



IOK/335/2024

22.1.2024

## European Commission's 2024 Rule of Law Report: stakeholder consultation

### Written contribution by the Finnish Human Rights Centre

This document contains information and observations by the Finnish Human Rights Centre (FHRC) on the rule of law situation in Finland. The FHRC is part of the Finnish National Human Rights Institution (FNHRI).<sup>1</sup>

Should you have any further questions or need for additional information, do not hesitate to contact us at [elina.hakala@ihmisoikeuskeskus.fi](mailto:elina.hakala@ihmisoikeuskeskus.fi).

### Justice system

#### Information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

As recommended by the European Commission, the previous and current Government have taken steps towards the development of the justice system. Appointed in February 2023, [a new working group](#) (titled 'Rule of Law Guarantees and Development of the Judicial System', in Finnish 'Oikeuslaitostyöryhmä') is by 2027 set to deliver its proposals pertaining to the future of the administration of justice in Finland. However, proposals for constitutional changes regarding strong independence of the judiciary are due already by the end of February 2025. Based on the 2022 [Government report on the Administration of Justice](#), the working group can also be expected to tackle surmounting problems concerning the length

---

<sup>1</sup> The NHRI comprises the Human Rights Centre, its pluralistic Human Rights Delegation, and the Parliamentary Ombudsman. The institution complies with the UN Paris Principles and the Global Alliance of NHRIs (GANHRI) accredited it with A-status in 2014 and 2019.

of the judicial proceedings, high cost of trials and underfunding of the justice system.

In October 2023 the working group, which is divided in 6 subgroups, published its [work plan](#) which includes approximately 140 action points, ranging from procedural improvements to crime victims' general standing, to changes in the court system structure, the Constitution or entire migration legislation and to improvement of the public trust in the authorities. One of the action points is to assess the system of lay judges, to which the Commission paid particular attention in its 2023 report.

Alongside with the long-term goals to improve independence, efficiency and quality of the justice system, the resources of the administration of justice [will be increased](#) gradually. In its [statement](#), the Parliamentary Committee on Legal Affairs welcomed this additional funding, which will strengthen personnel resources, thereby reducing backlogs and shortening processing times. However, the Committee was also concerned that according to the Government's fiscal plan, there will be operational cost savings allocated to the Ministry of Justice's main category starting from 2025, totalling approximately 18 million euros by the end of the budget period. The Committee considered it important that, in order to cover possible savings obligations, adjustments in operations or reductions in resources should not be directed towards personnel resources of various actors in the administration of justice.

As the work to develop the administration of justice in Finland is currently ongoing, the FNHRI continues to monitor Government's actions and progress in this field. Information will be compiled to the Finnish Human Rights Centre's online database, which contributes to the FHRC's statements, reports, and initiatives regarding rule of law. The Finnish Human Rights Centre's Human Rights Delegation has also issued [a statement](#) on its key priorities for the Government's programme 2023–2027, highlighting structural problems such as the length of court proceedings and reminding that resources of the justice system need to be ensured.

## Media pluralism and media freedom

### Framework for journalists' protection, transparency and access to documents

#### Lawsuits and convictions against journalists

In December 2023, Finland's Supreme Administrative Court gave a ruling which raised concerns about journalists being exposed to significant financial risk because of their work. According to the [Court's ruling](#), financial aid paid by employers to support journalists facing legal charges is taxable income. The ruling related to the case reported about last year, where two journalists were found guilty of disclosing state secrets in an article published in the newspaper Helsingin Sanomat in 2017. [Finland's Association of Editors](#), [The Council for Mass Media in Finland](#), [The Finnish](#)

[Media Federation](#), and [The Union of Journalists in Finland](#) have stated that the decision could reduce investigative journalism, lead to self-censorship by reporters and have a similar effect as SLAPPs, with journalists being subjected to an unreasonable financial burden because of their work. In the case in question, the legal fees amounted to more than two million euros, which as taxable income means that the journalists would have to pay hundreds of thousands in taxes. The ruling does not only concern journalists and the media sector, and similar issues could arise also in other fields of work.

