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on Civil and Political Rights**

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HUMAN RIGHTS COMMITTEE
Fiftieth session

VIEWS

Communication No. 412/1990

Submitted by: Ms. Auli Kivenmaa [represented by counsel]

Victim: The author

State party: Finland

Date of communication: 7 March 1990

Documentation references: Prior decisions
- Special Rapporteur's rule 91 decision,
dated 2 October 1990 (not issued in document form)
- CCPR/C/44/D/412/1990
(Decision on admissibility, dated 20 March 1992)

Date of adoption of Views: 31 March 1994

On 31 March 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, in respect of communication No. 412/1990. The text of the Views is appended to the present document.

[Annex]

*/ Made public by decision of the Human Rights Committee.
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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
- Fiftieth session -**

concerning

Communication No. 412/1990

Submitted by: Ms. Auli Kivenmaa [represented by counsel]
Victim: The author
State party: Finland
Date of communication: 7 March 1990
Date of decision on admissibility: 20 March 1992

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

Meeting on 31 March 1994,

Having concluded its consideration of communication No. 412/1990, submitted to the Human Rights Committee by Ms. Auli Kivenmaa 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 author of the communication, her counsel and the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

^{*/} The text of an individual opinion from Mr. K. Herndl is appended to the Views.

1. The author of the communication is Ms. Auli Kivenmaa, a Finnish citizen and Secretary-General of the Social Democratic Youth Organization. She claims to be a victim of a violation by Finland of articles 15 and 19, alternatively, article 21, of the International Covenant on Civil and Political Rights. She is represented by counsel.

The facts:

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 "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. The requirement of prior notification applies only to public meetings in the open air (section 3). A meeting is not public if only those with personal invitations can attend (section 1(2)). Section 1(1) provides that the purpose of a "meeting" is to discuss public matters and to make decisions on them. Section 10 of the Act extends the requirement of prior notification to public ceremonies, processions and marches.

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.

2.5 On 21 February 1990 the Supreme Court denied leave to appeal, without further motivation.

The complaint:

3. The author denies that what took place was a public meeting within the meaning of the Act on Public Meetings. Rather, she characterizes the incident as an exercise of her right to freedom of expression, which is regulated in Finland by the Freedom of the Press Act and does not require prior notification. She contends that her conviction was, therefore, in violation of article 19 of the Covenant. She alleges that the way in which the courts found her actions to come within the scope of the Act on Public Meetings constitutes ex analogia reasoning and is, therefore, insufficient to justify the restriction of her right to freedom of expression as being "provided by law" within the meaning of article 19, paragraph 3. Moreover, she contends that such an application of the Act to the circumstances of the events in question amounts to a violation of article 15 of the Covenant (nullum crimen sine lege, nulla poena sine lege), since there is no law making it a crime to hold a political demonstration. The author further argues that, even if the event could be interpreted as an exercise of the freedom of assembly, she still was not under obligation to notify the police, as the demonstration did not take the form of a public meeting, nor a public march, as defined by the said Act.

The State party's observations on admissibility and the author's comments thereon:

4.1 By submission of 21 December 1990 the State party concedes that, with regard to the author's complaint against her conviction, all available domestic remedies have been exhausted.

4.2 As to the issue of whether or not the relevant provision of the Public Meetings Act was applicable in the author's case, the State party submits that it is a question of evidence. The State party points out that the author does not contend that said provision conflicts with the Covenant, only that its specific application in her case violated the Covenant.

5. In her comments on the State party's submission, the author reiterates that not only convictions based on the retroactive application of criminal laws, but also those on analogous application of criminal law, violate article 15 of the Covenant.

The Committee's admissibility decision:

6.1 During its forty-fourth session, the Committee considered the admissibility of the communication. It observed that domestic remedies had been exhausted and that the same matter was not being examined under another procedure of international investigation or settlement.

6.2 On 20 March 1992, the Committee declared the communication admissible in so far as it might raise issues under articles 15, 19 and 21 of the Covenant. In its decision, the Committee requested the State party to clarify whether there was any discrimination between those who cheered and those who protested against the visiting head of State, in particular, whether any other groups or subgroups in the larger crowd, who were welcoming the visiting head of State, also distributed leaflets or displayed banners, whether they gave prior notification to the police pursuant to the Act on Public Meetings, and, if not, whether they were similarly prosecuted.

The State party's submission on the merits and the author's comments thereon:

7.1 The State party, by submission of 14 December 1992, refers to the questions put to it by the Committee and states that, on 3 September 1987, there was only a small crowd of people assembled in front of the Presidential Palace; besides the author's group, there were journalists and some curious passers-by. Except for the author and her friends, no other group or subgroup which could be characterized as demonstrators, distributing leaflets or displaying banners, was present. No other groups had given prior notification to the police of their intent to hold a public meeting.

