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Seventy-third session
15 October-2 November 2001

VIEWS

Communication No. 779/1997

Submitted by:	Mrs. Anni Äärelä and Mr. Jouni Näkkäläjärvi (represented by counsel, Ms. Johanna Ojala)
Alleged victims:	The authors
State Party:	Finland
Date of communication:	4 November 1997
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 3 November 1998 (not issued in document form)
Date of adoption of Views:	24 October 2001

On 24 October 2001 the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 790/1997. The text of the Views is appended to the present document.

[ANNEX]

- Made public by decision of the Human Rights Committee.

ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
Seventy-third session
concerning
Communication No. 779/1997*

Submitted by: Mrs. Anni Äärelä and Mr. Jouni Näkkäläjärvi (represented by counsel, Ms. Johanna Ojala)

Alleged victims: The authors

State Party: Finland

Date of communication: 4 November 1997

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 24 October 2001,

Having concluded its consideration of communication No. 779/1997, submitted to the Human Rights Committee by Mrs. Anni Äärelä and Mr. Jouni Näkkäläjärvi under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

Under rule 85 of the Committee's rules of procedure, Mr. Martin Scheinin did not participate in the examination of the case.

The texts of a concurring individual opinion signed by Mr. Prafullachandra Natwarlal Bhagwati, and of a partly dissenting opinion signed by Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Eckart Klein, Mr. Ivan Shearer and Mr. Max Yalden are appended to this document.

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication, dated 4 November 1997, are Anni Äärelä and Jouni Näkkäläjärvi, both Finnish nationals. They claim to be victims of a violation by Finland of articles 2, paragraph 3, 14, paragraphs 1 and 2, and 27 of the Covenant. They are represented by counsel.

The facts as submitted

2.1 The authors are reindeer breeders of Sami ethnic origin and members of the Sallivaara Reindeer Herding Co-operative. The Co-operative has 286,000 hectares of State-owned land available for reindeer husbandry. On 23 March 1994, the Committee declared a previous communication, brought by the authors among others and which alleged that logging and road-construction activities in certain reindeer husbandry areas violated article 27 of the Covenant, inadmissible for non-exhaustion of domestic remedies.[1] In particular, the Committee considered that the State party had shown that article 27 could be invoked in the relevant domestic proceedings, which the authors should have engaged before coming to the Committee. Thereafter, following unsuccessful negotiations, the authors brought a suit in the Lappi District Court of first instance against the National Forestry and Park Service (Forestry Service). The suit sought the enjoinder, on the basis inter alia of article 27 of the Covenant, of any logging or road-construction in the Mirhaminmaa-Kariselkä area. This area is said to be amongst the best winter herding lands of the Sallivara Co-operative.

2.2 On 30 August 1996, the District Court decided, following an on-site forest inspection at the authors' request, to prohibit logging or road construction in the 92 hectare Kariselkä area, but to allow it in the Mirhaminmaa area.[2] The Court applied a test of "whether the harmful effects of felling are so great that they can be deemed to deny to the Sami a possibility of reindeer herding that is part of their culture, is adapted to modern developments, and is profitable and rational". The Court considered that logging in the Mirhaminmaa area would be of long-term benefit to reindeer herding in the area and would be convergent with those interests. In the Kariselkä area, differing environmental conditions meant that there would be a considerable long-term decrease in lichen reserves. Relying inter alia on the decisions of the Committee,[3] the Court found that these effects of logging, combined with the fact that the area was an emergency feeding ground, would prevent reindeer herding in that area. A factor in the decision was the disclosure that an expert testifying for the Forestry Service disclosed he had not visited the forest in question. After the decision, logging duly proceeded in the Mirhaminmaa area.

2.3 On appeal by the Forestry Service to the Rovaniemi Court of Appeal, the Forestry Board sought the then exceptional measure of oral hearings. The Court granted this motion, while rejecting the author's motion that the appellate court itself conduct an on-site inspection. The expert witness, having in the meanwhile examined the forest, repeated his first instance testimony for the Forestry Service. Another expert witness for the Forestry Service testified that the authors' herding co-operative would not suffer greatly in the reduction of herding land through the logging in question, however the Court was not informed that the witness already

had proposed to the authorities that the authors' herd should be reduced by 500 owing to serious overgrazing.

