

HUMAN RIGHTS COMMITTEE

Celepli v. Sweden

Communication No. 456/1991

19 March 1993

CCPR/C/47/D/456/1991*

ADMISSIBILITY

Submitted by: Ismet Celepli [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 17 February 1991 (initial submission)

Documentation references: List CCPR/C/CL/R.51 - Prior decisions -Special Rapporteur's rule 91decision, transmitted to the State party on 5 August 1991 (not issued in document form)

Date of present decision: 19 March 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication (dated 17 February 1991) is Ismet Celepli, a Turkish citizen of Kurdish origin living in Sweden. He claims to be the victim of violations of his human rights by Sweden. He is represented by counsel.

Facts as submitted by the author:

2.1 In 1975, the author arrived in Sweden, fleeing political persecution in Turkey; he obtained permission to stay in Sweden but was not granted refugee status. Following the murder of a former member of the Workers Party of Kurdistan (PKK),. In June 1984 at Uppsala, suspicions of the author's involvement in terrorist activities arose. On 18 September 1984, the author was arrested and taken into custody under the Alien Act; he was not charged with any offence. On 10 December

1984, an expulsion order against him and eight other Kurds was issued, pursuant to sections 30 and 47 of the Swedish Aliens Act. The expulsion order was not, however, enforced as it was believed that the Kurds could be exposed to political persecution in Turkey in the event of their return. Instead, the Swedish authorities prescribed limitations and conditions concerning the Kurds' place of residence.

2.2 Under these restrictions, the author was confined to his home municipality (Västerhaninge, a town of 10,000 inhabitants, 25 kilometres south of Stockholm) and had to report to the police three times a week; he could not leave or change his town of residence nor change employment without prior permission from the police.

2.3 Under Swedish law, there exists no right to appeal against a decision to expel a suspected terrorist or to impose restrictions on his freedom of movement. The restrictions of the author's freedom of movement were alleviated in August 1989 and the obligation to report to the police was reduced to once a week. On 5 September 1991 the expulsion order was revoked and the restrictions on his liberty of movement were abolished.

Complaint:

3.1 It is submitted that the Government reached its decision to expel the author after an inquiry by the Municipal Court of Stockholm, which allegedly obtained its information mainly from the SAPO, the Swedish security police. The author claims that the hearing before the Court, which took place in camera, was more like an interrogation than an investigation. A request for information about the basis of the suspicions against the nine Kurds was refused on grounds of national security. The author, who states that he was never involved in terrorist activities, claims that he was subjected to a regime of residence restrictions, although the grounds for this measure were not disclosed to him, and although he was not given an opportunity to prove his innocence and to defend himself before an independent and impartial tribunal. Moreover, he claims that he was not afforded the right to a review of the Government's decision. He emphasizes that he was never charged with a crime.

3.2 The author further alleges that he and his family have been harassed by SAPO, the Swedish security police, and that they have been isolated and discriminated against in their municipality because the Government and the media have labelled them as terrorists. The author also states that his health has deteriorated and that he suffers from a "post-traumatic stress disorder" due to his experience with the Swedish authorities.

3.3 Although the author does not invoke any specific articles of the Covenant, it appears from his submission that he claims to be a victim of a violation by Sweden of articles 7, 9, 12, 13 and 17 of the International Covenant on Civil and Political Rights.

State party's observations and the author's comments thereon:

4.1 By submission, dated 7 October 1991, the State party argues that the communication is inadmissible on the grounds of non-substantiation and incompatibility with the provisions of the Covenant.

4.2 The State party submits that the restrictions placed upon the author were in conformity with the 1980 Aliens Act, article 48 (1) of which read: “Where it is required for reasons of national security, the Government may expel an alien or prescribe restrictions and conditions regarding his place of residence, change of domicile and employment, as well as duty to report”. In July 1989, this Act was replaced by the 1989 Aliens Act. According to a recent amendment to this act, the possibility to prescribe an alien’s place of residence no longer exists. The State party emphasizes that the measures against aliens suspected of belonging to terrorist organizations were introduced in 1973 as a reaction to increase terrorist activities in Sweden; they were only applied in exceptional cases, where there were substantial grounds to fear that the person in question played an active role in planning or executing terrorist activities.

4.3 The State party submits that, on 31 August 1989, a decision was taken to allow the author to stay within the boundaries of the whole county of Stockholm; his obligation to report to the police was reduced to once a week. On 5 September 1991, the expulsion order against the author was revoked and the restrictions on his liberty of movement were consequently abolished.

4.5 The State party argues that a right to asylum is not protected by the Covenant and refers to the Committee’s decision with regard to Communication No. 236/1987. 1/

4.6 The State party argues that article 9 of the Covenant, protecting the right to liberty and security of the person, prohibits unlawful arrest and detention, but does not apply to mere restrictions on liberty of movement which are covered by article 12. The State party argues that the restrictions on his freedom of movement were not so severe that his situation could be characterized as a deprivation of liberty within the meaning of article 9 of the Covenant. Moreover, the author was free to leave Sweden to go to another country of his choice. The State party therefore contends that this part of the communication is not substantiated and should be declared inadmissible.

4.7 With regard to the author’s claim that he is a victim of a violation of article 12 of the Covenant, the State party submits that the freedom of movement protected by this article is subject to the condition that the individual is “lawfully within the territory of a State”. The State party contends that the author’s stay in Sweden, after the decision was taken to expel him on 10 December 1984, was only lawful within the boundaries of the Haninge municipality and later within the boundaries of the county of Stockholm. The State party argues that the author’s claim under article 12 is incompatible with the provisions of the Covenant, since the author can only be regarded as having been lawfully in the country to the extent that he complied with the restrictions imposed upon him.