7.2 The State party recalls that article 19 of the Covenant gives everyone the right to hold opinions without interference and the right to freedom of expression, but that, under paragraph 3 of the provision, the exercise of these rights may be subject to certain restrictions as are provided by law and are necessary for respect of the rights and reputations of others, or for the protection of national security or of public order (*ordre public*), or of public health and morals. The State party also recalls that the Constitution of Finland protects every citizen's freedom of speech and freedom to publish, and that the exercise of these freedoms is regulated by law, in accordance with the Constitution. The State party submits that, although the wording of the Constitution concentrates on freedom of the press, it has been interpreted broadly so as to encompass freedom of expression as protected by article 19 of the Covenant. In this context, the State party emphasizes that the right to freedom of expression does not depend on the mode of expression or on the contents of the message thus expressed.

7.3 The State party submits that the right to freedom of expression may be restricted by the authorities, as long as these restrictions do not affect the heart of the right. With regard to the present case, the State party argues that the author's freedom of expression has not been restricted. She was allowed freely to express her opinions, for instance by circulating leaflets, and the police did not, after having received information about the organizer of the public meeting, hinder the author and her group from continuing their activities. The State party therefore denies that the Act on Public Meetings was applied ex analogia to restrict the right to freedom of expression.

7.4 In this context, the State party argues that a demonstration necessarily entails the expression of an opinion, but, by its specific character, is to be regarded as an exercise of the right of peaceful assembly. In this connection, the State party argues that article 21 of the Covenant must be seen as lex specialis in relation to article 19 and that therefore the expression of an opinion in the context of a demonstration must be considered under article 21, and not under article 19 of the Covenant.

7.5 The State party agrees with the author that in principle article 15 of the Covenant ~~as~~ prohibits ex analogia application of a law to the ~~dis~~advantage of a person charged with an offence. It argues, however, that in the present case the author was not convicted of expressing her opinion, but merely of her failure to give prior notification of a demonstration, as is required by article 3 of the Act on Public Meetings.

7.6 With regard to the author's allegation that she is a victim of a violation of article 21 of the Covenant, the State party recalls that article 21 allows restrictions on the exercise of the right to peaceful assembly. In Finland, the Act on Public Meetings guarantees the right to assemble peacefully in public, while ensuring public order and safety and preventing abuse of the right to assembly. Under the Act, public assembly is understood to be the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to. The State party submits that, in the established interpretation of the Act, the Act also applies to demonstrations arranged as public meetings or street processions. Article 3 of the Act requires prior notification to the police, at least six hours before the beginning of any public meeting at public place in the open air. The notification must include information on the time and place of the meeting as well as on its organizer. Article 12, paragraph 1, of the Act makes it a punishable offence to call a public meeting without prior notification to the police. The State party emphasizes that the Act does not apply to a peaceful demonstration by only one person.

7.7 The State party explains that the provisions of the Act have been generally interpreted as also applying to public meetings which take the form of demonstrations. In this connection, ~~th~~ State party refers to decisions of the Parliamentary Ombudsman, according to which a prior notification to the police should be made if the demonstration is arranged at a public place in the open air and if other persons ~~than~~ those who have personally been invited are able to participate. The State party submits that the prior notification requirement enables the police to take ~~th~~ necessary measures to make it possible for the meeting to take place, for instance by regulating the flow of traffic, and further to protect the group in their exercise of the right to freedom of assembly. In this context, the State party contends that, when a foreign head of State is involved, it is of utmost practical importance that the police be notified prior to the event.

7.8 The State party argues that the right of public assemblies not restricted by the requirement of a prior notification to the police. In this connection, it refers to jurisprudence of the European Court of Human Rights. The State party emphasizes that the prior notification is necessary to guarantee the peacefulness of the public meeting.

7.9 As regards the specific circumstances of the present case, the State party is of the opinion that the actual behaviour of the author and her friends amounted to a public meeting within ~~th~~ meaning of article 1 of the Act on Public Meetings. In this context, the State party submits that although the word "demonstration" is not expressly named ~~th~~ the Act on Public Meetings, this does not signify that demonstrations are outside the scope of application of the Act. In this connection, the State party refers to general principles of legal interpretation. Furthermore, it notes that article 21 of the Covenant does not specifically refer to "demonstrations" as a mode of assembly either. Finally, the State party argues that the requirement of prior notification is in conformity with article 21, second sentence. In this context, the State party submits that the requirement is prescribed by law, and that it is necessary in a democratic society in the interests of legitimate purposes, especially in the interest of public order.

