



**International covenant  
on civil and  
political rights**

Distr.  
RESTRICTED\*

CCPR/C/83/D/1076/2002  
18 April 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE  
Eighty-third session  
14 March to 1 April 2005

**VIEWS**

**Communication No. 1076/2002**

Submitted by: Riitta-Liisa Kasper and Ilka Olavi Sopenen  
(represented by counsel, Mr. Martti Tapio Juvonen)

Alleged victim: The authors

State party: Finland

Date of communication: 25 April 1997 (initial submission)

Document references: Special Rapporteur's rule 97 (old rule 91) decision,  
transmitted to the State party on 23 May 2002 (not  
issued in document form).

Date of adoption of Views: 15 March 2005

*Subject matter:* Equal treatment in relation to compensation for expropriation of property

*Procedural issues:* Exhaustion of domestic remedies, abuse of right of submission.

*Substantive issues:* disclosure of names of judges participating in court decision; equal treatment in relation to compensation for expropriation of property

*Articles of the Covenant:* 14(1), 26

*Articles of the Optional Protocol:* 3, 5(2)(b)

On 15 March 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1076/2002. The text of the Views is appended to the present document.

[ANNEX]

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\* 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

Eighty-third session

concerning

**Communication No. 1076/2002\*\***

Submitted by: Riitta-Liisa Kasper and Illka Olavi Sopenen  
(represented by counsel, Mr. Martti Tapio Juvonen)

Alleged victim: The authors

State party: Finland

Date of communication: 25 April 1997 (initial submission)

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

Meeting on 15 March 2005,

Having concluded its consideration of communication No. 1076/2002, submitted to the Human Rights Committee on behalf of Riitta-Liisa Kasper and Illka Olavi Sopenen, 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:

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

1. The authors of the communication are Riitta-Liisa Kasper and Illka Olavi Sopenen, both Finnish nationals. They claim to be victims of a violation of articles 2, paragraph 1, 3, 14, paragraph 1, and 26 of the International Covenant on Civil and Political Rights. They are represented by counsel, Mr. Martti Tapio Juvonen.

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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, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

### **Factual background**

2.1 On 26 March 1987, the Council of State authorized the expropriation of part of the authors' lands (covering 65.97 hectares). The expropriated area forms part of the larger area of Linnansaari National Park. On 18 February 1988, the Expropriation Commission issued an expropriation order and defined the amount to be paid.

2.2 The authors state that their lands were expropriated by the Government at a price considerably below the current price in comparison with voluntary purchases and other expropriations in the region.

2.3 The authors' appeal against this decision was rejected by the Court of Eastern Finland on 20 September 1989. The Land Court did not revise the amount of compensation. On 4 May 1990, the Supreme Court rejected the authors' leave to appeal.

2.4 A petition for reversal was then lodged with the Supreme Court. The Supreme Court heard the petition and by decision of 1 December 1993 held that the authors had not been able to invoke new facts or evidence likely to lead to another outcome and therefore dismissed the application. With this, all domestic remedies are said to have been exhausted.

2.5 The authors state that while considering their petition, the Supreme Court asked the National Board of Survey for an opinion in the matter. The Board's opinion concluded that the authors had not received equal treatment in comparison with expropriations in the same region for the same purpose. Nevertheless, the Supreme Court dismissed the authors' appeal.

2.6 The authors further state that the Supreme Court's judgement does not disclose the names of the judges who participated in the decision making, making it impossible to consider any grounds for disqualifying them.

2.7 The authors' application to the European Commission of Human Rights was declared inadmissible *ratione temporis* on 29 February 1996.

### **The complaint**

3. The authors argue that their rights under articles 2, paragraph 1, 3, and 26 of the Covenant have been violated because they did not receive equal treatment in relation to the compensation paid for expropriated land property. They also claim to be victims of a violation of article 14, paragraph 1, of the Covenant, because of the failure of the Supreme Court to disclose the names of the judges participating in the decision on their application.

### **State party's submissions on the admissibility and merits of the communication**

4.1 By submission of 23 July 2002, the State party challenges the admissibility of the communication. The State party argues that the Supreme Court's decision of 4 May 1990, rejecting the authors' request for leave to appeal, is the final decision in the case. It notes that the reversal procedure initiated by the authors and leading to the Supreme Court's decision of 1 December 1993 is an extraordinary appeal. The State party observes that thus seven years had passed since domestic remedies were exhausted before the authors presented their case to the Human Rights Committee.

4.2 The State party notes that the Optional Protocol does not include a special time limit for the presentation of communications to the Committee. Nevertheless, the State party argues that the length of time which has passed since the issue of the final national decision should be taken into account when determining the admissibility of a communication.

