HUMAN RIGHTS COMMITTEE

Párkányi v. Hungary

Communication No. 410/1990*

27 July 1992

CCPR/C/45/D/410/1990**

VIEWS

Submitted by: Csaba Páárkáányi

Alleged victim: The author

State party: Hungary

Date of communication: 15 January 1990

Date of decision on admissibility: 22 March 1991

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

Meeting on 27 July 1992,

Having concluded its consideration of communication No. 410/1990, submitted to the Human Rights Committee by Csaba Páárkáányi 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,

Adopts its

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

The facts as submitted by the author:

1. The author of the communication, dated 15 January 1990, is Csaba Páárkáányi, 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.

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.

2.3 On 8 February 1989, the author was convicted by the city court of Kapóósvar 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 lawyer applied for leave to appeal to the Supreme Court, 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.

The complaint:

3.1 The author contends that his arrest and detention by 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 five and a half months of 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; in particular, the legal advisor of his former company, a witness whose testimony was requested by both the prosecution and the author, was never heard, 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 highlyrelevant company documents, such as his instructions to company departments, the operational rules of the company, and measures adopted by him to streamline company activities.

The State party's observations:

4. The State party concedes the admissibility of the communication. Although the arrest and then the detention (from 3 September 1986 until 16 February 1987) 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.

The Committee's admissibility decision:

5.1 During its 41st session, in March 1991, the Committee examined the admissibility of the communication. It considered that the author had failed to substantiate his allegation of a violation of article 11 of the Covenant. It further observed that, to the extent that the author's allegations pertained to evaluation of facts and evidence in his case, the communication was inadmissible under article 3 of the Optional Protocol. However, it found that the author's claim that he was unable to obtain a copy of his indictment might raise issues under article 14, paragraph 1, and that his claim that the court denied his request to have witnesses testify on his behalf might raise issues under article 14, paragraph 3, of the Covenant.

5.2 The Committee, accordingly, declared the communication admissible in so far as it might raise issues under articles 10 and 14, paragraphs 1 and 3(e), of the Covenant.

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

6.1 By submission, dated 22 October 1991, the State party submits that it has conducted an

investigation into the author's allegations regarding the circumstances of his detention. It concedes that, after being detained, the author's clothing was replaced by prison clothes; it argues that this was necessary for reasons of security, since the author was wearing jeans with a zipper, that might have caused injury. It submits that the investigating officer requested the author's wife to bring suitable clothes; it argues that the arrival of these clothes after one week, cannot be regarded as unreasonably long.

6.2 Regarding the author's complaint that only five minutes per day were allowed for personal hygiene, the State party concedes that detainees had relatively little time for personal hygiene and walking. It submits that, in accordance with the regulations, one and a half hour was available for 12 cells, housing 40 persons. As regards the walking space, the State party states that the area measures 35 square metres, and not 20, as alleged by the author.

6.3 The State party further submits that the investigation has revealed that the author complained about the food only once; it states that this complaint did not refer to the quantity, but to the quality of the food, which he found too greasy. It further submits that the author was examined by a police doctor, who concluded that no medical obstacle existed to the author's detention.

6.4 The State party emphasizes that the detention regulations have recently been amended. It argues, however, that the regulations in force during the author's detention were fully in compliance with the Covenant.

6.5 As regards the author's allegation that he had not been given a copy of the indictment, the State party explains that the regulations at the time of the author's arrest provided for the transmission of the indictment to the party committee, in case of party members committing an offence. It emphasizes that this provision has since been repealed.

6.6 The State party further submits that the author received a copy of the indictment before the trial against him started. In this connection, the State party argues that the Hungarian Code of Criminal Procedure is in harmony with the provisions of the Covenant. The law prescribes that, on the first day of the trial, the prosecutor asks the accused and his counsel whether a copy of the indictment has been duly transmitted to them eight days before the session. If the indictment has not been transmitted in time, the accused and counsel have the right to raise an objection and ask for the adjournment of the session. The State party states that the trial transcript shows that no objection was raised by the author or his counsel on the first day of the trial.

6.7 With regard to the author's allegation that his request to have witnesses testify on his behalf was denied by the Court, the State party concedes that the trial transcript shows that the Courtdid not hear a certain witness, whose testimony was requested by the author. However, the State party submits that 28 of the 42 witnesses and two experts (requested by the Prosecution) were heard. It contends that the witnesses who were not heard could not be reached at the addresses provided. It further argues that both the Court of first instance and the Court of Appeal considered that it was not necessary to hear the particular witness requested by the author.

6.8 Finally, the State party states that its Ministry of Justice never received the application for review, which the author allegedly sent on 30 October 1989. Moreover, it observes that the Minister

of Justice has no power to review final judgments made by the courts.

7.1 In his comments on the State party's submission, the author states that he has nothing to add to his earlier complaints about the conditions of detention. He reiterates that he lost 10.5 kilograms in five and a half months of detention.

