Response by the Government of Finland to the recommendations contained in the concluding observations of the Committee against Torture following the examination of the combined fifth and sixth periodic reports of Finland on 3 June 2011

11 June 2012

Contents

1. Introduction

1. The Committee against Torture considered the fifth and sixth combined periodic reports of Finland (CAT/C/FIN/5-6) and adopted the concluding observations concerning Finland (CAT/C/FIN/CO/5-6) at its 46th session (from 9 May to 3 June 2011). The reports cover the years 2002–2009.

2. In paragraph 28 of the concluding observations the Committee requests Finland to provide, within one year, information on the implementation of the Committee's recommendations contained in paragraphs 8, 15, 17 and 20 of the concluding observations.

3. As a reply to the recommendations, the Government of Finland respectfully reports the following.

2. Paragraph 8 of the concluding observations: Fundamental legal safeguards

The Committee recommends that the State party ensure that all persons deprived of liberty are provided with fundamental legal safeguards from the very outset of detention, such as access to a lawyer, preferably of their choice, notifying their family of their detention and being examined by an independent doctor, preferably of their choice.

4. Access to a counsel in pre-trial investigation is regulated by section 10 of the Criminal Investigations Act (449/1987). Section 10, subsection 1 of the Act provides that a party has the right to the services of a counsel in a criminal investigation. A person suspected of an offence and apprehended, arrested or detained must be informed about his or her right to access to a counsel without delay. According to section 10, subsection 3 of the Act, a person suspected of an offence and apprehended, arrested or detained has the right to keep in contact with his or her counsel by means of visit, letter or telephone, as provided in greater detail in the Detention Act (768/2005) and the Act on the Treatment of Persons in Police Custody (841/2006).

5. Chapter 2, section 2, subsection 1 of the Act on the Treatment of Persons in Police Custody (841/2006) provides that a remand prisoner or an apprehended person must be given an opportunity to inform his or her family member or other close person about being held in detention. However, an apprehended person need not be given such an opportunity if the person is released within 12 hours from the apprehension and no particular grounds exist for

giving the opportunity. Section 2, subsection 2 of the Act provides that an arrested person's family member or other close person, as named by the arrested person, must be informed about holding the latter in detention. If the information causes particular harm to the investigation of the suspected offence, it may be delayed until, but only until, a court takes up a detention request concerning the arrested person for hearing.

6. Chapter 2, section 2, subsection 2 of the Detention Act provides that a remand prisoner must be given an opportunity to inform his or her family member or other close person about his or her detention.

7. A new Criminal Investigations Act (805/2011) will enter force at the beginning of 2014. In parallel with it, Chapter 2, section 2 of the Act on the Treatment of Persons in Police Custody has been amended. The amendments promote the use of counsels in pre-trial investigation and the provision of information about loss of liberty.

8. Chapter 4, section 10, subsection 1 of the new Criminal Investigations Act provides that a party has the right to use a counsel of his or her choice in criminal investigation. This right applies to all criminal matters. According to subsection 1, a party must, before being heard, be informed about the right in writing, unless the matter is investigated in simplified criminal investigation (petty offences). A suspect must be informed in writing about the right to use a counsel immediately when the suspect loses his or her liberty as a result of apprehension, arrest or detention. According to the same provision the investigation authority must also otherwise, taking account of the circumstances related to the investigated offence, the investigation and the person of the party in question, ensure that the party's right to use a counsel is *de facto* implemented if he or she so wishes. This means for example that interrogations must be scheduled so that the counsel is able to attend them. Chapter 4, section 11 of the new Criminal Investigations Act not only provides for the right of a suspect to contact his or her counsel but also obligates the investigation authority to ensure confidentiality of the contacts between the suspect and the counsel.

9. According to Chapter 2, section 2, subsection 1 of the Act on the Treatment of Persons in Police Custody, as amended, a remand prisoner must be given an opportunity to inform a close person or another person about his or her loss of liberty. Subsection 2 provides that an arrested or apprehended person's close person or other person, as named by the arrested or apprehended person, must be informed about the latter's loss of liberty. If such information causes particular harm to the investigation of the suspected offence, the information about the arrest may, by decision of a police command officer, be delayed by a maximum of two days from the apprehension, and the information about the apprehension may be delayed or omitted.

