

# **Business and human rights – access to remedy**

**Finland – Case study**

**2019**

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<b>1. Country where the incident took place</b>	Finland
<b>2. Country where the remedy<sup>1</sup> was sought</b>	Finland
<b>3. Type of remedy used</b> <i>(reasons why this remedy was used)</i>	Administrative court (the case concerns an appeal against a permit issued by an administrative authority)
<b>4. Deciding body -</b> <b>(in original language /and in English)</b>	<a href="#">Administrative Court of Northern Finland</a> ( <i>Pohjois-Suomen hallinto-oikeus</i> )
<b>5. Date (month/year) when the remedy was initiated</b> <b>Date, if available, of the (final) decision</b>	Date of decision of the administrative court: 19 December 2018
<b>6. Reference details, (type and title of court/body; in original language and English [official translation, if available])</b>	Administrative Court of Northern Finland, Decision number 18/0277/1 Pohjois-Suomen HAO 19.12.2018 18/0277/1
<b>7. Web link to the decision/procedure (if available)</b>	Not available
<b>8. Did the incident receive media</b>	Not much, a few links to the Finnish Broadcasting Company ( <i>Yleisradio, Yle/Rundradion</i> ) news and the Finnish Association for Nature Conservation:

<sup>1</sup> A remedy / complaint mechanism can include:

- State or non-state mechanisms
- Judicial
- Alternative Dispute Resolution (i.e. arbitration, mediation)
- company-based complaints mechanism (i.e., mechanism established and administered by a company)
- complaints mechanism developed by an industry, multi-stakeholder, or other collaborative initiative (i.e., mechanism 'external' to a company, to which the company has agreed to adhere to)
- complaints mechanism associated with a finance institution/ bank (i.e., mechanism through which a complainant/victim affected by a project that has been financed by a particular institution /bank can raise a complaint with the financial institution itself)]

<p>attention? If so, please provide links</p>	<p><a href="https://yle.fi/uutiset/osasto/sapmi/kasivarren_malminetsintaluvasta_valitettu_prosessi_pysahdyksissa/9082001">https://yle.fi/uutiset/osasto/sapmi/kasivarren_malminetsintaluvasta_valitettu_prosessi_pysahdyksissa/9082001</a></p> <p><a href="https://www.sll.fi/lappi/2019/01/07/malminetsinnasta-suojelualueilla-pohjois-suomen-hallinto-oikeuden-paatoksia/">https://www.sll.fi/lappi/2019/01/07/malminetsinnasta-suojelualueilla-pohjois-suomen-hallinto-oikeuden-paatoksia/</a></p> <p><a href="https://www.sll.fi/lappi/2019/01/22/kaivoslakinyt-kansalaisadressi-avattu-ja-kasivarren-malminetsintalupapaatoksesta-valitettu-khon/">https://www.sll.fi/lappi/2019/01/22/kaivoslakinyt-kansalaisadressi-avattu-ja-kasivarren-malminetsintalupapaatoksesta-valitettu-khon/</a></p>
<p>9. Legal basis in national/EU/international law of the rights under dispute</p>	<p><b>Sámi rights:</b> The Sámi as an indigenous people has the right to maintain and develop their own language and culture (<a href="#">Constitution</a>, Chapter 2, Section 17[3])</p> <p><a href="#">Act on the Sámi Parliament</a> (<i>Saamelaiskäräjälaki</i>, 974/1995), Section 9(1)(3): Obligation to negotiate with the Sámi: The authorities shall negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sámi as an indigenous people and which concern the following matters in the Sámi homeland...(3) applications for licences to stake mineral mine claims or file mining patents.</p> <p>In order to fulfil its obligation to negotiate, the relevant authority shall provide the Sámi Parliament with the opportunity to be heard and discuss matters. Failure to use this opportunity in no way prevents the authority from proceeding in the matter. Section 9(1)(2)</p> <p><a href="#">Mining Act</a> (<i>Kaivoslaki</i>, 621/2011):</p> <p>The activities referred to in this Act shall be adapted in the Sámi Homeland, referred to in the Act on the Sámi Parliament (974/1995), so as to secure the rights of the Sámi as an indigenous people. (Section 1)</p> <p>In the Sámi Homeland, the permit authority shall – in co-operation with the Sámi Parliament, the local reindeer owners’ associations, the authority or institution responsible for management of the area, and the applicant – establish the impacts caused by activity in accordance with the exploration permit, mining permit, or gold panning permit on the rights of the Sámi as an indigenous people to maintain and develop their own language and culture and shall consider measures required for decreasing and preventing damage... (Section 38[1])</p> <p>In a special reindeer herding area, the permit authority shall, in co-operation with the local reindeer owners’ associations, assess the damage caused to reindeer herding through activity under the permit. (Section 38[4])</p> <p><a href="#">Reindeer Husbandry Act</a>, (<i>Poronhoitolaki</i>, 848/1990), Chapter 8, Section 53:</p> <p>When planning measures concerning State land that will have a substantial effect on the practice of reindeer herding, the State authorities must consult the representatives of the reindeer herding co-operative in question.</p> <p><b>Indigenous peoples’ rights:</b> International Covenant on Civil and Political Rights (<a href="#">ICCPR</a>), arts. 1 (self-determination), 27 (minority rights); UN Declaration on Indigenous Peoples’ Rights (<a href="#">UNDRIP</a>), arts. 11, 18 and 19 (FPIC, free, prior and informed consent).</p> <p>[Note: Finland has not ratified the <a href="#">ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)</a>]</p>

