consists of "old Russians"³ and newcomers from the former Soviet Union: Russians, Estonians, Ingrian Finns (who can be Estonian or Russian citizens) and people from other Russian-speaking areas (the Baltic, Belarus, etc.). In other words, the Russian and Russian-speaking minority have existed for quite a long time in Finland.

Approximately 20,000 immigrants are of Ingrian Finn origin, or ethnically Finnish, but have previously lived in the former Soviet Union. Ingrian Finns are people whose ancestors moved from Finland to Ingrian Land in the 18th century.

The position of Ingrian Finns is unique because they have been able to obtain a residence permit only on the basis of their ethnic background. However, due to a recent

² Please note that this figure covers only those immigrants who have received a residence permit or refugee status. Those who are waiting for a residence permit decision, or whose appeal is pending in court are excluded.

³ Roughly speaking, the so-called Old Russians have come to Finland in different occasions: the first ones in the beginning of the Russian rule in the early 19th century as officials, priests and salesmen and last ones after the Russian revolution in the 1920's. At highest, there were 33 500 Russian-speaking people in 1922. Many emigrants continued their trip to bigger European cities. For details, please see ETNO 2003, pp. 6-8.

amendment, basic knowledge of the Finnish language is also required in some cases.⁴ Generally speaking, immigrant Ingrian Finns can be divided into three generations. The first generation, which was born before WWII, has a clear culturally Finnish identity. They have lived in Ingrian Land⁵, gone to Finnish-speaking schools, speak Finnish, and for the most part are Lutherans. The second generation was born in different parts of the Soviet Union and has had to hide their Finnish identity during the Soviet era. Their knowledge of Finnish language and culture is limited. The third generation consists of younger people who have been living in Estonia or Russia. They have not had much contact with the Finnish culture or language. Their integration into Finland is similar to “ordinary” Russians and Estonians.

Tatars and Jews have been living in Finland since the 19th century. Generally they are well integrated into society. There are approximately 1,000 Jews and even fewer Tatars.

Similarly as with other Western countries, Somalis have been arriving in Finland since the early nineties. The majority of the first arrivals were granted refugee status, and in the last few years most Somalis have come on the basis of family reunification.

Swedes have comprised part of Finland’s population since Finland became a part of the Swedish Crown in the 14th century. Most recently Swedes have immigrated to Finland because of family ties. Even though Swedes are one of the biggest minority groups, their numbers are relatively low. Generally they are very well integrated into society. In addition, there is a Finnish Swedish-speaking minority. About 6% of the population are Swedish-speaking Finns. Their socio-economic position is better than an average Finn. Swedish-speaking Finns are living mainly on the west coast and Southern Finland.

Ethnically, Finland has tended to be a very homogenous country. Within the past ten years, the growth of the foreign population has been rapid – multiplying to numbers five times greater than what it was in the early nineties.

⁴ This applies to those, who have not lived in Finland, but have Finnish roots, i.e. two grandparents and other parent of Ingrian Finn origin. Please see amendment 218/2003. The amendment comes into force in October 2003.

⁵ Ingrian Land is nowadays a part of Russia, namely St. Petersburg and its surroundings, known as “Leningrad oblast”.

5. OVERVIEW OF CURRENT LEGISLATION

5.1. THE ALIENS' ACT

One of the major issues in immigration law is the Aliens' Act. Originally passed in 1991, it has since been amended 18 times – thus the provisions of the law have not remained consistent. Between 2000 and 2003 there have been a number of revisions to the law, and currently a total revision of the act is ongoing. Due to the many new suggested provisions of the law, this report will focus on the total revision of the Aliens' Act.

5.1.1. Overview on the Current Aliens' Act

As mentioned, the current Aliens' Act dates back to 1991. The law is applied to foreigners (i.e. non-Finnish citizens) when they are entering, staying in, working in, or leaving Finland. The law applies to anyone seeking asylum, applying for a tourist visa, or requesting a work permit. At the moment, the law contains 75 sections. Its main components are discussed below.

The central aspect of the law is the conditions it sets for foreigners to stay in Finland. It states that the first residence permit should be applied for abroad. The applicant remains in his/her home country pending the government's decision and is allowed to come to Finland after receiving the permit. A permit is granted to an applicant once they have already arrived in Finland only in exceptional cases. The duration of the first residence permit is usually one year. In the case of EU citizens, the duration is five years. Citizens of Nordic countries are not required a permit at all.

The decision of whether to grant an applicant a residence permit is made by the local embassy of Finland or the Directorate of Immigration. Only through the Directorate of Immigration's Decisions are the decisions subject to appeal.

Foreigners need to renew their residence permit normally once a year. Either the Directorate of Immigration or the police renew the permit. A permanent residence permit can be given after two years of legal residence, but only for those whose stay is considered as permanent by the government. This excludes students and temporary workers.

For Ingrian Finns, ethnic background entitles them to a residence permit in Finland. This right has been slightly restricted so that certain Ingrian Finn applicants must prove a minimum working knowledge of Finnish.

The Aliens' Act does not cover all situations related to staying in Finland. There are no provisions addressing when a person who originally had official grounds for a residence permit experiences a change of circumstances by the time they must apply for renewal. For example, if a person quits his/her studies and becomes an entrepreneur, there is no provision dealing with his/her situation. A decision in such a situation is based on administrative instructions and leaves the authorities a relatively large margin of discretion.

In seeking asylum, the procedure is very complex, even to a lawyer. There are different categories of asylum decisions, and legal procedures vary according to the categories. The procedure begins when the police or the Directorate of Immigration hold an asylum hearing, and the Directorate of Immigration's decision follows. If the decision is negative, there are five options and one of them is "the normal procedure". In this option, the applicant can stay in Finland during the appeal process. In accelerated asylum procedure there are four options.

First, the Directorate of Immigration has seven days to make a decision if the applicant comes from a so-called "safe" country of origin or asylum. The decision on deportation can be enforced within eight days after notification, out of which at least five must be working days. Second, the so-called "Dublin decision." This means that an applicant has arrived Finland from a country that has signed on to the Dublin Convention. It might take up to one year until the asylum decision is made, but deportation may still be enforced immediately after notification. Third, the same procedure applies to an applicant, who reapplies after a negative decision. Fourth, otherwise manifestly unfounded application. Once again, the Directorate of Immigration might handle the asylum application even for a year, but after the notification an applicant can be deported in eight days.

To summarize the accelerated asylum procedure: only in one category the Directorate of Immigration is obliged to reach a decision in certain time (in 7 days). In two categories the deportation can be enforced immediately. In two categories the deportation can be enforced in eight days, out of which at least five must be working days. In all these categories, an applicant can appeal to the Administrative Court of Helsinki, which can stop the deportation. In the court, the question of deportation can be decided even in one or two days, but handling the asylum matter takes about one year.

Visa applications are not subject to appeal. Usually, the embassies do not provide the reason for their negative decisions. However, in the preparatory work of the law (HE 50/98) is stated that the purpose should be that decisions are openly reasoned.

As mentioned earlier, over the years there have been changes to several amendments dealing with government policy towards Ingrian Finns, the procedure for asylum, effective legal means (the right to appeal), family reunifications and other substantial technical changes. During 2002, there was one substantial and slightly controversial amendment dealing with detention of foreigners.

5.2. DETENTION OF FOREIGNERS AND DETENTION FACILITIES

According to the Aliens' Act, foreigners taken into detention under this law are to be placed in a specific facility and detained separately from criminals or criminal suspects. The grounds for detention consist of instances such as 'unknown identity' and to secure an expulsion order. Until June 2002, detainees were placed in police cells, and even in ordinary state prisons if the detention was prolonged for more than four days – despite the law prohibiting these sorts of facilities for this purpose.

