HUMAN RIGHTS COMMITTEE

Länsman et al. v. Finland

Communication No. 511/1992

14 October 1993

CCPR/C/49/D/511/1992 *

ADMISSIBILITY

Submitted by: Ilmari Länsman et al. [represented by counsel]

Alleged victim: The authors

State party concerned: Finland

Date of communication: 11 June 1992 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 25 August 1992 (not issued in document form)

Date of present decision: 14 October 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The authors of the communication are Ilmari Länsman and forty-seven other members of the Muotkatunturi Herdsmen's Committee and members of the Angeli local community. They claim to be the victims of a violation by Finland of article 27 of the International Covenant on Civil and Political Rights. They are represented by counsel.

The facts as presented by the authors:

2.1 The authors are all reindeer breeders of Sami ethnic origin from the area of Angeli and Inari; they challenge the decision of the Central Forestry Board to pass a contract with a private company, Arktinen Kivi Oy (Arctic Stone Company) in 1989, which would allow the quarrying of stone in an area covering ten hectares on the flank of the mountain Etela-Riutusvaara. Under the terms of the

initial contract, this activity would be authorized until 1993.

2.2 The members of the Muotkatunturi Herdsmen's Committee occupy an area ranging from the Norwegian border in the West, to Kaamanen in the East, comprising both sides of the road between Inari and Angeli, a territory traditionally owned by them. The area is officially administered by the Central Forestry Board. For reindeer herding purposes, special pens and fences, designed for example to direct the reindeers to particular pastures or locations, have been built around the village of Angeli. The authors pointed out that the question of ownership of lands traditionally used by the Samis is disputed between the Government and the Sami community.

2.3 The authors contend that the contract signed between the Arctic Stone Company and the Central
Forestry Board would not only allow the company to extract stone but also to transport it right through the complex system of reindeer fences to the Angeli-Inari road. They noted that in January of 1990, the company was granted a permit by the Inari municipal authorities for the extraction of some 5,000 cubic metres of building stone, and that it obtained a grant from the Ministry of Trade and Industry for this very purpose.

2.4 The authors admit that until now, only some limited-test quarrying has been carried out; by September 1992, some 100,000 kg of stone (approximately 30 cubic metres) had been extracted. The authors conceded that the economic value of the special type of stones concerned, anorthocite, is considerable, since it may replace marble in, above all, representative public buildings, given that it is more resistant to air-borne pollution.

2.5 The author affirm that the village of Angeli is the only remaining area in Finland with a homogenous and solid Sami population. The quarrying and transport of anorthocite would disturb their reindeer herding activities and the complex system of reindeer fences determined by the natural environment. They add that the transport of the stone would run next to a modern slaughterhouse already under construction, where all reindeer slaughtering must be carried out as of 1994, so as to meet strict export standards.

2.6 Furthermore, the authors observe that the site of the quarry, mount Etelä-Riutusvaara, is a scared place of the old Sami religion, where in old times reindeer were slaughtered, although the Samis now inhabiting the area are not known to have followed these traditional practices for several decades.

2.7 As to the requirement of exhaustion of domestic remedies, the authors point out that 67 members of the Angeli local community appealed, without success, against the quarrying permit to the Lapland Provincial Administrative Board as well as to the Supreme Administrative Court[1], where they specifically invoked article 27 of the Covenant. On 16 April 1992, the Supreme Administrative Court dismissed the appeal without addressing the alleged violations of the Covenant. According to the authors, no further domestic remedies are available.

2.8 Finally, at the time of submission of the communication in June 1992, the authors, fearing that further quarrying is imminent, requested the adoption of interim measures of protection, under rule 86 of the Committee's rules of procedure, so as to avoid irreparable damage.

The complaint:

3.1 The authors affirm that the quarrying of stone on the flank of the Etelä-Riutusvaara mountain and its transportation through their reindeer herding territory would violated their rights under article 27 of the Covenant, in particular their right to enjoy their own culture, which has traditionally been and remains essentially based on reindeer husbandry.

3.2 In support of their contention of a violation of article 27, the authors refer to the Views adopted by the Committee in the cases of Ivan Kitok (No. 197/1985) and B. Ominayak and members of the Lubicon Lake Band v. Canada (No. 167/1984), as well as ILO Convention No. 169 concerning the rights of indigenous and tribal people in independent countries.

The State party's information and observations and counsel's comments:

4.1 The State party confirms that quarrying of stone in the area claimed by the authors was made possible by a permit granted by the Angeli Municipal Board on 8 January 1990, Pursuant to Act No. 555/1981 on extractable land resources. This permit was at the basis for the conclusion of a contract was passed between the Central Forestry Board and a private company, which is valid until 31 December 1993.