2.4 On 11 July 1997, the Appeal Court, reversing the first instance decision, allowed logging also in the Kariselkä area, and awarded costs of 75,000 Finnish marks against the authors.[4] The Court took a different view of the expert evidence. It found that the small area of logging proposed (which would not involve further roadworks) would have minimal effects on the quantities of arboreal lichen and, over time, increase the amounts of ground lichen. In light of the finding that the area was not the main winter pasture and in recent years had not been used as a back-up area, the Court concluded it had not been shown that there would be adverse effects on reindeer in the long run and even the immediate effects would be small. The authors were not made aware by the Appeal Court or the Forestry Service that the latter had presented allegedly distorted arguments to the Court based on the Committee's finding of no violation of article 27 of the Covenant in the separate case of Jouni Länsman et al. v. Finland.[5] The authors learned of this brief only upon receiving the Appeal Court's judgement, in which it stated that the material had been taken into account, but that an opportunity for the authors to comment was "manifestly unnecessary". On 29 October 1997, the Supreme Court decided, in its discretion and without giving reasons, not to grant leave to appeal. Thereafter, logging took place in the Kariselkä area, but no roads were constructed.

2.5 On 15 December 1997, the Ombudsman decided that the municipality of Inari and its mayor had exerted inappropriate pressure on the authors by formally asking them to withdraw from their legal proceedings, but did not find that the Forestry Service had acted unlawfully or otherwise wrongly.[6] The Ombudsman limited his remedy to bringing this conclusion to the attention of the parties. On 1 June 1998, a decision of the Ministry of Agriculture and Forestry (of 13 November 1997) entered into effect reducing the permissible size of the Sallivaara herd by 500 head from 9,000 to 8,500 animals. On 3 and 11 November 1998, the Forestry Service required a total sum of over 20,000 Finnish marks from the authors towards meeting the costs judgement.[7] This sum distrained by the Forestry Service corresponds to a major share of the authors' taxable income.

The complaint

3.1 The authors claim a violation of article 27 of the Covenant in that the Appeal Court allowed logging and road construction in the Kariselkä area, comprising the best winter lands of the authors' herding co-operative. The authors contend that this logging in the herding lands, coupled with a reduction at the same time of the permissible number of reindeer, amounts to a denial of their right to enjoy their culture, in community with other Sami, for which the survival of reindeer herding is essential.

3.2 The authors claim a violation of article 14, paragraphs 1 and 2, of the Covenant, contending that the Appeal Court was not impartial, having pre-judged the outcome of the case and violated the principle of equality of arms in (i) allowing oral hearings while denying an on-site inspection and (ii) taking into account material information without providing an opportunity to the other party to comment. The authors also contend that the award of costs against the authors at the appellate level, having succeeded at first instance, represents bias and effectively prevents other Sami from invoking Covenant rights to defend their culture and

livelihood. There is no State assistance available to impecunious litigants to satisfy the imposition of costs.[8]

3.3 The authors also claim improper influence was exerted by the Forestry Service while the case was before the courts. They claim to have been harassed, to have had public meetings arranged to criticise them, to have had the municipality formally request withdrawal of the suit or risk endangering the herding co-operative's economic development, and to have had the Forestry Service make unfounded allegations of criminal conduct against one of the authors.

3.4 The authors claim that the Supreme Court's unreasoned decision denying leave to appeal violated the right to an effective remedy within the meaning of article 2, paragraph 3, of the Covenant. They contend that the denial of leave to appeal to the Supreme Court, where a miscarriage of justice, in violation of article 14, had been demonstrated, means no effective remedy existed for that violation.

