HUMAN RIGHTS COMMITTEE

L.T.K. v. Finland

Communication No. 185/1984

9 July 1985

ADMISSIBILITY

Submitted by: L. T. K. (name deleted) undated, received on 18 October 1984

Alleged victim: The author

State party: Finland

Declared inadmissible: 9 July 1985 (twenty-fifth session)

Date of Communication: 18 October 1984

Decision on Admissibility

1. The author of the communication (undated), received on 18 October 1984, is L. T. K., a Finnish citizen residing in Finland. He claims to be a victim of a breach by Finland of articles 18 and 19 of the International Covenant on Civil and Political Rights, stating that his status as conscientious objector to military service has not been recognized in Finland and that he has been criminally prosecuted because of his refusal to perform military service.

2.1. The facts, which are not in dispute, are described by the author and the State party as follows: On 25 April 1982, L. T. K. informed the competent authorities that, for serious moral considerations based on his ethical convictions, he was unable to perform military service. Instead of military service, armed or unarmed, he offered to do alternative service. On 22 October 1982, the Military Service Examining Board decided that it had not been proved that serious moral considerations based on an ethical conviction prevented the author from performing armed or unarmed military service and ordered that he should perform armed service. The author appealed to the Ministry of Justice, which, by a decision of 21 January 1983, ordered him to perform unarmed military service. On 10 June 1983, he was called up for service. Upon arrival at his assigned military unit the author refused to perform any military service. Court proceedings were initiated against him and the Valkeala District Court sentenced him on 9 August 1983 to nine months' imprisonment for refusal to perform compulsory military service. The author then appealed to the Kouvola Court of Appeal, which upheld the decision of the District Court on 11 September 1984. The Supreme Court

rejected his application for permission to appeal on 30 November 1984.

2.2. In the mean time, the author had again, on 20 February and 10 June 1983, informed the authorities of his ethical convictions and of his desire to perform only alternative service. The Examining Board, however, decided on 1 'July 1983 that it had not received sufficient proof of his convictions. The author then appealed to the Ministry of Justice, which again ordered him, on 13 September 1983, to perform unarmed service. An application was filed by the author with the Supreme Administrative Court, alleging that a procedural fault had been made by the Military Service Examining Board. On 6 June 1984, the Supreme Administrative Court declared the application inadmissible and referred the matter to the Ministry of Justice, where it is pending for consideration.

2.3. On 16 September 1983, the author became 30 years old. Paragraph 2 of article 3 of the Unarmed and Alternative Service Act No. 132/69 provides that a man who has been ordered to perform unarmed military service or alternative service and has not entered the service before reaching the age of 30 is thereafter not obligated to do so. As a consequence, after a person has reached the age of 30, ethical conviction cannot be examined by the Military Service Examining Board or by any other public authority.

3. 1. The author further argues that the application of an age limit to alternative service now prevents him from substituting military service by alternative service and makes him a victim of discrimination on the basis of age. If, however, the Examining Board would re-examine his case and recognize his ethical convictions, he believes that he would be pardoned.

3.2. The author states that his case has not been submitted to another procedure of international investigation or settlement.

4.1. By its decision of 22 October 1984, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The State party was also requested to provide the Committee with copies of any court orders or decisions relevant to this case.

4.2. In its reply, dated 28 January 1985, the State party did not raise objections to the admissibility of the communication. It indicated specifically that the author had exhausted available domestic remedies in the matter complained of, as required under article 5, paragraph 2 (b), of the Optional Protocol. As requested, the State party provided the Committee with copies of the relevant administrative and judicial decisions.

4.3. With regard to the question of exhaustion of domestic remedies, the State party observed, inter alia:

As regards the prison sentence passed by the Valkeala District Court, L. T. K. has exhausted all available domestic remedies. He could still seek the annulment of the court decision by bringing the case to the Supreme Court but, taking into account that the Supreme Court has

already once considered the case. this extraordinary remedy is unlikely to be effective ....

Article 5 of the Unarmed and Alternative Service Act No. 132/69 provides that an order to perform such service is given by the Military Service Examining Board. According to article 6 of the Act the order can be appealed to the Ministry of Justice. A decision by the Ministry is not subject to appeal, which must be stated in the decision. Such a statement appeared in the texts of the Ministry's decisions of 21 January 1983 and 13 September 1983. Consequently L. T. K. had no further ordinary remedies available. According to the Act on Extraordinary Remedies in Administrative Affairs No. 200/66 L. T. K. could still have sought the annulment of the Ministry's decision and thereby brought about a change in his situation. The alleged procedural fault by the Examining Board, referred to the Ministry of Justice by the Supreme [Administrative] Court, is pending. it would. however, seem unreasonable to require that these extraordinary remedies be taken into account when considering the question of admissibility under article 5 (2) of the Optional Protocol. The conclusion, therefore, is that all available domestic remedies within the meaning of article 5 (2) (b) of the Optional Protocol have been exhausted with respect to the decisions by the Military Service Examining Board.

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

5.2. The Human Rights Committee observes in this connection that, according to the author's own account he was not prosecuted and sentenced because of his beliefs or opinions as such, but because he refused to perform military service. The Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as implying that right. The author does not claim that there were any procedural defects in the judicial proceedings against him, which themselves could have constituted a violation of any of the provisions of the Covenant, or that he was sentenced contrary to law.

6. The Human Rights Committee, after careful examination of the communication, concludes that the facts which have been submitted by the author in substantiation of his claim do not raise an issue under any of the provisions of the International Covenant on Civil and Political Rights. Accordingly, the claim is incompatible with the provisions of the Covenant.

7. The Human Rights Committee therefore decides:

The communication is inadmissible.