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COMMISSION STAFF WORKING DOCUMENT

2020 Rule of Law Report Country Chapter on the rule of law situation in Finland

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

2020 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

The Finnish justice system is characterised by a consistently high level of perceived judicial independence among both businesses and the general public. The recent creation of an independent National Courts Administration, which has taken over tasks concerning the management of the courts from the Ministry of Justice since January 2020, aims at further strengthening the independence of the judiciary. In addition, a recent restructuring of the National Prosecution Service aims at improving its effectiveness and consistency in prosecution practices. Certain challenges regarding digitalisation of the justice system remain.

According to surveys, Finland is perceived as one of the least corrupt countries in the EU and the world. The country relies on an administrative culture of transparency and openness in order to combat corruption. Finnish public institutions have built a reputation for transparent administration and a reliable and functional corruption prevention framework. Setting up a dedicated Government strategy to fight corruption has been under discussion for several years but its adoption is still pending. There are currently no specific rules to regulate contacts of top executive functions with third parties and lobbyists and there are no reporting or disclosure requirements applicable to those who seek to influence Government actions and policies. However, work on measures for increasing ethics and transparency is ongoing. Finland is currently taking steps with regard to regulating lobbying and limiting ‘revolving doors’. In March 2020, a parliamentary Working Group was set up to establish a transparency register related to lobbying with the aim to supplement the legislation on openness of Government and strengthen administrative transparency.

A high level of press freedom in Finland is internationally recognised. The tasks and powers of the media regulatory authority are ensured by law, although it reports some challenges regarding resources. While no media-specific rules governing transparency of media ownership currently exist, a reasonable level of transparency exists in practice through voluntary disclosures and general publicity rules for limited liability companies. The Government is considering a reform for further extending the constitutionally guaranteed access to documents. In addition, the Government has started to reflect on measures to protect journalists more effectively from unlawful threats and targeting online, a phenomenon detected in recent years. No physical threats towards journalists have been reported.

The process for enacting legislation involves a multi-step procedure with impact assessment and consultation procedures. For recent reforms relating to the justice system, an inclusive process involving the judiciary has been followed. Furthermore, a reform process is currently ongoing to clarify the partially overlapping mandates of the Chancellor of Justice and the Ombudsman, two key independent authorities involved in safeguarding fundamental rights. In this regard, a legislative proposal is planned to be presented to Parliament in autumn 2020. A National Democracy Programme has been launched to further improve the framework for civil society and participatory democracy.

I. JUSTICE SYSTEM

The Finnish justice system is composed of the ordinary judiciary, with 20 district courts¹, five courts of appeal and the Supreme Court, and the administrative judiciary with six regional administrative courts and the Supreme Administrative Court. There are three specialised courts². The independent National Courts Administration is in charge of the administration of courts, including management of budgets, buildings and ICT systems³. The independent Judicial Appointments Board⁴ prepares proposals for appointments of judges to the Government, while proposals for Supreme Court and Supreme Administrative Court judges are made by these courts themselves⁵. Judges are formally appointed by the President of the Republic⁶. The National Prosecution Authority is an independent state authority⁷, led by a Prosecutor General, who is appointed by the President on the proposal of the Ministry of Justice and can be dismissed or suspended by the Government⁸. The Finnish Bar Association is the public body tasked with the professional supervision of lawyers⁹.

Independence

The Finnish justice system is characterised by a very high level of perceived independence. The perceived independence of courts and judges is consistently very high, with 84% of the general public and 85% of companies perceiving it as ‘fairly or very good’ – these figures have been stable, with slight improvements since 2016 for the general public. For companies, they have been stable at a high level since 2010¹⁰. Even with these high levels of perceived independence of the judiciary, Finland has recently undertaken reforms to further strengthen structural safeguards for judicial independence.

A new independent body has been established to safeguard judicial independence. The National Courts Administration, which has taken office in January 2020, is an independent agency responsible for the administration of the courts, taking over functions previously exercised by the Ministry of Justice. It was established through amendments to the Courts Act adopted in February 2019¹¹ and it is independent from the Ministry of Justice. The aim of

¹ The number of district courts was reduced from 27 to 20 in 2019, to allocate workload and resources more evenly between district courts.

² The Market Court, the Labour Court and the Insurance Court. CEPEJ (2020), Study on the functioning of judicial systems in the EU Member States.

³ Courts Act, Chapter 19a, National Courts Administration.

⁴ It has twelve members – nine judges from different levels of courts, proposed by the judiciary, and three non-judge members (one lawyer, one prosecutor, one member representing legal research and education). All members are appointed by the Government for a five year term.

⁵ All judges of the Supreme Court and Supreme Administrative Court participate to the selection. Courts Act, Chapter 11, Section 7.