In 2000, the Parliamentary Ombudsman criticized the situation in a letter to the government. As a result, the government set up a working group to prepare the establishing of a specific facility for detention, as well as keeping with the necessary regulations under the law. The working group completed its task in spring 2001 and published a report. The proposal was criticized by several NGOs. After reviewing the statements of the working group and its critics, a government proposal was submitted to Parliament in October 2001. The draft law was clearly an improvement: it was more analytical and reasoned than the previous report. The draft law took human rights into account and provided for efficient means of accessing justice.

The new law came into force in March 2002 with no substantial revisions by Parliament. The largest defect is that only one detention facility is established in Finland. The preparatory work acknowledges the need for several detention facilities, but argues that it would be too large of a financial burden. This means that under certain circumstances, detainees can be held in police cells for short periods.

In July 2002 the government selected a former prison as the temporary site for the new detention facility, the Helsinki County Prison.⁶ A year before this selection the prison had recently been renovated. Before converting the prison into a detention facility, only nominal renovations were made. However, the use of an old prison aroused a certain discontent, especially considering the criticism the institution had received in reports by the Council of Europe. The question was if the conditions for detained foreigners should be considerably more humane than prison conditions.

A new detention facility will be built in Helsinki sometime in the future. Obtaining the new facilities has been prolonged because of the complexity of organizing the project in an administrative bureaucracy. Normally, 20-30 detainees could be placed in the new facility, but under exceptional circumstances the capacity could be extended.

The total revision of the Aliens' Act would contain provisions which are similar to those in the current law concerning the detention and the facilities.

⁶ The press release of the Ministry of Labour can be found on the web at <http://www.mol.fi/migration/nokka.html>

5.3. TOTAL REVISION OF THE ALIENS' ACT

5.3.1. Background

The Ministry of the Interior set up a working group in March 2000 to prepare a completely new law to replace the Aliens' Act. The working group did not have any representatives from NGOs, prompting several NGOs to publish their disapproval in a joint statement in September 2001.

In November 2001, the ministerial group completed its task and gave a 362-page report to the Minister of the Interior, which was reported in the media. Five members of the working group objected to certain sections and wrote their remarks at the end of the document. Typically, working groups complete their tasks without contrary opinions – in such cases where there are differing opinions, usually a maximum of one or two members voice their concerns. Remarkably, the representatives of the Ministry for Foreign Affairs, the Ministry of Labor, and the Helsinki Administrative Court expressed discontent for certain sections of the report. Labour market representatives SAK (the largest trade union in Finland), and TT (the largest employers' association) also criticized the report.

Following this, the report circulated for a wide statement round to interest groups. Several NGOs expressed their discontent with the proposed asylum procedure, which remained largely unchanged. Other issues of discontent included regulations dealing with the best interest of child, family reunification, good administration, and efficient means of justice in general.

The Ministry of the Interior prepared another draft law for a limited statement round after receiving this feedback. The draft law was submitted to the government in December 2002. Elections in March 2003 prevented the previous Parliament from properly processing the draft law, and it was dropped.

Since fall 2002, several NGOs such as The Finnish Red Cross, Helsinki University Students' Association (HYY), Amnesty International – Finnish Section, The Finnish League for Human Rights, Finn Church Aid, Central Union for Child Welfare in Finland and the Refugee Advice Centre formed a "shadow law group" which lobbies intensively to influence MPs, ministers, and the general public. The purpose of the lobbying is to have a more human rights-based approach to the law as will be explained below.

After the new government was established in April 2003, the Ministry of Interior, Mr. Kari Rajamäki, announced that the once dropped draft law would be given to the Parliament in its current state. The government submitted the draft law with a few changes to the Parliament in June 2003, a week before their vacation season. The Parliament begins to process the draft law in September. NGOs replied to this by arranging a press conference and a press release in June 2003. The real effect of the lobbying remains to be seen.

The Content of the Draft Law

While the present law contains less than 80 sections, the draft law is much wider, with more than 200 sections. Many provisions that are currently under administrative

regulations, such as decree and ministerial instructions, are supposed to come under the new law. The draft law also covers new fields and circumstances that the current law does not address.⁷

As an improvement, the draft law allows for the spouse of a Finnish citizen to await their first residence permit decision in Finland. This improvement would not apply to foreigners however. For foreigners, the situation remains the same as in the current law. For example, a foreigner who has a permanent residence permit cannot get his/her foreign spouse here until the residence permit of the latter has been granted abroad and it can take 5-12 months to receive a decision. Another improvement is that the new law calls for the Directorate of Immigration or the police to make all residence permit decisions rather than embassies, whose decisions cannot be appealed.

However, many issues that require improvement have not been reviewed – even after the statement rounds. These include – as mentioned earlier - the asylum procedure, defining the best interest of the child, receiving a permanent residence permit, and access to justice.

The short time periods of the accelerated asylum procedure have been criticized by several NGOs, CERD (Commission for Eliminating Racial Discrimination – an organ of the United Nations)⁸, and even some governmental officials. They point out that in such a short time, applicants may not be able to respond to the negative decision with adequate action to request appeal, such as making an appointment with a lawyer, translators, etc.

The proposed carrier sanctions are also a concern. According to the draft law, heavy sanctions could be imposed on transportation companies carrying people without proper documentation. This diminishes the ability to seek asylum and could easily lead to an increase in illegal trafficking. The conditions of illegal trafficking can be very scarce. This also shifts border control responsibilities from governmental officials to private companies. Documentation verification becomes a responsibility of non-governmental officials.

According to the draft law, new visa procedure provisions would be similar to the current legislation. This means that visa decisions cannot be appealed. Whether such legislation is in accordance with the Constitution is questionable (see Section 21). Although the reasons for negative decisions are to be explained by law, in practice embassies usually refuse to give any grounds for their negative decisions. In this respect, embassies refer to ‘diplomatic custom’, i.e. no need to reveal any grounds. In the past, NGOs have received complaints that indicate that by denying visas, embassies classify some applicants as potential and unwanted asylum-seekers. By doing so, the embassies are acting *de facto* beyond their authority.

There are also regulations dealing with the right to work. The aim is to reduce bureaucracy and speed up the procedures involved. Currently a work permit decision can take several months, and a number of complaints have been made to the Parliamentary

⁷ Generally speaking, the draft law is so wide that only few major issues can be pointed out. The draft preparatory works contain approximately 250 pages, so the details cannot be presented here. Please see the draft law, HE 28/2003.

⁸ For the 63rd CERD session, please see press release at <http://www.pressi.com/fi/release/71231.html>

Ombudsman concerning the procedure time length. While the aim of the draft law is good, the draft law contains provisions that would be counterproductive. For example, one provision states that all employment contracts with foreigners should be registered. The enacting of such a procedure would create more paper work for employers and employees alike, as well as a further complication of bureaucracy.

Among other things, receiving a permanent residence permit would be more difficult. Now it is required that the applicant lives continually for two years before applying the permanent residence permit. In the draft law, the time period is increased to four years instead. In addition, minor offences could postpone the issuance of a permanent residence permit. For example, two traffic fines under certain period would postpone its issue.

5.3.2. Conclusions Concerning the Total Revision

Despite the fact that one of the purposes of a new draft law was greater clarity and consistency, the new law contains over 200 sections. Even for a lawyer, this is quite complex. The same substance could be written in a more logical and shorter way. The goal of simplifying the legislation has not been met.

