

***To the Finnish Parliamentary Commissioner for the Judiciary and Civil Administration
To the Ombudsman***

Finlandssvensk samling r.f. (Finland-Swedish Association) has according to its statutes amongst other the purpose to support the Finland- Swedes' mutual and general interests. The organization wants to draw the Ombudsman's attention to that it at the Court of Civil and Criminal Appeal in Vasa is taking place a great inadequate situation, which affects Swedish-speakers in a very discriminating way. In year 2003 had the completed Swedish civil cases an average hearing time of 14 months and 1 day while the average hearing time for these types of cases at the Court of Civil and Criminal Appeal was 9 months and 22 days. This results in that the cases in Swedish had a hearing time that was more then 44% longer than for the cases in Finnish. Regarding completed criminal cases during year 2003 was the average hearing time for the cases in Swedish more then 28% longer then for the cases in Finnish, 9 months and 11 days compared to a general average of 7 months and 9 days.

It should be noted that the general average hearing time mentioned above includes all of year 2003's completed civil or criminal cases, including the ones in Swedish. If the cases in Swedish were removed from these figures would the differences for these cases disadvantage would be even greater. It should also be noticed that the long average hearing times for the cases in Swedish are not due to that a few cases were to be heard for an extremely long time and strongly interfere with an otherwise reasonable average. Quite the opposite had a large number of the completed cases in Swedish in year 2003, around 2/3 of the civil cases and 1/3 of the criminal cases, a hearing time longer then 1 year. This is therefore a general problem and not limited to only a few problematic cases.

The organization has only paid attention to one Court of Civil and Criminal Appeal, the Court of Civil and Criminal Appeal in Vasa, and can therefore not comment on whether or not the same negative discrimination is occurring regarding cases in Swedish at other Courts of Civil and Criminal Appeal.

The reason for this complaint is that the situation has been known for a long period of time and promises to takes measures against it have been made but the situation is getting worse and will if nothing is done get even worse during financial year 2004.

Already in 1996 the Ombudsman request an investigation from the Court of Civil and Criminal Appeal in Åbo, Helsingfors and Vasa regarding the language in the proceeding of criminal cases (Statsrådet Dnr. 1776/2/96). The Ministry of Justice set up a working group on the 7.1.1999 that was assigned to investigate which possibilities persons with Swedish as their mother tongue has to use their mother tongue in the courts. The working group submitted its report to the Ministry of Justice on the 31.12.1999 (Justitieministeriet, 1999). To improve the situation for Swedish-speakers the working group made a 10-point proposal.

Internationally has Finland also been criticised for not living up to the international obligations that it has undertaken. That the position of the Swedish language in the judicial system does not harmonise with the Framework Convention for the Protection of National Minorities was emphasised in the answer (ACFC/INF/OP/I (2001) 002) regarding Finland's first report (ACFC/SR (1999) 003). Finland promised in its comment (GVT/COM/INF/OP/I (2001) 003) that the problem would be attended to.

The organization considers that the above-mentioned situation at the Court of Civil and Criminal Appeal in Vasa is a violation of our Constitution's 6 and 17§§.

6§ "Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language... or other reason that concerns his or her person..."

This statute is addressed to our public authorities/courts that are to apply the law. This means that the courts possibility to act on its own discretion is limited. This also means that "different treatment" is forbidden no matter if it is of a negative or of a positive type unless there is an acceptable reason for this different treatment. When it come to "an acceptable reason" to "negative different treatment" that has been accepted by the Government did the Committee for the Constitution formulate itself as follow regarding the law of registration of partnership that - from a judicial point of view - got a less beneficial position than a marriage: "The legislation concerning marriage relates to special decisions affecting the future and values of society which justifies that marriage between women and men are given a special status as partnership in the legislation. The interpretation of the legislation can in turn change with time and the interpretation of the Constitution affects values and attitudes". The Committee for the Constitution also said that this concerns a completely new type of legislation in a field that is in a phase of change also from an international viewpoint (GrUU 15/2001).

In this case, that is not applying to any government decision, is it not about special circumstances nor about something new that one wants to follow up on, it is about citizens that have Swedish as their mother tongue that has been on equal grounds side by side with the Finnish language for more than 80 years. The ground has crumbled though and the negative different treatment is a reality. This negative special treatment does not have to be directly affecting it can also be effecting indirectly which also is forbidden according to our Constitution. The treatment itself of a Swedish-speaking individual at a court is rarely, if ever, discriminating. However, the indirect discrimination is in that the actual consequences leads to an unequal situation since individuals due to their equally entitled language has to wait substantially longer for a judgement from the court.

17§ "...The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis..."

This statute is not a charter set up as a goal and it is not only a bout a formal equality between Finnish- and Swedish- speakers. It is above all about how the actual possibility to use your own language is implemented in courts among other places.

The organization Finlandssvensk samling r.f. is of the opinion that an indirect negative special treatment of the Swedish- language is occurring and that there are no acceptable reasons for this.

There is an obvious lack of Swedish-speaking judges and executives at the Court of Civil and Criminal Appeal in Vasa that should have been dealt with ages ago. The Court of Civil and Criminal Appeal in Vasa writes in its annual report for 2003 that there are an insignificant

number of cases in Swedish. The organization finds it unacceptable that a Court of Civil and Criminal Appeal is organised in such a way that ordinary occurrence that takes place in every governmental authority (such as official leave, pregnancy or other normally occurring events) puts the court cases for an ethnic group with equal rights in a situation that in an extremely striking way results in an indirect discrimination of this group. If the cases in Swedish only constitute “an insignificant number” can it then be so that it also is about the Court of Civil and Criminal Appeal’s internal administration and that Swedish-speaking judges and executives use the main part of their time for administering cases in Finnish?

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