⁶ Only one candidate is proposed per vacancy. While the proposal is non-binding, in practice, it is almost always followed, with only one exception each for ordinary court judges (in 2000, the year the Judicial Appointments Board was established) and for Supreme Court judges (in the 1970s).

⁷ Act on the National Prosecution Authority (32/2019), Chapter 1, Section 2.

⁸ The decision to dismiss can be appealed to the Supreme Administrative Court.

⁹ Advocates Act (496/1958).

¹⁰ Figures 44, 46 and 48, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

¹¹ Courts Act, Chapter 19a, National Courts Administration.

the reform, which was carried out in close consultation with the judiciary¹², is to strengthen the structural autonomy and independence of the courts, reinforce the quality of the administration of justice and allow courts to focus on their key functions instead of on administrative tasks¹³. The powers of the National Courts Administration include making proposals on the allocation of the budget of courts to the Ministry of Justice and deciding on its allocation to individual courts, monitoring courts' performance, managing court buildings and ICT systems and organising training for judges and other court personnel (in cooperation with the Judicial Training Board¹⁴). It is also in charge of establishing positions at the courts, both for judges and for other personnel. The decision-making body of the Courts Administration is the Board of Directors, which consists of eight members (six judges from all different instances of courts and two non-judge members¹⁵), appointed by the Government on proposal by the judiciary (for the judges-members), meaning that a majority of its members are judges chosen by their peers from all levels of the judiciary, which is consistent with Council of Europe recommendations¹⁶. The National Courts Administration has also been accepted as a full member by the European Network of Councils for the Judiciary in June 2020¹⁷.

Quality

The structure of the prosecution service has been reformed to improve its effectiveness. As of September 2019, the Office of the Prosecutor General and eleven local prosecution offices have been merged into a single National Prosecution Authority¹⁸. This reform is intended to enable the Prosecutor General to supervise more consistently the uniformity of the prosecution practices and centralise administrative functions as well as certain criminal proceedings¹⁹. In addition, it facilitates transfers of cases between districts to balance workloads. The reform has also created a fixed term of office for the District Chief Prosecutors (five years) as well as the new title of 'Specialised Prosecutor'. The number of prosecutors and their tasks and powers, including those of the Prosecutor General²⁰, are not affected by this reform.

Certain challenges remain as regards the digitalisation of the justice system. The online availability of judgments remains limited, in particular for first-instance judgments²¹.

¹² The preparatory process started in 2013 and involved a preparatory commission and a comprehensive consultation process; Ministry of Justice, Project for the establishment of a judicial office.

¹³ Input from Finland for the 2020 Rule of Law Report, p. 6.

¹⁴ The Judicial Training Board is responsible for arranging judicial training. It is composed of six judges, a prosecutor, a lawyer, a member representing legal research and education, and a member representing the National Courts Administration. Courts Act, Chapter 21.

¹⁵ One Supreme Court judge nominated by the Supreme Court, one Supreme Administrative Court judge nominated by the Supreme Administrative Court, one judge each from the courts of appeal, district courts, administrative courts and special courts (nominated by the chief judges of these courts following an expression-of-interest procedure); one member representing other court personnel nominated by the chief judges after consultation of the employees organisations and one member with special expertise in the management of public administration. Courts Act, Chapter 19a, Section 8.

¹⁶ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 26-27.

¹⁷ ENCJ, National Court Administration of Finland joins ENCJ.

¹⁸ Act on the National Prosecution Authority (32/2019).

¹⁹ Information received in the context of the country visit to Finland and input from Finland for the 2020 Rule of Law Report, p. 7.

²⁰ The Prosecutor General has wide-ranging powers, including to transfer without consent, to take decisions on disciplinary measures and the removal of individual cases assigned to a prosecutor. Figure 56, 2019 EU Justice Scoreboard.

²¹ Figure 28, 2020 EU Justice Scoreboard.

Furthermore, arrangements for ensuring that judgments are published in a machine-readable format are limited²². While case law of the Supreme Court, the Supreme Administrative Court and to a lesser degree the courts of appeal and special courts is published on a Government website, this is not the case for the district courts. In addition, while it is possible to both submit a case and transmit summons online, there is no possibility to follow stages of proceedings online²³. Case management systems exist in all courts and are currently being modernised, also to improve data collection²⁴. However, tools for producing court activity statistics currently only exist in about half of the courts²⁵.