<b>10. Parties<sup>2</sup></b>	<a href="#">Käsivarsi reindeer herding cooperative</a> (Käsivarren paliskunta, located in Enontekiö, Lapland) [unofficial translation]  <a href="#">Finnish Safety and Chemicals Agency</a> ( <i>Turvallisuus- ja kemikaalivirasto</i> , Tukes)
<b>11. Form of abuse/violation, and rights involved<sup>3</sup></b>	Tukes issued <a href="#">Geological Survey of Finland</a> ( <i>Geologian tutkimuskeskus</i> , GTK) a permit for exploration activities in preparation for mining allegedly in violation of the rights of the Sámi to their own culture; obligation to negotiate with the Sámi in matters that affect their culture and status as indigenous people.
<b>12. Type of business involved</b>  <i>(sector of activity, name of the company perceived as being responsible for the abuse, country of origin of the company, form of business entity)</i>	Mining industry, no individual companies are identified, but many of them are foreign, of Canadian and Australian origin. The exploratory activities/investigations are usually not conducted by the companies themselves but by the GTK, which is an expert organisation under the <a href="#">Ministry of Economic Affairs and Environment</a> (Työ- ja elinkeinoministeriö).
<b>13. Profile of the victim(s) - individuals /population affected - can be broader than actual parties to the proceedings</b>  <i>(e.g. country of origin, belonging to a particular minority – ex. ethnic, gender, age, occupation,</i>	One complaint was filed by the local Sámi reindeer herding cooperative, another complaint was filed by Sámi people collectively in the name of the <a href="#">Sámi Parliament</a> (saamelaiskäräjät) (and a third by the Finnish Association for Nature Conservation)

<sup>2</sup> Each Member State may have different rules with respect to anonymisation of personal data of participants in court and other types of proceedings and in public documents. Therefore, please reflect names or relevant information as referred to in the case concerned.

<sup>3</sup> The rights affected may include the entire spectrum of internationally recognised fundamental rights – civil and political rights, as well as economic, social and cultural rights; for example: the right to non-discrimination, the right to private and family life, freedom of expression, the right to health, the right to protection of life and physical integrity, property rights, consumer rights or environmental rights.

<p><i>social status, relations with the responsible company)</i></p>	
<p><b>14. Any legal or institutional factors in the Member State that facilitated the abuse of the (fundamental) rights in questions?</b> <i>(e.g. ), gaps in legislation, lack of obligatory Corporate social responsibility (CSR), corruption, close relations between the business and the government...)</i></p>	<p>Sámi parliament Act (Section 9) definition of “negotiations” is not clear (cf. FPIC), and the same concerns the Sámi impact assessment according to Mining Act, Section 38.</p> <p>The Sámi face language barriers and lack sufficient resources to conduct mining related impact assessments. The Sámi parliament neither has the resources to conduct such assessments.</p> <p>Finland has not ratified <a href="#">ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)</a>.</p>
<p><b>15. Key facts of the case</b></p>	<p>The case [Pohjois-Suomen HAO, 19.12.2018, 18/0277/1] relates to mining prospective activities planned to be carried out in Lätäseno, an area located in Lapland, Northern Finland, where mining exploratory activities/investigations have been conducted by different companies on a continuous basis for more than 60 years. The area is rich in minerals, but simultaneously environmentally vulnerable and forms a part of a protected nature reserve. In addition, it belongs to the Sámi homeland where the Sámi enjoy special protection guaranteed by the Constitution and several special acts. [According to Chapter 1 Section 1 of the Mining Act (621/2011), mining activities conducted in the Sámi homeland shall be adapted, so as to secure the rights of the Sámi as an indigenous people. A Sámi rights impact assessment is required for permits concerning activities in the Sámi homeland, according to Chapter 5, Section 38.]</p> <p>[Actual mining preceding exploratory activities can be carried out on notification only, but requires a permit in case, e.g. the land owner does not consent to such activities (Mining Act, Chapter 2, Section 9). Mining always requires a specific permit. Both permits are issued by Tukes. The exploratory activities/investigations are usually not conducted by the companies themselves but by the GTK.</p> <p>In the current case, Tukes had granted GTK a permit to carry out prospecting work (exploration) in the area in question, where a Sámi community is exercising reindeer herding based on traditional methods. Negotiations/impact assessment was limited to a meeting conducted with a few Sámi persons that were not living in the area in</p>