Whereas the employer in the present case decided to compensate the additional tax costs to the journalists, the ruling nevertheless poses a dangerous precedent and has provoked calls for amendments in the tax legislation

## **Other institutional issues related to checks and balances**

### **The process for preparing and enacting laws**

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders' /public consultations, and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

To afford decision-makers and stakeholders a holistic picture on the impacts of proposed legislation, the Government and the Ministry of Justice have in 2023 issued [updated guidelines](#), for successful assessment, concrete impacts should be analysed with the help of empirical assessment methods, where focus is drawn to the practical realisation of human rights in people's every-day lives. This includes impacts on poverty, unemployment, or the health of the populace. Consequently, while assessing the compliance of bills with constitutional norms and international human rights obligations remains essential during the drafting process, legalistic scrutiny alone is insufficient for a properly conducted human rights impact assessment.

Despite prominently featured in the Government's guidelines, meaningful impact considerations relating to human rights are represented quite sporadically in the actual drafting. Measures have been taken to educate drafters on human rights implications, although time constraints and deficient resources allotted to drafting remain recurring concerns.

Neglecting human rights during law drafting in favour of political expediency is thus a concern that warrants attention in Finland. Stringent, politically set timetables have hampered stakeholders, including human rights and civil society actors' capability to provide input, despite their consultative and vital role in the drafting process. At worst, impacts are so defectively assessed that the stakeholders are left to draw their own conclusions on impacts. Coupled with political urgency, this is often not only practically unfeasible but also constitutes rather undue delegating of state responsibilities, in terms of rule of law. Alarmingly, stakeholders have been given as little as [five days](#) to provide consultative inputs on major Government proposals,

instead the usual recommended minimum of 6–8 weeks.

The abovementioned was witnessed with the Government's proposals concerning major revisions in social security. As [noted](#) by the Finnish Council of Regulatory Impact Analysis in October 2023, human rights impacts were meagrely assessed during the process despite numerous proposed austerity measures on unemployment benefits, housing benefits and social assistance. Further troubling was the way how the Government primarily conducted its impact assessment individually for proposed changes, ending up ignoring many disadvantages the bills will cumulatively signify in terms of human rights realisation, once enacted. Pertaining to these proposals, the Finnish Human Rights Centre has forwarded its [criticism](#) to the parliamentary Social Affairs and Health Committee, commenting the lacking and occasionally misleading nature of the assessments on socio-economic impacts to the poorest section of the population, i.e. those most adversely affected by the proposals.

### **Regime for constitutional review of laws**

#### **Role of the parliamentary Constitutional Law Committee in reviewing human rights compliance of governmental legislative propositions**

The role of the parliamentary Constitutional Law Committee in ensuring in advance that laws comply with international human rights agreements has raised some questions, especially when it has assessed the Government's legislative proposals aimed at implementing its social welfare cuts policy. (See for example Government's proposal [HE 73/2023 vp](#) and proposal [HE 75/2023 vp](#).) As mentioned earlier, these legislative proposals entail significant reductions in benefits, but also index freezes, with their impacts largely affecting the most vulnerable segments of the population.

In its statements regarding the proposals, the Constitutional Law Committee emphasised, referring to its previous statements, that states having ratified the European Social Charter are committed to protecting the social and economic rights defined in the treaty. Furthermore, Finland has committed to the Additional Protocol to the Charter on the system of collective complaints. The Constitutional Law Committee reiterated its very serious approach to the observations made in the monitoring practice of the European Social Charter. In the Committee's opinion, the Government should promptly initiate a thorough examination of the matter. (See [Statement of the Constitutional Law Committee PeVL 15/2023](#) and [Statement of the Constitutional Law Committee PeVL 16/2023](#).) There isn't, however, any other mention in these statements of human rights and no analysis of the implications of the proposed legislation to the implementation of those rights. According to [academics](#), the Committee has in its deliberations also failed to consider the principle of non-retrogression.