Its other aim – to take legal and human rights into account – is not fulfilled. There are several provisions that are quite worrying in terms of human rights. However, it is rather difficult to give a thorough analysis of the Aliens' Act, because the Parliament can change any section of the draft law. The law is supposed to come into force May 2004.

5.4. THE LAW ON THE INTEGRATION OF IMMIGRANTS AND RECEPTION OF ASYLUM-SEEKERS

The Law on the Integration of Immigrants and Reception of Asylum-Seekers was passed in 1999. In spring 2002, the government submitted an evaluative report to Parliament.⁹ The government collected its information by sending questionnaires only to municipalities and other officials. Immigrant NGOs were not heard on how the law has been put into practice.

At the local level, municipalities considered the law an improvement because it clarified the responsibilities and duties of each actor involved. On the other hand, there have been difficulties because of the lack of resources allocated for the new tasks required by the law. First, there is a clear shortage of adequate language courses for immigrants and asylum seekers. In addition, people outside the labour force – housewives, students, and pensioners – are ignored in the integration process and the provisions of the law.

Although officials consider the law as improved, adequate, and necessary, generally immigrants have been dissatisfied in regard of the lack of consideration of their position.

⁹ The government submitted an evaluation report to Parliament.

Please see press release on the web at <http://www.mol.fi/tiedotteet/2002051601.html>

The complete report can be found on the web at <http://www.mol.fi/migration/selontekosu.pdf>

Secondly, the structure of the law has been criticized as biased in its measures for compliance. Immigrants may lose a number of social benefits if they do not comply with the law while there are no sanctions imposed on officials who do not comply with their duties.

According to the act, an immigrant who is seeking a job and receiving unemployment benefits has the right and the duty to take part in the designing of his or her individual integration plan (*Kotoutumissuunnitelma*) and training and employment program in cooperation with the municipality and the local public employment service agency.

An individual integration plan lasts three years, starting from the first day of official residence in Finland. In the case of asylum seekers, this three-year period begins after the asylum application decision. This means that asylum seekers have usually lived in Finland from one to two years before integrative measures start to take place. Before this, it is unlikely that they will be able to find employment. Although asylum seekers have a formal right to work, in practice this right is void of any real meaning. Finding employment is virtually impossible without help from the public sector. Refugees and asylum seekers' new lives in Finland often start with a long period of unemployment.

Economic sanctions apply to the integration program applicant. The foreigner receives an integration benefit that is comparable to low-level unemployment benefits. The integration benefit consists of a labour market subsidy and living allowance. If he or she fails to participate in the program, the integration process is seen as interrupted and the benefit is reduced. The grounds for granting the benefit are checked once a year, or when the individual circumstances of the foreigner or his/her family members change. It should be pointed out that the authorities face no sanctions whatsoever if they should fail, for example, to provide proper education or other agreed measures for the foreigner. Some kind of "penalty" or rather incentive would be needed to improve the integration duties of officials.

6. ANTI-DISCRIMINATION LEGISLATION

Current anti-discrimination legislation covers all ethnic and religious grounds. The Constitution lays down fundamental rules on non-discrimination and equality. Section 6 of the Constitution remarks that discrimination shall not be tolerated. Moreover, Section 17 of the Constitution guarantees that the Sami, Roma, and other minorities have the right to develop and maintain their language and culture.

The Constitution sets out a general framework that places an obligation upon Parliament and the authorities not to enact legislation that is discriminatory in nature. Although constitutional provisions can be interpreted in many ways, subsidiary legal norms have to be interpreted in a way that best fulfills the fundamental rights enshrined in the Constitution.

According to the Penal Code (*rikoslaki*, from 1889; amended 21.4.1995/578), incitement towards an ethnic group is prohibited. Chapter 11, Section 8 of the Penal Code reads as follows:

"A person who spreads statements or other notices among the public in which a certain race or national, ethnic or religious group or a comparable group is threatened, slandered or insulted shall be sentenced for agitation against an ethnic group to a fine or to imprisonment for the maximum of two years."

The Penal Code also contains a provision that criminalizes discrimination *inter alia* on the basis of ethnic origin, race, and religion in Chapter 11, Section 9. The provision reads as follows:

"He, who in the practice of a trade, the practice of a profession, in the offer of public services, in the exercise of duties as a civil servant, or in another public duty or in the organization of a public gathering or meeting, without an acceptable reason

- 1) does not serve a person in accordance under generally practicable conditions;
- 2) refuses to allow somebody entry to a gathering or meeting or removes him therefrom;
- 3) places somebody in an unequal or otherwise significantly worse position due to race, national or ethnic origin, skin color, language, gender, age, family relations, sexual orientation or health, or because of religion, political opinion, political or professional activity or some other reason comparable to these, shall be sentenced for discrimination to a fine or imprisonment up to six months, unless the act is punishable as discrimination in the field of employment."

There is also a similar prohibition concerning labor discrimination. Chapter 47, Section 3 reads as follows:

"Employer or his representative, when announcing a vacancy or choosing an employee or during the contract period, places a person without a valid, acceptable reason at a disadvantage, because of

- 1) race, national or ethnic origin, skin color, language, gender, age, family relations, sexual orientation or health,
- 2) religion, political opinion, or professional activity or some other reason comparable to these, shall be sentenced for labour discrimination to a fine or imprisonment up to six months."

6.1. IMPLEMENTATION OF THE RACE AND EMPLOYMENT DIRECTIVES

The implementation of the Race Directive is ongoing. In March 2001, the Ministry of Labour set up a working group mostly consisting of mainly governmental officials with some representatives from two major labour organisations, as well as two NGOs - the Refugee Advice Centre and the Finnish League for Human Rights. The group accomplished its work in the fall 2002, submitting a report for a draft law on Promoting Ethnic Equality. Instead of simply proposing amendments to several existing laws, the group outlined a single law.

Ministries, courts, labour market organizations, NGOs, and other actors responded to the circulation of the draft law. After this stage, labour market organizations continued preparations for the law, combining the Race Directive and the Labour Directive. The purpose of this was to implement both directives at the same time and in the same law.

However, Parliament was not able to handle the draft law before the elections in March 2003 and the draft law was dropped. However, the preparations have continued under the Ministry of Labour under the current government. Finland was not able to implement the Race Directive by July 17, 2003 and the implementation schedule remained open.

The content of the draft law will only deal with civil proceedings, excluding criminal proceedings and class action proceedings. Many of the provisions of the draft law are similar to articles in the directive, such as those that outline the scope and purpose of the law and the definition of discrimination.

The most crucial aspect of the law is the creation of an anti-discrimination board. Its purpose would be to prohibit discriminatory practice and initiate counter actions. To secure compliance with the law, the board impose fines for violations. However, the board would not be invested with the authority to handle compensation claims for a breach of the law. All compensation claims would be addressed to a lower court and handled by ordinary civil court proceedings. Additionally, there is no minimum amount for compensation, which could result in the sanction being very low. Allowing for certain exceptions, the maximum sanction would be €15,000.¹⁰

The decisions of the discrimination board could be appealed through administrative courts. The qualification requirements of board members would be equivalent to those of court judges.

Courts, the Ethnic Minority Ombudsman, and practically any official could request a statement from the board in an individual case (i.e. how to apply the law). In the dropped draft law, it has been proposed that the same right be given to any organization, including NGOs. It is a question of interpretation whether this provision fulfils the minimum criteria of the Article 7 of the directive.