The State party's submissions with respect to the admissibility and merits of the communication

4.1 The State party responded to the communication by submission dated 10 April 1999. The State party contests the admissibility of the case. It argues that, in respect of some claims, domestic remedies have not been exhausted. As the authors did not appeal against the part of the first instance judgement that allowed logging and road construction in the Mirhaminmaa area, they have not exhausted available domestic remedies and that part of the claim is not admissible under article 5, paragraph 2 (b), of the Optional Protocol.

4.2 The State party argues that no violation of any provision of the Covenant has been shown. As to the claims under article 27, the State party accepts that the Sami community is an ethnic minority protected under that provision, and that individuals are entitled to its protection. It accepts further that reindeer husbandry is an accepted part of Sami culture and is accordingly protected under article 27 insofar as is essential to the Sami culture and necessary for its survival.

4.3 The State party argues however, referring to Lovelace v. Canada[9] and Ilmari Länsman et al. v. Finland,[10] that not every interference which in some limited way alters previous conditions can be regarded as a denial of article 27 rights. In the Länsman case, the Committee articulated a test of whether the impact is "so substantial that it does effectively deny [article 27 rights]". The State party also refers to jurisprudence of the Norwegian Supreme Court and the European Commission on Human Rights requiring serious and significant interference with indigenous interests before justiciable issues arise.[11]

4.4 In the present case, the State party emphasises the limited extent of the Kariselkä logging, amounting to 92 hectares of a total of 286,000 hectares of the Co-operative's total lands. The State party refers to the facts in the Jouni Länsman et al. v. Finland[12] case, where the Committee considered logging covering 3,000 of 255,000 hectares not to disclose a violation of article 27.

4.5 The State party points out that the author's claims were thoroughly examined in two courts, which considered the case explicitly in the light of article 27 of the Covenant. The courts heard expert witnesses, examined extensive documentary material and conducted an on-site inspection before coming to an evaluation of the facts. The Court of Appeal determined that the

lichen pastures were poor, and that logging would assist the recovery of such lichen.[13] The intermediate cutting envisaged was also a lower impact form of logging that would have less significant effects, and was less than the logging envisaged in the Jouni Länsman case where the Committee found no breach. The State party also contests whether the Kariselkä area could be described as "best (winter) herding lands", noting that the Court found that the area was not the main pasture area in winter, and in recent years had not even been used as a back-up area.

4.6 The State party also emphasises that, as required by the Committee in Jouni Länsman, the affected persons effectively participated in the decisions affecting them. The Forestry Service plans were developed in consultation with reindeer owners as key stakeholder groups. The Sallivaara Committee's opinion resulted in a course being adopted different to that originally recommended by the Wilderness Committee to reconcile forestry and herding, including a reduced area available to forestry. In this connection the State party refers extensively to the legal obligations on the Forestry Service to sustainably manage and protect natural resources, including the requirements of Sami reindeer herding culture.[14] Accordingly, the State party argues that the different interests of forestry and reindeer husbandry have been properly weighed in coming to the most appropriate forestry management measures.

4.7 The State party points to the Committee's approval of this kind of reconciliation in Ilmari Länsman, where it considered that for planned economic activities to be consistent with article 27 the authors had to be able to continue to benefit from husbandry. The measures contemplated here also assist reindeer husbandry by stabilizing lichen supplies and are compatible with it. Moreover, many herdsmen, including the authors, practise forestry on their lands in addition to pursuing husbandry.

4.8 Finally, the State party contends that, contrary to the authors' assertion, no decision to reduce reindeer numbers has been made, although the Herdsmen's Committees and the Sami Parliament have provided opinions.

4.9 In sum, the State party argues with respect to this claim that the authors' right to enjoy Sami culture, including reindeer husbandry, has been appropriately taken into consideration in the case. While the logging and consequential waste will temporarily have certain adverse effects on the pasture, it has not been shown that the consequences would create considerable and long-term effects which would prevent the authors from continuing reindeer herding in the area to its present extent. On the contrary, it has been indicated that due to heavy grazing the pastures were in bad condition and needed to recover. Furthermore, the area in question is a very small proportion of the Co-operative's area, and during winter the area has been used mostly at times of crisis in the 1970s and 1980s.

