TO THE UNITED NATIONS COMMITEE ON THE RIGHTS OF THE CHILD

Subject matter

1. Communication/Complaint
2. Request for initiation of inquiry procedure

The complainant / the informant

Forum Externum ry
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Forum Externum is a Finnish based registered association which aims at promoting human rights in accordance with the values enshrined in the Finnish Constitution, as well as the principles of democracy and rule of law. To fulfill its purpose, the Association conducts autonomous and independent civil monitoring for the promotion of basic human rights.

State concerned

Finland

Article violated

Article of the Convention - Article 3

Articles of the Optional Protocol

Articles 5 and 13

Exhaustion of domestic remedies / Application to other international procedures

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Procedure

1. Complaint procedure

We request the Committee to: a) investigate the complaint, b) find that a violation has occurred, c) urge Finland to take children's best interests into consideration in their legislative activities, according to the Convention on the Rights of the Child (CRC).

2. Inquiry procedure

In subsidiary, we request that the Committee initiates an inquiry procedure regarding Finland for the systematic violation of Article 3 CRC.

Abstract

Child Impact Assessment is an expression of the best interest of the child, enshrined in Article 3 CRC. This notwithstanding, Finland has overlooked to perform it in a number of cases during the last two years. Repeatedly, Finland turned a blind eye to the requirement to make a Child Impact Assessment, particularly with regard to the marriage law and the related legislation. For this reason, Finland violated the best interest of the child.

The Finnish Parliament adopted the same sex marriage law in its first reading on 28.11.2014 by a vote of 105-92, and in its second reading on 12.12.2014 by a vote of 101-90. It came before Parliament through a citizens' initiative, a rather new system for the enactment of an Act of Parliament.

The first section of the Marriage Act (411/1987), which reads: "A woman and a man who have agreed to marry each other shall be considered engaged", has been changed to "Two persons who have agreed to marry each other shall be considered engaged" (156/2015).[1] At the same time, changing the Marriage Act allows same sex couples to adopt together (joint adoption) without having to satisfy the requirements set out in the Adoption Law (22/2012).

These changes are meant to come into force on 1.3.2017.

In the legislative process, the Finnish Ombudsman for Children recommended that a Child Impact Assessment should be conducted. She did so in a comment to the Legal Affairs Committee on 2.4.2014:

> "Finally, we wish to keep in mind, that if the citizens' initiative proceeds to the legislative stage, an assessment is to be done during its preparation, in particular, concerning its impacts on children. A Child Impact Assessment, according to the general agreement, is based on its demands that children's interests should take first place in all decision making relating to children. Also, the Ministry of Justice recommends an evaluation in its guidelines."[2]

Also, the Legal Affairs Committee's report recommended the same:

> "The Committee would like to draw special attention, as well, to the issue that before the implementation of such a significant change in family law legislation, an assessment of its impacts on children should be prepared. This matter emerged

1 http://www.finlex.fi/fi/laki/ajantasa/1929/19290234#L1P1

2 http://lapsiasia.ssthosting.fi/?page_id=773

during consultations between experts and the Committee. A Child Impact Assessment is based on the demands of the U.N. Convention on the Rights of the Child, that, in all legislative decision making which concerns children, children's interests are to be given first place. Also, the Ministry of Justice recommends an evaluation in its guidelines."[3]

The Legal Affairs Committee opposed the draft of the proposed law. Its report includes an objection, however, and Parliament approved the objection and passed the law with a majority of votes without any particular assessments of its impacts on children.

This kind of legislation – leaving out the Child Impact Assessment - is against the Parliament's own principles of good law drafting, and it violates Article 3 CRC.

Facts of the complaint / the inquiry procedure

Repeatedly, Finland failed to make a Child Impact Assessment regarding the gender neutral Marriage Law and related legislation. Although a number of recommendations in this sense were put forward (by the Finnish Ombudsman, by Finnish Members of the Parliament), such an Impact Assessment was completely overlooked. This is reflective of a systematic violation of Article 3 CRC.