Without a particular reason, such information must not be provided against the will of the arrested or apprehended person. The amendments made in section 2 mean, among other things, that in principle information must be provided also about apprehension even if it lasts less than 12 hours, and that the information about arrest can no longer be delayed as long as before. Under the amended legislation a court must take up a detention request concerning an arrested person for hearing within four days from the apprehension.

10. Based on the recommendations from the Committee and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), a specific project on more efficient provision of information in cases of deprivation of liberty was included in the national action plan on fundamental and human rights for 2012-2013. Within this project, a specific form will be drawn up showing the rights of persons having been deprived of their liberty. Furthermore, Police are currently updating their directions concerning treatment of persons deprived of their liberty and preparing a set of training material on this issue.

11. The Coercive Measures Act and Chapter 4 of the Military Discipline Act (331/1983) currently in force contain provisions on the coercive measures applicable to the offences referred to in the Military Court Procedure Act and on the persons entitled to use these measures.

12. Paragraph 324 of the General Regulations of the Finnish Defence Forces provides that only persons with the right to inspect guards or with a permit to enter the premises of a guard have access to such premises. In addition, army doctors, army chaplains and army welfare officers, police officers performing official duties, public prosecutors and persons with a permit from the head of the garrison or the commander of the officer commanding and, if the conditions laid down in law are fulfilled, guests of an apprehended person, have access to those premises of a guard which are used for keeping apprehended, arrested or detained persons or persons punished by confinement in custody.

13. In the pre-trial investigation of a suspected military offence the suspect has, under the Criminal Investigations Act, the right to use a (legal) counsel. According to the internal instructions for investigating military discipline matters in the Defence Forces, the interrogation must be interrupted until the interrogated person *de facto* has an opportunity to acquire a legal counsel. Furthermore, the internal instructions provide that, where necessary, the parties must be guided and referred to authorities for cost-free legal proceedings and public legal assistance.

14. Chapter 6, section 1 of the Detention Act provides that the Criminal Sanctions Agency must arrange or otherwise ensure health care, medical care and medical rehabilitation compatible with the medical needs of remand prisoners. Chapter 10, section 1 of the Imprisonment Act

contains a corresponding provision. Finnish legislation does not provide for a health check on entry into prison, but in practice a prisoner has access to a nurse. In acute cases prisoners have immediate access to health care and medical care. All prisoners are subjected to a health check within two weeks from their entry into prison.

15. According to Chapter 6, section 1, subsection 2 of the Detention Act a remand prisoner has the right to medication, examination and other health care in prison with the permission of a doctor of the Criminal Sanctions Agency and at the prisoner's own cost, unless it jeopardizes the purpose of the remand imprisonment.

3. Paragraph 15 of the concluding observations: Conditions of detention

The Committee recommends that the State party limit to the extent possible the stay of remand prisoners and aliens in preventive detention, in particular in police and border-guard detention facilities, and comply with the recommendations made in November 2010 by the working group set up by the Ministry of Justice to introduce a legislative amendment allowing for remand prisoners to be moved more quickly from police stations to regular prisons than is the case at present. It recommends that the Parliamentary Ombudsman monitor the conditions of detention of Roma prisoners, including the implementation of ethnic equality, and ensure that prison staff intervene in all incidents of discrimination against Roma brought to their attention. The Committee recommends that legislation be adopted to reduce pre-trial detention and to accelerate the pending civil and criminal procedures. The Committee would appreciate receiving statistics on the number of members of ethnic minorities among the judiciary.

16. The working group set up by the Ministry of Justice in 2009 completed its work in November 2010, and the Ministry is preparing the legislative amendment mentioned by the Committee. The intention is to submit the related government bill to Parliament in autumn 2012.

17. In recent years the number of remand prisoners held in police detention facilities has declined considerably. On 1 January 2012 the police was holding 76 remand prisoners in detention.