Before resorting to the discrimination board, the Ombudsman can begin reconciliation negotiations between the parties. If an agreement is reached, the board has authority to confirm the agreement.

The law would extend the mandate of the Ombudsman for Ethnic Minorities, which is an important role in monitoring the implementation of the new law. It remains to be seen if resources will be allocated to his office accordingly.

One of the aims of the implementation is that relevant legal definitions (such as ‘harassment’) would be in accordance with the implementation of the Gender Directive. Also, the legislation should be clear enough so that there would be no room for “forum shopping”. In other words, a victim of any kind of discrimination should be aware which law would be applied.

¹⁰ HE 269/2002.

The ‘fine-tuning’ of the draft law actually translated into its deterioration. The original working group had prepared a wider draft law and had proposed more effective legal measures to prevent discrimination and to protect victims.¹¹ Despite this criticism, the new law would be a clear improvement.

6.2. THE EU COUNCIL’S FRAMEWORK DECISION COMBATING RACISM AND XENOPHOBIA

The Constitutional Committee of the Parliament has addressed the EU Council’s framework decision combating racism and xenophobia (PeVL 26/2002). The Government of Finland and the Committee both agree on the importance of combating racism and emphasize the need to further specify the crimes proposed in the framework. Based on the principle of legality, some conceptions in Article 4 of the framework are too broad and loose. Both governmental bodies found that the obligation to criminalize racist action should be applied only to extreme racist behavior. For example, the Committee stated that the obligation to criminalize public disparagement of racist crimes is not precise or in accordance with the principle of relativity. The definition of racism and xenophobia should also be more precise. They also emphasized that the severity of sanctions should be left up to the authority of each EU Member State. All member states have their own legal systems, and sanctions should be evaluated within the national context.

Despite criticism, governmental bodies find legislative action against racism and xenophobia very important. The framework is a useful tool but must be more precise. From the point of view of an NGO, we can agree with the governmental bodies. However, we are concerned that there has not been further public discussion about the framework decision.

6.3. AMENDMENT TO PENAL CODE

The amendment of Penal Code (515/2003) addresses general principles of criminal liability - such as the discharge from liability and principles for measuring punishment. The amendment will come into force January 1, 2004. It introduces a severing motive for crimes committed for racist or equivalent motives and proposes using this criterion for pronouncing appropriate punishment. According to the law’s Chapter 6, Section 5 §:

“a severing motive would be committing a crime against a person, because of belonging to a national, racial, ethnical or equivalent group.”

As the preparatory work points out (HE 44/2002), racist motives are usually connected with organised crime and therefore must be prioritised over adding other negative

¹¹ For example, the original working group proposed a minimum sanction of 3, 000 euros and wider mandate to the discrimination board. Secondly, the original working group proposed that the discrimination board would have been invested with the authority to handle compensation claims for a breach of the law. Otherwise, the proposals were quite similar.

characters and inclinations into the law. Ethnic groups who suffer discrimination require specific protections.

This amendment is a step in the right direction. It rejects forms of racism and clearly expresses racism as condemnable. Such an amendment also improves the reporting of racial violence. Currently, only the following crimes can be monitored: discrimination, work discrimination and incitement to an ethnic group. Since January 1, 2004, different type of racially motivated crimes can be monitored, such as assaults, damage to property, illegal threats and so on.

6.4. NATURALISATION

The new Citizenship Act (359/2003) came into force June 1, 2003. The old law, dating back to 1968 with a few amendments, was completely out of date. The new law permits double citizenship, and persons who have already given up Finnish citizenship are able to reclaim it under certain conditions. The new requirements for naturalisation extend the general period of residence from five years to six. It is also possible to “collect” this requirement in non-consecutive periods of residence instead of living continuously in Finland, the time requirement being seven years rather than six. The latter amendment takes increased mobility into account – such as contemporary working or studying abroad – and is a welcome improvement to the previous policy.

Under the previous law, there had been two major questions in court praxis. The first question dealt with applicants who have been denied citizenship for committing crimes. The Directorate of Immigration applied its own instruction of postponing the naturalisation. In some cases, courts overruled negative decisions, and in other cases appeals were dismissed. The Directorate of Immigration even denied naturalisation in cases where an applicant had one or two minor traffic violations. In those cases especially, the court overruled the negative decision. However, if an applicant committed a more serious crime - such as aggravated assault or several minor crimes over a short period of time - their appeal was usually denied.

The new law requires that the applicant has lived ‘honourably’. In practice, this means that naturalisation can be postponed for a certain period of time depending on the severity of the crime(s), time passed after the crime(s), and other factors. The government will define the precise criteria later by decree. The content of such a decree remains to be seen.

Under the previous law, the second major question dealt with persons whose identification was considered unclear. In almost all cases, appeals have been dismissed because courts have found that proper identification is an absolute pre-requisite for naturalisation. Contradicting information is a valid ground for denial.

Typical examples of these cases are Somalis who have come under certain names and later have given different information, as well as others who used several different names during their time in Finland. There were no provisions that enabled naturalisation in these circumstances. Especially for children, this led to a very unjust situation. They may have been living in Finland for most of their lives, and were completely integrated into society, but because of their parents’ or other relatives’ misleading information, their

identification was called into question. With no means to verify their identities, their citizenship applications were easily dismissed.

The new law contains a provision that states naturalisation is possible if a person has had the same identification continuously for ten years. Although the time period is quite lengthy, it is an improvement.

6.5. LEGISLATION FOR SPECIAL AREAS

Generally, the application of the discrimination section in the penal code (Penal Code Chapter 11, Section 9) is very wide. It covers professional real estate business, health care and education. For these areas, there are no other specific provisions in criminal law. The previously presented labour discrimination section (Penal Code Chapter 47, Section 3) concerns employment. The sections in civil and administrative law prohibit labour discrimination on ethnically related grounds. In the Employment Contracts Act (55/2001), it is stated that the employer shall not exercise any unjustified discrimination against employees or prospective employees on the basis of ethnic origin, language, religion or comparable circumstance (Chapter 2, Section 2). There is also a similar provision in Government Civil Servant Act (Section 11).

6.6. OTHER GOVERNMENTAL ACTIVITIES

Finland submitted its 16th Periodical Report to the United Nations' Committee for the Elimination of Racism and Discrimination (CERD) in October 2001.¹² In spring 2001, the Ministry for Foreign Affairs sent a statement to NGOs, labour market organizations, and governmental and municipal officials requesting comments on the recommendations and conclusions of the CERD. Upon receiving these, the Ministry prepared a draft report and arranged a hearing amongst the interest groups involved. The government has progressively taken its reporting duty to the CERD more seriously, and the quality of reports has been improving. The Finnish League for Human Rights supplements these reports with its own 'shadow report'. The Finland's CERD session was scheduled for August 2003 and will receive the committee's conclusions later.

¹² The report can be found in Finnish at <http://formin.finland.fi/ihmisoikeudet>

7. SPECIALISED BODIES

In Finland, there are several institutions dealing with minority issues. The newest institution, established in September 2001, is the Ombudsman for Ethnic Minorities. Other institutions include the Roma Advisory Board (*Romaniasiaain neuvottelukunta*), the Sami Advisory Board (*Saamelaisiasiain neuvottelukunta*), the Ethnic Relations Advisory Board (ETNO), and the Commission against Racism, Xenophobia, Anti-Semitism, and Intolerance (*Rasismmin vastainen valtuuskunta*). The structure and tasks of each of these institutions varies. Their organs and the governmental action plans are presented briefly below.