4.8 Moreover, the State party invokes article 12, paragraph 3, which provides that restrictions may be imposed upon the enjoyment of article 12 rights, if they are provided by law and necessary for the protection of national security and public order, as in the present case. The State party argues therefore that these restrictions are compatible with article 12, paragraph 3, and that the author’s claim is unsubstantiated within the meaning of article 2 of the Optional Protocol. In this connection, the State party refers to the Committee’s decision declaring Communication No. 296/1988 inadmissible. 2/

4.9 With regard to article 13 of the Covenant, the State party argues that the decision to expel the

author was reached in accordance with the relevant domestic law. In this context, the State party refers to the Committee's decision in Communication No. 58/1979, 3/ where the Committee considered that the interpretation of domestic law was essentially a matter for the courts and authorities of the State party concerned. The State party contends that in the present case, compelling reasons of national security required that exceptions be made with regard to the right to review of the decision. According to the State party, the communication is therefore unsubstantiated with respect to article 13 and should be declared inadmissible under article 2 of the Optional Protocol.

4.10 The State party forwards copy of the text of the decision of the European Commission of Human Rights in a similar case, 4/ which was declared inadmissible as manifestly ill-founded and incompatible ratione materiae.

5.1 In his comments on the State party's submission, the author reiterates that he was never accused of having committed any crime and that the State party's decision to declare him a potential terrorist was solely based upon information from the SAPO.

5.2 As regards the revoking of the expulsion order and the abolition of the restrictions, the author points out that the State party has not recognized that he was no potential terrorist. In this context, he states that the SAPO has provided information about him to Interpol. He claims that this means in practice that he can never leave Sweden without fearing for his safety.

5.3 With regard to the State party's arguments that the restrictions on his freedom of movement cannot be considered to be so severe as to constitute a deprivation of liberty, the author argues that a residence restriction can be considered a deprivation of liberty when it is of considerable duration or when it has serious consequences. He claims that his condition, being under a residence restriction for nearly seven years and having to report to the police three times a week for five years, was so severe as to amount to a deprivation of liberty, protected by article 9 of the Covenant.

5.4 The author further submits that, although he has not been charged with any criminal offence, the effects of the treatment he was subjected to were such as to make him a criminal in the eyes of the public and amounted to a harsh punishment for an offence of which he has not been charged and for which he has not been able to defend himself.

5.5 The author further claims that the residence restriction imposed upon him amounted to inhuman treatment, prohibited by article 7 of the Covenant. He supports this claim by referring to the opinion of Mr. Pär Borgå, a Swedish doctor working for the Centre for Tortured Refugees, where the author received treatment. In this connection, the author refers to alleged harassment by the police.

Issues and proceedings before the Committee:

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

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement.

6.3 As regards the author's claim that the restrictions imposed upon him amounted to inhuman treatment, the Committee considers that the author has not substantiated, for purposes of admissibility, how these restrictions exceeded the threshold established by article 7 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.4 With regard to the author's contention that restrictions on his freedom of movement are tantamount to a deprivation of liberty, the Committee observes that the author was free to leave Sweden and that he was not subject to unlawful detention within the meaning of article 9 of the Covenant. This part of the communication is thus inadmissible under article 3 of the Optional Protocol.

6.5 With respect to the author's complaint concerning the expulsion order, the Committee observes that article 13 of the Covenant stipulates that "an alien lawfully in the territory of a State party ... may be expelled therefrom, only in pursuance of a decision reached in accordance with law". The Committee notes, however, that the author was never expelled from Sweden. Therefore no issue arises under article 13 of the Covenant. The Committee has also taken note of the author's argument that he should have been allowed to submit reasons against his expulsion and to have his case reviewed. In this connection, however, the State party has invoked the exception specifically provided for in article 13 concerning compelling reasons of national security. In the circumstances, and considering that the State party itself subsequently reviewed and rescinded the order of expulsion, the Committee finds that this part of the communication is inadmissible under article 3 of the Optional Protocol.

6.6 The communication does not disclose any facts in support of the author's allegation that he has been subjected to unlawful attacks on his honour and reputation. Moreover, even if he claims that being considered a terrorist per se constitutes a violation of article 17 of the Covenant, the Committee notes that the author has not exhausted domestic remedies in that respect.

6.7 As regards the author's claim under article 12 of the Covenant, the Committee notes that the State party prescribed certain restrictions upon his freedom of movement, which it justified on grounds of national security. The Committee has noted the State party's argument that the freedom of movement stipulated in article 12 of the Covenant is subject to the condition that the individual be "lawfully within the territory" of the State, and that subsequent to the expulsion order the author's continued stay in Sweden was lawful only within the boundaries of the Haninge municipality (para. 4.7). The Committee is of the opinion that two issues arise under article 12 of the Covenant: (1) whether a person against whom an expulsion order has been issued but not enforced is "lawfully within the territory of a State", and, if so, (2) whether that person's freedom of movement may lawfully be restricted for reasons of national security, in accordance with paragraph 3 of article 12, without allowing appeal against such decision. The Committee finds that these are issues to be considered on the merits.

7. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it appears to raise issues under article 12 of the Covenant;

(b) That in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it, as well as all relevant documentation, including reports of the preliminary investigation in the author's case, or of such judicial proceedings, including court orders, as may have taken place in the meantime;

(c) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make thereon should reach the Human Rights Committee, care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) That this decision shall be communicated to the State party and to the author.

[Done in English, French and Spanish, the English text being the original version.]

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ V.M.R.B. v. Canada, declared inadmissible on 18 July 1988

2/ J.R.C. v. Costa Rica, declared inadmissible on 30 March 1989

3/ Anna Maroufidou v. Sweden, Views adopted on 9 April 1981

4/ Application No. 13344/87, Ulusoy v. Sweden, declared inadmissible on 3 July 1989