	<p>question. The community filed a complaint to the regional administrative court in Northern Finland (<i>Pohjois-Suomen hallinto-oikeus</i>), assisted by a lawyer, challenging the permit on grounds of inadequate assessment of the impact of the exploratory activities on the Sámi community. The complaint was filed also for strategic reasons (strategic litigation) in the sense that it was an attempt to establish standards for conducting the Sámi impact assessment and aimed at banning the continuous prospective activities carried out in the area in the interest of several successive companies keeping the community in continuous uncertainty and in a vulnerable position. There were two other complaints filed simultaneously, one by the Sámi parliament and another by an environmental NGO.</p> <p>The complaint was not successful. The Court was of the opinion that proper consultations were held, and proper safeguards were in place and, thus, upheld Tukes' decision.</p> <p>The plaintiffs have sought leave to appeal from the <a href="#">Supreme Administrative Court</a> (<i>Korkein hallinto-oikeus</i>) where the case is currently pending.</p>
<p>16. With respect to the case described in this template - <u>what worked well</u> from the standpoint of the complainant/victim? What were the reasons for it?</p>	
<p>17. With respect to the case described in this template – <u>what did not work well</u> from the standpoint of the complainant/victim? What were the reasons for this?</p>	<p>Negotiations/impact assessment was limited to a meeting conducted with a few Sámi persons that were not living in the area in question.</p> <p>The documentation and expert opinions submitted by the claimants were largely ignored by the court, according to claimants who felt that the Court allegedly attached much higher weight to Tukes' and GTK' statements than to those of the several experts (including an expert in Sámi and fundamental rights) used by the complainants, even though Tukes does not have any experts specialized in Sámi rights. An expert also pointed out that in environmental impact assessment quite different standards are applied and a proper impact assessment report is written, which was not the case here.</p>

<p><b>18. Main reasoning / argumentation</b> <i>(of the parties and the court: key issues /concepts clarified by the case)</i></p>	<p>The claimants requested the decision to be annulled, the search warrant be refused and Tukes and GTK to be ordered to pay the costs.</p> <p>According to the claimants, the criteria for assessing the eligibility/acceptability of projects (effective participation and vitality test) developed on the basis of Article 27 ICCPR had not been met. The effects of exploration on the Sámi as an indigenous people had not been adequately assessed. The authorization would cause significant harm to the traditional reindeer husbandry of the cooperative.</p> <p>This was denied both by Tukes and GTK.</p> <p>HAO considers that the assessments and consultations had been sufficient in light of section 38 of the Mining Act and Article 9 of the <a href="#">Act on the Sámi Parliament</a>. The effects had been adequately clarified and there was no obstacle to authorization.</p>
<p><b>19. What was the outcome?</b> <i>(e.g. positive outcome for the complainant/victim? Why/why not? Compensation/back pay awarded? Perpetrator(s) punished/fined? Measures were introduced to stop future incidents? (of individual character)</i></p>	<p>The complaint was not successful. The Court was of the opinion that proper consultations were held, and proper safeguards were in place and, thus, upheld Tukes' decision to grant the exploratory permit.</p>
<p><b>20. Did the case lead to legislative or policy developments?</b> <i>(including more general measures introduced to</i></p>	<p>No, it did not (at least not yet).</p>

<p><i>stop future incidents)</i></p>	
<p><b>21. In case the remedy sought was not of a judicial nature, was there eventually any follow up on the case in the court? Or followed by a different type of procedure?</b></p> <p><i>Why/why not?</i></p> <p><i>If yes, which court/proceedings?</i></p> <p><i>Was a decision reached or was the case discontinued (if so, why?)</i></p>	<p>The plaintiffs have sought for leave to appeal from the Supreme Administrative Court.</p>
<p><b>22. Any other comments relevant to case?</b></p>	