The institutions of the Parliamentary Ombudsman and Chancellor of Justice are perhaps the most important and well-known specialised bodies. They act broadly as legal guardians, dealing with individual complaints against public authorities, carrying out independent investigations of their own initiative, and providing input during the preparation process of new legislation. They also monitor the implementation of basic individual rights and liberties, as well as human rights. They also handle complaints dealing with racial discrimination and related intolerance. The Ombudsman and Chancellor of Justice represent a high moral authority.

7.1. THE OMBUDSMAN FOR ETHNIC MINORITIES

The legislative reform that came into force in September 2001 was underpinned by the European Union's 'Race Directive' (2000/43/EC), which requires that member states implement proper measures against racism. There was some discussion concerning the title of the new office. In the Government's bill (HE 39/2001), the suggested title was Discrimination Ombudsman, but finally the bill was approved as the Law on Ombudsman for Ethnic Minorities.

The new office replaces the former Ombudsman for Foreigners. In addition to covering issues pertaining to foreigners, the mandate of the Ombudsman extends to cover indigenous people and other ethnic minorities. Concerning ethnic minorities in Finland, the tasks of the Ombudsman are to foster good relations, to monitor, improve, and report on their status and rights, to take initiatives to eradicate ethnic discrimination, and to inform the public about the legislation and implementation of laws. The Ombudsman's opinion can be considered in the processing of asylum applications and in the extradition cases of foreigners. The Ombudsman also supervises the implementation of equal treatment in collaboration with other authorities. The new Ombudsman, Mr. Mikko Puumalainen, assumed his position on January 1, 2002.

The new Ombudsman's office is a positive development after the several year delaying of its establishment. It was not until the Race Directive increasingly pressured for its creation that the procedures involved were taken seriously. Currently administered by six permanent officials, its resources are still very limited. The Ombudsman has been the most active in promoting ethnic equality.

7.2. THE GOVERNMENT ACTION PLAN TO COMBAT ETHNIC DISCRIMINATION AND RACISM

The government's plenary session on 22 March, 2001 adopted the *Government Action Plan to Combat Ethnic Discrimination and Racism*. The purpose of the government programme is to develop and support measures that promote good ethnic relations and prevent racism and ethnic discrimination in Finnish society. In the programme, the government "stresses the importance of honouring and adhering to international guidelines and conventions on human rights and EU practices when preparing statutes at national level and taking measures at local level. [It] approaches racism and ethnic discrimination with the seriousness these issues warrant, which concerns a continuous national process of development and adaptation respecting the rights and human dignity of each individual".¹³

The action plan focuses on 2001 to March 2003, covering the office's government term. The action plan has been prepared "in a manner enabling the government to implement or launch a considerable proportion of the proposed measures." These apply to immigrants who are new, have resided in Finland for many years, or are second generation. It also extends to established ethnic minorities including the Lapps (the native inhabitants of Finland), the Roma, the Jews, the Tatars, and the long-established Russian population. It is also applicable to expatriated Finns and their families who have returned to Finland. The action plan sets out principles for good administrative procedures, but is not legally binding.

The measures are divided nationally, regionally, and locally. Some of the measures have already been carried out. Pertaining to racial discrimination, the establishment of the Ombudsman is classified as a national measure. At regional level, measures concentrated the prevention of ethnic discrimination and racism in employment. Finnish League for Human Rights is not aware of any reported concrete measures or results from the latter initiative.

The government considers local level measures fundamental because "it is in the municipalities that people meet one another and encounter the various situations of everyday life".¹⁴ The differences between municipalities in Finland are substantial due to their various cultural heritages, economic structures, size, and population composition – understandably, the need for certain measures vary between municipalities. Some of the bigger cities have announced their own city programmes. These address problems at the local level concerning the authorities' responsibilities dealing with integration, education and housing.

Although the government officially adopting the action plan reflects constructive behaviour, its substantial contributions remain to be seen. Had the action plan been duly executed, there ought to have been numerable improvements - so far its real effect has been minimal.

¹³ The Government Action Plan to Combat Ethnic Discrimination and Racism 2001, p. 1. The programme can be found in English at <http://www.mol.fi/migration/etnoraen.pdf>

¹⁴ Ibid., p. 2

7.3. THE NEW GOVERNMENTAL PROGRAMME

Taking office in June 2003, the present government announced its governmental programme, including immigration issues. The programme calls for the preparation and development of integration policies towards immigrants. This is in response to its estimation that by the end of this decade, there will be demographic structure changes and therefore a smaller labour force. Given this, the government promotes labour-based immigration. The government emphasizes the value of good ethnic relations and preventing measures to combat discrimination.¹⁵ One could say that the government could be more active in employing immigrants and showing a positive example.

Among other immigration issues, there is mentioned the total reform of the Aliens' Act. The government assured that human rights are being taken into account fully in the total reform.¹⁶ However, according to our evaluation of the draft law, these intents fall short from being realized.

7.4. THE PARLIAMENTARY OMBUDSMAN

The Parliamentary Ombudsman has taken an active role in human rights promotions, including anti-racism cases and related instances of intolerance. In one instance, the Parliamentary Ombudsman took his own initiative in which involved a prosecutor's comments regarding a court case he had been assigned by the District court of Helsinki, resolving in a warning handed to an army official who had called a black soldier 'Negro'. In an interview, the prosecutor claimed the case had not been worth going to court about, but that since superiors are quite sensitive, they had pushed to have the case brought to court. The prosecutor stated that he did not consider the word 'Negro' offensive, and for him it is normal to use the word 'nigger'. The Ombudsman requested a report from the Army Office about whether the prosecutor had complied with his duties as an official prosecutor. The Army Office wrote that they considered the prosecutor's action inappropriate and one could draw the misleading conclusion that in the army, using the word 'Negro' is not offensive. The Parliamentary Ombudsman agreed with the Army Office and informed the prosecutor of his opinion. Because the Army Office had already informed and advised the prosecutor, there was no need for further action besides issuing a reprimand to the prosecutor.¹⁷

The Parliamentary Ombudsman has taken his own initiative in a few other similar cases, especially concerning the language used by police officers.¹⁸ Generally, systematic evaluations of underlying patterns of discrimination have seldom been carried out in the office of the Ombudsman due to a lack of resources.

¹⁵ The programme can be found at <http://www.valtioneuvoisto.fi/tiedostot/pdf/fi/39357.pdf>

¹⁶ Ibid., p. 50.

¹⁷ Parliamentary ombudsman 28.2. 2002, 839/2/99, p. 3

¹⁸ Annual report 1999, p. 173 and statement 24.5. 2000, 429/2/00.

7.5. THE CHANCELLOR OF JUSTICE

The Parliamentary Ombudsman handles most immigrants' complaints, including those of racism. However, in certain cases, the Chancellor of Justice may review complaints dealing with minority issues and equality. In the annual report for the year 2000, the Chancellor of Justice cited one case in particular.