It is equally important to note that Finland has received several observations and recommendations from human rights bodies on shortcomings regarding social rights, especially inadequacy of the level of social security. (See [UN Committee on](#)

[Economic, Social and Cultural Rights](#) and [European Committee on Social Rights](#).) Considering these observations, and the role of the Constitutional Law Committee, a thorough analysis of the human rights implications of the proposed legislation by the Committee would have been appropriate.

### Possible need to amend the Section 106 of Finland's Constitution

The discussion on the need to amend Section 106 of the Finnish Constitution is still ongoing in Finland. According to the Section, the courts have the duty to refrain from applying a provision of a law if it is in obvious conflict with the constitution. However, the requirement of a manifest conflict may have set the threshold of the application of Section 106 too high.

As the Finnish Human Rights Centre has argued in its [report](#) published in 2021, the removal of the obviousness requirement would not imply an expansion of the judiciary's authority relative to the legislature, as the abstract constitutionality review conducted by the legislature and the Constitutional Law Committee would still be in place. Also, in the court's assessment, the rights-oriented interpretation would remain as the primary means of resolving conflicts with the constitution.

There have been some developments after the FHRC's report. In 2022, Ministry of Justice's Working Group on the Administration of Justice (WGAJ) [stated](#) that since the European Union legislation directly supersedes conflicting domestic legislation in Finland, and as in Sweden the obviousness requirement was removed as early as 2011, it could be considered whether the position of Finland's Constitution should be equally strong. The working group on 'Rule of Law Guarantees and Development of the Judicial System' set up by the Ministry of Justice for the years 2023–2027 will be building on and concretising the work of the WGAJ, and has suggested the removal of the requirement of obviousness to be considered as part of its [work plan](#).

### Independent authorities

#### National human rights institution

FNHRI has been able to conduct its tasks independently and effectively. Nevertheless, the institution is closely monitoring the general atmosphere regarding other human rights actors who have legislative tasks to promote, monitor and/or protect different human rights. Hate speech towards the actors, especially those who actively engage in societal debates as part of their duties, is more and more common. As part of its work on foresight and resilience, the Finnish Human Rights Centre is considering threats related to the hardening attitudes on human rights.

Concerning resources of the FNHRI, the Finnish Human Rights Centre's and the Parliamentary Ombudsman's budgets increase for the year 2024. For the years 2025–2027 budget cuts are expected but they remain minor and are part of the Government's general aim to produce savings in the State's economy. The NHRI is

thus not specifically and only targeted by these cuts.

When it comes to the FNHRI's access to legislative processes, some improvements are required. Especially the possibility to engage in the national consideration of draft EU legislation impacting on human rights or human rights actors requires proactiveness from NHRI. On some occasions, the information on the consideration has been discovered only afterwards through Government's communication to the Parliament (so called 'U-letters').

The FNHRI has also advocated for changes in the Parliamentary Ombudsman's Act. In March 2023, the Finnish Human Rights Centre and the Parliamentary Ombudsman met with representatives of the Ministry of Justice to discuss on changes to the Parliamentary Ombudsman's Act. The proposed changes included, as recommended by SCA (GANHRI Sub-Committee on Accreditation):

- Explicitly stipulate the structure of the FNHRI
- Right to submit Finnish Human Rights Centre's report to the Parliament

During the spring 2023, the Ministry of Justice provided its [proposals](#) for the new Government's programme. One of the proposals was titled 'Strengthening the National Human Rights Institution'. The Ministry suggested that the need to strengthen and clarify the status and tasks of the FNHRI would be assessed.

Following the Parliamentary elections, the Finnish Human Rights Centre submitted information to the negotiations on the new Government's programme. As part of its statement (available by request), the FHRC highlighted that the possibility to submit a report by the Centre on the state of fundamental and human rights in Finland could promote discussion on human rights at the Parliament. Several NGOs have also [suggested](#) this possibility for the FHRC in their joint proposals for the Government programme.