8.1 The author, by submission of 28 April 1993, challenges the State party's description of the facts and refers to the Court records in her case. According to these records, witnesses testified that approximately one hundred persons were present on the square, among whom were persons welcoming the foreign head of State and waving miniature flags; no action was taken by the police

against them, but the police removed the banner displayed by the author and her friends. According to the author, this indicates that the police interfered with her and her friends' demonstration because of the contents of the opinion expressed, in violation of article 19 of the Covenant.

8.2 The author further challenges the State party's contention that the police did not hinder the author and her group in the expression of their opinion. She emphasizes that the entrance of the foreign head of State into the Presidential Palace was a momentary event, and that the measures by the police (taking away the banner immediately after it was erected and questioning the author) dramatically decreased the possibilities for the author to express her opinion effectively.

8.3 As regards the alleged violation of article 15 of the Covenant, the author refers to her earlier submissions and maintains that applying *ex analogia* the Act on Public Meetings to a demonstration such as the one organized by the author is in violation of article 15 of the Covenant. In this context, the author submits that the State party's argument that article 21 of the Covenant does not include a reference to demonstrations either is irrelevant, since article 15 only prohibits analogous interpretation to the disadvantage of an accused in criminal procedures.

8.4 The author challenges the State party's contention that it should have been evident to the author that she was under obligation to notify the police of the demonstration. The author argues that this was only firmly established by the Court's decision in her own case, and that the general interpretation to which the State party refers is insufficient as basis for her conviction. The author finally submits that the description of a public meeting, within the meaning of article 1 of the Act, used by the State party is unacceptably broad and would cover almost any outdoor discussion between at least three persons.

8.5 In conclusion, the author states that she does not contest that restrictions on the exercise of the right of peaceful assembly may be justified, and that prior notification of public meetings is a legitimate form of such restrictions. However, the author does challenge the concrete application of the Act on Public Meetings in her case. She contends that this outdated, vague and ambiguous statute was used as the legal basis for police interference with her expressing concern about the human rights situation in the country of the visiting head of State. She claims that this interference was not in conformity with the law nor necessary in a democratic society within the meaning of article 21 of the Covenant. In this connection, it is again stressed that, by taking away the banner, the police interfered with the most effective method for the author to express her opinion.

Issues and proceedings before the Committee:

9.1 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.

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 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 limitations 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.

9.3 The right for an individual to express his political opinions, including obviously his opinions on the question of human rights, forms part of the freedom of expression guaranteed by article 19 of the Covenant. In this particular case, the author of the communication exercised this right by raising a banner. It is true that article 19 authorizes the restriction by the law of freedom of expression in certain circumstances. However, in this specific case the State party has not referred to a law allowing this freedom to be restricted or established how the restriction applied to Ms Kivenmaa was necessary to safeguard the rights and national imperatives set forth in article 19, paragraph 2(a) and (b) of the Covenant.

9.4 The Committee notes that, while claims under article 15 have been made, no issues under this provision arise in the present case.

10. 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 disclose a violation of articles 19 and 21 of the Covenant.

11. Pursuant to article 2 of the Covenant, the State party is under an obligation to provide Ms. Auli Kivenmaa with an appropriate remedy and to adopt such measures as may be necessary to ensure that similar violations do not occur in the future.

12. The Committee would wish to receive information, within ninety days, on any relevant measures taken by the State party in respect of the Committee's Views.

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

APPENDIX

Individual opinion by Mr. Kurt Herndl (dissenting)

1. While I did (and do) agree with the Committee's decision of 20 March 1992 to declare the present communication admissible in as much as the facts reported might raise issues under articles 15, 19 and 21 of the Covenant, I am regrettably unable to go along with the Committee's substantive decision that in the present case Finland has violated articles 19 and 21. The reason for this is that I do not share at all the Committee's legal assessment of the facts.

A. The question of a possible violation of article 21

2.1 The Committee's finding, that by applying the 1907 Act on Public Meetings (hereinafter called the 1907 Act) to the author - and ultimately imposing a fine on her in accordance with Section 12 of the Act - Finland has breached article 21 of the Covenant, is based on an erroneous appreciation of the facts and, evermore so, on an erroneous view of what constitutes a "peaceful assembly" in the sense of article 21.