The changing of the Marriage Law to gender-neutral

On 13.12.2013, the Finnish Parliament was presented with the Citizens' Initiative[4], which contained a legal proposal to change the Marriage Law to gender neutral. Held important in the initiative was the recognition of an equal position for those belonging to a minority. The legal proposal was sought, so that couples of the same sex would receive the same rights as those belonging to married couples. In the initiative, the fact that registered couples don't automatically have the right by law to a common family name was held to be unjust. Likewise, the fact that couples of the same gender have no possibility to adopt together was held to be unjust.

On 2.4.2014, the Ombudsman for Children, whose task is, according to Finnish Law, to ensure that the position and rights of children are taken into account in legislation and societal decision making, sent a written statement to the Parliamentary Legal Affairs Committee concerning the citizens' initiative. In the statement, a reminder was given that, if the citizens' initiative should proceed to the legislative stage a child impact assessment should be done. It also mentioned that this was based on the demands of the CRC that children's interests should come first in all decision making that affects children. It also stated that the Ministry of Justice recommends an assessment in its guidelines.[5]

The Legal Affairs Committee gave its report on the law proposal[6], in which it stated that, according to the marriage law currently in force, marriage can be contracted by a man and a woman. A same sex couple has the possibility to register their relationship according to the law given for relationships between couples. According to the report, there are, in

[3] LaVM 14/2014 vp: https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiakirjat&docid=lavm+14/2014

[4] KAA 3/2013 vp: https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiat&docid=m+10/2013

[5] http://lapsiasia.ssthosting.fi/?page_id=773

[6] LaVM 14/2014 vp: https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiakirjat&docid=lavm+14/2014

principle, the same legal effects for those registering a relationship as for those who marry, and the regulations in the law and statutes concerning marriage or a married spouse are applied, in principle, to a registered relationship or a member of a relationship.

In the report of the Legal Affairs Committee, it was stated that the legal effects of registering a relationship differ from marriage since, for a registered relationship, the regulations of paternity law are not applicable to the establishment of paternity based on marriage. Nor are other regulations which are concerned with a spouse based solely on their gender. Also, for a registered relationship, neither regulations concerning name laws relating to the name of a spouse, nor regulations concerning adoption, which concern a spouse's right to adopt a child, are applicable. These last mentioned facts mean that the members of a registered couple cannot take a common name by making a notification to the authorities concerned, nor may they adopt together. Since 2009, the members of a registered relationship may adopt within the family: this gives the possibility to adopt a partner's child.

The Legal Affairs Committee held in its report that marriage is an old traditional family legal institution and form of relationship, which has a great significance to people and society. Changing marriage from a union between a man and a woman to a gender neutral form would affect the foundations of family legislation, which would have a remarkable significance. According to the Legal Affairs Committee, the granting of rights comparable to marriage to the members of a registered couple would be realises through a change in the law of relationships. With regard to the adoption from outside the family (joint adoption), the Legal Affairs Committee stated that, in 2009, members of a registered relationship were given the possibility to adopt the children of their partners (second-parent adoption). This signified a judicial change to the regulatory principle concerning parenthood, in which a child has only one mother and one father. The Legal Affairs Committee pointed out, however, that second-parent adoption does not change a child's actual life situation, contrary to joint adoption, in which a child is adopted from outside the family. Because second-parent adoption and joint adoption by a same sex couple differ by nature significantly from one another, joint adoption should be evaluated especially from the point of view of the child's best interests.

The Legal Affairs Committee also stated that joint adoption would not increase, in practice, the possibilities of same sex couples to get children due to: a) the small amount of adoptive children compared to the number of adoption applicants, b) that countries of origin do not, in principle, allow children to be placed with same sex couples. In the report, the concern was also brought forward that approving the marriage of same sex couples would complicate the chances of other Finnish married couples, hetero-couples, for international adoption. For example, after 2013, Russia has suspended international adoptions with Sweden, among others. The Committee also drew notice to the fact that some adoption applicants may have to suspend their adoption procedures should the marriage law be changed to gender neutral.