4.10 As to the authors' claims under article 14, the State party rejects that either the imposition of legal costs or the procedures pursued by the courts reveal violations of article 14.

4.11 As to the imposition of costs, the State party points out that under its law there is an obligation for the losing party to pay, when sought, the reasonable legal costs of the successful party.[15] The law does not alter this situation when the parties are a private individual and public authority, or when the case involves human rights issues. These principles are the same in many other States, including Austria, Germany, Norway and Sweden, and are justified as a means of

avoiding unnecessary legal proceedings and delays. The State party argues this mechanism, along with free legal aid for lawyers' expenses, ensures equality in the courts between plaintiffs and defendants. The State party notes however that, from 1 June 1999, an amendment to the law will permit a court ex officio to reduce a costs order that would otherwise be manifestly unreasonable or inequitable with regard to the facts resulting in the proceedings, the position of the parties and the significance of the matter.

4.12 In the present case, the award of costs against the authors was 10,000 Finnish marks lower than the sum of 83,765.59 Finnish marks actually sought by the Forestry Service.

4.13 As to the procedure adopted by the Court of Appeal, the State party argues that under its law (as it then was), it is not for the parties to decide on an oral hearing, but for the court to arrange one where it was necessary to assess the reliability and weight of oral witness statements taken in the district court. As to the refusal to make an on-site inspection, the Court considered, after the full oral hearing and evidence, that such an inspection would not provide any further relevant evidence. The District Court records of inspection were not in dispute, and accordingly an inspection was not necessary. The State party notes that a witness could go and see the relevant area, and such a visit cannot have jeopardised the interests of justice. However, the Court's judgement does not show whether the witness had in fact gone to the forest, or how decisive that evidence was. The authors also had a witness familiar with the forest in question.

4.14 As to the observations on the Jouni Länsman case submitted by the Forestry Service after the expiry of the appeal time limit, the State party notes that this occurred simply because the Committee's Views were delivered after that point. The Forestry Service letter contained only factual description of the decision and no detailed comment,[16] and the State party therefore considered it manifestly unnecessary to request comments from the other party. The State party notes that the court could in any event have taken the Committee's Views into account ex officio as a source of law, and that both parties could have commented on the Views in the oral hearing.

4.15 The State party rejects the authors' contentions that there is no right to an effective remedy, in breach of article 2. The Covenant is directly incorporated into Finnish law and can be (and was) directly pleaded before all levels of the courts. Any first instance decision may be appealed, while appellate judgements may only be appealed with leave. This is granted only when necessary to ensure consistent court practice, when there is a procedural or other fault requiring annulment of the lower decision, or where other weighty reasons exist. Here, two full instances gave comprehensive consideration to the authors' claims and arguments.

4.16 As to the general claims of harassment and interference, the State party observes that the Forestry Service reported to the police a suspected offence of unauthorized felling of timber on State land by one author's husband. While the matter is still under police investigation, the author in question has paid the Forestry Service compensation for the damage and costs of investigation. However, these matters have not affected the Forestry Service's conduct in the issues raised by the communication.

The authors' response to the State party's submissions

5.1 The authors responded to the State party's submissions on 10 October 1999.

5.2 As to the admissibility of the communication, the authors state that they did not seek remedies for the logging in the Mirhaminmaa area, concentrating in the Court of Appeal on defending the District Court's decision on the Kariselkä area.

5.3 As to the merits, the authors argue, however, that the logging of the Mirhaminmaa area immediately and necessarily affect the authors' article 27 rights. This logging in the best winterlands of the Co-operative increasingly encroaches on the authors' husbandry and increases the strategic significance of the Kariselkä area for herding, and should therefore be taken into account. The Kariselkä area becomes especially crucial during crisis situations in winter and spring, when the reindeer are suffering from lack of nourishment due to the paucity of such areas. The authors argue that the Kariselkä area's significance has also increased since other activities in the area limit the possibilities for herding, including large-scale gold mining, other mineral mining, large-scale tourism, and the operation of a radar station. They point out that the reduced amount of land available for herding after such encroachments has contributed to overgrazing of the remaining pastures. The authors point out that in any event the logging in the Kariselkä area has been undertaken.