The complainant accused municipal officials of violating equality statutes by granting an extra social allowance for Roma women to pay for their traditional dress without extending the same payment to other groups. The Chancellor of Justice stated that the constitutional provision (§6) on equality does not require that everyone be treated equally in all circumstances. To secure both formal and substantive equality may require positive discrimination. Regarding Section 17 of the Constitution, Roma have the right to maintain and develop their own language and culture. The traditional Roma dress is more expensive than a more common woman's dress, and wearing the traditional dress is an essential part of Roma culture. Considering these facts, and taking into account the position of the Roma minority, the municipal officials have not violated constitutional equality when entitling a Roma an extra social allowance for the dress.¹⁹

7.6. THE ADVISORY BOARD FOR ETHNIC RELATIONS (ETNO)

In August 2001, the Council of State appointed the Advisory Board for Ethnic Relations (ETNO) for one term, lasting from August 2001 to August 2004.²⁰ ETNO is as a broad-based expert consultative organ, which gives statements on matters relating to refugees and migration, and on racism and ethnic relations. The Board is composed of governmental and municipal officials, labour market organisations, and representatives of minority language groups.

The cross-administrative Advisory Board assists, among other things, the Council of State and the various ministries as an expert on refugee and migration affairs.²¹ ETNO also submits proposals and initiatives on matters concerning racism and ethnic discrimination.

In May 2003, ETNO received publicity on their sub-committee's publishing a report on the situation of the Russian-speaking minority in Finland. The sub-committee made several far-reaching suggestions for improving the position of Russian-speakers. The sub-committee suggested that Russia should be recognised as an official language in areas where at least 10 % of the population speak Russian as their mother tongue. In Finland, official languages are Finnish and Swedish (Sami in Sami Homeland as well). This suggestion aroused a lot of criticism and the Ministry of Justice, Mr. Johannes Koskinen, did not approve that suggestion. In the report, there were less controversial suggestions as

¹⁹ Chancellor of Justice, diario 83/1/99 and 2000, p. 55. The statement can be found at <http://www.vn.fi/okv/>

²⁰ The first advisory board to precede ETNO was the Migration Commission (SAN) in 1970. Since then, there has always been similar board dealing with immigration issues.

²¹ Please see information in English at <http://www.mol.fi/etno/esiteenglanniksi.pdf>

well. For example, the sub-committee suggested that there should be more Finnish language courses for all immigrants. Generally speaking, there are no indications that the report would eventually lead to any improvements.

7.7. THE ADVISORY BOARD FOR ROMA AFFAIRS

The Advisory Board for Roma Affairs serves as a link between the Roma people and the public authorities in Finland. The board is composed of Roma and governmental officials, with members appointed every three years. Despite the fact that the Board has few resources, it has been quite active and has improved the position of Roma in fields such as housing and education.

7.8. THE ADVISORY BOARD FOR SAMI AFFAIRS

The Advisory Board for Sami Affairs serves as a consultative body, with representatives from the central government, the County of Lapland and the Sami Parliament. It works to improve the social, cultural, educational, legal and economic situation of the Sami people. Both the Sami Parliament and the Advisory Board have publicly taken a stance on questions such as Sami land-ownership and reindeer herding. Over the years, their input and efforts have raised the general level of awareness about the Sami and improved their situation.

7.9. THE COMMISSION AGAINST RACISM, XENOPHOBIA, ANTI-SEMITISM AND INTOLERANCE

The Commission Against Racism, Xenophobia, Anti-Semitism and Intolerance is a consultative body created by the government. Previously, the Commission has organised an annual EUMC National Roundtable in cooperation with the Finnish ministries. However, there have not been nominated new members to the Commission by the Ministry of Foreign Affairs and therefore there are no more activities.

8. DATA ON COURT CASES

8.1. PENAL CODE: DISCRIMINATION CASES

The Discrimination Sentences of District Courts in 1998-2001

	Charged	Average number of day fines	Convicted with no punishment	Dismissed	Total Cases
1998	8	25	-	3	11
1999	8	23	-	9	17
2000	12	22	1	9	21
2001	15	20	1	5	20

(Source: Statistics Finland)

Altogether, there have been 20 cases of discrimination in district courts in 2001. The statistics in 2002 are not available until September/October 2003. The court has found the accused guilty in 15 cases, and in 5 cases the charges have been dismissed. The average punishment has been 20 days fine. Concerning previous years, the figures are quite similar. However, the dismissal percentage varies greatly. In 1998, less than 30 percent of cases were dismissed, whereas a year later, it had risen to more than half. In 2001, again the dismissal percentage was lower. However, compared to most 'ordinary' crimes, the dismissal percentage is quite high. This leads one to ask whether the law works effectively.

These statistics are based on primary crimes in each case. Cases that do not have discrimination or employment discrimination as the primary crime are overlooked. Additionally, it should be noted that Section 9 of Chapter 11 in the Penal code covers basis for discrimination other than ethnic background - for example, gender and age can also be grounds for discrimination. Therefore, one cannot assess reliable statistics on ethnic discrimination. However, according to unofficial sources, the majority of all court cases under Section 9 of Chapter 11 deal with ethnic discrimination.

There is no comprehensive follow-up of court cases. Moreover, there are no relevant cases in the Supreme Court dealing with racial discrimination. However, the Finnish League for Human Rights has collected district court decisions concerning discrimination and agitation against ethnic groups. Most discrimination cases have concerned Roma whose entrance to restaurants has been denied. Only in few cases have there been immigrants as victims of discrimination. There have been court cases of these in several parts of the country.²² In some of the cases the charges have been dismissed. The fines have been relatively mild: the average is about 20-30 days fine and compensations for mental suffering have been around 200-500 euros. In most cases, the doormen have denied the charges saying that the reason for denial has been the security, i.e. Roma have caused trouble in the restaurant earlier or they have been misbehaving when trying to enter the restaurant. Typically, Roma have stated that they have been told that they are

²² Vantaa district court judgments R 00/2753 and R 01/1308, Äänekoski district court R 01/544, Toijala district court R 01/45, Tuusula district court R 01/33, Oulu district court R 00/2136, Kouvola district court R 01/154. Rovaniemi Court of Appeal R 01/615 and Turku Court of Appeal R 01/1725.

not allowed in, because they are Roma. This contradicting evidence leaves room for the courts to evaluate **the** credibility of testimonies.

8.2. ASYLUM-SEEKERS

The Decisions on Asylum Applications 1 January – 31 May 2003

Positive decisions	Numbers	Negative decisions	Numbers
Refugee status	6	Normal procedure	213
Protection	55	Safe country of origin	34
Family ties	32	Safe country of asylum	7
Cannot be Deported	4	Dublin	127
Other grounds	95	Manifestly unfounded	599
Altogether	192	Altogether	980

(Source: The Directorate of Immigration)

As the statistics show, during the period from Jan. 1 to May 31, 2003, the Directorate of Immigration made 192 positive and 980 negative decisions. Out of all decisions, only 6 applicants were admitted under refugee status. In 2002, out of 3,203 applicants, only 14 were admitted under refugee status as the statistics show below. It is highly questionable whether this policy is in line with the principles of the Geneva Convention. Finland's strict asylum policy has been criticized domestically and internationally for years. Not only that, but the decision-making process can take very long periods of time. Excluding the accelerated procedure, it usually takes about one and a half to two years to receive an asylum decision, and if the decision is appealed, then another year in the court.

The Decisions on Asylum Applications 1 January – 31 December 2002

Positive decisions	Numbers	Negative decisions	Numbers
Refugee status	14	Normal procedure	406
Protection	250	Safe country of origin	322
Family ties	58	Safe country of asylum	5
Cannot be Deported	29	Dublin	344
Other grounds	240	Manifestly unfounded	1235
Altogether	891	Altogether	2312

(Source: The Directorate of Immigration)

As one can note, 72 % of all decisions were negative in 2002. Most of the applications were considered manifestly unfounded, and more than 80 percent of the negative decisions were handled in the accelerated procedure (which has been explained in Chapter 4). Although these figures can be largely explained by the substantial number of

Roma asylum-seekers from Eastern Europe, it still shows that the use of ‘exceptional procedure’ has become the rule.

