

OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process

Participating State: Finland

UPR Working Group Session and Date of Review: 41st Session, 7-18 November 2022

Background

1. Finland has been a participating State in the Organization for Security and Co-operation in Europe (OSCE) since 1973 and has thus undertaken, and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.¹
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Finland, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Finland and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Finland.

Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE participating State, OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards.² In 2016-2022, the following relevant legal opinions (on topics other than elections) were issued on legislation or draft legislation of Finland:

*Opinion on Certain Legislation on Combatting Trafficking in Persons*³

5. On 11 November 2020, the Wellbeing and Health Protection Unit of the Ministry of Social Affairs and Health of Finland sent a request to ODIHR for a legal review of Acts aimed at combatting trafficking in human beings in Finland, with a special focus on measures of

¹ OSCE Office for Democratic Institutions and Human Rights, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, <http://www.osce.org/odihr/elections/76894> and *Compendium of OSCE Human Dimension Commitments: Volume 2, Chronological Compilation (third edition)*, 2011, <http://www.osce.org/odihr/76895>; OSCE Summit Meeting, Astana 2010, *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010, <http://www.osce.org/cio/74985?download=true>

² *The legal reviews and opinions, often produced in co-operation with the Council of Europe's Commission for Democracy through Law (Venice Commission), are available at www.legislationline.org. Basic information about the constitutional system and human dimension-related legislation of Poland is also available in English on www.legislationline.org.*

³ *OSCE/ODIHR Opinion on Certain Legislation on Combatting Trafficking in Persons*, 13 October 2021

support and assistance to victims of trafficking in human beings.

6. The opinion concluded that the relevant Finnish legal framework is generally respecting international legal standards and recommendations, but the following main recommendations were presented to improve the legislation relevant to combatting trafficking:

- to improve the definition of “trafficking in human beings” found in Section 3 of Chapter 25 of the Criminal Code of Finland in line with the latest guidance provided in the UNODC Model Legislative Provisions Against Trafficking in Persons. This entails:
 - a) expanding the concept of “means” used to subject a person to human trafficking covering, for instance, non-obvious physical force and abuse of the position of vulnerability;
 - b) ensuring that the consent of the adult victim is deemed irrelevant where the means stated in the article have been employed; and
 - c) ensuring that even where none of the means as stated by the article are employed, the consent is deemed irrelevant as concerns children, people who belong to a vulnerable group, who are disabled or do not have full legal capacity;
- to ensure that trafficking committed by all public officials in the performance of their duties constitutes an aggravating circumstance;
- to refrain from passing information about victims to the law enforcement authorities until the recovery and reflection period is completed, unless strictly necessary, in narrowly defined situations;
- to establish a clear national referral mechanism with a system of victim identification by a) law enforcement authorities for the purpose of criminal justice procedure and b) social services providers for assistance and support purposes;
- to introduce a specific article on identification of child victims stipulating that where there is uncertainty of the age of the victim of trafficking, it should be presumed that the victim is a child and be entitled to ensuing rights;
- to ensure that anti-trafficking legislation or policy documents, or action plans, include specific articles which provide for regular training and capacity building as an essential component of the methodical support of professionals who are involved in identification procedures and support of victims of trafficking in situations both within and outside Finland, with special focus on the gender aspect of human trafficking as well as the particular vulnerability of children and persons with disabilities;
- to establish a system of data collection at national level that is specific to trafficking and can therefore help to shape policy decisions and identify needs, and allowing disaggregation (based on sex, age, type of exploitation, country of origin and/or destination);
- to provide separate and appropriate assistance and protection measures for victim-witnesses who decide to participate in criminal investigations and trials relating to the prosecution of their trafficker;
- to provide child victim-witnesses with special protection measures taking into account the “best interests of the child” under the UN Convention on the Rights of the Child; and
- to include in the legislation of Finland a clear and specific non-punishment provision for victims of trafficking in human beings for the offences that they committed non-voluntarily in the course of the trafficking situation.

Election-related activities

7. ODIHR has observed prior to the reporting period. During the reporting period ODIHR deployed Needs Assessment Missions (NAM) on two occasions, most recently in 2019, in advance of the parliamentary election, and in all cases decided not to deploy an observation mission.

Parliamentary elections, 14 April 2019

8. Following an invitation from the Permanent Delegation of Finland to the OSCE, issued to ODIHR to observe the 14 April 2019 parliamentary elections, ODIHR deployed a NAM from 23 to 25 January 2019 to assess the pre-election environment and preparations for the elections and to recommend whether to deploy an ODIHR election-related activity for the forthcoming elections.
9. All ODIHR NAM interlocutors expressed a high level of confidence in all of the aspects of the electoral process and the legal framework and its implementation. The report⁴ noted that: “While the authorities took measures to implement some prior ODIHR recommendations, others remained to be addressed, such as:
 - ensuring more effective mechanisms for election dispute resolution; and
 - removing the restriction on the right to stand in elections for individuals holding military office.
10. Following the ODIHR NAM it was recommended that no deployment of an election-related activity for the 14 April 2019 parliamentary elections was needed.

Tolerance and non-discrimination issues

11. OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and OSCE/ODIHR supports states in their implementation of those commitments. In this context, OSCE/ODIHR produces an annual report on hate crime⁵ to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR also helps participating States design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States’ criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.
12. In respect of the 2020 Hate Crime Report,⁶ ODIHR recognized Finland's efforts to improve its hate crime recording, data collection mechanisms, and local cooperation practices, as well as the submitted information on police records. However, based on the available information, ODIHR also observed that Finland would benefit from raising the awareness and building the capacity of its criminal justice officials about hate crimes.

⁴ Needs Assessment Mission Report, Finland, Parliamentary Elections, 14 April 2019

⁵ <http://hatecrime.osce.org>.

⁶ 2020 Hate Crime Report - Finland, 16 November 2021. Only the 2020 report is referenced for the reporting period as the range of reported issues has been expanded and previous reports are not directly comparable. The full list of Main and Complementary key recommendations (KO) is available [here](#). Pre 2020 KOs on hate crime data are available [here](#).