In the adopted Government's [programme](#) it is stated that '[t]he division of tasks between the national human rights institutions (the Human Rights Centre, the Parliamentary Ombudsman and the Human Rights Delegation) will be clarified in order to eliminate overlaps.' The FNHRI would like to underline that there is only one NHRI in Finland, composed of the Finnish Human Rights Centre, its Human Rights Delegation and the Parliamentary Ombudsman. Each part of the FNHRI have separate tasks according to the law. At the time of writing this report, FNHRI didn't have information on the implementation of this Government objective or the planned timeline for it.

### Specialised ombudsmen, including equality bodies

One of the Government's initiatives stated in its [programme](#) reads as follows: 'The Government will examine the duties of specialised ombudsmen to identify possible overlaps and any potential for savings in this respect.' Based on the initiative, the



Government decided to move forward with a legislative proposal discontinued by the previous Government due to lack of funding. According to the new act (adopted in December 2023), a new agency will be created, and starts its work in 2025. Certain administrative services of the specialised ombudsmen, including the two equality bodies and some other authorities situated in connection with the Ministry of Justice are transferred to the agency. The legislative tasks, powers, and independent status of the ombudsmen will remain unaffected.

One of the objectives of the new act is to free capacity for substantial work of the authorities. While this is welcome, the FNHRI does not see the structural independence of these actors from the Ministry of Justice will be increased by creating a separate administrative agency (see statements by the [FHRC](#) and [Parliamentary Ombudsman](#)). The Ministry will still be in charge of procedures relevant to the independence of the ombudsmen, including results-based management. In addition, the FHRC has argued that the establishment of a new agency should not under any circumstances lead to a decrease in resources allocated to the specialised ombudsmen's tasks.

### **Accessibility and judicial review of administrative decisions**

#### **Follow-up by the public administration and State institutions to final (national/supranational, including the European Court of Human Rights) court decisions**

Finland has 6 judgments from the ECtHR pending implementation (2 leading judgments). During 2023, the Government managed to close 12 cases, of which 7 were leading cases, mainly by providing missing information on the implementation status.

One of the leading judgments and the remaining 4 repetitive judgments pending implementation concern ne bis in idem problematic, violation of the right not to be punished twice, as the applicants were subject to both criminal and administrative taxation proceedings concerning partly or entirely the same facts.

One of the leading cases, X. v. Finland (application no. 34806/0419) is still being examined under enhanced procedure before the Committee of Ministers. The case concerns lack of legal remedy against forced medication in psychiatric hospital. The Court found a violation on 3 July 2012, among others, of Art. 8 (Right to private life). Regarding the violation of Article 8, implementation has not taken place, more than 10 years on. The Committee of Ministers examined the status of implementation and reasons for its delay in December 2021 and March 2023. The case is due to be examined again in March 2024 and should no tangible progress be reported, the Secretariat is to prepare a draft interim resolution for consideration at that meeting.

Two further complaints on the same issue (E.S. against Finland, application no. 23903/20 and H.H. against Finland, no. 19035/21) have been lodged before the Court in June 2020 and April 2021 and communicated to the Government in March

2021 and December 2021, respectively.

The Finnish Human Rights Centre has taken several actions to support the implementation ECtHR's judgments. Again, in January 2023 the Finnish Human Rights Centre submitted [Rule 9 communication](#) on the case of X v. Finland. In early 2023 NHRI held discussions with the Department for Execution of Judgments of the ECtHR during their country visit, specifically on the case of X v. Finland.

In May 2023 the FHRC participated in a discussion and prepared an extensive brief on the case of X. v. Finland for discussion organised by the International Department of the Parliament. Other participants included members of parliament and representatives of the Ministry for Foreign Affairs and Ministry of Social Affairs and Health.

In 2023 the Deputy Chancellor of Justice has also requested the Ministry for Foreign Affairs to inform him on the reasons for the continued delay in the implementation of the ECtHR judgments as well as actions taken to improve the implementation of the judgments. The decision is pending.