In its report, the Legal Affairs Committee also brought up that single adoption makes it possible to circumvent adoption regulations, in that one member of a same sex couple might adopt a child alone, and then the other member of the same sex couple would adopt through second-parent adoption. According to the Legal Affairs Committee, however, the chances of single adoption are weakened, in practice, by the fact that adoptive children are considerably fewer than applicants for adoption. According to the rules, in the choosing of adoptive parents, married couples are given priority over single applicants. In practice, single adoption has been possible mainly in special cases in which the applicant is a close

relative. What has been of foremost importance here is the fulfillment of the child's best interests.

In its report, the Legal Affairs Committee proposed the rejection of the draft law, and made a special point that, before the implementation of such a significant legislative change in family law, a Child Impact Assessment should be done. "The matter was brought up during the Legal Affairs Committee's consultations with experts. A Child Impact Assessment is based on the demands of the CRC that, in all decision making connected with children, the best interests of the child should take first place. The Ministry of Justice also recommends an assessment in its guidelines."

The Legal Affairs Committee's report included an objection, in which it was suggested that the law would be approved in such a way that it would come into effect on 1.3.2017. The objection commented on the impact of the draft-law on the adoption process and the child's best interests on the part of non-discrimination based on family background. It was also commented that the child's best interests was already settled in legal regulations, for example Fertilization care law (1237/2006) would be adapted for female couples, which legally is an erroneous understanding. In the objection, there is no mentioning of a Child Impact Assessment.

During the discussions in the plenary session of the Parliament, the rejection of the draft-law was demanded on the grounds that, *inter alia*, a Child Impact Assessment was lacking.[7]

On 28.11.2014, Parliament approved content of the law according to the objection by a vote of 105-92.

After this, the draft-law was sent to the Parliament's Grand Committee, in which a representative of the Ministry of Justice was heard as a consultant. According to the Ministry, the functionality of the marriage law change would require that before the law came into effect, consequential changes to several other laws should be prepared and approved. The Ministry's position was that it would be possible to prepare complementary legislation in the proposed time period while adhering to its principles. A Child Impact Assessment was not presented in this context. The minutes of the Committee do not make reference to Child Impact Assessment. In its report, the Grand Committee announced it would abide with the decision made by Parliament.[8]

In its second hearing on 12.12.2014, Parliament approved, by a vote of 101-90, the draft law, whose contents were decided upon during the first hearing of the draft law which was included in the citizens' initiative. At the same time, a proposal statement attached to it was approved by a vote of 104-46. In its statement, the Parliament required that the government would begin without delay to prepare the necessary changes required for other laws and submit its proposal for processing by Parliament by 31.12.2015.

The President of the Republic confirmed the law on 20.2.2015. The law is set to come into effect on 1.3.2017.

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7 Chairman of the Legal Affairs Commmitee Anne Holmlund and Member of Parliament Päivi Räsänen, https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiakirjat&docid=PTK+120/2014+ke+p+1

8 SuVM 2/2014 vp: https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiakirjat&docid=suvm+2/2014

The processing of complementary laws related to the marriage law amendment

On 1.5.2015, the Ministry of Justice started the project "Continuing preparations connected with the equal marriage law." A hearing was held concerning the government's model of proposal on 2.9.2015. On 9.9.2015, the Christian Democrat's parliamentary group gave a written statement in which it was stated that, with the coming into effect of the marriage law amendment, same sex couples could adopt together; this would not require a change to the adoption law. The parliamentary group held it especially reprehensible that, in the preparation of the law, a Child Impact Assessment was not conducted at all. The group demanded that a Child Impact Assessment would be included in *all* legislation relating to children. Because there was no such evaluation in the parliamentary proceedings of the marriage law, the group demanded it should be done as part of a complementary law. In this way, the position on the adoption law could be formed on the basis of the information received from the evaluation.

The government's proposal was given to parliament on 15.10.2015.[9] In the section "Effects of the proposal", it was stated that the effects of the marriage law amendment had been evaluated in conjunction with the law's approval in parliament." The critique presented by the parliamentary group of the Christian Democrats and its demand for the preparation of a Child Impact Statement in conjunction with complementary laws was not mentioned in the summary of the proceedings.

