HUMAN RIGHTS COMMITTEE

R. M. v. Finland

Communication No. 301/1988

23 March 1989

ADMISSIBILITY

Submitted by: R. M. [name deleted]

Alleged victim: The author

State party concerned: Finland

Date of communication: 14 June 1988 (date of initial letter)

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

Meeting on 23 March 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 14 June 1988, further dated 12 December 1988) is R. M., a Finnish citizen born in 1956, currently serving a prison sentence in Finland. The author claims to be a victim of a violation by the Government of Finland of articles 7, 14, paragraphs 1, 3 (e) and 3 (g) and 17 of the International Covenant on Civil and Political Rights.

2.1 On 5 May 1986, the author was sentenced to 2 years and 3 months of inprisonment by the Municipal Court of Helsinki for having smuggled into Finland 4.5 kilos of hashish. In July 1986 an accomplice was arrested and a retrial was ordered, in which the author was sentenced, on 12 January 1987, to 8 years and 8 months of imprisonment and to pay a fine of 1 million Finnish markkaa. On 25 March 1988, the Supreme Court dismissed the author's petition for leave to appeal.

2.2 The author complains that the Municipal Court admitted into evidence against him

testimonies of a mentally disturbed co-defendant, which were allegedly obtained under duress. The author further claims that the policemen who conducted the interrogation made illegal promises in order to obtain the information and that one testimony was obtained abroad under the threat of extradition.

2.3 The author further alleges that the courts did not evaluate fairly the evidence presented by the prosecutor, and that they were unduly influenced by the media. In addition, he alleges that his plea of not guilty was used against him and that his sentence was disproportionate in comparison with that of his co-defendants. Finally, he alleges that he was unable to defend himself properly in the Court of Appeal since there were no oral proceedings.

2.4 With regard to the exhaustion of domestic remedies, the author contends that he has exhausted all domestic remedies inasmuch as all three instances provided under the Finnish legal system have already adjudicated on his case.

3. By its decision of 8 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 8 November 1988, the State party confirms that the author has exhausted all the domestic remedies available to him. It does, however, contest the admissibility of the communication on the ground that the facts of the case do not reveal any breach of the author's rights. The State party submits that the author's allegation that article 7 has been violated is unfounded, since the prohibition of torture and other inhuman or degrading treatment stipulated therein does not concern the alleged right of a defendant to have legal assistance and a tape recorder during the stage of preliminary investigation. Moreover, the State party contends that the author has not adduced any facts which could substantiate his claims that the Finnish authorities violated article 7.

4.2 With regard to the alleged violations of article 14, the State party observes that the Human Rights Committee is not a further instance of appeal and, therefore, is not competent to pronounce on the proper weighing of evidence or the measurement of sentences. Furthermore, with respect to whether the non-availability of a lawyer and a tape recorder at the preliminary investigation might be deemed a violation of article 14, paragraph 3, the Finnish Government notes that upon ratification of the Covenant it made a reservation concerning the right to have legal assistance at the stage of preliminary investigation, and contends that it cannot be assumed that the provisions of article 14 establish a personal right to have one's criminal investigation tape-recorded.

4.3 As to the alleged violation of article 17, the State party argues that serious offences - and in particular offences in which several people, drugs and large sums of money are involved - frequently are closely followed by the press and that press coverage in itself can hardly be held to be a violation of the defendant's rights.

5. Commenting on the State party's submission, the author, in a letter dated 12 December

1988, reiterates his previous allegations and contends that the absence of a lawyer and of a tape recorder at the stage of preliminary investigation makes it impossible to prove the conditions of ill-treatment to which he was allegedly subjected. He further argues that the weighing of the evidence constitutes the essence of a fair and public hearing by a competent, independent and impartial tribunal, that he is not submitting his communication to the Committee as an appeal to a fourth instance for a review of his case and that the procedure actually followed by the Finnish system of judicial appeal does not conform to the articles of the International Covenant on Civil and Political Rights.

6.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The author of the communication claims that there have been breaches of articles 7, 14, paragraphs 1 and 3 (e) and (g), and 17 of the Covenant.

6.3 A thorough examination by the Committee of all the material submitted by the author has not revealed any precise allegations of fact in substantiation of the claim that he is a victim of violations by the State party of his rights set forth in article 7.

6.4 The Committee takes note of the Finnish reservation on article 14 and further reiterates the view that the assessment of the evidentiary material or the measurement of sentences are essentially matters for the courts and authorities of the State party concerned. The Committee further observes that it is not an appellate court and that allegations that a domestic court has committed errors of fact or law do not in themselves raise questions of violation of the Covenant unless it also appears that some of the requirements of article 14 may not have been complied with. R. M.'s complaints relating to the alleged violations of article 14 do not appear to raise such issues. The Committee believes that the absence of oral hearings in the appellate proceedings raises no issue under article 14 of the Covenant.

6.5 The communication does not disclose any facts in support of the author's allegation that the press coverage in his case adversely affected the procedures before the courts. As to his allegation that the press coverage per se constituted a violation of article 17, the Committee notes that the author has not exhausted domestic remedies against those claimed to be responsible for the violation of his privacy, honour and reputation.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That the decision be communicated to the author and to the State party concerned.