5.4 The authors dispute the State party's observation that no decision aimed at reducing reindeer numbers has been made, and in substantiation submit the text of a decision of the Ministry of Agriculture and Forestry, dated 13 November 1997 which entered into effect on 1 June 1998, reducing the Sallivaara herd by 500 head from 9,000 to 8,500 animals. This reduction was a consequence of poor pasture conditions (itself acknowledged by the State party), while the Court of Appeal allegedly concluded that the pastures were sufficient and in good condition. The authors also object to the State party's reference to the authors' own logging activities, stating these were necessary to secure their subsistence in poor economic conditions and were in any event not comparable in scale to the logging undertaken by the State party.

5.5 As to the State party's arguments on the issues raised under article 14 in the communication, the authors clarify, on the issue of the award of legal costs, that the now amended and more flexible regime regarding costs did not apply to them. That amendment was made partly as a result of the filing of this communication. The authors point out that the Forestry Authority, in enforcing the award of costs, publicly announced that it sought to "prevent unnecessary trials". However, the fact that the authors prevailed at first instance demonstrates that this trial at least could not be considered unnecessary.

5.6 On the issue of the oral hearing and failure to undertake an on-site inspection by the Court of Appeal, the authors note that, while an oral hearing was at the time exceptional, they do no object to the oral hearing as such but to the proceedings as a whole. The overall proceedings were unfair, because whereas an oral hearing was granted, an on-site inspection was denied. The authors contend that the request for an on-site inspection was denied by the Court before all witnesses at the hearing had been heard. In any case, according to Finnish procedure an on-site inspection should have been carried out before the main hearing. The authors also contend that

the records of inspection (comprising one page of minutes and some photographs) do not and cannot replace an on-site inspection lasting a day.

5.7 As to the submissions by the Forestry Service to the Court of Appeal after the expiry of time, the authors state that the submissions included the Committee's Jouni Länsman Views and a brief. At the commencement of the oral hearing, the authors sought to provide the decision to the Court and were informed that the Forestry Service had already provided it. The Court did not mention the brief, which did not come to the notice of the authors during the hearings. According to the authors, the brief included an incorrect interpretation of the Committee's Views, as shown by the translation supplied by the State party. It could not mean, as the Forestry Service claimed, that no violation of the Covenant had occurred in the present case. The two cases were clearly different, as the Jouni Länsman Views rested on the treatment afforded in that case by the national courts, which in the present case was still continuing. The authors consider the brief had a relevant impact on the Court's decision, and the authors were unable to respond to it, in violation of their rights under article 14. That violation was not cured by the Supreme Court, which denied leave to appeal. Article 27 was also violated as the logging proceeded as a consequence of proceedings conducted in breach of article 14.

5.8 On 7 August 2001, the authors supplied a further decision of the Ministry of Agriculture of 17 January 2000 to reduce the Sallivaara Co-operative's herd by a further 1,000 head (from 8,500 to 7,500 animals) on account of poor pasture condition. This constitutes a 17 per cent reduction in the total size of the herd in two and a half years.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As the authors' complaints do not relate to the Mirhaminmaa area per se, it is not necessary for the Committee to pronounce on the arguments on admissibility adduced by the State party related to this area.

6.3 As to the authors' claim of inappropriate interference by the municipality of Inari, the Committee considers that, in circumstances where the legal proceedings subject to attempted interference were in fact pursued, the authors have failed to substantiate their arguments that these facts give rise to a violation of a right contained in the Covenant.

6.4 As to the authors' claims that they suffered harassment and intimidation in the course of the proceedings in that the Forestry Authority convened a public meeting to criticise the authors and made an unfounded allegation of theft, the authors have failed to detail their allegations in this regard. The lack of any materials in substantiation beyond those allegations themselves leaves the Committee unable to properly consider the substance of the allegations and their effects on the proceedings. Accordingly, this part of the communication has not been substantiated sufficiently, for purposes of admissibility, and is inadmissible under article 2 of the Optional Protocol.