In the Parliament's preliminary debate of 22.10.2015, speaking turns were presented in which a Child Impact Assessment was insisted upon.[10] The matter was forwarded to the Legal Affairs Committee.

On 11.2.2016, the Legal Affairs Committee gave its report, in which the approval of the amendment included in the government's proposal, with small technical changes, was proposed. Concerning adoption, it was noted that "with the coming into force of the marriage law amendment, same sex couples can also adopt together. This does not require any change to the law of adoption." There is no mentioning anywhere of a child impact evaluation.[11]

The report of the Legal Affairs Committee included an objection. According to it, the proposal's preparation did not fulfill the criteria of good administration. In addition, it was noted that, in the proposal, the reasons for the law's rejection by the previous election period's Legal Affairs Committee were disregarded, such as the lack of a Child Impact Assessment. In the objection, it was held to be especially reprehensible that in the preparation of the amendment a Child Impact Assessment was not carried out. Since there was no such evaluation, it was stated that this should have been done in conjunction with a complementary law. The objection included a proposal for the rejection of the law.

In the first hearing of the proposed amendment on 10.2.2016, and in the second hearing on 16.2.2016, different voices criticised the lack of a Child Impact Assessment and proposed the rejection of the amendment.[12] In one particular speaking turn, an appeal was made to Commitee`s Concluding Observations (2011) and General Comment No. 14 (2013)

[9] HE 65/2015 vp: https://www.eduskunta.fi/FI/vaski/KasittelytiedotValtiopaivaasia/Sivut/HE_65+2015.aspx
[10] Members of Parliament Mika Niikko, Rami Lehto, Sari Tanus, https://www.eduskunta.fi/FI/vaski/PoytakirjaAsiakohta/Sivut/PTK_55+2015+3.aspx
[11] LaVM 7/2015 vp: https://www.eduskunta.fi/FI/vaski/mietinto/Sivut/LaVM_7+2015.aspx
[12] Members of Parliament Antero Laukkanen, Sari Essayah, Sari Tanus, Peter Östman, Lea Mäkipää, https://www.eduskunta.fi/FI/vaski/PoytakirjaAsiakohta/Sivut/PTK_5+2016+5.aspx

regarding taking the child´s best interests as a primary consideration.[13]

On 17.2.2016, the Parliament approved of the proposed law included in the government's proposal by a vote of 104-46.

The President of the Republic approved the law on 8.4.2016. The legal amendment is set to come into force on 1.3.2017.

Legal evaluation

Background

In its published report of 17.6.2011, The UN Committee on the Rights of the Child urged Finland to strengthen its efforts to ensure that the principle of the best interests of the child children's would be observed in, among other things, its legislative proceedings.[14]

At the administrative level, the Committee's exhortation was observed in the program of Prime Minister Jyrki Katainen's government (22.6. 2011-24.6.2014): "An assessment of the impact on children will be increased in all decision-making"[15].

In the program of the government of Prime Minister Alexander Stubb, which succeeded Prime Minister Katainen's government, it was determined that Katainen's government's program and its objectives would still be held in effect, and it was stated that the government would take notice of and evaluate the place of families, especially families with children, in its legislative work and decision making.

In the program of Prime Minister Juha Sipilä's government, which succeeded Stubb's government (29.5.2015-), it states, in conjunction with the change in the program of child and family services, that "the conclusions of a child and family impact assessment will be taken into account", and that in cooperation with the Council of State, a legislative impact assessment body will be established, the task of which will be to ensure the quality of legislation's impact evaluation.

Taking the complaint into investigation

On 13.10.2015, Finnish Parliament approved the Optional Protocol concerning complaint proceedings related to children's rights. The President of the Republic ratified it on 30.10. 2015, after which the letter of ratification was copied to the attention of the Secretary General of the United Nations on 12.11. 2015. The complaint procedure came into force in Finland on 12.02. 2016.

Actio Popularis
The complainants are aware of the fact that a large scale address type of complaint is not possible in this situation.