The services offered by state legal aid offices have been expanded and it is now possible to receive certain services remotely. Certain services, such as financial and debt counselling services, were previously handled at the municipal level and are now carried out by state legal aid offices to help ensure consistent delivery of services across the country²⁶. In addition, preparation of an on-call legal aid service began at the Ministry of Justice in June 2019. This project aims to establish an electronic system that provides legal aid effectively in a remote manner. The on-call system guarantees that a suspect or an injured party will get a legal counsel also outside normal business hours²⁷.

The new National Courts Administration has played an important role in supporting courts during the COVID-19 pandemic. While Finnish courts did not close down fully during the COVID-19 pandemic, their activity was affected²⁸. In this situation, the National Courts Administration provided support to the courts, by developing guidelines on the use of teleconferencing to replace physical hearings, on when hearings should be cancelled or postponed and on arrangements for social distancing inside courthouses²⁹. The importance of this support has also been highlighted by the judiciary³⁰.

Efficiency

The justice system manages its caseload efficiently. The justice system performs at an average level when it concerns the estimated time to resolve both litigious civil and commercial cases and administrative cases. The clearance rate for the former category has decreased somewhat since 2016, but still remains above 100%, while the clearance rate for administrative cases has shown clear improvements, going from 79% in 2016 to 112% in 2018. The number of pending cases is particularly low for litigious civil and commercial

²² Figures 28 and 29, 2020 EU Justice Scoreboard.

²³ Figure 27, 2020 EU Justice Scoreboard.

²⁴ Two development projects for general courts and administrative courts are ongoing, which also aim at providing better data, to allow to target allocation of resources and find targets for improvement. Input from Finland for the 2020 Rule of Law Report, p. 10.

²⁵ Figure 40, 2020 EU Justice Scoreboard.

²⁶ Oikeus.fi, Financial and debt counselling, and information received in the context of the country visit.

²⁷ Ministry of Justice, Emergency system: Project to define a legal aid on-call system.

²⁸ Statistics on the number of suspended cases regularly provided by the National Courts Administration counted around 6 000 criminal cases, 1.300 civil cases and 300 cases in the courts of appeals that were suspended as of June 2020. National Courts Administration, Suspension Statistics.

²⁹ National Courts Administration, Courts to remain open subject to new guidelines for protecting customers and staff.

³⁰ Information received in the context of the country visit and statement by the Supreme Court and Supreme Administrative Court of 14 April 2020, A strong rule of law bears over the crisis.

cases and average for administrative cases, showing that the justice system overall copes well with its caseload³¹.

II. ANTI-CORRUPTION FRAMEWORK

While Finland has no separate anti-corruption agency, several different authorities and bodies are jointly responsible for the fight against corruption. The Ministry of Justice's Department of Criminal Policy and Criminal Law oversees preventive efforts, is responsible for international cooperation and administers the national Anticorruption Cooperation Network. The police has competences to investigate corruption and is generally trusted by the public. Measures for increasing ethics and transparency as well as regulating lobbying and 'revolving doors' are ongoing.

Finland scores 86/100 in the Transparency International Corruption Perception Index and ranks 2nd in the European Union and 3rd globally³². 22% of respondents to the 2020 Special Eurobarometer survey on corruption consider corruption to be widespread (EU average: 71%) and only 8% of people feel personally affected by corruption in their daily lives (EU average: 26%)³³. As regards businesses, 37% of companies consider corruption to be widespread (EU average: 63%) and 13% of companies consider that corruption is a problem when doing business (EU average: 37%). 38% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average: 36%) while 53% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average: 31%)³⁴.

Finland has the legal framework to combat corruption largely in place. The Criminal Code criminalises several bribery offences³⁵ and several other laws include provisions related to the prevention of corruption³⁶. However, the criminalisation of trading in influence remains a matter of debate in the context of Criminal Code reform³⁷. Although clear instances of corruption are not widespread, the most commonly encountered forms are the offering or acceptance of benefits³⁸, conflicts of interests and favouritism, and the unethical contacts in preparation of decision-making³⁹. While concerns about the acquittal rate of foreign bribery cases have been raised in international evaluations, Finland has organised dedicated trainings and enhanced awareness raising to address perceived procedural shortcomings in the police, prosecution and amongst judges.

³¹ Figures 5-15, 2020 EU Justice Scoreboard.

³² Transparency International (2020), 2019 Corruption Perceptions Index.

³³ Special Eurobarometer 502 (2020) on Corruption.

³⁴ Flash Eurobarometer 482 (2019), Businesses' attitudes towards corruption in the EU.

³⁵ The Criminal Code contains provisions against active and passive bribery, embezzlement, fraud, and abuse of office, and persons and companies can be held liable for offenses. Facilitation payments are prohibited, while the propriety of gifts and hospitality depends on their value, the intent and the potential benefit obtained.