7.1 The Committee finds the remaining portions of the communication admissible and proceeds to a consideration of the merits. The Committee has considered the communication in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7.2 As to the authors' argument that the imposition of a substantial award of costs against them at the appellate level violated their rights under article 14, paragraph 1, to equal access to the courts, the Committee considers that a rigid duty under law to award costs to a winning party may have a deterrent effect on the ability of persons who allege their rights under the Covenant have been violated to pursue a remedy before the courts. In the particular case, the Committee notes that the authors were private individuals bringing a case alleging breaches of their rights under article 27 of the Covenant. In the circumstances, the Committee considers that the imposition by the Court of Appeal of substantial costs award, without the discretion to consider its implications for the particular authors, or its effect on access to court of other similarly situated claimants, constitutes a violation of the authors' rights under article 14, paragraph 1, in conjunction with article 2 of the Covenant. The Committee notes that, in the light of the relevant amendments to the law governing judicial procedure in 1999, the State party's courts now possess the discretion to consider these elements on a case by case basis.

7.3 As to the authors' claims under article 14 that the procedure applied by the Court of Appeal was unfair in that an oral hearing was granted and an on-site inspection was denied, the Committee considers that, as a general rule, the procedural practice applied by domestic courts is a matter for the courts to determine in the interests of justice. The onus is on the authors to show that a particular practice has given rise to unfairness in the particular proceedings. In the present case, an oral hearing was granted as the Court found it necessary to determine the reliability and weight to be accorded to oral testimony. The authors have not shown that this decision was manifestly arbitrary or otherwise amounted to a denial of justice. As to the decision not to pursue an on-site inspection, the Committee considers that the authors have failed to show that the Court of Appeal's decision to rely on the District Court's inspection of the area and the records of those proceedings injected unfairness into the hearing or demonstrably altered the outcome of the case. Accordingly, the Committee is unable to find a violation of article 14 in the procedure applied by the Court of Appeal in these respects.

7.4 As to the author's contention that the Court of Appeal violated the authors' right to a fair trial contained in article 14, paragraph 1, by failing to afford the authors an opportunity to comment on the brief containing legal argument submitted by the Forestry Authority after expiry of filing limits, the Committee notes that it is a fundamental duty of the courts to ensure equality between the parties, including the ability to contest all the argument and evidence adduced by the other party.[17] The Court of Appeal states that it had "special reason" to take account of these particular submissions made by the one party, while finding it "manifestly unnecessary" to invite a response from the other party. In so doing, the authors were precluded from responding to a brief submitted by the other party that the Court took account of in reaching a decision favourable to the party submitting those observations. The Committee considers that these circumstances disclose a failure of the Court of Appeal to provide full opportunity to each party to challenge the submissions of the other, thereby violating the principles of equality before the courts and of fair trial contained in article 14, paragraph 1, of the Covenant.

7.5 Turning to the claim of a violation of article 27 in that logging was permitted in the Kariselkä area, the Committee notes that it is undisputed that the authors are members of a minority culture and that reindeer husbandry is an essential element of their culture. The Committee's approach in the past has been to inquire whether interference by the State party in that husbandry is so substantial that it has failed to properly protect the authors' right to enjoy their culture. The question therefore before the Committee is whether the logging of the 92 hectares of the Kariselkä area rises to such a threshold.

7.6 The Committee notes that the authors, and other key stakeholder groups, were consulted in the evolution of the logging plans drawn up by the Forestry Service, and that the plans were partially altered in response to criticisms from those quarters. The District Court's evaluation of the partly conflicting expert evidence, coupled with an on-site inspection, determined that the Kariselkä area was necessary for the authors to enjoy their cultural rights under article 27 of the Covenant. The appellate court finding took a different view of the evidence, finding also from the point of view of article 27, that the proposed logging would partially contribute to the long-term sustainability of reindeer husbandry by allowing regeneration of ground lichen in particular, and moreover that the area in question was of secondary importance to husbandry in the overall context of the Collective's lands. The Committee, basing itself on the submissions before it from both the authors and the State party, considers that it does not have sufficient information before it in order to be able to draw independent conclusions on the factual importance of the area to husbandry and the long-term impacts on the sustainability of husbandry, and the consequences under article 27 of the Covenant. Therefore, the Committee is unable to conclude that the logging of 92 hectares, in these circumstances, amounts to a failure on the part of the State party to properly protect the authors' right to enjoy Sami culture, in violation of article 27 of the Covenant.