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13 Member of Parliament Antero Laukkanen, https://www.eduskunta.fi/FI/vaski/PoytakirjaAsiakohta/Sivut/PTK_5+2016+5.aspx#16.07Laukkanen

14 Concluding Observations: Finland, 2011, chapter 27.

15 Programme of Prime Minister Jyrki Katainen´s Government 2011, 110 http://vnk.fi/documents/10616/622966/H0311_Programme+of+Prime+Minister+Jyrki+Katainen%E2%80%99s+Government+2011.pdf/41e14454-a2c2-4ed0-8179-e46801a37541?version=1.0

The complainants, however, would like to point out that this is a question of a conscious and repetitive violation of an agreement obligations, perpetrated by a member state's legislative body. Furthermore, citizens do not have effective means of legal protection in Finland if lawmakers fail in their responsibility to stand by human rights obligations.

The investigation of this complaint has an especially weighty reason. The legislative changes may have an essential impact on the group of people who do not have the abilities to act to defend their rights and interests. Therefore, the complaint lodged by an external part is highly important for the realisation of rights.

Ratione Temporis
The breach of the agreement obligations related to the complaint began in December 2014, when the gender neutral marriage law was approved without any Child Impact Assessment. At that point, the Optional Protocol relating to the complaint procedure had not come into force in Finland.

The breach has continued after the coming into force of the Optional Protocol in February of 2016, when a Child Impact Assessment was again overlooked in the course of legislative changes related to the marriage law.

No National Legal Protection Methods

According to section 22 of the Finnish Constitution[16], public authority is to ensure the implementation of basic rights and human rights.

According to section 42 of the Constitution, it is the task of the Chairman of Parliament to oversee - during sessions of Parliament - that the Constitution is complied with during its handling of matters.

According to section 74 of the Constitution, the interpretation and supervision of human rights in Parliament belongs to the Parliament's Constitutional Law Committee. Its task is to give statements on the constitutionality of its handling of upcoming draft laws and other matters, as well as their relationship to international human rights agreements.

If the law making body does not observe human rights obligations that are binding on Finland, then there is not an effective protection mechanism in the Constitution for its citizens. The Attorney General of the Council of State and the Parliamentary Ombudsman do not have jurisdiction over Parliament.

According to section 106 of the Constitution, in the handling of a particular matter, if a legislative bill is in conflict with the Constitution, the Court of Justice can give priority to the Constitution. It is difficult to expect that this regulation could be applied in the preparation and legislation of the law with the procedural error that took place in Parliament.

Initiating the inquiry procedure

Finland has adopted the Optional Protocol without restraints. Hence,Finland has regonized the competence of the Commitee in respect to rights set forth in Article 13 of the Optional

[16] http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf

Protocol.

We have submitted reliable information to the Commitee indicating intentional and systematic violations by Finland in its legislative process concerning the rights set forth in Article 3 CRC.

New Citizens' Initiative Under Consideration

A new Citizens' Initiative was presented to the Parliament on 22.6.2016. It proposes the overturning of the gender neutral marriage law act before it comes into force.

The Citizens' Initiative criticizes that the Parliament had made no Child Impact Assessment in the process of making the reform act. To our understanding, connected with this overturning initiative there would be a Child Impact Assessment, so that this serious deficiency would be corrected. We request that the Committee urges Finland to abide by its CRC obligations and to perform the Child Impact Assessment which pertains to this matter.

Conclusion

Child Impact Assessment is an expression of the best interest of the child, enshrined in Article 3 CRC. This notwithstanding, Finland has overlooked to perform it in a number of cases during the last two years. Repeatedly, Finland turned a blind eye to the requirement to make a Child Impact Assessment, particularly with regard to the marriage law and related legislation. For this reason, Finland violated the best interest of the child.

On the basis of the points mentioned above, we request the Committee to: a) investigate the complaint, b) find that a violation of Article 3 has occurred, c) urge Finland to take the best interests of the child into consideration in their legislative activities. In subsidiary, we request the Committee to initiates an inquiry procedure regarding Finland for the systematic violation of Article 3 CRC.

Date and signature

Oulu, 11th August 2016

FORUM EXTERNUM RY

Jyrki Anttinen Pekka Lahdenperä Timo Nikula

members of the board