

## Finland

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*Finnish NHRI (Human Rights Centre and its Delegation and Parliamentary Ombudsman)*

### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

In October 2019, the Finnish NHRI was re-accredited with A status. While the SCA understands that the government bill establishing three components as the NHRI (the Human Rights Centre, Parliamentary Ombudsman and Human Rights Delegation) is a source of law in Finland, it encourages the FNHRI to continue to advocate for legislative amendments to further clarify this. The SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandates. The SCA considers it preferable for the Human Rights Centre to also have the ability to table its reports in Parliament for discussion, as is the case for the reports of the Parliamentary Ombudsman.

#### Developments relevant for the independent and effective fulfilment of the NHRI's mandate

There were no changes in the operating environment (except for COVID-19) or the regulatory framework since the last review by the SCA. However, there are some positive developments concerning the Finnish NHRI. There was a significant budget increase granted by the Parliament for the Finnish NHRI in 2020. The budget was increased to enable six (6) permanent posts to be established, two (2) for the Human Rights Centre (HRC) and four (4) for the Parliamentary Ombudsman. These posts were earmarked mainly for monitoring and promoting the rights of older persons. While the increase as such is positive, it is problematic from the point of view of independence that funding is earmarked and that the Finnish NHRI can't freely decide for which activities funds are used.

Another development relates to the division of labour (defined in a law) of the Parliamentary Ombudsman and the Chancellor of Justice, both supreme guardians of legality and fundamental and human rights in Finland with identical mandates stipulated in

the Constitution. A working group set up by the Ministry of Justice to make a proposal on how to clarify and develop the division of labour between the two institutions issued its report in June 2019. For the Parliamentary Ombudsman e.g. its tasks originating from international treaties are proposed to be taken into account when dividing the tasks. This will have an effect of strengthening the Parliamentary Ombudsman and the Finnish NHRI as it is the Finnish NHRI as a whole that has been designated as the monitoring mechanism based on UN CRPD 33(2). Both institutions are supportive of the reform generally and were participating in the working group. The Constitutional Committee of the Parliament has repeatedly (since 2014) called for the clarification of the tasks. This reform will bring more clarity into the rather complicated architecture of Finnish human rights bodies and their statutory competences.

### *References*

- [https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161658/OM\\_2019\\_24\\_Ylimpien\\_laillisuusvalvojen\\_tehtavanjako.pdf?sequence=1&isAllowed=y](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161658/OM_2019_24_Ylimpien_laillisuusvalvojen_tehtavanjako.pdf?sequence=1&isAllowed=y)
- Annual reports of both the Parliamentary Ombudsman and the Chancellor of Justice.
- Reports of the Constitutional Committee based on the annual reports of the Parliamentary Ombudsman and the Chancellor of Justice (since 2014 -).
- Links available upon request. Information available mainly in Finnish and Swedish.

## **Human rights defenders and civil society space**

The situation as regards civil society space and human rights defenders is generally very good. There is a tradition of respecting non-governmental organisations (NGOs) by the Government and civil society organisations (CSOs) are often consulted and included in various advisory bodies, programs and processes. The environment is enabling and the legislative framework provides for the rights to assembly, association etc. The current Government has increased funding for NGOs working on human rights, peace, environment, democracy and the rule of law.

Despite this generally good situation, there are also some negative developments and trends. We have monitored an **increase of (mainly verbal) attacks (mainly) in the social media** by movements or persons opposing human rights, often the rights of migrants and refugees, LGBTI-rights and rights of minorities and indigenous people (Sami) and rights of women and equality. They are mainly non-State actors, but often seem well organised. Some **populist politicians** are also making derogatory statements in the social media, but

this has also happened in the plenary session of Parliament. Investigations have been started by the State Prosecutor against members of the Parliament. This requires the permission of the Parliament. These concern alleged crimes of incitement to violence and hate.

Hate speech on social media appears to bear a **strong gender dimension**. We have observed that female journalists, human rights defenders, politicians, NGO activists tend to be attacked more than their male counterparts and often in sexually explicit manner. There are orchestrated hate campaigns against those who work on human rights, including civil servants. The targeting has even included judges and civil servants working for independent human rights bodies. The Government has plans to strengthen legislation against targeting.