7.2 He further argues that it is incredible that the State could not find the addresses of twelve witnesses. He alleges that the State never tried to summon them. He argues that in a fair trial all witnesses requested should be summoned; that the Court did not find it necessary to summon the witness requested by him, is, according to the author, a violation of the presumption of innocence. He finally submits that the trial records would support his allegations, but that he does not have the means to have them translated.

The examination of the merits:

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee welcomes the detailed investigation initiated by the State party with regard to the author's claim that the circumstances in detention violated his rights under article 10 of the Covenant. The Committee notes that the State party has not objected to the competence of the Committee to consider this claim, although it relates to events that occurred prior to the entry into force of the Optional Protocol for Hungary, albeit after the entry into force of the Covenant. In these specific circumstances, the Committee considers that it is not precluded from examining the allegation.8.3 As to the substance of the claim, the Committee considers that, in the light of the information provided by the State party, it cannot be concluded that the food was insufficient and that the author was made to wear rags. However, the Committee notes that the State party does not dispute the author's allegation that he was allowed only five minutes per day for personal hygiene and five minutes for exercise in the open air. The Committee considers that such limitation of time for hygiene and recreation is not compatible with article 10 of the Covenant.

8.4 As to the author's claim that he had not been able to obtain a copy of the indictment before the first day of the trial, the Committee notes that the State party has contested this allegation. In the absence of any further comments of the author, the Committee finds that the facts before it do not disclose a violation of article 14, paragraph 1, of the Covenant.

8.5 As to the author's remaining claim that the Court failed to call a certain witness who was of importance to his defence, the Committee notes that the State party has argued that the Court had decided that it was not necessary to hear that witness. The author of the communication has not provided evidence which would justify concluding that the Court's refusal, upheld by the Court of Appeal, was such as to infringe the equality of arms between the prosecution and the defence and that the circumstances under which defence witnesses were heard were different from those under which prosecution witnesses were heard. Consequently, the Committee is not able, in the present case, to find that there has been a violation of article 14, paragraph 3(e).

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 10, paragraph 1, of the Covenant.

10. The Committee is of the view that the State party should offer Mr. Páárkáányi an appropriate remedy. Furthermore, while the Committee welcomes the general improvements in prison conditions afforded under recent amendments, it observes that legal provision should be made for adequate time both for hygiene and exercise.

11. The Committee wishes to receive information, within 90 days, of any relevant measures taken by the State party in respect of the Committee's Views.

Footnotes

*/ Made public by decision of the Human Rights Committee.

**/ The text of an individual opinion by Mr. Bertil Wennergren is appended.

Appendix

Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure concerning the Committee's Views on Communication No. 410/1990 (Páárkáányi v. Hungary)

1. While the Covenant entered into force for Hungary on 23 March 1976, the Optional Protocol only entered into force on 7 December 1988. Part of the instant communication concerns the author's detention, which lasted from 3 September 1986 to 16 February 1987, i.e. prior to the entry into force of the Optional Protocol for Hungary.

2.1 According to article 1 of the Optional Protocol, no communication shall be received by the Committee if it concerns a State party to the Covenant, which is not a party to the Protocol. A State party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant.

2.2 According to article 25 of the Vienna Convention on the Law of Treaties, a treaty or part of a treaty may be applied provisionally pending its entry into force if the negotiating States have so agreed. No such agreement about a provisional application of the Protocol for Hungary exists. Article 28 of the Vienna Convention, regarding non-retroactivity of treaties, provides clear guidance in this respect: it states that, unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

2.3 The Committee's jurisprudence has developed in accordance with that provision. For example, in Communication No. 457/1991 (A.I.E. v. Libyan Arab Jamahiriya) [Declared inadmissible on 7 November 1991.] the Committee observes that the Optional Protocol cannot be applied retroactively and concludes "that it is precluded **ratione temporis** from examining the author's allegations".

3.1 The instant case can be distinguished from the established jurisprudence of the Committee with regard to the application of the Optional Protocol **ratione temporis** in that Hungary has not objected to the competence of the Committee to consider those of the author's claims which relate to events that occurred before the entry into force of the Optional Protocol for Hungary. However, I do not agree with the majority's conclusion that the Committee in these specific circumstances is not precluded from examining the allegation, since I am of the opinion that the Committee is acting beyond its competence in doing so.

3.2 The principles enshrined in article 28 of the Vienna Convention are well established principles of international law; in most legal systems similar principles form the basis for the legal rules regulating contractual obligations. Their main objective is to create legal presumptions to facilitate the conclusion of treaties, rationalize their application and prevent unnecessary disputes between parties. These principles should therefore be strictly applied.

3.3 In my opinion a State party may consent to a wider application of the Optional Protocol **ratione temporis** only by an agreement which is concluded with the other contracting States parties. It falls outside the competence of the Human Rights Committee under article 1 of the Optional Protocol to negotiate with a State party the retroactive application of the Optional Protocol.

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