³⁶ Public officials are further governed by more detailed provisions in the Act on Public Officials in Central Government (1994/750), the Act on Parliamentary Civil Servants (1197/2003) and the Act on Civil Servants in Local Government (304/2003). Relevant acts in corruption prevention are also the Act on Public Contracts (348/2007), the Competition Act (948/2011), the Act on a Candidate's Election Funding (273/2009), the Act on Political Parties (10/1969), the Act on the Taxation of Business Profits and Income from Professional Activity (360/1968), the Administrative Procedure Act (808/2019), the Act on Equality between Women and Men (609/1986) and the Non-discrimination Act (1325/2014).

³⁷ GRECO Fifth Evaluation Round – Evaluation Report, para. 12.

³⁸ Without this necessarily reaching the threshold for bribery.

³⁹ Input from Finland for the 2020 Rule of Law Report.

A draft anti-corruption strategy 2017-2021, submitted to the Ministry of Justice in 2017, has yet to be adopted by the Government. After the strategy failed to be adopted before the resignation of the previous Government, a Ministerial working group on the rule of law and internal security under the new Government has launched the preparation of a subsequent strategy against corruption for 2020-2023, which will build on the previous draft and plans to clarify authorities' responsibilities to increase co-operation. The previous draft anti-corruption strategy drafted in 2016 focussed on six main themes, including strengthening structures to combat corruption, awareness raising, increasing transparency, facilitating the exposure of corruption, developing legislation on bribery offences and promoting research on corruption. The upcoming strategy aims to take into account anti-corruption recommendations addressed to Finland by international evaluations. In addition, the evaluation of legislative changes on the protection of whistleblowers is ongoing under the Ministry of Justice⁴⁰.

Several different authorities are jointly responsible for efforts to combat corruption. The Ministry of Justice's Department of Criminal Policy and Criminal Law oversees preventive efforts, is responsible for international cooperation and administers the national Anticorruption Cooperation Network⁴¹. The Network coordinates domestic anti-corruption activities, promotes national strategies and policies, and is a forum for information exchange amongst relevant ministries and stakeholders⁴². The Ministry of Finance is the main coordinating authority for civil service ethics. It has published guidelines for Government officials on hospitality, benefits and gifts, including travel and secondary employment. The National Audit Office audits central Government finances, monitors fiscal policy, and oversees political party and election campaign funding.

The National Bureau of Investigation (NBI) has competences to investigate corruption. The Police's financial crimes units and the NBI have the powers to investigate corruption and a National Network of anti-bribery and corruption specialists increases cooperation and coordination. In March 2020, 459 financial crime investigators and 60 positions supporting financial crime prevention within the NBI were reported. The National Prosecution Authority does not have any specialised units, but all prosecution districts have specialised financial crime prosecutors to handle bribery offences. Various districts also have prosecutors specialising in offences committed by persons in public office. Official statistics show that there is a low number of corruption-related offences reported in Finland.

A Code of Conduct for civil servants and top executive functions is under preparation. With regard to the ethics framework for civil servants, overall principles of good administration are defined in several legislative acts⁴³. Moreover, the Ministry of Finance is taking steps to prepare a Code of Conduct for persons entrusted with top executive functions, which was subject to a GRECO recommendation⁴⁴. The draft Code of Conduct consolidates existing guidelines on values, general duties, secondary occupations, gifts and benefits. The draft includes a section covering specifically top executive functions' obligations to declare

⁴⁰ Input from Finland for the 2020 Rule of Law Report, p. 18.

⁴¹ GRECO Fifth Evaluation Round – Evaluation Report, para. 37.

⁴² It has two full-time staff members, with a yearly budget of approximately EUR 250 000.

⁴³ The current code of ethics consists in a series of 'ethical guidelines' found in the Act of Public Officials in Central Government, the Administrative Procedure Act, the Act on the Openness of Government Activities and the Criminal Code of Finland.

⁴⁴ Finland's situational report on the implementation of the recommendations issued in the GRECO Fifth Evaluation Round – Evaluation Report. The GRECO recommendation also referred to a code of conduct for ministers.

assets, income, liabilities and interests. Conduct against the code will be considered as acting against the duties of a civil servant. Specific sanctions will apply in such cases, while certain violations may constitute an offence sanctioned in the criminal code⁴⁵. The new Code of Conduct is expected for the end of 2020 and will be binding for all civil servants, including persons with top executive functions. Ministers will however not fall under its scope, the Prime Minister's Office remaining in charge of regulating ethical matters for members of Government⁴⁶.