2.2 In the first sentence of paragraph 9.2 of its Views the Committee rightly observes 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 limitation laid down in article 21 of the Covenant". A mere requirement, as contained in the 1907 Act, to notify a public meeting to the authorities several hours before it starts, is obviously in line with article 21 of the Covenant which provides for the possibility of legitimate restrictions on the exercise of the right to peaceful assembly "in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". The 1907 Act certainly falls in this category. This is, by the way, admitted by the author herself who asserts that she does not contest that restrictions on the exercise of the right to peaceful assembly may be justified, and that prior notification of public meetings is a legitimate form of such restriction (see paragraph 8.5 of the Views). In her last communication she explicitly states that she is not challenging the validity of the 1907 Act in abstracto either.

2.3 The legal issue therefore centres on the question whether the author's action - the fact that she "and about 25 members of her organization, amid a large crowd, gathered ..., distributed leaflets and raised a banner" (see paragraph 2.1 of the Views) - ought or ought not to be qualified as a "public meeting" in the sense of the 1907 Act or, for that matter, as a "peaceful assembly" in the sense of article 21 of the Covenant.

2.4 In that respect the Committee observes in paragraph 9.2 (second sentence) of its Views that "it is evident from the information provided by the parties that the gathering 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". I am, much to my regret, not able to follow this reasoning.

2.5 It is not contested by the author that she and a group of people of her organization summoned by her, went to the Presidential Palace explicitly for the purpose of distributing leaflets

and raising a banner and thus to publicly denounce the presence, in Finland, of a foreign Head of State whose human rights record they criticized. If this ~~des~~ not constitute a demonstration, indeed a public gathering within the scope of article 21 of the Covenant, what else would constitute a "peaceful assembly" in that sense, and, accordingly, a "public meeting" in the sense of the 1907 Act?

2.6 In his commentary on article 21 of the Covenant Manfred Nowak states the following:

"The term 'assembly' ('réunion') is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional human right. It is beyond doubt that not every assembly of individuals requires special protection. Rather, only intentional, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly".

Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, Engel Publisher, Kehl-Strasbourg-Arlington, 1993, page 373.

2.7 This is exactly the case with the author's manifestation in front of the Presidential Palace. The decisive element for the determination of an "assembly" - as opposed to a more or less accidental gathering (e.g. people waiting for a bus, listening to a band, etc.) - obviously is the intention and the purpose of the individuals who come together. The author is estopped from arguing that she (and her group) were bystanders like the other crowd who was apparently attracted by the appearance of a foreign Head of State visiting the President of Finland. She and her group admittedly joined the event to make a political demonstration. This was the sole purpose of their appearing before the Presidential Palace. The State party, therefore, rightly stated, that this was "conceptually" a demonstration.

2.8 Nor can I follow the Committee's argument in 9.2 (4th and 5th ~~sentences~~) where an attempt is made to create a link between the purpose (and thus the legality) of the restrictive legislation as such and its application in a concrete case. To say that "a requirement to pre-notify a demonstration would normally be for reasons of national security etc ..." and then to continue "[C]onsequently, the application of the Finnish legislation on demonstrations to such a gathering cannot be considered as an application of a restriction permitted by article 21 of the Covenant" is, to say at least, contradictory.

2.9 If the restricting legislation as such - in the present matter the 1907 Act on Public Meetings - is considered as being within the limits of article 21 (a fact not contested by the author and recognized by the Committee) the relevant law must obviously be applied in an uniform manner to all cases falling under its scope. In other words: If the 1907 Act and the obligation therein contained to notify any "public meeting" prior to its commencement, is a valid restriction on the exercise of the right to assembly, permitted under article 21 of the Covenant, then its formal application cannot be considered as a violation of the Covenant, whatever the actual reasons (in the mind of the authorities) for demanding the notification.

2.10 The Finnish authorities, therefore, did not violate article 21 of the Covenant by insisting that the author address an appropriate notification to the authorities prior to her demonstrating in front of the Presidential Palace and by fining her subsequently for not having made such a notification. In objective terms, it would have been easy for the author to comply with the requirement of simply notification. No reason has ever been induced by her for not doing so, except for the

arguing ex post facto that she was not required to notify because her action did not fall under the 1907 Act. She seems to have deliberately chosen to disregard the provisions of the Act, and accordingly had to bear the consequences, i.e. the imposition of a fine.

B. The question of a possible violation of article 19

3.1 In paragraph 9.3 of its Views the Committee emphasizes that the author exercised her right to freedom of expression by waiving a banner. As the banner was removed by the police the Committee concludes that this violated article 19.

