

Complaint to Finland's Parliamentary Ombudsman¹



**Center for Human Rights and Environment (CEDHA)
30 January 2007**

**Filed to:
Finland's Parliamentary Ombudsman
Arkadiankatu
FI-00102 Helsinki
ombudsman@parliament.fi
www.oikeusasiamies.fi**

¹ This complaint has been prepared following the Finland's Parliamentary Ombudsman complaint guidelines available at <http://www.oikeusasiamies.fi/Resource.phx/ea/english/complaints/complaintform.htx>

Contact Particulars

1. Name of complainant:

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Details of Complaint

1. The person or authority whose action the complainant criticises

Finland's National Contact Point for the OECD Guidelines for Multinational Enterprises

Jorma Immonen, Secretary General, Chief Counsellor

and

Risto Paaermaa, Chairman of the MONIKA Advisory Committee

Advisory Committee on International Investment and

Multinational Enterprises of Finland (MONIKA)

Ministry of Trade and Industry

2. What action or decision the complainant considers illegal

CEDHA contends that Finland's Actions and Statements with regard to the Botnia Specific Instance and the Finnvera Specific Instance are illegal.

Attached to this complaint you will the Statement released by Finland's NCP on the Botnia Specific Instance dated 21 December 2006, a letter to the OECD Investment Committee criticising the actions of Finland's NCP relative to the Botnia Specific Instance dated 12 January 2007 and an evaluation of the NCP Statement on the Finnvera Specific Instance.

Original specific instances for Botnia can be found at:

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/oecd-specific-instance-botnia-eng.pdf

Original specific instance for Finnvera can be found at:

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/oecd-specific-instance-finnvera-eng.pdf

All documentation available at:

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/

3. Why the complainant considers the action or decision illegal

The following points are taken from examples given by Finland's Ombudsman as consisting of illegal behaviour:

- Exceeding authority or abusing discretionary powers: Finland's NCP has exceeded its authority by stating that the enterprise (Botnia) must be able to trust that Uruguay is in compliance with international law, ignoring the function of international tribunals and the rule of law. It is known that Uruguay compliance with international law is undetermined and rests upon open cases at the International Court of Justice and the Inter American Commission on Human Rights.
- Inadequate presentation of grounds for a decision: Finland's NCP has failed in its attempts to bring Botnia and the complainants to dialogue, and closed the facilitation process three weeks after the parties attended an initial meeting, leaving with a will to dialogue. Finland's NCP denies any responsibility of enterprises at international law, fails to encourage enterprise behaviour consistent with the Guidelines and closes the specific instance on inadequate grounds. The NCP decision rests on approval of financing by the International Finance Corporation and a Statement from Finland's department of Environment whilst ignoring the intense diplomatic and social conflict between Argentina and Uruguay, and issues at international law.

Similarly, Finland's NCP rejected a complaint against Finnvera, the export credit agency 100% owned and controlled by the Finnish government. This agency is set to provide support to the Botnia project. The reasoning behind this decision is also contrary to the OECD Guidelines. Finland's NCP was not publicly made available on Government website, contributing to the lack of transparency in the decision. A transcript of the Statement can be found at:

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/ncp_finn.pdf

CEDHA's evaluation of the NCP Statement:

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/evaluation-finland-ncp-statement-finnvera-CEDHA.pdf

- Carelessness: Finland's NCP has acted carelessly in its Statement, suggesting that CEDHA has alleged breaches to the Bribery provisions of the Guidelines when it clearly did not do so.
- Failure to advise: Finland's NCP failed to advise parties of its intention to close the case as early as 22 September 2006, failed to advise Botnia and potential breaches by Uruguay to international law, failed to advise Botnia on key evidence such as the Compliance Advisor Ombudsman Initial Assessment,
- Inappropriate behaviour or other procedure contrary to good governance: Finland's NCP has failed to uphold, implement the Guidelines and encourage behaviour consistent with the Guidelines. On the basis of the Statement, and considering

Finland's involvement in the project, it has failed to act in an independent manner, and failed to discharge its duty following OECD Guidelines procedure.

- Not informing public of Finnish government involvement in the controversial Botnia project. Finland's Government has repeatedly denied any involvement in the project, misrepresenting the factual situation which involves Finnvera, Nordic Investment Bank, Kemira and Metso Corporation. Placing Finland's international reputation at risk:
- Parliamentary officials and other government representatives should ensure that Finland enjoy the best reputation abroad it can. Now, Finland and Botnia are being directly blamed for the conflict between Uruguay and Argentina. See for example http://buscador.lanacion.com.ar/Nota.asp?nota_id=877916&high=finlandia
- Unwillingness to become involved in the OECD Guidelines for Multinational Procedure to facilitate dialogue between parties relative to issues: The OECD Guidelines task NCPs to 'contribute to the resolution of issues that arise relating to implementation of the Guidelines'. CEDHA submits to Finland's Ombudsman that it has failed to do so.
- Failure to discharge State obligations under international law and agreements with the OECD: Finland is obliged to respect the rule of law, and to promote and respect international law. Therefore it is to advise its companies when possible violations of international law, relative to company projects, may occur. In the statement on the specific instance, Finland stated that Botnia must be able to trust that a host country has complied with international law. This undermines good governance and the role of the international tribunals.

4. Whether the matter is under deliberation in a court of law or elsewhere.

The OECD Investment Committee has been notified of CEDHA's concerns relative to the actions and Statement released by Finland's NCP. Mr Schekulin, the Chair of the Committee which oversees the implementation of the Guidelines, has notified CEDHA that it would contact the parties involved about the issues. Please see attached letter.

5. What the complainant wants the Ombudsman to do:

CEDHA would like the Ombudsman to investigate the actions and statement of Finland's NCP, and if it considers appropriate, to:

- issue a reprimand the National Contact Point;
- raise this issues in Parliament, and consider a recommending a special inquiry
- issue recommendations on how the National Contact Point should behave in future cases to avoid these problems;
- issue recommendations to restructure the MONIKA Advisory Committee and the NCP to ensure a transparent and objective process dealing with specific instances;
- draw the attention of the authority to the requirements of good governance;
- request that the Finnish National Contact Point retract its Statement and re-open the specific instance with a focus on dialogue;

- request that Finland's Government publicly reveal details on its involvement in the Botnia's project both to the public of Finland and Argentina (for example Finnvera, Kemira, Nordic Investment Bank etc);
- make available to the public all communication between the NCP and Botnia, and also internal documentation and minutes of meetings which deals with the specific instance;
- make proposals on how legislation or regulations may be strengthened to enhance the Guidelines for Multinational Enterprises