7.7 In the light of the Committee's findings above, it is not necessary to consider the authors' additional claims brought under article 2 of the Covenant.

8.1 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal of a violation by Finland of article 14, paragraph 1, taken in conjunction with article 2 of the Covenant, and additionally a violation of article 14, paragraph 1, of the Covenant taken alone.

8.2 Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the authors are entitled to an effective remedy. In terms of the award of costs against the authors, the Committee considers that as the costs award violated article 14, paragraph 1, of the Covenant and, moreover, followed proceedings themselves in violation of article 14, paragraph 1, the State party is under an obligation to restitute to the authors that proportion of the costs award already recovered, and to refrain from seeking execution of any further portion of the award. As to the violation of article 14, paragraph 1, arising from the process applied by the Court of Appeal in handling the brief submitted late by the Forestry Service (para. 7.4), the Committee considers that, as the decision of the Court of Appeal was tainted by a substantive violation of fair trial provisions, the State party is under an obligation to reconsider the authors' claims. The State party is also under an obligation to ensure that similar violations do not occur in the future.

9. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views. The State party is requested also to give publicity to the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

Notes

[1] Sara et al. v. Finland, Communication 431/1990.

[2] The State party points out that the 92 hectare area amounts to some 3 per cent of the 6,900 hectares of the Co-operative's lands used for forestry.

[3] Sara v. Finland (Communication 431/1990), Kitok v. Sweden (Communication 197/1985), Ominayak v. Canada (Communication 167/1984), Ilmari Länsman v. Finland (Communication 511/1992); and moreover the Committee's General Comments 23 (50).

[4] Costs, for which the authors were jointly liable, totalled 73,965.28 Finnish marks, with 11 per cent annual interest.

[5] Communication 671/1995.

[6] The complaint had been submitted almost three years earlier.

[7] No information is provided on whether the Forestry Service is pursuing the outstanding portion of costs awarded to it (some 55,000 Finnish marks).

[8] The authors were also represented pro bono throughout the proceedings.

[9] Communication 24/1977.

[10] Communication 511/1992.

[11] Alta case, Norwegian Supreme Court, 26 February 1982, and G. and E. v. Norway, Application No. 9278/1981 and 9415/1981 (joined), Decisions and Reports of the European Commission of Human Rights, Vol. 35.

[12] Communication 671/1995.

[13] The State party notes that another Co-operative had proposed this form of logging in their area in order to stimulate lichen growth.

[14] The State party refers to s.2, Act on the National Forestry and Park Service 1993; s.11, Decree on the Finnish Forestry and Park Service 1993; and documentation of the Ministry of Agriculture and Forestry's working group on reindeer husbandry.

[15] Chapter 21, section 1, Code of Judicial Procedure 1993.

[16] The full text of the relevant parts of the letter reads: "The decision of the Human Rights Committee concerns the communication made by the authors who consider that their case was not duly considered by the Finnish courts and that the outcome of the case was not correct. The

Human Rights Committee rejected the communication considering that the Supreme Court came to the right conclusion. At the same time the Human Rights Committee found that the logging executed and planned by the National Forest and Park Service in the Angeli area did not constitute a denial of the authors' right to practice reindeer herding as a part of their cultural heritage in accordance with article 27 of the Covenant on Civil and Political Rights. Since the Human Rights Committee came to the same conclusion as the Supreme Court, the decision supports the observations of the National Forest and Park Service."