There is no explicit definition of conflict of interest in the legislation. The Constitution states that a Minister shall not hold any other public office or undertake any other task, which may obstruct the performance of their duties or compromise the credibility of actions as a Minister. The Act on Public Officials in Central Government states that a civil servant may not demand, accept or receive any financial or other advantage if this reduces confidence in him or her or in an authority. The Administrative Procedure Act (Section 27) and the Act on Public Officials in Central Government also impose limitations, and the Ministry of Finance has issued detailed guidelines about secondary occupations. Nonetheless, despite existing provisions, it has been recommended that a formal system for review of the declarations of ministers and disclosures of other persons entrusted with top executive functions be established or enhanced⁴⁷.

Asset disclosure for senior Government officials is regulated by the Act on Public Officials in Central Government⁴⁸. It states that, before appointment, the person must give an account of their business activities, holdings in companies and other property, as well as of other duties, relations and commitments that are relevant for whether the person qualifies for performing the tasks required in office⁴⁹. Although the Ministry of Finance has issued detailed guidelines about asset disclosure, it has been recommended that Finland standardise asset disclosure requirements⁵⁰. In its evaluation, the Ministry of Finance has set out the measures needed to fulfil the recommendation and whether to widen the scope of reporting⁵¹. The expected changes could possibly come into effect in early 2021.

Work on introducing a transparency register is ongoing. There are currently no specific rules to regulate contacts of top executive functions with third parties and lobbyists. Furthermore, there are no reporting or disclosure requirements applicable to those who seek to influence Government actions and policies. However, in March 2020, a parliamentary Working Group was set up to establish a transparency register related to lobbying. The register, which will supplement the legislation on openness of Government and strengthen administrative transparency, will be developed in consultation with civil society to improve the transparency of decision-making, and prevent undue influence. It will initially cover state-level decision-making, but may later be extended to the municipal and regional governments.

⁴⁵ According to the Act on Public Officials in Central Government, the applicable sanctions are informal warning, written warning, notice and cancellation of a civil service relationship (depending of course on the gravity of the violation).

⁴⁶ Finland's situational report on the implementation of the recommendations issued in the Fifth Round Evaluation Report, p. 6.

⁴⁷ GRECO Fifth Evaluation Round – Evaluation Report, recommendation iii).

⁴⁸ Act of Public Officials in Central Government, Section 8 a.

⁴⁹ Act of Public Officials in Central Government, Section 18.

⁵⁰ GRECO Fifth Evaluation Round – Evaluation Report, recommendation v.

⁵¹ The option proposed is to amend section 8 a in the Act on Public Officials in Central Government and consequently update the guidelines and the form regarding the disclosure.

The resulting legislation, expected by 2023, would impose a registration obligation on lobbying organisations and individuals.

Certain restrictions exist to limit ‘revolving doors’ and an extension to these measures is currently being prepared. Post-employment requirements for all civil servants except ministers were introduced by law in 2017. The Act on Public Officials in Central Government includes a post-employment waiting period for top executive functions who are civil servants. Ministers are currently not covered by this requirement, but are subject to an Advisory Board for Civil Service Ethics recommendation to disclose any intention to assume other duties after their appointment as ministers⁵². Moreover, in December 2019 the Government issued a resolution blocking ‘revolving doors’ for ministers. It requires ministers to inform the Prime Minister and Government’s Advisory Committee about a possible transfer to another position during the minister’s government term and the advisory committee to evaluate whether a cooling period of maximum 6 months should be recommended. The disclosure commitment is only applied to an on-going ministerial term and lapses once the latter has come to an end. As the establishment of other types of restrictions has been deemed to require legislative action, a legislative project on this subject has been commenced. The aim is to lay down procedures to prevent and avoid conflicts of interest for members of the Government. The Government’s proposal is due to be submitted in spring 2021. The Ministry of Finance is now evaluating whether the general guidelines need updating in respect of the GRECO recommendation to establish standards, procedures, and where necessary legislation, and if restriction periods for the highest civil servants should be extended to 12 months⁵³.

III. MEDIA PLURALISM

The tasks and powers of the Finnish Transport and Communications Agency (Traficom), the media regulatory authority, are ensured by law. Finland has general publicity rules for limited liability companies⁵⁴. No media-specific rules governing transparency of media ownership exist for the moment. Access to public documents is guaranteed by the Constitution. New legislation⁵⁵ to protect journalists from unlawful threats and targeting has been proposed last year⁵⁶.

Following a recent merger, the Finnish Transport and Communications Agency (Traficom) acts as the independent media regulatory body. The purpose of merger of the Finnish Communications Regulatory Authority (FICORA) and the Finnish Traffic Safety Authority in January 2019 was to form synergies with the governing Ministry of Transport and Communications and provide more services under the same roof. The tasks, powers and appointment procedures of the head and members of the collegiate body of the authority are defined by law⁵⁷. The government appoints the Director General for a five-year term⁵⁸. The Act on Public Officials in Central Government includes provisions on the termination of an

⁵² Recommendation of the Advisory Board for Civil Service Ethics dated 22 September 2014.

