

HUMAN RIGHTS COMMITTEE

Mahmoud v. Slovakia

Communication No. 935/2000

23 July 2001

CCPR/C/72/D/935/2000

ADMISSIBILITY

*Submitted by: Mr. Ibrahim Mahmoud (represented by counsel,
Mr. Bohumír Bláha)*

Alleged victim: The author

State party: The Slovak Republic

Date of communication: 2 May 2000 (initial submission)

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

Meeting on 23 July 2001,

Adopts the following:

Decision on admissibility

1. The author of the communication is Ibrahim Mahmoud, a Syrian national, currently being held in a detention centre in the Slovak Republic. He claims to be a victim of a violation by the Slovak Republic of articles 2, 14, and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 On 17 February 1992, Ibrahim Mahmoud arrived in the Slovak Republic for the purpose of studying at the Pharmaceutical Faculty of Comenius University in Bratislava. He was granted a scholarship by the Ministry of Education and a residence permit for the duration of his stay.

2.2 On 10 March 1998, the author gave up his studies because of ill health. The author refers to two different sets of proceedings, the conduct of which he claims violated his rights under the Covenant. The first relates to the decision to annul his residence permit and requesting him to leave the Slovak Republic and the second relates to the refusal to grant him refugee status.

Residence Permit

2.3 On 16 March 1998, the Border and Alien Police Department of the Bratislav Regional Headquarters, issued a decision, annulling the author's residence permit. The author was not served with this decision. It was delivered by means of a public decree only and as he was unaware of the decision, the author was not able to challenge it by filing an appeal.

2.4 On 29 April 1998, the Border and Alien Police Department of the Regional Police Corps Headquarters, issued another decision, prohibiting the author from re-entering the Slovak Republic before 29 April 2001 and ordering him to leave the Slovak Republic by 15 May 1998. The author's appeal of this decision to the Ministry of the Interior, Police Corps Presidium, Border and Alien Police Department was dismissed.

2.5 The author filed a motion with the Supreme Court requesting it to examine the lawfulness of the decision of the Ministry of the Interior. The Supreme Court considered the case in closed session and informed the author and his lawyer that its judgement would be delivered on 28 January 1999. The author and his lawyer were unable to attend delivery of the judgement as when they arrived the court was being evacuated because of a bomb scare. The author disputes the statement in the text of the Supreme Court judgement that the judgement itself was delivered publicly. The author was served with the written judgement of the Supreme Court on 17 March 1999.

2.6 The author lodged a petition with the Constitutional Court of the Slovak Republic requesting the Court to decide on the constitutionality of the Supreme Court's failure to publicly deliver the judgement. It appears that this was the only ground invoked by the author in his appeal to the Constitutional Court.

2.7 On 27 October 1999, the Constitutional Court determined that the procedure used by the Supreme Court did not violate the rights of the author as the judgement was delivered publicly. This decision was served on the author's lawyer on 5 November 1999.

Asylum Procedure

2.8 On 16 May 1998, (the day after the author was supposed to have left the Slovak Republic) he applied for refugee status to the Migration Office of the Interior Ministry of the Slovak Republic. His application was dismissed by a decision dated 8 February 1999, as the author failed to prove that there was a well-founded fear of persecution because of his race, religion, nationality, membership in a particular social group, or political opinion if he were to be returned to his country of origin. In addition, it doubted the credibility of the reasons for which the author was seeking refugee status.

2.9 The author appealed this decision to the Minister of the Interior who examined the case on the basis of written documentation only. The appeal was dismissed by a decision dated 25 May 1999.

2.10 The author then filed a complaint with the Supreme Court to review the legality of the decision. The author was present for the "hearing" of the case on 8 September 1999 but was not accompanied by counsel. The judge asked the author if he wished "to express his opinion on the complaint". The author requested an interpreter but was refused on the basis that "facts were not to be proven" in this instance and therefore the request for an interpreter was unnecessary. The Supreme Court dismissed the complaint and the delivery of the decision was made in Slovak. The author was served with this decision on 8 October 1999. The author claims to have exhausted all domestic remedies in respect of the asylum procedure.

2.11 On March 2000, proceedings were initiated to deport the author from the Republic of Slovakia. No further information has been provided as to the status of these proceedings.