18. Efforts to speed up legal proceedings have been one of the priorities in the administrative branch of the Ministry of Justice in recent years. Parliament, too, required in a statement adopted in 2010 that the Government should prepare an overall plan to expedite pre-trial investigation, consideration of charges and legal proceedings. Two working groups set up the the Ministry of Justice have examined the issue.

19. The first working group submitted its report (*Ministry of Justice, Memorandums and statements 87/2010*) in December 2010. The report discusses the reasons for delays in legal proceedings and current measures to prevent such delays and puts forward new proposals to prevent delays. The report concludes with a plan summarising the proposals of the working group and its idea of the actors responsible for implementing the proposals, of the timetable of the implementation and of the significance of the proposals for expediting criminal proceedings.

20. In January 2011 the Ministry of Justice set up a working group to follow up the preparation of the plan proposed in the above-mentioned report (87/2010). This working group considered that the key for expediting criminal proceedings would be to ensure sufficient human resources for the police, prosecutors and courts and to introduce interoperable data systems. The group focused especially on economic crime, and suggested e.g. that the possibilities of restricting pre-trial investigation and of plea bargaining should be developed. The group proposed that petty tax offences should be made subject to an administrative procedure. These reforms would contribute to speeding up legal proceedings as they would reduce the number of cases brought before courts.

21. In recent years, expedited criminal proceedings have been one of the performance targets of the prosecution service, too. According to the performance target for 2012, criminal proceedings should be expedited in respect of cases with a high risk of delay.

22. The Criminal Sanctions Agency prepared an equality plan in 2006. The measures envisaged in the plan underline such issues as intervention in racist phenomena, awareness-raising on customs of different groups, in-house training and development of attitudes to increase the appreciation of equality and diversity. After the completion of the plan the Agency has annually inquired into the position and situation of special groups of prison inmates compared with the inmates belonging to the majority population. The next inquiry will take place in 2012, concerning Finnish Roma and immigrant prisoners. (The Criminal Sanctions Agency published a summary of the previous inquiry as handout no. 3/2010.)

23. No statistics exist on the number of judiciary employees belonging to ethnic minorities.

4. Paragraph 17 of the concluding observations: Detention and ill-treatment of asylum-seekers, irregular immigrants and other aliens

The Committee recommends that the State party consider alternatives to the frequent detention of asylum-seekers and irregular immigrants, including minors and other

vulnerable persons, and that it establish a mechanism to examine the frequent detention of such persons. It recommends that the State party consider increasing the use of non-custodial measures, use detention as a last resort and ensure that administrative detention of unaccompanied children is not practised. The Committee requests the State party to ensure that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment be applied to asylum-seekers in administrative detention. In addition it would appreciate receiving information on the number of asylum-seekers and irregular immigrants in detention, how frequently they are detained and the average length of their detention.

24. The Ministry of the Interior has set up a project to revise the provisions on detention laid down in the Aliens Act (301/2004) and the Act on Treatment of Detained Foreigners and on the Detention Facility (116/2002) during the period from 1 December 2011 to 1 December 2013. The revision of the provisions of the Aliens Act is based on the Programme of Prime Minister Jyrki Katainen's Government, according to which the detention of unaccompanied minor asylum seekers will be prohibited and alternatives will be developed for detention.

25. The project set up by the Ministry is supported by a working group, which, at the beginning of its term, focuses on preparing the prohibition of the detention of unaccompanied minor asylum seekers as envisaged in the Government Programme. A government bill to that effect was sent out to different actors for comment in spring 2012 and will be submitted to Parliament during its autumn session 2012. The government bill proposes to amend the Aliens Act by more precise provisions on the detention of children. The Act would prohibit the detention of unaccompanied children and regulate the detention of children accompanied by their families in more detail. The proposals are intended to improve the realisation of the basic and human rights of children arriving in Finland.

26. At the next stage, the project will examine the possibilities of developing alternatives to detention. Chapter 7 of the Aliens Act in force contains provisions on both detention and different interim measures as alternatives to detention (sections 118-120). These interim measures comprise an alien's obligations to report at regular intervals to police or border control authorities, to hand over his or her travel document and travel ticket to police or border control authorities or to give them the address where he or she may be reached, and to give a security to the State for the expenses related to his or her residence and return.