⁵³ GRECO Fifth Evaluation Round – Evaluation Report recommendation iv.

⁵⁴ Osakeyhtiölaki 624/2006.

⁵⁵ Lakialoite LA 33 2019 vp https://www.eduskunta.fi/FI/vaski/Lakialoite/Sivut/LA_33+2019.aspx.

⁵⁶ Since its first report in 2002, the Reporters Without Borders’ annual World Press Freedom Index has continuously placed Finland among the top five countries, currently occupying the second place.

⁵⁷ Act on the Transport and Communications Agency (Laki Liikenne- ja viestintävirastosta 935/2018).

⁵⁸ Section 9a of the Act on Public Officials in Central Government (Valtion virkamieslaki 750/1994) and point 6 of the first subsection of section 28 of the Decree on Public Officials in Central Government (Valtion virkamiesasetus 971/1994).

official's employment relationship and they are also applied to the Director General of the agency. Generally, the independence and effectiveness of Traficom appear to be very good, as analysed by the latest edition of the Media Pluralism Monitor (MPM 2020). However, the agency reported that they have little possibilities to contribute effectively to the work of the European Regulators Group for Audiovisual Media Services (ERGA) at the moment, due to limited resources⁵⁹. The national transposition of the Audiovisual Media Services Directive (AVMSD)⁶⁰ is currently in process. Besides Traficom, the National Audiovisual Institute is another independent government media body. It is tasked with classifying audiovisual programmes for the purpose of the protection of minors (the Act on the National Audiovisual Institute⁶¹).

The Finnish Council for Mass Media (*Julkisen sanan neuvosto*) is a self-regulating committee established by publishers and journalists. Its purpose is to interpret good professional practice and defend the freedom of speech and publication. It also addresses the methods by which journalists acquire information. The Council is composed of 13 members and a chair and does not exercise legal jurisdiction or public authority. The majority of the Finnish media have signed the Council's Basic Agreement, whereby the Council can directly handle any complaints that concern them. In limited cases, the Council can also independently initiate an investigation⁶².

There are no specific rules governing transparency of media ownership, but voluntary disclosure is common. General publicity rules for limited liability companies are applied to media companies. On the basis of the Limited Liability Companies Act⁶³, the shareholder register is to be kept accessible to everyone at the head office of the company. There is no specific legislation concerning media ownership transparency or concentration. In exchanges with the Finnish authorities, it appears, however, that most companies voluntarily disclose their ownership on their website. The Finnish authorities also report to be in the process of implementing the revised AVMSD, which encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure. The Directive is envisaged to be implemented in the Act on Electronic Communication Services in autumn 2020. On the basis of the Government's proposal, media service providers would be required to make publicly accessible information concerning their ownership structure.

Finland has a strong tradition of transparency in government. Access to public documents is guaranteed by the Constitution and the Act on the Openness of Government Activities⁶⁴. Every Finnish citizen is allowed to get access to governmental documents, unless, for compelling reasons, their publication has been specifically restricted by an act. The same section also protects the right to express, publish and receive information, opinions and other messages without anyone preventing it in advance, irrespective of the medium.

⁵⁹ It should be noted in this context that the revised Audiovisual Media Services Directive (AVMSD) requires Member States to 'ensure that national regulatory authorities or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively and to contribute to the work of ERGA'. Article 30(4) of 2010/13/EU AVMSD, as revised by 2018/1808/EU.

⁶⁰ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU.

⁶¹ Laki Kansallisesta audiovisuaalisesta Instituutista 1434/2007.

⁶² Council for Mass Media website: <http://www.jsn.fi/en/>.

⁶³ Chapter 3, section 17 (Osakeyhtiölaki 624/2006).

⁶⁴ Section 12, subsection 2 of the Constitution and the Act on the Openness of the Government Activities (Laki viranomaisten toiminnan julkisuudesta 621/1999).

According to non-governmental organisations the legal framework is generally good, ensuring that transparency rules are generally held up in court. This evaluation holds despite a trend in recent years towards a stricter interpretation of the rules by some authorities, including police and local government⁶⁵. There may be fees which act as a barrier to access certain public documents. The Finnish authorities state that the current rules could possibly be reformed in the future in light of the changes in the organisation of the public sector, where the state and municipalities have privatised their functions. For this purpose, a study has been commissioned by the Ministry of Justice on broadening the institutional scope of the Act⁶⁶. The modernisation of the rules is also necessary for other reasons, such as digitalisation. The current Government Programme raises the need to re-evaluate the institutional scope of the Act and to ensure that the principle of openness is materialised also in the future⁶⁷.