The complaint

3.1 In relation to the decision by the Border and Alien Police Department to annul the author's residence permit, the author states that when the authorities became aware that his whereabouts were unknown he should have been appointed a guardian, under section 16, paragraph 2 of the Administrative Procedure Act No. 71/1967 Coll. If he had been appointed a guardian, the author argues that he would have been in a position to challenge this decision.

3.2 The author claims that the State party violated his right to a public delivery of the Supreme Court judgement and the right to be present during such a delivery under articles 2,14, paragraph 1, and 26 of the Covenant. As formulated by the author, his complaint only relates to the delivery of the Supreme Court judgement and not to the decision prohibiting him from re-entering the Slovak Republic and ordering him to leave.

3.3 The author claims that he did not receive a fair "hearing" in the Supreme Court as he was refused an interpreter. This decision violated his right to have this "trial" conducted in a language he understands, his right to equal legal protection without discrimination and the principle of equality of arms according to articles 2, article 14, paragraph 1 and article 26 of the Covenant. In addition, he complains that the appeal to the Minister of the Interior is based on documentation only and does not provide the complainant with an opportunity to make oral representations. Finally, he states that the State party incorrectly evaluated the facts and evidence of his case.

Observations by the State party on admissibility

4.1 On the facts of the case the State party states that Ibrahim Mahmoud was expelled from Cormenius University and as the purpose for his residence permit ceased to exist he was requested to leave the Slovak Republic by 15 May 1998. In addition, the State party adds that he was carrying out an unauthorised activity within the terms of his permit by operating a travel agency from 4 December 1997.

4.2 With respect to the author's complaint that the Supreme Court did not deliver its judgement publicly, the State party contends that both the Supreme Court and Constitutional Court based their findings on written evidence submitted by the Ministry of Justice which confirmed that, although the building was evacuated because of a bomb scare, it did remain in session for part of the morning.

In addition, the State party states that the delivery of the judgement in this case was recorded in the court files. In the State party's view, it is not the court's role to ensure that the parties to court proceedings are present when judgements are announced and their absence in court at the time of delivery does not constitute a reason for not delivering it. The fact that the author could not enter the building because of the bomb scare cannot be considered a violation of his rights.

4.3 On the issue of the asylum proceedings, according to the State party, the Minister of the Interior dismissed the appeal on the grounds *inter alia* that, the author had acted "at variance with valid laws" of the Slovak Republic on a number of occasions and, he failed to justify his fear of persecution if returned to his country of origin. In addition, the Minister formed the belief that the author intended to secure his residence in the Slovak Republic to continue his business activities.

4.4 With respect to the author's allegation that he did not receive an interpreter during the Supreme Court proceedings, the State party argues that on this date the Supreme Court only announced its judgement and that no oral evidence was heard. Consequently, the court took the view that an interpreter was unnecessary. Court rulings are always delivered in the official language without translation into the mother tongue of a party to the proceedings. In addition, the State party argues, that the author himself did not avail himself of an interpreter during the first instance of the proceedings because, as he is alleged to have stated in the interview, he has a good command of Slovak. The State party also highlights the fact that Ibrahim Mahmoud has resided in the Slovak Republic since 1992 and did not apply for asylum until 1998.

4.5 In any event, the State party contends that the author has not exhausted domestic remedies in either set of proceedings and requests the Committee to declare the case inadmissible. Firstly, under s243(e) and (f) of the Code of Civil Procedure the author had the option of making an extraordinary appeal to the "Prosecutor General", if he believed that a valid ruling of a court violated the law. Under this procedure, the State party explains that if the Prosecutor General finds that the law has been violated he (the Prosecutor General) may lodge an extraordinary appeal with the Supreme Court. In the author's case, a different panel of the Supreme Court, to the one that examined his case in the third instance, would have examined such an extraordinary appeal. If the Supreme Court finds that the law has been violated, it may dismiss the ruling of the judgement in question and return the case to the court that made the incorrect ruling for a further hearing. The State party adds that the submission of a complaint to the Prosecutor General under this extraordinary appeals procedure is not a bar to initiating proceedings at the Constitutional Court.

4.6 Secondly, and with respect to the author's claim for refugee status, the State party argues that the author could have initiated proceedings in the Constitutional Court in accordance with article 130(3) of the Constitution. The State party explains that such proceedings may be initiated against Court decisions as well as administrative decisions like the decision to refuse the author refugee status. The right to asylum (article 53 of the Constitution) and to proceed before the court in one's mother tongue is protected under the Constitution.