27. The project has also identified a need to improve the compilation of detention statistics. For this purpose, the project has a separate sub-working group, which will issue its final report in the near future. The sub-working group has examined the current situation in the compilation of detention statistics and prepared a proposal to develop it. The group considers it appropriate to

develop the compilation of detention statistics within the VITJA information system for steering police operations, to be introduced at the beginning of 2014. The sub-working group has prepared a proposal on the content of statistical data concerning detention. In addition, it has paid attention to the availability of statistics e.g. on the Internet.

28. The Ministry of the Interior underlines that, unlike stated in recommendation 17 of the concluding observations, aliens are never detained in Finland by virtue of the Aliens Act without judicial proceedings. According to section 124 of the Aliens Act, the official responsible for a decision on holding an alien in detention must, without delay and no later than the day after the alien was placed in detention, notify the District Court of the municipality where the alien is held in detention or, in an urgent case, another District Court of the matter. The District Court in turn must hear the matter concerning the detention of an alien without delay and no later than four days from the date when the alien was placed in detention. If the alien has been placed exceptionally in police detention facilities, far from the nearest detention unit (currently only Metsälä Detention Unit) the District Court must hear the matter without delay and no later than 24 hours from the notification. Further, section 128 of the Aliens Act provides that the District Court must, on its own initiative, always rehear the matter concerning the detention no later than two weeks after the decision under which the District Court ordered continuation of the detention.

29. Current statistics on aliens detained by virtue of the Aliens Act are appended.

5. Paragraph 20 of the concluding observations: Redress, including compensation and rehabilitation

The Committee recommends that the State party adopt all necessary measures in order to comply with the full scope of article 14 of the Convention according to which the State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, that in the event of the death of the victim as a result of an act of torture his dependants shall be entitled to compensation and that nothing shall affect any right of the victim or other persons to compensation which may exist under national law. In addition, while it welcomes the existence of two rehabilitation units for torture survivors in the State party, the Committee recommends that full rehabilitation be made available to all victims of torture and ill-treatment, in all settings.

30. The right of a victim of torture to compensation does not derive only from the Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person (422/1974).

31. A victim of torture is entitled to compensation above all on the basis of the Tort Liability Act (412/1974). Chapter 3, section 2 of the Act provides that a public corporation is vicariously liable for damages caused through an error or negligence in the exercise of public authority. The existence of such liability can be considered evident in cases where a civil servant or another person acting in an official capacity makes himself or herself guilty of torture within the meaning of Article 1 of the Convention.

32. Chapter 5 of the Tort Liability Act contains provisions on damages. On the basis of Chapter 5, section 2 a victim of torture is entitled to damages to cover the indispensable medical costs and other costs arising from a bodily injury, as well as loss of income and maintenance, pain and suffering, and other temporary handicap and permanent handicap. The right to damages to cover medical costs also comprises costs for medical rehabilitation.

33. In addition, a victim of torture has the right to damages for anguish under Chapter 5, section 6 of the Act.

34. If a victim of torture has died, the liability for damages covers, among other things, burial costs (Chapter 5, section 3 of the Tort Liability Act), damages for loss of maintenance to a person entitled to maintenance or child support or to persons otherwise dependent on maintenance by the deceased (Chapter 5, section 4) and, on certain conditions, damages for anguish caused by the death to persons close to the deceased (Chapter 5, section 4 a).

35. On the basis of the above the Government holds that the Finnish legislation currently in force complies with the requirements of Article 14 of the Convention.

36. Refugees traumatised by torture and residing in Finland and their family members are treated at two rehabilitation centres. For the time being, the Centres for Torture Survivors at the Oulu and Helsinki Deaconess Institutes are responsible for rehabilitating victims of torture in Finland. The precondition for access to this treatment is experience of torture or comparable traumatisation.

Appendices: Statistics on aliens detained by virtue of the Aliens Act

Appendix 1: Coercive measures taken by the police in the whole country

Appendix 2: Client statistics of Helsinki Detention Unit 2003-2011