HUMAN RIGHTS COMMITTEE

Muhonen v. Finland

Communication No. 89/1981

8 April 1985

VIEWS

Submitted by: Paavo Muhonen

Alleged victim: The author

State party concerned: Finland

Date of communication: 28 March 1981 (date of initial letter)

Date of decision on admissibility: 6 April 1984

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

Meeting on 8 April 1985,

Having concluded its consideration of Communication No. 89/1981 submitted to the Committee by Paavo Muhonen under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 28 March 1981 and further submissions of 20 September 1981 and 25 January 1982) is Paavo Muhonen, a Finnish citizen, horn on 17 February 1950, employed as a librarian in Finland. He states that he is a conscientious objector to military service and, alleging that his ethical conviction has not been respected by the Finnish authorities, claims to be a victim of an infringement of the

right to freedom of conscience, in violation of article 18, paragraph 1, of the International Covenant on Civil and Political Rights. The facts of the claim are as follows.

2.1 In August 1976, at that time eligible for military service, Mr. Muhonen applied to the Military Service Examining Board to be permitted, on profound ethical grounds and in accordance with existing law (Unarmed and Alternative Service Act, 1969), to do alternative service subject to the civil authorities, instead of armed or unarmed service in the armed forces. By its decision of 18 October 1977, the Examining Board rejected the application on the ground that Mr. Muhonen had not proved that serious moral considerations based on ethical conviction prevented him from doing armed or unarmed military service and ordered that he should do armed service (with the details of posting and the time for reporting for duty to be communicated to him at a later date). The proceedings before the Examining Board were conducted in writing. Mr. Muhonen did not avail himself of the opportunity to appear personally before the Examining Board, both because it was inconvenient for him to travel a long distance for a hearing and also because the Examining Board had indicated to him that a decision could be taken in his absence. Mr. Muhonen therefore concluded that his presence was not necessary and that his absence would not affect the disposition of the matter. Being dissatisfied with the decision of the Examining Board, Mr. Muhonen (as he was entitled to under the law) appealed to the Ministry of Justice to change the decision of the Examining Board. By a decision of 21 November 1977, the Ministry of Justice concluded that 'no cause for changing the decision of the Military Service Examining Board [had] been shown' and upheld the decision of the Examining Board. The text of the decision of the Ministry of Justice also states that under the law "this decision is not subject to appeal".

2.2 On 13 February 1978, Mr. Muhonen resubmitted to the Military Service Examining Board a declaration of refusal to bear arms. The Examining Board decided, on 1 September 1978, not to examine Mr. Muhonen's renewed declaration, "as the Ministry of Justice [had] already adopted a decision in this case". Mr. Muhonen again appealed to the Ministry of Justice, asking that he be called up for alternative service. In a decision of 3 November 1978, the Ministry of Justice, taking the view that the Examining Board should not have left Mr. Muhonen's declaration without a hearing on the grounds invoked, decided not to return the matter to the Board in view of the fact that the circumstances of the case were already clarified, but to give it direct consideration, reaching the conclusion that no cause had been shown for changing the final decision which the Examining Board had reached in its decision of 18 October 1977 and on the appeal against which the Ministry of Justice had adopted a decision on 21 November 1977. Again, the text of the decision of the Ministry of Justice stated that it was not subject to appeal."

2.3 In the meantime, i.e. before the Examining Board and the Ministry of Justice acted on his submission of 13 February 1978, Mr. Muhonen was called up for military service (15 February 1978). He reported to the military unit where he had been posted and there refused to do any military service. He was furloughed the same day. Criminal court proceedings were then initiated against Mr. Muhonen for refusal to do military service and an ordinary court of first instance sentenced him to 11 months imprisonment on 13 December 1978. The Eastern Finland Higher Court confirmed that verdict on 26 October 1979, and Mr. Muhonen

started to serve his sentence on 4 June 1980.

2.4 In the autumn of 1980, Mr. Muhonen applied for a new hearing before the Military Service Examining Board, which acceded to this request and now found in favour of Mr. Muhonen. In a decision of 2 February 1981 the Examining Board stated as follows:

"The Military Service Examining Board, having studied the documents relating to the original refusal to hear arms which are in the possession of the Ministry of Justice, and having provided Mr. Paavo Juhani Muhonen with an opportunity to explain his convictions personally to the Board, has considered Mr. Muhonen's application and has found that Mr. Muhonen who, as may be believed on the basis of a conversation which has now taken place, has an ethical conviction within the meaning of the Unarmed and Alternative Service Act (132/69) which prevents him from doing armed or unarmed service in the armed forces and who, having already reached the age of 30, may not be called up for service.