The HRC has monitored the developments carefully and supports the work of the CSOs in various ways, also by providing grants for their monitoring and reporting activities. The HRC is very active in social media providing information and opinions in support of human rights.

### *References*

Sources are mainly media and social media, some reports and research and can be provided at request. Information is mainly available in Finnish and Swedish.

## Checks and balances

The Finnish NHRI is closely monitoring how the mechanisms for checks and balances work and how the principles of rule of law, democracy and fundamental and human rights are respected. The Parliamentary Ombudsman has a strong constitutional mandate in this regard.

To assist the HRC in its monitoring and reporting, we have constitutional, criminal law and human rights law experts as well as supervisory authorities included in our Human Rights Delegation (our pluralistically composed advisory body). Overall, the system works well, also during the current crisis. There is a strong historic tradition for the respect of the principle of legality. The Parliamentary Ombudsman (part of the Finnish NHRI) is one of the main guarantors of it as a supreme guardian of legality for the acts of the public

administration. There are strong constitutional guarantees for the separation of powers in the Constitution.

There is a **pluralist constitutional review** of legislative processes to ensure compliance with fundamental rights and human rights. There are both ex-ante controls (during the drafting of the Bills and in the Parliamentary process) as well as controls after the legislation has entered into force. The national courts have a role to play as well in accordance with the article 106 of the Constitution. The courts may not need to apply provisions of law they deem to be “manifestly” in conflict with the Constitution. The “manifestly” qualification sets the bar high for the use of this article and as a result the role of the courts has been rather limited.

The **Parliament** can exercise sufficient oversight generally, but there have been some instances in the last years where the authorities (ministries) have not provided sufficient information for the parliamentary committees. The Constitutional Committee has started an inquiry concerning the obligation of the government authorities to provide all the necessary information for the Parliament very recently (in April 2020). The Parliament is not satisfied that it has always received the information it deems necessary for its legislative work.

There is a culture of consultation and modern e-Consulting tools have been developed as well as guidance and tools for legislative drafting. There is an obligation to ensure participation in relation to some groups (the indigenous Sami, persons with disabilities). There is, however, some criticism by CSOs and special groups that the **consultations appear sometimes formalistic or come too late**.

The Finnish NHRI and in particular the Parliamentary Ombudsman provides comments on legislative processes to ensure that laws are compliant with human rights and fundamental rights requirements. The Finnish NHRI is regularly invited to comment, but can also do it on its own initiative. The HRC is included in many governmental working groups as an independent expert on human rights. The HRC comments on draft legislation, especially in its thematic priority areas and on structural issues with impact on human rights.

One of the problems we have observed has been **expedited legislative processes**, which have led to **lack of human rights impact assessments** (and other impacts, financial, social, environmental). Last year the HRC and its Delegation issued a report with recommendations i.a to improve the HR impact assessments in legislative processes aimed at the new Government as it was writing its program after the elections in April 2019. It is

evident that the Ministry of Justice has made better law making one of its key priorities and resources and expertise has been increased at the Ministry. The Chancellor of Justice has also increased his reviews of draft legislation and regularly checks them against international human rights standards at an early stage.

The role of the Parliament's **Constitutional Committee** is crucial in the ex-ante control of the compliance of draft legislation with the Constitution. The system continues to function well. Despite the fact that the Committee is composed of members of the Parliament, it has worked mainly by consensus and in keeping with the Constitution and its established practice. The work is supported by competent civil servants and experts are always heard.

No system is without its weaknesses, however, and should the politics change in Finland so that those in power (elected) would not have respect for the rule of law, democratic rules and the constitutional and human rights rights, the system of checks and balances could become weaker or even be sidelined. In an extreme case, a hostile takeover of the Constitutional Committee and the highest Courts would be possible as for some laws to be enacted only a simple majority is required (number of judges in the Supreme Court for example).

The prevailing view continues to be that there is no need for a Constitutional Court in Finland and that the current system serves us well. One of the arguments is that even a Court could be captured as has been seen in some European countries.

During the current corona-crisis and after the declaration of the state of emergency by the Government and the President, the Parliament has continued to exercise its strong legislative oversight role with the Constitutional Committee being at the centre stage. The Parliament has the right to review and either reject or approve the decrees that the Government proposes to implement the Emergency Powers Act.