In 2001, there were 827 positive decisions made (but only four people received refugee status), and negative decisions totalled 1,083 (300 asylum-seekers cancelled their application). Compared to 2002 and 2003, the percentage of negative decisions is significantly higher. However, in 2001 there were fewer Roma asylum-seekers from Eastern Europe. When considering the annual variations, it still seems that there are no significant changes in asylum policy.

One should also note that the above-mentioned statistics are based on the decisions of Directorate of Immigration. All decisions concerning asylum applications can be appealed to Helsinki Administrative Court. Court statistics for the year 2002 concerning outcome of appeals are not available. Judge Juha Rautiainen estimated that out of all immigration appeals about two-third had been dismissed by October 2002.²³ This figure could be a rough leading when assessing asylum appeals.

THE BIGGEST GROUPS OF ASYLUM-SEEKERS

1 January – 31 December 2002

Nationality	Numbers
Romania	592
Slovakia	381
Russia	252
Bulgaria	248
Bosnia-Hertsegovina	226
Turkey	188
Yugoslavia	180
Other countries	1062
Altogether	3129

(Source: *The Directorate of Immigration*)

THE BIGGEST GROUPS OF ASYLUM-SEEKERS

1 January – 31 May 2003

Nationality	Numbers
Bulgaria	261
Russia	103
Iraq	88
Turkey	84
Yugoslavia	72
Bosnia-Hertsegovia	32
Slovakia	30
Romania	30
Other countries	383
Altogether	1083

(Source: *The Directorate of Immigration*)

²³ E-mail from the judge Juha Rautiainen 21.11. 2002.

Concerning the asylum-seekers, many of them come from countries, which are seeking EU-membership, such as Romania, Slovakia, Bulgaria and Turkey. Among Russians, there are different ethnic groups, like Chechens.

HELSINKI ADMINISTRATIVE COURT: STATISTICS FOR IMMIGRATION CASES

1.1. – 31.10. 2002

<i>Type of appeal</i>	<i>Arrived</i>	<i>Decided</i>	<i>Pending</i>
Citizenship	36	34	36
Residence permit	221	204	202
Residence permit in case of family reunification	439	294	322
Deportations (in Finnish: <i>karkotukset & käännytykset</i>)	118	126	104
Asylum	296	222	265
Asylum, accelerated procedure	323	196	207
Miscellaneous	31	35	16
Altogether	1464	1111	1152

(Source: Helsinki Administrative Court)

These statistics were chosen because Helsinki Administrative Court exclusively handles all asylum appeals, and a majority of all other immigration appeals as well.

As one can see, altogether there are 1,152 cases pending in the court. More cases have been filed than the court has been able to decide on. This is compounded by the fact that the normal procedure time is already quite long, about one year in all cases. Additionally, the same division of the court handles taxation appeals as well. Huge increases in taxation appeals are likely in 2003. The higher number of responsibilities means that already strained resources will need to be thinned out over more cases. Appeal processes are likely to take an even longer time.

The Supreme Administrative Court gives only a few decisions annually concerning immigration law. They concern requirements for naturalization, deportation, residence permits, and family reunifications. In a case decided in December 2002, the Court ruled that in considering the validity and nature of marriage, one should take cultural differences into account. The case (KHO:2002:84), an Iranian person who had come to Finland as a refugee and married. The spouses had known each other before the refugee left Iran, and after the wedding the spouses kept contact by phone and mail. When the refugee applied for resident status on grounds of family reunification, the Directorate of Immigration and Helsinki Administrative Court held the view that the marriage did not constitute real family life, and as they had not been living together there was no need for reunification. However, the Supreme Administrative Court considered the appeal admissible and overruled the previous decisions. In the verdict, the Court emphasized that in Iranian culture it is not socially acceptable to live together before marriage, and, secondly, the refugee status of the Iranian prevented the possibility of family life in Iran. This decision is commendable in that it allows for the consideration of cultural differences in court decisions concerning refugees in Finland.

8.3. DOES THE LAW WORK IN PRACTICE? : SOME CRITICAL NOTIONS

There have been few court cases over the years concerning ethnic agitation and discrimination. It is evident that the threshold for court proceedings is very high among immigrants. Immigrants are not so well aware of the function of the legal system and are often afraid of legal costs. According to several studies, most racist crimes go unreported. The current anti-discrimination legislation is weak and ineffective in practice. In regular crime cases, charges are dismissed only in approximately 5 to 6 percent of all cases. Yet the dismissal percentage is many times higher in discrimination charges.

Not only are more cases involving racism dismissed in proportion to other types of crimes, there are also rarely any cases involving the discrimination laws in the courts. This is unsettling when taking into account how widespread a phenomenon racial discrimination is.

In immigration issues, one of the major problems is the lengthy process time. The decision-making process for the first permit can take several years in the Directorate of Immigration. Even renewing residence permits may take several months, and during that time the applicant's passport is held at the police station and he/she is unable to travel abroad. For students, this procedure can last for years, bearing the potential for particularly grave consequences.

The current Aliens' Act does not cover all possible situations. For example, if the grounds for a residence permit changes over the years, there is no particular provision for that situation. The Directorate of Immigration guides itself by its own instructions and has used loose power of consideration. The draft law contains provisions for such situations, so its implementation may improve this legality aspect.

9. INTERNET

Recently, there was a study published on racism on the Internet: “*Rasismia Internetissä – vierasvihaisen nettiaineiston kartoitus*” (Racism on the Internet - an analysis of xenophobic material on the net) by Anna-Maria Pekkinen. The study concluded that official associations’ sites from Finnish servers usually had less racist content than sites supported by non-Finnish servers. According to the study, *Blood & Honor* is the most frequently visited site among the racist web pages, with an average around 7,000 hits per month. It is a part of the international *Blood & Honour* movement, which has local groups in several western countries.

The radical movements and groups representing their views on the Internet are varied and have distributed their material quite widely on the Internet. The contents of web pages also vary: from pro patria to outright hate speech and Holocaust denial.

According to the study, there are at least five racist net magazines and six net shops where one can buy skinhead-related material. The contents of many homepages clearly constitute agitation against ethnic groups, but there have been few prosecutions for this crime. However, one should be aware of the potential risks involved with legal action. Legal action could be counterproductive: information of racist homepages would be spread widely if a court case received publicity.

10. THE INDIGENOUS PEOPLE - SAMI

The fiercest battle the Sami people have taken issue with concerning the Finnish government is the question of land rights. Being an indigenous people afforded particular special rights under international covenants in which Finland has participated, the Sami people have contested the lack of government protection for land rights to their traditional territories and their traditional livelihood.

Strict criticism on Finland’s policy towards Sami land issues circulated as early as the 1970’s when its own parliamentary committee expressed concern that Finland’s current policies do not fully comply with Article 27 of the CCPR. Most recently, Finland’s policy has been criticized by the CERD for its failure to institute the provisions of the International Labor Organization’s Convention No. 169.

The question of land-ownership rights has been noted by ECRI (European Commission Against Racism and Intolerance) as well. ECRI published the country report on Finland in July 2002. One of the findings was that Finland has not properly recognized the land-owning rights, and the fact that the ILO Convention has not been ratified might be seen as defiance.

The government’s most recent attempt to address the land question, however, has not been to the satisfaction of either the Sami Council or the Sami Parliament. The Ministry of Justice undertook an investigation to determine which lands in the Sami’s traditional

territory belong to non-Sami Finns and which are territory utilized by the Sami people since time immemorial.