In cases like X. v. Finland, where the required legislative changes are in process for a long time and not proceeding, there is usually lack of political will to prioritise these reforms combined with lack of resources and lack of uniform understanding on the importance of the full implementation. In this particular case, [the law including changes to availability of legal remedies](#) was adopted by the Parliament in December 2023. Whether it is sufficient to finalise the implementation, remains to be seen.

## **Enabling framework for civil society**

### **Measures regarding the framework for civil society organisations and human rights defenders**

The development of a mechanism for protection of human rights defenders has not proceeded during 2023. The previous Government started preparing a humanitarian visa for human rights defenders, activists and journalists, but whether the initiative will proceed under the new Government is unclear. In October 2023, the Finnish Human Rights Centre [highlighted in a statement](#) submitted by its own initiative to the Parliament's Foreign Affairs Committee, that a permanent mechanism for the protection of human rights defenders is needed and resources for its development should be granted. The need for EU member states to improve access to visas for human rights defenders has also [recently been highlighted](#) by the UN Special Rapporteur (SR). During a visit to Finland in September 2023, the SR discussed this topic with the FHRC's Human Rights Delegation.

It also to be noted that in March 2023, the National Union of Students in Finnish Universities of Applied Sciences (SAMOK) and the National Union of University Students in Finland (SYL) established a [Students at Risk association](#), with a grant



from the Ministry of Foreign Affairs. The aim of the association is to offer students with the opportunity to continue studies at a Finnish higher education institution if in their home countries they are denied the right to education or other human rights due to their activities as human rights defenders. This is a very welcome initiative, but the Finnish Human Rights Centre will continue to advocate for a broader and more permanent national protection mechanism for human rights defenders.

### Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders

During the past year, racism, hate speech and online targeting of journalists have been matters of concern which have been actively debated in Finland. The debate started from media reports about racist writings by some of the newly appointed ministers, dating a few years back. Journalists who reported about the topic were subjected to smear campaigns and online hate speech. One journalist was [directly targeted](#) by members of parliament belonging to the Finns Party and the National Coalition Party (both currently in Government), in their social media posts. One of the MPs was appointed Minister of Economic Affairs a couple of days later. The Council of Europe Commissioner for Human Rights [published a statement](#) condemning such smear campaigns and attacks directed at individuals, expressing concern for its potential chilling effect on the press. The police has launched a criminal investigation regarding the matter.

As a response to the public debate on racism, the Government published a [statement on promoting equality, gender equality and non-discrimination](#) in August 2023. The importance of taking active measures to tackle racism and discrimination was further proven by the FRA report [Being black in the EU](#) (2023), which showed that people of African descent often experience racism in Finland. The Finnish Human Rights Centre [provided a statement](#) to the working group developing the Government's statement. The FHRC highlighted the State's duty to effectively implement judgements and recommendations received from monitoring mechanisms under the UN, the Council of Europe, and relevant national bodies, as well as duly implementing EU legislation concerning equality and discrimination. Shortcomings in these areas have continuously been raised. The Finnish Human Rights Centre will be monitoring the implementation of the Government's statement and has included it as one of the priority areas in its advocacy work for 2024 (FHRC action plan).

At the end of the previous Government's term, the Ministry of Justice explored needs to amend criminal law to improve tackling of targeting. (Targeting refers to systemic harassment of a person in the form of mass actions on e.g., online platforms because of his or her work or social duties.) The [assessment](#) published in 2022 found that there are grounds for criminalisation. The current Government [decided not to proceed](#) with separately criminalising this phenomenon or further exploring the possibility, stating that targeting can already meet the legal definition of other crimes (such as public exhortation to an offence, dissemination of information

violating personal privacy, defamation, illegal threat, stalking or coercion).

The question of criminalising targeting divides opinions of legal experts. The definition of the crime/its delimitation would be challenging and require significant balancing to avoid overlaps with existing criminalised offences and unnecessary restrictions on freedom of speech, and to ensure that the crime would be judicable in practice. These challenges were raised by the Parliamentary Ombudsman in a [statement concerning the assessment](#), submitted at the request of the Ministry of Justice. However, [many actors agree](#) that targeting is a growing problem which threatens rule of law and freedom of speech, and that the existing legislation is not applied effectively to tackle the issue.