4.2 The State party opines that those communicants to the Committee who, in the matter under consideration, have applied both to the Lapland Provincial Administrative Board and to Supreme Administrative Court have exhausted all available domestic remedies. As the number of individuals who appealed to the Supreme Administrative Court is however lower than the number of those who filed a complaint with the Committee, the State party considers the communication inadmissible on the ground of non-exhaustion of domestic remedies in respect of those authors who were not a party to the case before the Supreme Administrative Court.

4.3 The State party concedes that "extraordinary appeals" against the decision of the Supreme Administrative Court would have no prospect of success, and that there are no other impediments, on procedural grounds, to the admissibility of the communication. On the other hand, it submits that the author's request for the adoption of interim measures of protection was "clearly premature", as only test quarrying on the contested site has been carried out.

5.1 In his comments, counsel rejects the State party's argument that those authors who did not personally sign the appeal to the Supreme Administrative Court failed to exhaust available domestic remedies. He argues that "[a]II the signatories of domestic appeals and the communication have invoked the same grounds, bot hon the domestic level and before the Human Rights Committee. The number and identify of signatories was of no relevance for the outcome of the Supreme Court judgement, since the legal matter was the same for all the signatories of the communication...".

5.2 Counsel contends that in the light of the Committee's jurisprudence in the case of Sandra Lovelace v. Canada, all the authors should be deemed to have complied with the requirements of article 5, paragraph 2 (b), of the Optional Protocol. In this case, he recalls, the Committee decided that the Protocol does not impose on authors the obligation to seize the domestic courts if the highest domestic court has already substantially decided the question at issue. He affirms that in the case

of Mr. Länsman and his co-authors, the Supreme Administrative Court has already decided the matter in respect of all the authors.

5.3 In further comments [dated 16 August 1993], counsel notes that the lease contract for Arktinen Kivi Oy expires at the end of 1993, and that negotiations for a longer lease are underway. If agreement on a long-term lease is reached, Arktinen intends to undertake considerable investments, inter alia for road construction. Counsel further notes that even the limited test quarrying carried out so far has left considerable marks on Mount Etelä-Riutusvaara. Similarly, the marks and scars left by the provisional road allegedly will remain in the landscape for hundreds of years, because of extreme climatic conditions[2]. Hence, the consequences for reindeer herding are greater and will last longer than the total amount of stone to be taken from the quarry (5,000 cubic metres) would suggest. Finally, counsel reiterates that the location of the quarry and the road leading to it are of crucial importance for the activities of the Muotkatunturi Herdsmen's Committee, because their new slaughterhouse and the area used for rounding up reindeers are situated in the immediate vicinity.

Issues and proceedings before the Committee:

6.1 Before considering any claims 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 The Committee notes that the State party does not object to the admissibility of the communication in respect of all those authors which appealed the quarrying permit both to the Lapland Provincial Administrative Board and to the Supreme Administrative Court. Only in respect of those authors who did not personally appeal to the Supreme Administrative Court does it contend that available domestic remedies have not been exhausted.

6.3 The Committee is unable to accept the reasoning of the State party. The facts that are at the basis of the decision of the Supreme Administrative Court of 16 April 1992 and of the communication before the Committee are identical; had those who did not personally sign the appeal to the Supreme Administrative Court done so, their appeal would have been dismissed along with that of the other appellants. It is unreasonable to expect that if they were to apply to the Supreme Administrative Court now, on the same facts and with the same legal arguments, this court would hand down a different decision. The Committee reiterates its earlier jurisprudence[3] that wherever the jurisprudence of the highest domestic tribunal has decided the matter at issue, thereby eliminating any prospect of success of an appeal to the domestic courts, authors are not required to exhaust domestic remedies, for purposes of the Optional Protocol. Accordingly, the Committee concludes that all the authors have complied with the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee considers that the authors' claims pertaining to article 27 of the Convention have been sufficiently substantiated and that they should, accordingly, be examined on their merits.

6.5 Having noted the State party's argument that the issue of a request for interim protection under rule 86 of the Committee's rules of procedure would be premature, as only limited test quarrying in the area of Mount Etelä-Riutusvaara has been carried out, the Committee concludes that no

request for interim protection will be made at this juncture. The authors do, however, retain the right to address a request for interim measures of protection to the Committee, if there are reasonably justified concerns that quarrying may resume.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it appears to raise issues under article 27 of the Covenant;

(b) that in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure, to the authors and their counsel, with the request that any comments that they may wish to submit thereon should reach the Human Rights Committee, care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party, to the authors and to their counsel.

[Done in English, French and Spanish, the English text being the original version.]

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*/ All persons handling this document are requested to respect and observe its confidential nature.

[1] It should be noted that not all of the authors of the communication before the Committee appealed to the Supreme Court.

[2] Photographic evidence submitted by counsel showing the effect of the quarrying and of road construction is kept in the case file.

[3] See communication No. 24/1978, Sandra Lovelace v. Canada, decision on admissibility of 14 August 1979.