



GEN7062-19

VERBAL NOTE

The Permanent Mission of Finland to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and, with reference to the communication (AL Indigenous (2001-8) FIN 1/2012) sent by the Special Rapporteur on the rights of indigenous peoples, Mr *James Anaya*, on 24 May 2012, has the honour to provide the following comments on the information and allegations referred to in the aforementioned communication:

In the communication concern is expressed that elimination of the language requirement, and the emphasis on the non-objective criterion of self-identification, will result in an influx of registrants to the electoral roll for an election of the Sámi Parliament and a diluting of Sámi decision-making power within the Sámi Parliament. It is also alleged that the judgment of the Supreme Administrative Court (KHO 2011:81) further interferes with Sámi self-determination by failing to allow the Sámi Parliament to select its own membership in accordance with its own procedures.

Relevant legislation

Section 21 of the Constitution of Finland (731/1999) provides that everyone has the right to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. In the Finnish legal system everyone must have an opportunity to refer a decision concerning his or her voting right to an independent court of law for review.

A corresponding provision exists in Article 6 of the European Convention of Human Rights (Treaty series 18–19/1990) and in Article 2 of the International Covenant on Civil and Political Rights (Treaty Series 7–8/1976), both implemented in Finland by an act of Parliament.

Section 3 of the Act on the Sámi Parliament (974/1995) provides that for the purpose of the Act, a Sámi means a person who considers himself or herself a Sámi, provided that

- 1) he himself or herself or at least one of his or her parents or grandparents has learnt Sámi as his or her first language; or
- 2) he or she is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or
- 3) at least one of his or her parents has or could have been registered as an elector for an election to the Sámi Delegation or the Sámi Parliament.

According to section 21 of the Act on the Sámi Parliament the right to vote in elections to the Sámi Parliament belongs to every Sámi, regardless of locality of residence, who reaches the age of 18 years no later than on the last election day, provided that he or she is a Finnish citizen, or that he or she is a foreign citizen domiciled in Finland in

accordance with the Municipality of Residence Act (201/1994) on the last date when the request for inclusion in the electoral roll can be made.

Section 2 of the Ministry of Justice Decree on the procedure in elections to the Sámi Parliament (965/2006) provides that a person applying for inclusion in the electoral roll must append to the application

- 1) a reliable account of learning Sámi as his or her first language as referred to in section 3, paragraph 1 of the Act on the Sámi Parliament (974/1995);
- 2) a certificate issued by archival authorities showing that a certain person has been entered as a mountain, forest or fishing Lapp in the land, taxation or population register mentioned in the certificate, and a certification issued by authorities showing that the applicant is a descendent of this person; or
- 3) individualized information on the basis of which the Election Committee may establish that at least one of his or her parents has or could have been registered as an elector for an election to the Sámi Delegation or the Sámi Parliament.

A person who requests inclusion in the electoral roll as a foreign citizen must also prove in the request that he or she is a foreign citizen domiciled in Finland referred to in section 21 of the Act on the Sámi Parliament.

In the election of the Sámi Parliament in autumn 2011, in all 5,483 persons had the right to vote. According to the statistics of 2011, 1,854 persons among all Finnish citizens spoke Sámi as their mother tongue. Of those with another citizenship, 16 spoke Sámi as their mother tongue.

Section 7 of the Sámi Language Act (1086/2003) provides that a Sámi resident in Finland in accordance with the Municipality of Residence Act (201/1994) has the right to declare Sámi as his or her mother tongue for purposes of the Population Register. Since all Sámi people speaking Sámi as their mother tongue have not exercised this right, the real number of Sámi speaking Sámi as their mother tongue is slightly higher.

Judgments of the Supreme Administrative Court

On 26 September 2011 the Supreme Administrative Court passed five judgments. In four of these judgments it overturned decisions of the Executive Board of the Sámi Parliament and ordered that the appellants be included in the electoral roll of the Sámi Parliament for 2011. In one judgment the Court rejected one similar appeal.

The first of these judgments, published in the Supreme Administrative Court's Yearbook (**KHO 2011:81**), is described in more detail below.

