http://www1.umn.edu/humanrts/undocs/session36/9-40.htm

Erkki Juhani Hartikainen on his own behalf as well as on behalf of other persons v. Finland, Communication No. R.9/40, U.N. Doc. Supp. No. 40 (A/36/40) at 147 (1981).

Submitted by: Erkki Juhani Hartikainen on his own behalf as well as on behalf of other persons
State party concerned: Finland
Date of communication: 30 September 1978 (date of initial letter)

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

Meeting on 9 April 1981;

Having concluded its consideration of communication R.9/40 submitted to the Committee by Erkki Juhani Hartikainen 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 and by the State party concerned;

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of this communication (initial letter dated 30 September 1978 and several further letters received between December 1978 and January 1981) is Erkki Juhani Hartikaineno a Finnish school teacher residing in Finland. He submitted the communication on his own behalf and also in his capacity as General Secretary of the Union of Free Thinkers in Finland and on behalf of other alleged victims, members of the Union.

2.1 The author claims that the School System Act of 26 July 1968, paragraph 6, of Finland is in violation of article 18 (4) of the Covenant inasmuch as it stipulates obligatory attendance in Finnish schools, by children whose parents are atheists, in classes on the history of religion and ethics. He alleges that since the textbooks on the basis of which the classes have been taught were written by Christians the teaching has unavoidably been religious in nature. He contends that there is no prospect of remedying this situation under the existing law. He states that letters seeking a remedy have been written, in vain, to the Prime Minister, the Minister of Education and members of Parliament. He argues that it would be of no avail to institute court proceedings, as the subject matter of the complaint is a law which creates the situation of which he and others are the victims.

2.2 A copy of the law in question (in Finnish) is attached to the communication. This, in translation, reads as follows:

"The curriculum of a comprehensive school shall, as provided for by decree, include religious instructions social studies, mother tongue, one foreign language, study of the second domestic languages history, civics, mathematics, physics, chemistry, natural history, geography, physical education, art, music, crafts, home economics as well as studies and practical exercise closely related to the economy and facilitating the choice of occupation.

"Five or more students who by virtue of the Religious Freedom Act have been exempted from religious instruction and who do not receive any comparable instruction outside of schools shall instead of religious instruction receive instruction in the study of the history of religions and ethics. Where five or more students of the same religious denomination have by virtue of the Religious Freedom Act been exempted from the general religious instruction of a school and the guardians of those students demand religious instruction of that denomination, such instruction shall be given in that school."

2.3 The author seeks amendment of the law so as to make the classes (teaching) complained of, neutral or non-compulsory in Finnish schools.

3. On 27 October 1978, the Committee on Human Rights decided: (a) to transmit the communication to the State party under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility of the communication in so far as it related to the author in his personal capacity, and to request the State party, if it contended that domestic remedies had not been exhausted to give details of the effective remedies available to the alleged victim in the particular circumstances of his case, and (b) to inform the author that it could not consider the communication in so far as it had been submitted by him in his capacity as General Secretary of the Union of Free Thinkers in Finland, unless he furnished the names and addresses of the persons he claimed to represent together with information as to his authority for acting on their behalf.

4. In December 1978 and January 1979, the author submitted the signatures and other details of 56 individuals~ authorizing him to act on their behalf as alleged victims.

5. In its reply dated 17 January 1979, the State party admitted that the Finnish legal system did not contain any binding method for solving a possible conflict between two rules of law enacted by Parliament in accordance with the Constitution, i.e., the School System Act of 26 July 1968 and the International Covenant on Civil and Political Rights which had been brought into force by Decree Ho. 108 of 30 January 1976. The State party stated further that "thus it could be said that there were no binding local remedies for such a case".

6. On 14 August 1979, the Human Rights Committee noted that, as regards the question of exhaustion of local remedies, the State party had admitted in its reply that no such remedies were available and the Committee found therefore that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol. The Human Rights Committee therefore decided:

1. That the communication was admissible;

2. That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decisions written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

7.1 In its submission under article 4 (2) of the Optional Protocols dated 7 March 1980, the State party refutes the allegation that there has been a violation of the Covenant on Civil and Political Rights in Finland. It affirms that the Finnish legislation concerning religious freedoms including the School System Act, paragraph 6, was scrutinized in connexion with the process of ratifying the Covenant and found to be in conformity with it. It points out that not only is religious freedom guaranteed by the Constitution of Finland, but the Religious Freedom Act (which is referred to in the School System Acts paragraph 6) stipulates in paragraph 8 that:

"If religious instruction according to any specific denomination is given at a government-subsidized primary or elementary school or other institute of learning, a student who adheres to another denomination, or no denominations shall upon the demand of the guardian be exempted from such religious instruction".

7.2 Having regard to the relevant legislation, the State party submits that it can be stated that religious education is not compulsory in Finland. It adds that there is, however, the possibility that students, who by virtue of the Religious Freedom Act have been exempted from religious instruction, may receive instruction in the study of the history of religions and ethics; such instruction is designed to give the students knowledge of a general nature deemed to be useful as part of their basic education in a society in which the over-whelming majority of the population belongs to a religious denomination. The State party claims that the directives issued by the National Board of Education concerning the principal aims of the instruction to be given show that the instruction is not religious in character. However, the State party explains that there have in some cases been difficulties in the practical application of the teaching plan relating to this study and that in January 1979 the National Board of Education established a working group consisting of members representing both religious and non-religious views to look into these problems and to review the curriculum.

8.1 On 13 April 1980, the author submitted additional information and observations in response to the State party's submission under article 4 (2) of the Optional Protocol. A copy of the author's submission was forwarded to the State party for information.