The framework for protection of journalists appears robust. Finland has not taken any specific measures based on the Council of Europe Recommendation on the protection of journalism and safety of journalists and other media actors⁶⁸. However, since its first report in 2002, the Reporters Without Borders' annual World Press Freedom Index has continuously placed Finland among the top five countries. The MPM 2020 notes the continued criminalisation of blasphemy and the severe punishments issuable for (aggravated) defamation⁶⁹. Furthermore, in 2019, one alert was published in the Council of Europe's Platform to promote the protection of journalism and safety of journalists concerning defamation charges having chilling effects on media freedom. The judgment concerned is under appeal⁷⁰. The criminal provisions on defamation and dissemination of information violating personal privacy were, however, amended and the possibility of prison sentences removed except in cases of 'aggravated' defamation in the Criminal Code in 2014 following cases in the European Court of Human Rights⁷¹.

The government is reflecting on additional measures to protect journalists from online attacks. No physical threats against journalists have been reported in Finland by the MPM 2020 or the Council of Europe's Platform to promote the protection of journalism and safety of journalists. Online harassment campaigns exist, but in the last few years, actions have been taken to counter it, such as the new criminalisation of stalking in 2013⁷². The Ministry of the Interior has set up a working group (for the period of 1 June 2020 – 31 December 2020) to address the question how to target online attacks, how the policy actions can be intensified and how to give more effective protection to the victims. Furthermore, education policy on the protection of journalists is being prepared⁷³. Feedback from non-governmental organisations reveals that new legislation to protect journalists from unlawful threats and

⁶⁵ Information received in the context of the country visit e.g. The Union of Finnish Journalists, Finnish Media Association and the Council for Mass Media.

⁶⁶ Input from Finland for the 2020 Rule of Law Report, p. 25.

⁶⁷ Programme of Prime Minister Sanna Marin's Government 10 December 2019. Inclusive and competent Finland – a socially, economically and ecologically sustainable society.

⁶⁸ Recommendation CM/REC(2016)4 of the Committee of Ministers of the Council of Europe

⁶⁹ Media Pluralism Monitor 2020.

⁷⁰ Council of Europe, Platform to promote the protection of journalism and safety of journalists, Finland: Court Convicts Journalist Johanna Vehkoo on Defamation Charges.

⁷¹ E.g. *Juppala v. Finland*, no. 18620/03, ECHR 2008 and *Ristamäki and Korvola v. Finland*, no. 66456/09, ECHR 2013.

⁷² Criminal Code, Chapter 25, Section 7a.

⁷³ Input from Finland for the 2020 Rule of Law Report p. 25.

targeting has been proposed last year⁷⁴ and the investigation and adjudication of these instances has improved.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Finland is a unicameral, parliamentary democracy, in which legislative proposals can emanate from Government or Parliament (although in practice most laws are based on Government proposals). In the absence of a Constitutional Court, ex-ante constitutionality review is carried out by the Chancellor of Justice and the Constitutional Law Committee of the Parliament. Moreover, all courts can carry out ex-post constitutionality review in concrete cases⁷⁵. The Chancellor of Justice, the Human Rights Centre and the Parliamentary Ombudsman play an important role in the system of checks and balances.

An impact assessment framework and comprehensive consultation process are part of a particularly inclusive framework for enacting legislation. The process for preparing and enacting laws is described in the ‘legislative drafting process guide’⁷⁶, which foresees a multi-step procedure, including a preparatory phase, a drafting phase including an impact assessment, and a consultation phase (minimum six weeks). A Council of Regulatory Impact Analysis issues statements on Government proposals and impact assessments. If broader-based participation is required in the process, a separate preparatory body with stakeholders, representatives of ministries, experts and political decision-makers can be appointed. For the creation of the National Courts Administration⁷⁷, such a preparatory body, which included members of the judiciary, was set up. For a recent reform of the Administrative Judicial Procedure Act⁷⁸, a network of stakeholders was involved in the preparatory process.

Emergency powers were used in the context of the COVID-19 pandemic and have been subject to constitutional review. The Emergency Powers Act, which invests the Government with a number of powers in a state of emergency, was applied during the COVID-19 pandemic, between 16 March and 16 June 2020⁷⁹. Decrees adopted by the Government based on these powers must be submitted to Parliament, who can approve, change or reject them. The Government submitted a series of such decrees for approval to Parliament during the COVID-19 pandemic⁸⁰. This included a review by the Constitutional Law Committee, a parliamentary committee⁸¹ that assesses the constitutionality of proposals submitted to Parliament, which provided statements on all decrees adopted under the Emergency Powers Act and sometimes required amendments⁸². In addition, the Chancellor of Justice is reviewing the constitutionality of the emergency legislation and launched at least

⁷⁴ Lakialoite LA 33 2019 vp https://www.eduskunta.fi/FI/vaski/Lakialoite/Sivut/LA_33+2019.aspx.