"Accordingly, this case requires no further action by the Military Service Examining Board."

2.5 At this stage (2 February 1981) Mr. Muhonen had already been serving his 11 months' prison sentence since 4 June 1980. It is stated on his behalf that a number of persons then requested a presidential pardon in his case; that the case was handed over by 'the Ministry of Justice to the Highest Court of Finland; and that, as a result, Mr. Muhonen was pardoned on 27 March 1981 and released from prison two weeks later. It is claimed, however, that Mr. Muhonen has not been allowed any monetary relief for the wrongs which he has allegedly suffered. The facts, as submitted, do not indicate which steps, if any, have been taken by Mr. Muhonen, or on his behalf, to obtain such monetary relief.

2.6 As stated above (see para. 1) Mr. Muhonen claims that the facts, as described, make him a victim of a violation by Finland of his right protected by article 18, paragraph 1, of the International Covenant on Civil and Political Rights reading as follows:

Article 18

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

3. The Committee was of the opinion that, in so far as the decisions of the Military Service Examining Board and of the Ministry of Justice in 1977 and 1978, refusing Mr. Muhonen's application to be exempted from service in the armed forces on ethical grounds, raised a Question of compliance with article 18, paragraph 1, of the Covenant, the subsequent decision of the Examining Board of 2 February 1981 had already provided an answer in that respect and that consequently no further Question of violation of that article arose. Therefore, the Question whether article 18, paragraph 1, guaranteed a right of conscientious objection to military service did not have to be determined by the Committee in the present case. It observed, however, that the facts of the case might still raise an issue under article

14, paragraph 6, of the Covenant which the Committee should consider.

4.1 On 28 July 1982, the Human Rights Committee therefore decided to transmit the communication to the State party concerned under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the Question of admissibility, in so far as the communication might raise issues under article 14, paragraph 6, of the International Covenant on Civil and Political Rights, which reads as follows:

Article 14

"...

"6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

4.2 In response, the State party, on 29 October 1982, objected to the admissibility of the communication on the ground that "in so far as the communication refers to decisions of the Ministry of Justice, all local remedies bays not been exhausted in this case, since the possibility of seeking the annulment of the decision in the Supreme Administrative Court, which is open to the author of communication, has not yet been used".

5.1 Considering that the successive decisions of the Ministry of Justice handed to Mr. Muhonen had already stated that there was no appeal from the decisions of the Ministry of Justice, the Human Rights Committee requested further clarifications from the State party as to the nature of the remedy which it now said had been available to Mr. Muhonen.

5.2 The State party's response, dated 21 June 1983, reads as follows:

"According to paragraph 6 of the Act on Extraordinary 'Remedies in Administrative Affairs (200/66), the extraordinary remedy of seeking the annulment of an administrative decision can be used:

"1. If a procedural fault has been made in the case that may have essentially affected the decision;

"2. If the decision is based on an apparently faulty application of law or on a mistake that may have essentially affected the decision;

"3. If such new information has been obtained in the case that might have essentially affected the decision and the appellant is not responsible for the omission to present such information on time.

"In the case of this extraordinary remedy, an application must be lodged with the supreme administrative court within five years from the entry into effect of the decision. If particularly weighty grounds exist, an extraordinary remedy may be used after the set period of five years.

"The Ministry of Justice of Finland considers that in the present case where normal procedure of appeal is not available, an extraordinary remedy such as seeking the annulment of decision[s] of the Ministry of Justice could have been an effective local remedy. Owing to the fact that a decision of the Ministry of Justice under section 6 of the Unarmed and Alternative Service Act cannot be subject to appeal, similar cases have previously been brought up in the Supreme Administrative Court on the basis of paragraph 6 of the Act on Extraordinary Remedies in Administrative Affairs referred to above and have been decided upon by the Court.

"The Ministry of Justice of Finland considers that article 14, paragraph 6 of the Covenant does not apply in the case of the decision of the city court of Joensuu of 13 December 1978 based on act No. 23 of 1970 on the punishment of certain conscripts refusing to do regular military service, since the decision was not in itself wrong. The Ministry of Justice states that Mr. Muhonen could possibly have avoided the process through the use of the extraordinary remedy of seeking the annulment of the decisions of the Ministry of Justice.'

6.1 When considering the admissibility of the communication, the Committee noted, with regard to article 5, paragraph 2 (b), of the Covenant, that it could not accept the State party's contention that the communication should be declared inadmissible on the ground that the extraordinary remedy indicated by it had not been used. In the first place, the author of the communication had clearly been given to understand that there was no further remedy. Secondly, having regard to the limited scope of the extraordinary remedy in question, the State party did not show that there were grounds for believing that the remedy could be or could have been effective in the particular circumstances of the case.