8.2 In his submission the author claims that an application which he had made for the privilege of not attending religious events in the school where he was a teacher had not by then been accepted. He reiterates the Free Thinkers' belief that the Finnish constitutional laws do not guarantee freedom of religion and belief to a sufficient extent and contends that the result of the School System Act, paragraph 6, and the Comprehensive School Statute, paragraph 16, is that there is compulsory instruction for atheists on the history of religions and ethics. In support of this contention he quotes a part of the teaching plan for this course of instruction a/and refers to certain cases which had allegedly occurred. As to the working group established by the National Board of Education (referred to in paragraph 7.2 above), the author claims that there was only one distinctly atheist member of this working group and since he had been left in a minority he could not have any influence on the work of the group. Further letters were received from the author dated 25 September, 28 October and 7 November 1930.

9.1 The State party submitted additional comments under article 4 (2) of the Optional Protocol in a note dated 2 December 1980. A copy of the State party's submission was transmitted to the author of the communication with the request that any comments which he might wish to submit thereon should reach the Human Rights Committee not later than 16 January 1981.

9.2 In its submission, the State party observed that the letter of Mr. Erkki Juhani Hartikainen, dated 13 April 1980, to which reference is made in paragraph 8 above, included elements that went beyond the scope of the original communication to the Human Rights Committee. It explained that, owing to the lack of precise information about the concrete cases referred to in the author's letter of 13 April 1980, it was unable to verify the facts of these claims. However, it pointed out that the Finnish legal system provides an extensive network of domestic remedies for concrete violation of rights.

9.3 In order to illustrate the efforts made in Finland to improve the teaching of the history of religions and ethics, the State party annexed to its submission a report of the working group established by the National Board of Education, which was handed to the Board on 16 October 1980. The report classifies the contents of the teaching of the subject according to the following objectives:

1. Education for human relationships which function on ethical principles;

2. Education promoting full development of an individual's personality;

3. Education for understanding the cultural heritage of our own nation as well as our present cultures with special reference to different beliefs;

4. Education for understanding the cultural heritage of various nations, with special reference to different beliefs in the present world. b/

The State party observes that Mr. Hartikainen was among the experts consulted by the working group and that the National Board of Education intends to request the Union of Free Thinkers in Finland, among others, to give its comments on the working group's proposal for a curriculum before the working group is asked to work out a teacher's guide. However, the Government of Finland submits that it is beyond the competence of the Human Rights Committee to study the formulation of school curricula and repeats its conclusion that no legislative inconsistency with the Covenant has been established.

10.1 The Committee has considered the present communication in the light of all information made available to it by the parties as provided fqr in article 5 (1) of the Optional Protocol. Its views are as follows:

10.2 Article 18 (4) of the International Covenant on Civil and Political Rights provides that -

"The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

10.3 The Committee notes that the information before it does not sufficiently clarify the precise extent to which the author and the other alleged victims can actually be said to be personally affected, as parents or guardians under article 1 of the Optional Protocol. This is a condition for the admissibility of communications. The concept of a "victim" has been further examined in other cases, for instance in the final views in case No. R.9/35. However, this case having been declared admissible without objection on this points the Committee does not now consider it necessary to reopen the matters for the following reasons.

10.4 The Committee does not consider that the requirement of the relevant provisions of Finnish legislation that instruction in the study of the history of religions and ethics should be given instead of religious instruction to students in schools whose parents or legal guardians object to religious instruction is in itself incompatible with article 18 (4), if such alternative course of instruction is given in a neutral and objective way and respects the convictions of parents and guardians who do not believe in any religion. In any event, paragraph 6 of the School System Act expressly permits any parents or guardians who do not wish their children to be given either religious instruction or instruction in the study of the history of religions and ethics to obtain exemption therefrom by arranging for them to receive comparable instruction outside of school.

10.5 The State party admits that difficulties have arisen in regard to the existing teaching plan to give effect to these provisions, (which teaching plan does appear, in part at least, to be religious in character), but the Committee believes that appropriate action is being taken to resolve the difficulties and it sees no reason to conclude that this cannot be accomplished, compatibly with the requirements of article 18 (4) of the Covenant, within the framework of the existing laws.

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a/"Second class

Spring term

Stories of the childhood of Jesus. Jesus is brought to the temple. The Magi. The flight to Egypt. The return from Egypt to Nazareth. What was the home area of Jesus like? A Jewish home and manners. The education of a Jewish boy.

What Jesus taught. The good Samaritan. Applications of the story for children's life in modern time.

What was Jesus like? Jesus' attitude to people thrown away outside the community, to the disliked and the despised (the ill, blind, invalid, poor, starving, illiterate, women and children).

Stories about what Jesus did. Jesus heals the son of the official. Jesus heals the daughter of Jairaus ... The feeding 5,000 people. The meaning of the stories about the activities of Jesus: the value of them does not depend on the verity of details.

Jesus as ideal. Jesus was good and helped those in need for support. The ideal of Jesus in modern world: the use of knowledge and skills for the benefit of people in need for help. Jesus disliked no one. Jesus saw in every human also good.

The church building and service. Lutheran, Orthodox and Roman Catholic church building and service.

Development aid. The help in different emergency situations. The permanent aid of the developing countries. The early form of development aid, missionary work.

Francis of Assisi and his solar song. Francis: man, who experienced God so strongly that even others realized that. Legends about Francis ... The solar song."

b/The author, in his submission of 5 January 1981, offers the following translation of these objectives:

"1. Education for ethically rightly functioning human relationships;

"2. Education for individual, communal and social consciousness, sense of responsibility and functioning;

"3 Education to understand the cultural heritage of our own nation and our present culture, especially material from world view;

"4. Education to understand the cultural heritage of various nations, especially different world views in the present world."