The Election Committee of the Sámi Parliament had (by 3 votes to 2) rejected the appellant's request to be included in the electoral roll. The appellant filed a rectification request with the Committee, stating, *inter alia*, that he lived in the Sámi Homeland as any other Sámi person in the same position who had been included in the electoral roll for the Sámi Parliament. The Election Committee rejected the rectification request.

The appellant filed a rectification request concerning the decision of the Election Committee with the Executive Board of the Sámi Parliament, emphasizing the strength of his Sámi identification. The Executive Board rejected the rectification request.

The appellant appealed to the Supreme Administrative Court, requesting that the Court overturn the decision of the Executive Board of the Sámi Parliament and that he be included in the electoral roll for the Sámi Parliament. The Executive Board in its reply on the appeal held that the appellant had not presented any such new material that was

relevant to the matter and that the Executive Board had not already taken into account in its decision.

In his reply to the Supreme Administrative Court the appellant stated that the Executive Board of the Sámi Parliament had made its decision by voting and that the minority of the Executive Board had regarded the decision as erroneous because it rested too much on the language criterion. The appellant requested the Court to take account of the information about his ancestors' forced loss of their Sámi language and of his own weak knowledge of Sámi as well as the information from the research on the history of Lapps commissioned by the Ministry of Justice and completed in 2006. The appellant stated that he based his Sámi identification on his Sámi descent, way of life and cultural values.

The Supreme Administrative Court adjudicated the matter on the basis of the available documentary evidence.

In its judgment the Court stated that the appellant regarded himself as a Sámi and no grounds existed for questioning the genuineness of his Sámi identification. The Court held that he was not a Sámi defined in the Act on the Sámi Parliament only on the ground that he, according to a certificate issued by archival authorities, was a descendent of a person entered as a mountain Lapp in the land and taxation registers of the year 1825 and that he had also presented evidence of his grandparent's learning of Sámi as the first language.

The Supreme Administrative Court, nevertheless, considering also the identification of the appellant – residing in Inari in the Sámi Homeland – with the Sámi identity and way of life as a whole, he had to be regarded as a Sámi and thus entered in the electoral roll for the forthcoming elections, as he had requested. Thus, the Supreme Administrative Court paid attention especially to the appellant's self-identification and the overall assessment of the matter.

In two other cases the Supreme Administrative Court based its judgments on an overall assessment of the appellants' situation and the conclusion that no reason existed for doubting the genuineness of their identification. The main differences from the above-mentioned judgment published in the Yearbook were the following:

The second judgment (T 2711) concerned a person who, according to a certificate issued by authorities, was a descendent of a person entered as a mountain Lapp in the land and taxation registers of the year 1825. According to the Supreme Administrative Court, the descent alone could not be regarded as sufficient evidence of the appellant's being a Sámi. However, evidence had also been presented to the effect that the appellant had adopted a Sámi way of life in many respects (the authenticity of this evidence was not contested). Even though the appellant had not presented any evidence of his being a Sámi according to the language criterion, the overall assessment of the appellant's situation sufficiently supported the decision to consider him as a Sámi.

The third judgment (T 2713) concerned a person who, according to a certificate issued by authorities, was a descendent of a person entered as a mountain Lapp in the land and taxation registers of the year 1825. This descendent could not be considered as a Sámi only on the ground of the descent or on the ground that he, by proving that his father had known the Sámi language (the authenticity of this evidence was not contested), had obviously intended to prove that one of his parents or grandparents had learned Sámi as the first language. However, when assessing the situation as a whole the Court considered this appellant as a Sámi.

The fourth judgment (T 2712) deviating from the judgment published in the Yearbook of the Supreme Administrative Court concerned a person who, according to a certificate issued by authorities, was a descendent of a person entered as a Lapp in the land and taxation registers of the year 1763. The Supreme Administrative Court held that this

ground alone did not suffice for considering the appellant as a Sámi. After receiving sufficient evidence from a private individual that the appellant's grandmother had learned Sámi as her first language, the Court considered the appellant as a Sámi by the language criterion.