4.3 The State party further argues that, to the extent that the authors intend to complain about interference with their right to property, the communication is inadmissible *ratione materiae*.

5.1 By submission of 25 November 2002, the State party raises an additional objection to the admissibility of the authors' claim under article 14 of the Covenant. The State party argues that this claim is inadmissible as incompatible with the provisions of the Covenant, as the Covenant does not contain a right to the review of a judgement in a civil case nor any right to extraordinary appeal.

5.2 As to the merits of the communication, the State party refers to the legal provisions regulating expropriation of immovable property and its compensation. The Act on the Expropriation of Immovable Property and Special Rights (603/1977) provides that a property owner is entitled to full compensation for the financial losses caused by the expropriation (section 29 of the Act). Section 30(1) of the Act provides: "Full compensation, corresponding to the market value, shall be determined for the expropriated property. The moment of property transfer shall be decisive for the determination of this value. If the market value does not reflect the real loss suffered by the owner of the property or any related right, the assessment shall be based on the returns from the property or the investments in it."

5.3 The State party argues that as a result of these provisions, the value of different properties may vary even if they are situated close to each other, depending on their characteristics and their suitability for recreational use. The assessment of the value shall normally be based on reliable statistical evidence on the prices normally paid for comparable pieces of land.

5.4 With regard to the authors' claim under article 14, paragraph 1, of the Covenant, the State party notes that the present case concerned a request for reversal of judgement, requiring new and important evidence. The State party notes that the authors have not claimed that they had no possibility to submit all the evidence. The Supreme Court, after having evaluated all evidence before it, concluded that there were no new circumstances or evidence presented by the authors that would likely have led to a different result. As a consequence the Supreme Court did not reverse the judgement. The State party observes that the fact that the outcome was not what the authors had wished, does not mean that the judicial proceedings were unfair.

5.5 In respect to the authors' claim that the names of the judges who participated in the decision were not disclosed, the State party notes that it was possible to get the names of those judges participating in the decision by contacting the Registry of the Supreme Court and that this information was thus publicly available. The State party concludes that there has thus been no violation of article 14, paragraph 1, of the Covenant in the instant case. The State party adds that at present, the names of the judges are mentioned on the written judgements.

5.6 In respect to the authors' claim under article 26 of the Covenant, the State party notes that the expropriation of the land had been determined on the basis of statistics available on the prices paid for comparable pieces of land at the time of the expropriation. The State party notes that the Supreme Court, in its decision of 1 December 1993, noted that the report of the National Board of Survey did not indicate that the compensation had been incorrectly calculated. The Supreme Court also considered that the authors had not presented any evidence that would have given reason to find that they had not been treated equally. The State party argues that differences in prices do not as such render a decision incorrect or discriminatory. The State party concludes that there has been no violation of article 26 of the Covenant in the present case.

#### **Authors' comments on the State party's submissions**

6. On 4 March 2003, the authors comment on the State party's submission. They argue that their communication is admissible. As to the merits, they reiterate that the National Board of Survey was of the opinion that they had not received equal treatment in comparison with expropriations in the same region for the same purpose.

#### **The Committee's admissibility consideration**

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes that the authors have exhausted all domestic remedies available to them. It may also be noted that the authors presented their communication a year after the European Commission on Human Rights declared their application inadmissible *ratione temporis*. The Committee considers that in the present case, having regard to its particular circumstances, it is not possible to consider the time that passed before the communication was filed was so unreasonable as to make the complaint an abuse of the right of submission.

7.3 As regards the authors' claim that they were not treated equally in relation to the compensation paid for expropriated land property, in violation of article 26 of the Covenant, the Committee notes that the Supreme Court, after having examined all the evidence before it, including the report of the National Board of Survey to which the authors refer, concluded that there was not sufficient evidence to prove that the authors were treated contrary to the equality principle enshrined in the Constitution. The Committee recalls that it is normally for the courts of States parties, and not for the Committee, to evaluate facts and evidence in a particular case. In the instant case, the Committee, having examined the Supreme Court's decision, is of the opinion that the decision is not manifestly arbitrary or ill-founded. Consequently, the Committee finds this claim inadmissible under article 2 of the Optional Protocol.

7.4 As regards the remaining claim of a violation of article 14, paragraph 1, of the Covenant, the Committee is of the view that it is admissible and proceeds to consider it on the merits.

**Consideration of the merits**

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 In respect to the authors' claim that they are the victims of a violation of article 14, paragraph 1 of the Covenant, the Committee notes the State party's explanation, which has not been contested by the authors, that the authors could at any time have requested the names of the judges participating in the decision from the Registry of the Supreme Court. The Committee therefore considers that the facts before it do not reveal any violation of article 14, paragraph 1 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

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

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