According to the Finnish Human Rights Centre, further polarisation of the public debate and increased hate speech does not only risk creating a chilling effect on journalists and the press, but more broadly on civil society. NGO representatives and academics have also reported a rise in hate speech and smear campaigns targeting them and expressed concern for their impact on freedom of speech (see for example [article](#) by newspaper Helsingin Sanomat, [communication](#) from a meeting of the Human Rights Delegation, and [statement](#) by the Research Council of Finland).

The FHRC would also like point out that academics and media in Finland have [highlighted](#) linguistic strategies widely applied in right-wing populist discourse to undermine human rights and the rule of law. Neologisms or familiar words imbued with irony and sarcasm are used in a systematic way to question the validity of human rights and international treaties. Messaging includes double meanings and is deliberately directed towards different publics with multiple reading options to raise negative emotions and create divisions between “us” and “them”. While such linguistic strategies trace their origins to social media platforms replete with hate speech, their use has spread to public and political discussion and mainstream media to influence popular opinion at large.

## **Other issues related to the realisation of rule of law**

### **Human rights & securitisation**

Following the 2022 amendment to the Border Guard Act, the Government can decide on the centralisation of asylum applications to one or more border crossing points in a situation where there is information or reasonable suspicion on instrumentalisation of migration. This amendment was applied for the first time in November 2023 due to information and observations by Finnish authorities that Russian actors had started facilitating the arrival of migrants to Finland’s eastern land border.

The Chancellor of Justice oversees the legality of actions by the Government. In accordance with his mandate and with access to classified intelligence information,

the Chancellor (or his deputy) provided their legal opinions to the Government in this case. When the Deputy Chancellor of Justice [stated](#) on 21 November that there were not sufficient legal grounds to close all eastern land border crossing points at that stage, he was publicly criticised by some members of the parliament (see [here](#) and [here](#)). One of the MPs belonging to the party represented in the Government speculated on the possibility to dismiss the Deputy Chancellor of Justice.

After the Minister of Finance had expressed dissatisfaction to the Deputy Chancellor's decision in her blog, the Prime Minister had to [underline](#) that members of government shouldn't assess the actions of guardian of the law. [According to the Minister of Finance](#), the Deputy Chancellor of Justice had considered the border situation from the perspective of access to asylum even though, in her opinion, national security should be prioritised.

Due to the discussion surrounding the situation of suspected instrumentalisation of migration, the FNHRI is concerned that certain politicians have questioned the system of check and balances. The President of the Supreme Administrative Court has [brought forward](#) similar concerns. He considered demands to dismiss the Deputy Chancellor of Justice as dangerous because the Deputy's position did not please some political decision-makers.

Similarly, the juxtaposition of national security and Finland's international human rights obligations seem to have taken up more and more space in the political discourse. In December 2023, the Prime Minister [stated](#) that the possibility to return asylum seekers in certain situations back to Russia without considering their applications should be further explored as part of different means to respond to developments at the border. Already before that, following Finland's decision to temporarily close all eastern land border crossing points on 30 November, the Council of Europe Commissioner for Human Rights had sent a [letter](#) to the Minister of the Interior. The Commissioner highlighted that full closure could potentially violate the principle of non-refoulement and prohibition of collective expulsions and requested additional information on how Finnish authorities deal with persons who irregularly enter Finnish territory and try to seek asylum.

As explained above, in this case the Chancellor of Justice has been the key rule of law and human rights actor due to his task in providing independent legal opinions for Government's decision-making. As part of its mandate, the Finnish Human Rights Centre has been monitoring the situation at the eastern border, including Government's actions and discussion related to them. The FHRC has discussed with and shared information to regional stakeholders such as FRA and its Justice, Digital and Migration Unit and Frontex's Fundamental Rights Office. Further actions will be considered, depending on developments in the beginning of 2024.

Sirpa Rautio  
Director

Elina Hakala  
Expert