The conclusion is that our system of checks and balances has served us well even during the time of crisis. There are, however, also views that some more checks and balances might be required, for example a qualified majority for enacting certain laws. There is also a general agreement that some legislative reforms will be necessary once the crisis is over. The Emergency Powers Act has not been entirely suitable for the crisis caused by the pandemic.

### *References*

There are numerous academic articles on the constitutional checks and balances in Finland. It is a topic that is constantly discussed. Main sources can be provided at request.

## Functioning of justice systems

Overall, the justice system functions well and its independence is guaranteed. Some reforms in recent years have **strengthened its independence**, such as the establishment of an Agency for National Courts Administration in 2019. In terms of efficiency of the justice system, the length of proceedings continues to be a problem.

A **legal aid** funded by the Government is in place, but does not apply to all kinds of cases and stages of the proceedings. In the last few years, the right to legal aid for **asylum seekers** has been limited by law. The fee provided for the lawyers assisting in these cases in the courts has been very low practically making it not possible for competent lawyers to take up asylum cases. This has also reportedly led to neglect and abuse by fraudulent and incompetent legal advisors with consequences for access to justice. The Finnish NHRI, both the Ombudsman and the HRC, have taken up these issue repeatedly with the authorities. Studies commissioned on the subject have confirmed the need to improve the legal aid for asylum seekers, but so far only the fees have been slightly increased by the Ministry of Justice.

The awareness of the courts on the **rights of persons with disabilities** and the CRPD Convention appears to be limited. There is both anecdotal and case-based evidence pointing to that direction. More research and training is required on this.

## Media pluralism

The HRC monitors media pluralism and freedom of speech by following relevant sources, including media and media organisations.

According to World Press Freedom Index 2020, the legal, institutional and structural basis for free media and free journalism in Finland remained intact throughout the year 2019. Unfortunately, meanwhile the abuse of the freedom of speech in the social media in the form of hate speech, stalking and targeting of journalists, with the purpose of silencing them, has increased.

### *References*

- <https://rsf.org/en/finland>

## Journalist's right not to reveal the sources

In 2019, Finland's Supreme Court gave an important preliminary ruling / a precedent in Finnish law on the case concerned journalist's privilege. Supreme Court ruled on December 20 that police could not use electronic equipment seized from a journalist's home as part of their preliminary investigation into how the journalist (from Helsingin Sanomat newspaper) got classified material about the country's intelligence capabilities. The Defence Forces had asked police to investigate the case in 2017, and as part of its investigation, police searched journalist's home. During the search, officers took computers, phone, notebooks and USB memory sticks.

The Supreme Court points out in its ruling that "The European Court of Human Rights has consistently emphasized the role of the media in a democratic society". Journalist's right not to reveal the sources is based on Constitution 12 §, European Convention on Human Rights article 10, and UN Convention on Civil and Political Rights article 19. The Union of Journalists in Finland and other media actors praised the decision and highlighted the importance to protect journalist's sources of information.

### *References*

- <https://korkein oikeus.fi/fi/index/ennakkopaatokset/precedent/1576742887583.html>

## Hate speech, harassment, and journalists' protection

**Increasing hate speech against journalists and its impact on media** has been a major concern during recent years, also in Finland. The Union of Journalists in Finland (UFJ) and the union's newspaper, Journalisti, conducted a survey in 2016 for its members to find out how many of them had been threatened because of their work. Out of the 1,400 who answered the survey, one-sixth reported having received some form of threat. Some 40 percent said the threats were related to articles dealing with immigration and asylum. According to the UFJ survey, 14 percent of the female journalists surveyed reported threats

of sexual violence. No male journalist reported receiving such threats. Around 5 percent of both genders reported receiving death threats.

Some efforts have been taken against hate speech and help journalists to handle the attacks against them. Since 2017, the Ministry of Justice has coordinated the Against Hate project aimed at stepping up efforts to combat hate crime and hate speech. The project focused on improving reporting of hate crimes and the operating capacity of the authorities. The project has produced, e.g., material for journalists targeted by hate campaigns.

In addition to hate speech, there is also other alarming phenomenon in regarding to **harassment against journalists**. The ongoing research project at the University of Tampere (2016–2020) focuses on external interference, threats and harassment experienced by Finnish journalists. The main objective of the study is to measure the frequency and methods of external interference in Finnish context and to analyse journalists' personal experiences and views of the phenomenon. The preliminary findings indicate that low-level interference in everyday journalistic practices and mediated verbal abuse are the most frequent types of external interference.

