

ASSEMBLY - FREEDOM OF

III. JURISPRUDENCE

ICCPR

- *Kivenmaa v. Finland* (412/1990), ICCPR, A/49/40 vol. II (31 March 1994) 85 (CCPR/C/50/D/412/1990) at paras. 2.1-2.4, 9.2 and 10.

...

2.1 On 3 September 1987, on the occasion of a visit of a foreign head of State and his meeting with the president of Finland, the author and about 25 members of her organization, amid a larger crowd, gathered across from the Presidential Palace where the leaders were meeting, distributed leaflets and raised a banner critical of the human rights record of the visiting head of State. The police immediately took the banner down and asked who was responsible. The author identified herself and was subsequently charged with violating the Act on Public Meetings by holding a "public meeting" without prior notification.

2.2 The above-mentioned Act on Public Meetings has not been amended since 1921, nor upon entry into force of the Covenant. Section 12(1) of the Act makes it a punishable offence to call a public meeting without notification to the police at least six hours before the meeting...

2.3 Although the author argued that she did not organize a public meeting, but only demonstrated her criticism of the alleged human rights violations by the visiting head of State, the City Court, on 27 January 1988, found her guilty of the charge and fined her 438 markkaa. The Court was of the opinion that the group of 25 persons had, through their behaviour, been distinguishable from the crowd and could therefore be regarded as a public meeting. It did not address the author's defence that her conviction would be in violation of the Covenant.

2.4 The Court of Appeal, on 19 September 1989, upheld the City Court's decision, while arguing, *inter alia*, that the Act on Public Meetings, "in the absence of other legal provisions" was applicable also in the case of demonstrations; that the entry into force of the Covenant had not repealed or amended said Act; that the Covenant allowed restrictions of the freedom of expression and of assembly, provided by law; and that the requirement of prior notification was justified in the case because the "demonstration" was organized against a visiting head of State.

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9.2 The Committee finds that a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21 of the Covenant. In the circumstances of this specific case, it is evident from the information provided by the parties that the gathering of

ASSEMBLY - FREEDOM OF

several individuals at the site of the welcoming ceremonies for a foreign head of State on an official visit, publicly announced in advance by the State party authorities, cannot be regarded as a demonstration. Insofar as the State party contends that displaying a banner turns their presence into a demonstration, the Committee notes that any restrictions upon the right to assemble must fall within the limitation provisions of article 21. A requirement to pre-notify a demonstration would normally be for reasons of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Consequently, the application of Finnish legislation on demonstrations to such a gathering cannot be considered as an application of a restriction permitted by article 21 of the Covenant.

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10. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 19 and 21 of the Covenant.

For dissenting opinion in this context, see Kivenmaa v. Finland (412/1990), ICCPR, A/49/40 vol. II (31 March 1994) 85 (CCPR/C/50/D/412/1990) at Individual Opinion by Mr. Kurt Herndl, 92.