3.2 Surely, one will have to place the removal of the banner in the context of the whole event: the author and her group "demonstrate". They distribute leaflets, they waive a banner. The police intervenes in order to establish the identity of the person leading the demonstration (i.e. the "convener" of a public meeting under the 1907 Act). The banner is "taken down" by the police (see paragraph 2.1 of the Views). However, the demonstration is allowed to continue. The author herself and her group go on to distribute their leaflets and presumably give vent in public to their opinion concerning the visiting Head of State. There is not further intervention by the police. Hence, the "taking down" of the banner is the only fact to be retained in view of a possible violation of article 19.

3.3 The Committee has opted for a very simple façon de voir: Take away the banner and you necessarily violate the right to freedom of expression. This view does not take into account the intimate and somewhat complex relationship between articles 19 and 21 and, for that matter, also article 18 of the Covenant.

3.4 The right of peaceful assembly would seem to be just one facet of the more general right to freedom of expression. In that regard John P. Humphrey in his analysis of "political and related rights" states as follows:

"There would hardly be freedom of assembly in any real sense without freedom of expression; assembly is indeed a form of expression."

John P. Humphrey, Political and Related Rights, in: Human Rights in International Law Legal and Policy Issues (ed. Theodor Meron), Clarendon Press, Oxford, 1984, Vol. I, P. 188.

3.5 If, therefore, there are in force in any given State party, legal norms on the right of assembly which are in conformity with article 21 of the Covenant, including restrictions of that right which are permitted under that article, such legislation will apply to a public meeting or peaceful assembly rather than legislation on the exercise of freedom of expression. In that sense the observation by the Government of Finland that article 21 must be seen as lex specialis in relation to article 19 (see paragraph 7.4 of the Views) is correct. In that regard I should like to refer to the relevant portion of the Government's submission which reads as follows:

"... this means that article 19 is to be regarded, in any case, as lex generalis in relation to article 21 (lex specialis), thus excluding the need for separate consideration under the former article".

It is regrettable that the Committee, in its Views, did not address this legal problem but contented itself with the somewhat oversimplified statement that just by removing the displayed banner, the Government violated the author's right to freedom of expression. Would the Committee still have found a violation of article 19 if it had found no violation of article 21? Hardly.

C. The question of a possible violation of article 15

4.1 Although the Committee, in its admissibility decision of 20 March 1992, clearly retained article 15 among the articles which might have been violated by the Government of Finland, it completely failed to address the issue of article 15 in its final Views. This is all the more surprising as the author in all her submissions including her last rejoinder, had again and again emphasized that her being fined by the Helsinki City Court (on the basis of Section 12 of the 1907 Act) was tantamount to a retroactive application, by analogy, of criminal law. While this argument may be considered on the surface as rather subtle, it is contradicted by the facts of the case.

4.2 The author was convicted not for having expressed her political opinions in a specific way but merely for her undisputed omission "to give the prior notification required by Section 3 of the Act on Public Meetings for arranging a certain kind of a public meeting, in her case a demonstration" (as submitted by the State party). Even on the assumption, that applying the 1907 Act with regard to the author's actions was erroneous, which, in turn, might have infringed on the author's rights under article 21 of the Covenant, her conviction on the basis of that same Act, can surely not be qualified as a "retroactive" application of criminal law, forbidden by article 15 (nullo in crimen, nulla poena sine lege). Perhaps the Committee thought the argument too farfetched and unreasonable. In any event, the Committee should have included in its final Views a statement to the effect that in the present case Finland has not violated article 15.

Kurt Herndl

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

Au cas d'espèce, il résulte des informations communiquées aussi bien par l'auteur de la communication que par l'Etat partie que les circonstances de la participation de plusieurs personnes venues assister à la cérémonie d'accueil d'un chef d'Etat étranger en visite officielle annoncée publiquement à l'avance par le Gouvernement ne permettent pas de considérer leur présence sur les lieux de la cérémonie comme une manifestation. 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. Dès lors l'application de la législation finlandaise sur les manifestations à un tel rassemblement ne peut être considérée comme la mise en oeuvre d'une restriction tolérée par l'article 21 du Pacte.

9.3 Le droit pour un individu d'exprimer ses opinions politiques, y compris évidemment sur la question des droits de l'homme, fait partie de la liberté d'expression garantie par l'article 19 du Pacte. En l'espèce, l'auteur de la communication a exercé ce droit en brandissant un calicot. Il est vrai que l'article 19 autorise la limitation par la loi de la liberté d'expression dans certaines circonstances. Toutefois, au cas particulier, l'Etat partie n'a pas fait état d'une loi permettant de restreindre cette liberté ni établi en quoi la restriction appliquée à Mme Kivenmaa était nécessaire à la sauvegarde des droits et des impératifs nationaux énoncés aux paragraphes a) et b) de l'article 19.3 du Pacte.