While severe interference is rare, results show that the perceived risk of interference causes concern and self-censorship among the respondents. About 14 percent of journalists told that they have changed the content of their work due to experienced pressure, and some 44 percent used consciously certain methods and actions to tackle the interference. Judicial pressure seems to be used occasionally, with 35 percent of respondents having been threatened with court cases and 25 percent with lawsuits for damages at least once during the reference period.

The results are in line with previous Nordic and European studies, and underline how external interference may have detrimental effects on journalistic autonomy also in countries with strong legal, institutional and cultural safeguards of press freedom. The Union of Journalists in Finland (UFJ) has proposed in its statement in 2019 that these cases should not be complainant offences, and threats against journalists should be aggravating factor for the punishment.

### *References*

- <https://oikeusministerio.fi/en/project?tunnus=OM005:00/2018>
- <https://journalistiliitto.fi/wp-content/uploads/2019/06/Journalists-and-hate-speech.pdf>

## Access to information and public documents

A recent media study (Hiltunen, 2018) revealed that nearly half (48%) of the journalists had experienced **withholding or obstruction of access to public information**. Also other studies have shown problems in government authorities' ability and willingness to provide public documents when requested, despite the Finnish Act on the Openness of Government Activities ensuring broad access to all material not specifically labelled restricted. This is noteworthy considering that in The Worlds of Journalism Study (WJS, 2018) survey, 40 percent of Finnish journalists regarded access to official information as either "very" or "extremely" important to their work.

## Media ownership, pluralism, transparency of media ownership and government interference

Regarding media pluralism, one area of concern has been continuous **concentration in media ownership**. According to Centre for Media Pluralism and Media Freedom (Media Pluralism Monitor 2020), few companies dominate each media sector. In the TV broadcast sector, the four largest companies hold 92 percent of the audience and 97 percent of revenues. The four largest companies in the radio market hold 80 percent and 92 percent; and the four largest companies in the newspaper market hold 59 percent (audience) and 64 percent (revenue).

General competition legislation applies to media companies, but its means and scope are geared toward facilitating competition, not plurality. Some of Finland's largest media companies are active in two or more fields, and the four largest companies have 65 percent of the newspaper, television, radio, and online advertisement markets' revenues.

Finnish law does not prohibit this level of concentration, as long as it does not result in a situation that constricts effective competition. Finnish legislation does not set additional transparency requirements for media companies.

## Media regulatory authorities and bodies

The Council for Mass Media (CMM) in Finland is a self-regulating committee established by publishers and journalists in the field of mass communication for the purpose of interpreting good professional practice and defending the freedom of speech and publication. The Council also addresses the methods by which journalists acquire their information. The Council does not exercise legal jurisdiction or public authority. The CMM

has adopted the Guidelines for Journalists, which are the main code of conduct for the profession.

Any person who considers that there has been a breach of good professional practice by the press, radio or television may bring this to the attention of the Council. The complaint process is free of any charge. If the Council believes that the media has breached good professional practice, it issues a notice, which the party in violation must publish within a short time span. If the media that has received the notice does not publish it, the notice will be otherwise made public.

The majority of the Finnish media have signed the Council's Basic Agreement, whereby the Council can directly handle any complaints that concern them. Under certain circumstances involving important principles, the Council can also independently initiate an investigation.

The CMM (2016) has acknowledged a rising trend in using their self-regulatory procedures to pressure and harass journalists. As a result, the Council has publicly declared that complaints made with these motives will be discarded outright. The CMM has suffered lack of resources as the amount of complaints have increased, and the Council has decreased the number of cases it takes into consideration. The critics of the CMM argue that it concentrates solely on individual cases instead of giving statements also on wider matters of principle regarding journalism.

### *References*

- Council for Mass Media Guidelines for Journalists:  
[https://www.jsn.fi/en/guidelines\\_for\\_journalists/](https://www.jsn.fi/en/guidelines_for_journalists/)

## **Corruption**

The Finnish NHRI, namely the Parliamentary Ombudsman deals with some aspects of corruption within its supervision of the right to good public administration. It can investigate complaints and take own initiatives relating to the right to good public administration, including access to public information. Issues relating to the conflict of interest also come up in this regard.