17 In Jansen-Gielen v. The Netherlands (Communication 846/1999), the Committee stated: "Consequently, it was the duty of the Court of Appeal, which was not constrained by any prescribed time limit *to ensure that each party could challenge the documentary evidence which the other filed* or wished to file and, if need be, to adjourn proceedings. In the absence of the guarantee of equality of arms between the parties in the production of evidence for the purposes of the hearing, the Committee finds a violation of article 14, paragraph 1 of the Covenant." (emphasis added)

Appendix

Individual opinion of Committee member Prafullachandra N. Bhagwati (concurring)

I have gone through the text of the views expressed by the majority members of the Committee. I agree with those views save in respect of paragraph 7.2 and, partly, in respect of paragraph 8.2. Since I am in substantial agreement with the majority on most of the issues, I do not think it necessary to set out the facts again in my opinion and I will therefore straightaway proceed to discuss my dissenting opinion in regard to paragraphs 7.2 and 8.2.

So far as the alleged violation of article 14, paragraph 1, in conjunction with article 2, by the imposition of substantial costs is concerned, the majority members have taken the view that such imposition, on the facts and circumstances of the case, constitutes a violation of those articles. While some of the members have expressed a dissenting view, I agree with the majority view but I would reason in a slightly different way.

It is clear that under the law as it then stood, the Court had no discretion in the matter of award of costs. The Court was under a statutory obligation to award costs to the winning party. The Court could not tailor the award of costs – even refuse to award costs – against the losing party taking into account the nature of the litigation, the public interest involved, and the financial condition of the party. Such a legal provision had a chilling effect on the exercise of the right of access to justice by none too wealthy litigants, and particularly those pursuing an *actio popularis.* The imposition of substantial costs under such a rigid and blind-folded legal provision in the circumstances of the present case, where two members of the Sami tribe were pursuing public interest litigation to safeguard their cultural rights against what they felt to be a serious violation, would, in my opinion, be a clear violation of article 14, paragraph 1, in conjunction with article 2. It is a matter of satisfaction that such a situation would not arise in the future, because we are told that the law in regard to the imposition of costs has since been amended. Now the Court has a discretion whether to award costs at all to the winning party, and, if so, what the amount of such costs should be depending upon various circumstances such as those I have mentioned above.

So far as paragraph 8.2 is concerned, I would hold that the authors are entitled to the relief set out in paragraph 8.2 in regard to the costs, not only because the award of costs followed upon the proceedings in the appellate Court which were themselves in violation of article 14, paragraph 1, for the reasons set out in paragraph 7.4, but also because the award of costs was itself in violation of article 14, paragraph 1, read in conjunction with article 2, for the reasons set out in paragraph 7.2. I entirely agree with the rest of paragraph 8.2

[signed] Prafullachandra N. Bhagwati

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual opinion of Committee members Abdelfattah Amor, Nisuke Ando, Christine Chanet, Eckart Klein, Ivan Shearer and Max Yalden (partly dissenting)

While we share the Committee's general approach with regard to the award of costs (see also Lindon v Australia (Communication 646/1995), we cannot agree that in the present case it has convincingly been argued and proven that the authors were in fact so seriously affected by the relevant decision taken at the appellate level that access to the court was or would in future be closed to them. In our view, they have failed to substantiate a claim of financial hardship.

Concerning possible deterrent effects in future on the authors or other potential authors, due note must be given to the amendment of the code of judicial procedure according to which a court has the power to reduce a costs order that would be manifestly unreasonable or inequitable, having regard to the concrete circumstances of a given case (see paragraph 4.11 above).

However, given that we share the view that the Court of Appeal's judgment is vitiated by a violation of article 14, paragraph 1, of the Covenant (see paragraph 7.4 above), its decision relating to the costs is necessarily affected as well. We therefore join the Committee's finding that the State party is under an obligation to refund to the authors that proportion of the costs award already recovered, and to refrain from executing any further portion of the award (see paragraph 8.2 of the Committee's views).

[signed] Abdelfattah Amor
[signed] Nisuke Ando
[signed] Christine Chanet
[signed] Eckart Klein
[signed] Ivan Shearer
[signed] Max Yalden

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]