4.7 According to the State party, if the Constitutional Court decides for the author it states in its judgement which constitutional right/s have been violated and through which action, proceedings, or decision of a state authority this violation occurred.

Counsel's comments on admissibility

5.1 The author contests the State party's contention that the Supreme Court merely delivered a judgement on the asylum proceedings and reiterates his view that this was a hearing in which both participants took part. He confirms that he had not requested interpretation facilities at the first instance hearing as he states that his knowledge of Slovak was sufficient to express himself on personal but not legal issues.

5.2 With respect to the author's failure to make an extraordinary appeal to the Prosecutor General, the author states that as the initiation of such proceedings depends exclusively on the Prosecutor and not on the author alone, this remedy is neither available nor accessible to the author.¹

5.3 On the issue of non-exhaustion of domestic remedies by the author's failure to initiate proceedings in the Constitutional Court, the author argues that such a remedy would have been ineffective. He states that the Constitutional Court cannot investigate valid decisions of judicial bodies, even if they violate human rights, as this would mean the infringement of the independence of judicial bodies guaranteed by the Constitution². Nor can the Constitutional Court prevent the continuation of an unlawful decision by a court or State administrative body. A decision of the Constitutional Court in favour of the complainant can only be used as a "new legal fact" in a case and may eventually lead to new proceedings but it does not represent an effective remedy against the violation of human rights. In addition, even if all the legal requirements have been met, the Constitutional Court is not obliged to consider a case.

Issues and proceedings before the Committee

6.1 Before considering any claims in the communication, the Human Rights Committee must, according to article 87 of the rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 On the issue of the decision by the Border and Aliens Police to annul his residence permit and the author's complaint that he was never informed of this decision, the Committee is of the view that this decision was superseded by the decision of 29 April 1998, ordering the author to leave the Slovak Republic, and therefore finds that it is unnecessary to consider it further.

6.3 With respect to the author's complaint regarding delivery of the Supreme Court's judgement on the refusal to grant him a residence permit, the Committee notes that the author is not contesting the procedure of the actual hearing of his appeal, in which he was represented by counsel. He argues, instead, that because the court building was cleared due to the bomb scare, the delivery of the judgement was not public, and that his rights were violated as he was prevented from being present when the formal judgement was delivered. In this connection, however, the Committee notes that the author concedes that at the time the judgement was delivered, the hearing of his appeal had already been completed and that the judgement was subsequently served on him personally. In these circumstances, the author has failed for the purposes of admissibility to show that his rights under articles 14 and 26 of the Covenant were violated. Consequently, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 In relation to the proceedings on the author's asylum application, the Committee notes the State party's contention that the author has not exhausted domestic remedies as he did not initiate proceedings in the Constitutional Court, and that the rights allegedly violated by the State party may be invoked in such proceedings. While the author has argued that the Constitutional Court cannot interfere in judicial decisions, he has conceded that that court could make a decision creating "a new legal fact" which could lead to new proceedings. Furthermore, the author's argument stands in contradiction to the information he provided that his petition, against the decision of the Supreme Court regarding public delivery of its judgement, was dealt with on its merits by the Constitutional Court. Accordingly, the Committee is of the opinion that the author has not refuted the State party's argument that he could have challenged the Court's decision before the Constitutional Court on the grounds that he was denied an interpreter. It is therefore of the opinion that domestic remedies have not been exhausted in this regard and this claim is inadmissible under articles 2, and 5, paragraph 2(b) of the Optional Protocol.

7. The Committee therefore decides:

- a) that this communication is inadmissible under articles 2, and 5, paragraph 2(b) of the Optional Protocol;
- b) that this decision shall be transmitted to the State party and to the author.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfik Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

¹ Counsel refers to the opinion of Daniel Svaby who gave a lecture in Bratislava on the exhaustion of domestic remedies under article 26 of the European Convention on Human Rights. In his lecture, he refers to a case of the European Court of Human Rights, H v. Belgium (No. 8950/80, judgement 16.5 1984, DR No. 37, P.5), in which it was decided that domestic remedies had been exhausted despite the fact that an application could have been made to the Attorney General as the initiation of such proceedings depended exclusively on the Prosecutor and not on the complainant.

² The author refers to the remarks of a Slovakian judge of the Constitutional Court, made during an expert seminar in Bratislava in 1995.