In its fifth judgment (T 2714) the Supreme Administrative Court held that although the appellant, according to a certificate issued by authorities, was a descendent of a person entered as a Lapp in the land register of the year 1763, he could not be considered as a Sámi only on this ground because he had not supported the appeal with any other evidence. The Court rejected the appeal.

Comments

As to the allegation that the aforementioned judgment (KHO 2011:81) of the Supreme Administrative Court eliminated the language criterion and gave excessive weight to self-identification, the Court expressly held in the reasoning of its judgment that no grounds existed for questioning the genuineness of the applicant's Sámi identification. Regarding the significance of self-identification, the Court referred, *inter alia*, to the concluding observations which the Committee monitoring the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (Treaty Series 37/1970) has issued to Finland. The Committee on the Elimination of Racial Discrimination has recommended that the definition of a Sámi should be interpreted more broadly in Finland, by lending self-identification the weight it deserves (CERD/C/FIN/CO/19, paragraph 13 and the subsequent recommendation)

As to the language criterion the appellant had presented a written certificate of the first language of his mother's father. The certificate had been signed by the appellant himself and certified by another person. The Supreme Administrative Court held that no circumstances established in the matter warranted doubting the truthfulness of the presented statement of a private person that the appellant's grandfather had known the Sámi language. The Court also considered it clear that the reindeer herder who had signed the certificate had meant to express his understanding of expressly the knowledge of Sámi of the appellant's grandfather.

The Government notes that in its reasoning the Supreme Administrative Court paid particular attention to the language criterion, stating, *inter alia*, the following:

The Supreme Administrative Court notes that in some cases the criterion laid down in section 3, paragraph 1 of the Act on the Sámi Parliament, requiring the learning of Sámi as the first language, is difficult to establish and substantiate reliably for instance regarding a person's grandparents. Considering section 2, subsection 1, paragraph 1 of the Ministry of Justice Decree on the procedure in elections to the Sámi Parliament, on one hand, and the nature of the matter, on the other hand, it is not appropriate to require a report of authorities on the matter.

*On the above-mentioned grounds, when self-identification cannot be supported by watertight evidence regarding the language criterion under section 3, paragraph 1 of the Act on the Sámi Parliament, section 3 of the Act must be interpreted as a whole in a manner that is positive towards fundamental and human rights. The interpretation must be based on assessing whether the person in question identifies himself or herself as a Sámi and whether objective grounds exist for this identification. The credibility of any evidence presented in support of the language criterion under section 3, paragraph 1 must be assessed case by case, considering *inter alia* the provision in section 31 of the Administrative Procedure Act on*

clarifying a matter and section 2, subsection 1, paragraph 1 of the Ministry of Justice decree on the procedure in elections to the Sámi Parliament.

The Government further notes that the Executive Board of the Sámi Parliament was not unanimous in rejecting the appellant's request for inclusion in the electoral roll on 31 May 2011. The Executive Board rejected the request by 3 votes to 2, and the two dissenting members filed a dissenting opinion, according to which *"the definition of a Sámi under the Act on the Sámi Parliament excludes from the electoral roll persons who are Sámi but have lost their language because of the strong efforts to make Sámi people Finns"*.

Moreover, when the Executive Board of the Sámi Parliament adopted its statement to the Supreme Administrative Court on 11 July 2011, a minority opinion was included in it. According to the minority opinion *"the language criterion cannot be a decisive criterion, whereas descent can"*.

In this connection, the Government also refers to the comment of the Committee of Experts monitoring the implementation of ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries according to which under Article 1 of the Convention language is not a criterion for defining the peoples protected by the Convention. The Committee noted that *"the application of Article 1 is not limited, as it does not include language as a criterion for defining the peoples protected by the Convention"*. (Committee of Experts, 76th Session, 2005, Individual Direct Request, Mexico, submitted 2006)

The Government notes that the Supreme Administrative Court has thoroughly examined the case and taken comprehensively account of different aspects related to the assessment of the matter. The criterion concerning the knowledge of the Sámi language has been duly taken into account.

The Permanent Mission of Finland to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurance of its highest consideration.

9 July 2012



Office of the United Nations High Commissioner for Human Rights
Geneva