⁷⁵ According to Section 106 of the Constitution if in a case before a court, the application of an act would be in evident conflict with the Constitution, the court of law shall give primacy to the Constitution.

⁷⁶ Finnish Government, Legislative Drafting Process Guide.

⁷⁷ Ministry of Justice, Project for the establishment of a judicial office.

⁷⁸ Ministry of Justice, Administrative Procedure Act.

⁷⁹ The application of the Emergency Powers Act (1552/2011) is limited by law to maximum six months. The Government decided to withdraw its application on 15 June 2020, lifting the state of emergency as of 16 June 2020, and repealed all decrees adopted under it on the same date.

⁸⁰ The two first decrees were submitted to Parliament on 17 March 2020 and approved on 18 March 2020.

⁸¹ The committee is made up of members of Parliament and regularly hears independent experts on constitutional law.

⁸² See e.g. committee report 2/2020 vp, on the first emergency decree, in which the Constitutional Law Committee considered the decree to be constitutional except for one provision regarding a work obligation for health workers, which was subsequently repealed.

twelve on-going own-initiative investigations regarding the use of emergency powers, in which he has requested additional clarifications from the authorities⁸³.

A reform process has been initiated to clarify the mandates of different independent authorities safeguarding fundamental rights. The Constitution provides that the Chancellor of Justice and the Parliamentary Ombudsman are the two supreme guardians of legality and fundamental rights, with similar and concurrent tasks to oversee the activities of public authorities and monitor the legality and rule of law in the exercise of public authority by Government, public institutions and courts⁸⁴, although some specialisation exists in practice⁸⁵. Additionally, since 2018, the Chancellor of Justice ensures prior legality review of draft legislation to be submitted to Parliament. The Parliamentary Ombudsman and the Human Rights Centre (and its delegation) jointly constitute the National Human Rights Institution, re-accredited with A-Status by the Global Alliance of National Human Rights Institutions in 2019. To bring clarity to the mandates of and division of competences between the Parliamentary Ombudsman and the Chancellor of Justice, the Government launched a reform process in 2018 and a legislative proposal is set to be presented to Parliament in autumn 2020⁸⁶. Both institutions have indicated their support for the reform and participated in the preparatory phase⁸⁷.

The National Democracy Programme aims at further improving the framework for civil society and participatory democracy. The civil society space in Finland is considered to be open⁸⁸. Several mechanisms exist to involve civil society in the decision-making process, such as the Advisory Board on Civil Society Policy (appointed in 2017), which promotes interaction between public authorities and civil society. However, several civil society organisations have reported that on some occasions consultations are carried out in a formalistic manner or late in the process⁸⁹. The National Democracy Programme 2025, launched in 2019, aims to improve the framework for participatory democracy, including the involvement and consultation of civil society. Furthermore, the Programme is meant to strengthen operating conditions of the civil society and to promote democracy and human rights education⁹⁰.

⁸³ Information received in the context of the country visit and statements by the Chancellor of Justice of 3 April and 19 May 2020.

⁸⁴ Both authorities can bring charges against a judge for unlawful conduct in office.

⁸⁵ The Chancellor of Justice is appointed by the President of the Republic and has particular responsibilities overseeing the activities of the Government. The Ombudsman is elected by the Parliament and has a wide remit in following up on complaints from citizens.

⁸⁶ Ministry of Justice, Clarifying and evaluating the division of responsibilities of supreme law enforcement officers.

⁸⁷ Information received in the context of the country visit and the consultation process for the report, e.g. contribution from ENNHRI (European Network of National Human Rights Institutions) for the 2020 Rule of Law Report p. 83-84.

⁸⁸ Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

⁸⁹ Contribution from ENNHRI for the 2020 Rule of Law Report, p. 87.

⁹⁰ Ministry of Justice, National Democracy Programme 2025.

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Finland in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Finland

The Commission services held virtual meetings in May and June 2020 with:

- Chancellor of Justice
- Constitutional Law Committee
- Council for Mass Media
- Finnish Judges' Association
- Finnish Media Association
- Finnish Union of Journalists
- Judicial Appointments Board
- Ministry for Foreign Affairs
- Ministry of Justice
- National Bureau of Investigation
- National Courts Administration
- Prime Minister's Office
- Prosecution Service
- Supreme Court
- Transparency International Finland
- Transport and Communications Agency

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU