

HUMAN RIGHTS COMMITTEE

Párkányi v. Hungary

Communication No. 410/1990

22 March 1991

CCPR/C/41/D/410/1990 *

ADMISSIBILITY

Submitted by: Csaba Párkányi

Alleged victim: The author

State party concerned: Hungary

Date of communication: 15 January 1990

Document references: Prior decisions - Special Rapporteur's decision under rule 91, dated 27 September 1990 (not issued in document form)

Date of present decision: 22 March 1991

The Human Rights Committee, acting through its Working Group under rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following:

Decision on admissibility.

1. The author of the communication (initial submission dated 15 January 1990 and subsequent correspondence) is Csaba Párkányi, a Hungarian citizen and resident of the city of Siofok, at the time of submission serving a prison sentence at the Budapest Penitentiary, but subsequently released by virtue of an amnesty. He claims to be the victim of violations by Hungary of articles 9, 10 and 11 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Hungary on 7 December 1988.

Facts as submitted

2.1 In 1980, the author became the managing director of the Building Cooperative Joint Venture of the city of Siofok. For several years, he led the company to prosperity, but a general economic

downturn towards the end of 1984 seriously affected performance. At approximately the same time, the local party committee of the Hungarian Socialist Workers' party initiated an investigation against him and the company. According to the author, this investigation was conducted with a view to removing him from his position.

2.2 In August 1986, the director of one of the company's departments was arrested on charges of fraud and embezzlement of funds. On 3 September 1986, the author was arrested and charged with being an accessory to fraud and embezzlement. The author claims that the activities of the department under investigation represented no more than 5 per cent of the company's total turnover and that, as the departmental activities were carried out some 150 kilometres from headquarters, it was difficult for him to verify them and, if necessary, intervene. In the course of the trial, one witness estimated the sum total of embezzled funds at 500,00 forint, which the author claims is exaggerated and indicative of the fact that the party bureaucracy did not spare any efforts to unsettle whomever it did not consider a loyal supporter of the party line. The author refers to the example of a party official who participated in the investigations against his company and who later became involved in another embezzlement scandal; this official, to the author's knowledge, was never prosecuted.

2.3 On 8 February 1989, the author was convicted by the city court of Kapósvár and sentenced to two years and eight months imprisonment; property valued at 400,000 forint belonging to him was confiscated. On 13 July 1989, the Court of Appeal confirmed the prison sentence but reduced the confiscation of property to 130,000 forint. It further ordered the author to pay legal expenses in the amount of 60,000 forint. His lawyers applied for leave to appeal to the Supreme Court on unspecified procedural grounds, but the petition was dismissed in September 1989. The author, who began serving his sentence on 13 August 1989, appealed to the Minister of Justice and requested a retrial, without success. On 26 June 1990, he was released by virtue of an amnesty decree.

Complaint

3.1 The author contends that his arrest and detention of the police of Somogy County were arbitrary, since no adequate evidence could be produced to support the charges, and that the conditions of his pre-trial detention were deplorable. In this context, he notes that detainees in the police lock-up, including himself, were dressed in rags, and that he was not able to retrieve his own clothes for an entire week. Only five minutes were allowed for basic hygiene in the morning, and a shower could be taken only once a week; similarly, a mere five minutes of recreation per day were allowed, which consisted of a walk in an open place about 20 square metres in size, against the walls of which warders frequently urinated. Meals were wholly inadequate, and although the author was able to receive some food from home during weekends, he lost over 10 kilograms during pre-trial detention. The warders allegedly intimidated him by suggesting that if no confession was obtained, they would fabricate different, constantly changing, charges so as to justify an extension of the detention. This, the author adds, exposed him to continued mental stress.

3.2 The author contends that he was never able to see a copy of his indictment although, when summoned to the party office for the first time, the investigators of his case were in possession of a copy.

3.3 The author submits that he did not have a fair trial, and that the judicial proceedings against him were a travesty of justice. Thus, his application to have witnesses testify on his behalf was rejected by the court; the legal advisor of his former company, a prosecution witness whose testimony the author also requested, was never cross-examined, in spite of the fact that he was knowledgeable about the company's financial situation. The author further contends that although some of the prosecution witnesses indirectly confirmed his own version of the case, the court passed over them in silence.

3.4 According to the author, the courts failed to observe the applicable rules and directives of the Supreme Court of Hungary governing the evaluation of evidence. By failing to carry out a comprehensive evaluation of witness testimony, the courts allegedly violated the presumption of innocence. The only evidence used against him was that of a former colleague, whose testimony, according to the author, was not only in contradiction with that of other prosecution witnesses but also internally inconsistent. The court rejected the testimony as an admissible defence for the colleague and accepted it as evidence against the author. Finally, the author contends that the court failed to consider highly relevant company documents, such as his instructions to company departments, the operational rules of the company, and measures adopted by him to streamline company activities.

State party's observations

4. The State party concedes the admissibility of the communication. Although the events leading to the author's conviction occurred prior to the entry into force of the Optional Protocol for Hungary on 7 December 1988, conviction on first instance occurred thereafter, on 8 February 1989. The State party notes that since the events that occurred before 7 December 1988 cannot be considered separately from the criminal proceedings against the author, the communication is admissible ratione temporis; it adds that all available domestic remedies have been exhausted in the case

Issues and proceedings before the Committee

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

5.2 Although the State party has not raised any objection to the admissibility of the communication, it is incumbent on the Committee to ascertain that the communication meets all the conditions for being declared admissible. As to the allegation of a violation of article 11, the Committee considers that the author has failed to substantiate sufficiently, for purposes of admissibility, that he was subjected to detention on account of his inability to fulfil a contractual obligation. In this respect, therefore, he has no claim under article 2 of the Optional Protocol.

5.3 On the other hand, the Committee observes that several of the author's allegations relate to violations of his rights under articles 10 and 14. In respect of the allegations of unfair trial, the Committee observes that inasmuch as the alleged improper evaluation of evidence by the courts is concerned, it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and the evidence in a particular case. It is not in principle for the Committee to review the

conduct of the trial by the trial judge, unless it can be ascertained that the judge manifestly violated his obligation of impartiality. The Committee has no evidence that the trial was deficient in this respect; accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Covenant.

5.4 The Committee observes, however, that the author's claim that he was unable to obtain a copy of his indictment may raise issues under article 14, paragraph 1. Furthermore, his claim that his request to have witnesses testify on his behalf was denied by the court may raise issues under article 14, paragraph 3 (e). These claims should, accordingly, be considered on the merits.

5.5 The Committee further observes, and the State party itself concedes, that the communication is admissible ratione temporis.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under articles 10 and 14, paragraphs 1 and 3 (e), 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;

(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 comment that he may wish to submit thereon should reach the Committee in 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, Russian and Spanish, the English text being the original version.]

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