As explained in the section on media pluralism, the **right of access to public information** is protected by the Finnish Act on the Openness of Government Activities, but there are

often problems relating to its practical implementation. As media and journalists are instrumental in revealing malpractices and conflict of interests within public administration, this is a real problem.

Finland currently lacks a systematic and structural approach to the prevention of corruption. There have been cases of conflict of interest for example in the **procurement in the public sector**. Another area of concern is the question of **revolving doors**. In recent years, this has been in particular a concern within the health sector (due to major health care reform ongoing where people moved from public positions with information to the health care companies). There should be more clear regulations for situations when persons move between positions of public office to the private sector.

The findings of GRECO, the Council of Europe anti-corruption body in its report summarized their concerns, which included the conflict of interest and revolving doors as recurring problems in Finland and needing better regulation. Overall, the GRECO report is an accurate situational analysis of the type of issues we face in Finland despite its very high ratings in transparency and corruption indexes. Structural corruption and unethical conduct and corrupt practices do exist in Finland.

One more example is that certain types of corrupt practices relating to exports can fall through the cracks in the criminal law in Finland due to lack of evidence at the receiving country. Finland has made a reservation to the Council of Europe Convention on corruption and has not criminalized **trading in influence** (Art 12.). Having a specific crime of trading in influence in the criminal code could help with these types of cases to reach the conviction.

## In-focus section on COVID-19 measures

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Finnish HRC has been monitoring and analyzing legislation and regulations passed during the states of emergency in Finland and has been involved in the discussions on the restrictions and their compliance with human rights. Particular focus is on **people in vulnerable situations**, such as **older persons** and **persons with disabilities**. The HRC has developed a designated website for COVID19.

The Office of the Parliamentary Ombudsman has received more than 100 complaints related to the state of emergency and the coronavirus pandemic. The Office has also begun working on several issues at its own initiative. The complaints have concerned all branches of administration. Many of the complaints are related to **health care, social welfare and social insurance**. There have also been large numbers of complaints concerning **education** and the **supreme organs of the State**.

The Parliamentary Ombudsman has begun investigating two complaints concerning the restrictions on crossing the Uusimaa County border. The Ombudsman is also investigating a complaint in which a person with a disability was denied the possibility of receiving respirator treatment in advance (2480/2020) and one concerning the operations in a residential unit for people with disabilities during the coronavirus epidemic (2219/2020).

During the pandemic, there is a greater need for supervision in elderly care, but different means are now required to supervise these sites than at other times. Inspections mainly take place by telephone and videoconferences. The nursing staff play a key role in providing information. Relatives and elderly people are also being interviewed. The Deputy-Ombudsman is monitoring the ways in which municipalities implement oversight during the state of emergency, as well as the obligation of personnel to contact the Regional State Administrative Agency if any irregularities occur.

The Ombudsman has begun an investigation and requested information from the Finnish Immigration Service on how the coronavirus epidemic has been taken into consideration in detention units for foreigners and reception centres (2138/2020).

The Deputy-Ombudsman is investigating the actions that municipalities are taking during the state of emergency with regard to reducing homelessness and arranging social welfare and health care services for homeless people. Homeless people are in an even more difficult situation during the coronavirus pandemic.

Some of the pending complaints have already been resolved. For example, a complaint concerning contact with children taken into foster care (2130/2020) is available for viewing (in Finnish) at [www.oikeusiamies.fi](http://www.oikeusiamies.fi).

### Most important challenges due to COVID-19 for the NHRI's functioning

The main challenge is that almost all staff work remotely, although by and large it works well.

The main substantive concern we have is lack of access to care homes, prisons, detention facilities due to the risk of infection. This is causing frustration and there are many reports of deaths in care homes also in Finland.

### *References*

- <https://www.humanrightscentre.fi/>
- [https://www.oikeusasiamies.fi/en\\_GB/-/oikeusasiamiehelle-paljon-poikkeusoloihin-liittyvia-kanteluita](https://www.oikeusasiamies.fi/en_GB/-/oikeusasiamiehelle-paljon-poikkeusoloihin-liittyvia-kanteluita)