6.2 With regard to the State party's contention that article 14, paragraph 6, of the Covenant is inapplicable in the circumstances of the present case, the Committee observed that that was a matter for consideration on the merits of the communication.

7. On 6 April 1984 the Human Rights Committee therefore decided:

1. That the communication was inadmissible in so far as it related to an alleged breach of article 18, paragraph 1, of the International Covenant on Civil and Political Rights, in view of the remedy obtained by the author of the communication on 2 February 1981 (see paras. 2.4, 2.6 and 3 above) ;

2. That the communication was admissible, in so far as it raised issues under article 14, paragraph 6, of the Covenant;

3. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party 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 remedy, if any, that may have been taken by it.

8.In its submission under article 4, paragraph 2, of the Optional Protocol, dated 22 October 1984, the State party again reviewed the facts of the communication and concluded:

"The author of communication No. 89/1981 had been sentenced by a court of law on the basis of the law concerning the punishment of certain conscripts who decline to do military service (23/72). The legality of the sentence had been considered and confirmed at the highest level of judicial review. The fact that the Military Service Examining Board, by its decision of 2 February 1981, considered that the conviction of the applicant had now been established does not indicate that its earlier decisions or those of the Ministry of Justice would have been at fault. Under no circumstances can the validity of the decisions of the courts of law in this matter be Questioned.

"According to article 29 (1) of the Constitution Act (94/19) if, due to changed circumstances, compliance with a valid court decision is no longer equitable, the President can, in an individual case, having received the opinion of the Supreme Court, pardon the person concerned or make his sentence lighter. This is precisely what happened in the case of the author of communication No. 89/1981.

"There was no 'miscarriage of just ice' during the process. Therefore, article 14, paragraph 6, of the Covenant does not apply. Nor has the applicant the right to compensation under the Law on Compensation to Persons Who Have Been Innocently Imprisoned or Convicted (422/74)."

9. The State party's submission was duly forwarded to the author of the communication. No further comments have been received from Mr. Muhonen.

10. The Committee, having considered the present communication in the light of all information. made available to it by the parties as provided for in article 5 (1) of the Optional Protocol, decides to base its views on the facts as submitted by the parties, which are not in dispute.

11.1 In considering the merits of the communication, and bearing in mind the decision on admissibility, the Human Rights Committee starts from the premise that existing Finnish law grants certain categories of persons an option to do alternative service instead of armed or unarmed service in the Finnish Armed Forces. While Finland does have legislation allowing such an exemption, the Committee recognizes that only the Finnish authorities are responsible for evaluating each application for exemption under Finnish law.

11.2 The Committee's task is limited to determining whether, in the particular circumstances of the case, Mr. Muhonen was entitled to receive compensation in accordance with article 14, paragraph 6, of the Covenant. Such a right to compensation may arise in relation to criminal proceedings if either the conviction of a person has been reversed or if he or she "has been pardoned on the ground that a new or newly discovered fact shows conclusively

that there has been a miscarriage of justice". As far as the first alternative is concerned, the Committee observes that Mr. Muhonen's conviction, as pronounced in the judgement of the city court of Joensuu on 13 December 1978 and confirmed by the Eastern Finland Higher Court on 26 October 1979, has never been set aside by any later judicial decision. Furthermore, Mr. Muhonen was not pardoned because it had been established that his conviction rested on a miscarriage of justice. According to the relevant Finnish statute, the Law concerning the punishment of certain conscripts who decline to do military service (23/72), whoever refuses military service not having been recognized as a conscientious objector by the Examining Board commits a punishable offence. This means that the right to decline military service does not arise automatically once the prescribed substantive requirements are met, but only after due examination and recognition of the alleged ethical grounds by the competent administrative body. Consequently, the presidential pardon does not imply that there had been a miscarriage of justice. As the State party has pointed out in its submission of 22 October 1984, Mr. Muhonen's pardoning was motivated by considerations of equity.

11.3 To be sure, Mr. Muhonen's conviction came about as a result of the decision of the Examining Board of 18 October 1977, denying him the legal status of conscientious objector. This decision was based on the evidence which the Examining Board had before it at that time. Mr. Muhonen succeeded in persuading the Examining Board of his ethical objection to military service only after he had personally appeared before that body following his renewed application in the autumn of 1980, while in 1977 he had failed to avail himself of the opportunity to be present during the Examining Board's examination of his case.

12. Accordingly, the Human Rights Committee is of the view that Mr. Muhonen has no right to compensation which the Finnish authorities have failed to honour and that consequently there has been no breach of article 14 (6) of the Covenant.