Professor Juhani Wirilander published a report on the historical evolution of land-ownership in the area inhabited by the Sami in August 2001. This was done in conjunction with the committee's task to solve the land rights question of the Sami in their traditional territories. The committee was to survey how the rights of the Sami people could be exercised, bearing in mind consideration for the rights of local non-Sami people.²⁴

The report of Wirilander acknowledged some historical land-owning rights, but not to the extent that the Sami people demanded. The report found that an extensive study into the archives of Finland's land and tax records is necessary to determine the owners of individual holdings.

This finding is a disappointment for several reasons. First, it disregards the premise of collective rights and collective land holdings that the Sami people have maintained for centuries. Rather, it calls for the use of archival evidence, which is likely to be racist in character due to the ideas of the time, and in high disfavor of the viability of Sami land ownership rights. Because of the shifting nature of state boundaries over the centuries, often Sami families had to pay taxes to multiple governments for the same piece of land. Second, it does not propose any sort of law or allow viable participation from the Sami people and its representatives. Yet the study the report recommends is already underway and due for completion in 2003.

The Finnish government should legislatively treat the Sami people as an indigenous people with the rights afforded to them as such, rather than as a linguistic minority with rights only afforded to 'language and culture'. The draft law that Finland does propose should respect collective land rights and participatory rights in accordance with the international covenants in which Finland has participated.

11. ROMA

In Finland, there are approximately 10,000 Roma people, although there are no reliable statistics. Most Roma live in southern Finnish cities. In addition, circa 3,000 Finnish Roma reside in Sweden.

The majority of Roma speak fluent Finnish. Roma also have the constitutional right to maintain and develop their own culture and language. Although the government has taken action to improve the conditions of Roma, their socio-economic position is still clearly below that of the average population. In addition, Roma face everyday discrimination and exclusion.

Concerning legal issues, one could point out language education in schools, housing, employment discrimination, access to services and the position of Roma prisoners. These

²⁴ The whole report can be found at <http://www.om.fi/12517.htm>

are the issues that the Roma Advisory Board has emphasized in its report to the Finnish League for Human Rights²⁵.

Problems with housing relate to both the public and private sector. In the public sector, there have been many complaints that the selection process for communal housing has been discriminatory. In the private sector, many landlords are not willing to have Roma as tenants.

Roma language education in schools began in 1989. In the beginning, the language education increased the use of the language. However, there has been a lack of education material, teachers, and adequate teacher training. The difficult financial situation in many municipalities has prevented effective language education. Moreover, Roma language education was only provided in twenty schools throughout Finland - the equivalent of about five percent of all schools that have Roma students.

Employment discrimination is quite common. At the same time, the traditional Roma professions have lost their importance. In addition, Roma and Finnish mainstream culture have significant differences, which also makes employment more difficult. Roma women especially face employment discrimination, partly because of their traditional dress. The European Social Fund has promoted one employment project, called *Finitiko Romako*, during the years 2001 to 2002. According to the findings of the project and the Roma Advisory Board, Roma nowadays have a more positive attitude towards working life and education, but employment is very difficult because of negative attitudes.

Access to services means for example entrance to restaurants, bars, and even stores. Roma are frequently denied the entrance, especially to nightclubs. However, the law does not allow the restaurants to exclude Roma even if they are wearing traditional dress.

In prisons, Roma prisoners are often separated from other prisoners. The prison officials usually claim that the reason is to protect Roma health and maintain order in the prison. However, to separate the victim rather than the offender discriminates against the victim before a wrong has occurred. The Correctional Institute (*Rikosseuraamusvirasto*), which is under the Ministry of Justice, established a working group in 2001. Its tasks are to survey the position of Roma prisoners and decide on necessary measures to improve the situation, including the consideration of the establishment of a support network for ex-Roma prisoners. The mandate of the working group ended in December 2002. The working group published a report in January 2003 and in the report acknowledged the critical conditions of Roma prisoners, such as keeping Roma in solitary confinement without proper reason and not allowing Roma ordinary prison-activities, like studying.²⁶

²⁵ Roma Advisory Board: Report to the Finnish League for Human Rights, 5.12. 2002.

²⁶ The report "Romanien asema ja olosuhteet vankiloissa sekä yhdyskuntaseuraamusten suorittajina", 2003 ("The position and conditions of Roma in prisons and in community service", 2003) can be found at <http://www.rikosseuraamus.fi/uploads/26k6igza.pdf>

12. POSITIVE ACTION

AWARENESS-RAISING CAMPAIGNS

IOM (International Organisation for Migration) is carrying out a project called Awareness Raising and Legal Training for Lawyers on Discrimination Practices. The second phase of the project began in September 2002. During the fall of 2002 and spring 2003, the main focus was on producing a guide for the target groups and planning training for the fall 2003. As well as Finland, this project covers Sweden, France, Austria, and Greece.

The project aims at addressing the need for information on different forms of discrimination and relevant legislation on discrimination among personnel of the justice system of each EU Member State participating in the project. The project consists of two components: (1) training, and (2) information distribution. The training will be carried out in each participating Member State in the form of workshops and aims at informing target groups of relevant national and international legislation on non-discrimination as well as relevant case law. The training is targeted at a select group of lawyers, attorneys, prosecutors, and judges, and includes the organisation of 2 three-day workshops in each participating country. The trainers of the legal component will consist of specialists in human rights, including lawyers and academics. The workshops will facilitate the exchange of information on the identification of forms and expressions of discrimination between the target group and the representatives of the minority and other groups vulnerable to discrimination. The information distribution will be a common effort on behalf of the project partners and will be carried out through the establishment of an Internet site.²⁷

²⁷ Project information was found at www.iom.fi

13. CONCLUSIONS

There has been significant numbers of immigrants only in the past few years in Finland. It has taken some time to persuade officials of the importance of monitoring discrimination. The monitoring system needs to be developed, as it covers only a few fields at the moment. Therefore, there is not a sophisticated statistical or data collection system. However, there have been improvements during the last five years. The police have been classifying racist crimes since 1997, the Parliamentary Ombudsman has been classifying minority complaints since 2001, the post of the Ombudsman for Ethnic Minorities was established in 2001, and there are many ongoing studies into issues of racism and discrimination. Moreover, the government has taken its reporting duty to the CERD more seriously, and the quality of reports has been improving.

In the field of legislation there are two contradictory tendencies: in anti-discrimination there are increasingly efforts to improve the position of ethnic minorities, but immigration policy is getting stricter. The former can be mainly explained by the pressure from the EU (implementing the Race and Employment Directive). This pressure obliges Finland to pass new legislation. On the other hand, there are extremely few court cases on discrimination. In practice, the Finnish criminal justice system has not been able to deal properly with the problem of racially motivated crimes.

Immigration policy follows the tendency in other Western European countries. The first signal of stricter policy was the amendment to the Aliens Act in 2000, which enabled the controversial accelerated asylum procedure. As mentioned earlier, the CERD has expressed its concern on this matter as well. Other recent amendments have dealt with granting temporary protection (instead of permanent) and certain language requirements for Ingrian Finns. The new draft law for total revision of the Aliens Act is more control-oriented law than the present one.

Despite the improvements of monitoring ethnic discrimination, the Finnish League for Human Rights encourages the government to continue developing the monitoring system to help produce more relevant statistics. These would include, among others, the statistics or research how racially motivated crimes proceed from the police to the prosecutor and to the court.

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