

HUMAN RIGHTS COMMITTEE

A.M. v. Denmark

Communication No. R.26/121

23 July 1982

ADMISSIBILITY

Submitted by: A.M. [name deleted]

Alleged victim: The author of the communication

State party concerned: Denmark

Date of communication: 9 March 1982 (date of initial letter)

Date of present decision on admissibility: 23 July 1982

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

Meeting on 23 July 1982,

Adopts the following:

Decision on admissibility*

1. The author of the communication (Initial letter dated 9 March 1982 and further letters dated 20 April and 9, 29 and 30 June 1982) is a 39 year-old Pakistani national at present serving a prison term in Denmark. He submits the communication on his own behalf.

2.1 The author states that he has been residing in Denmark since 1970, that in 1977 he married in Pakistan a citizen of that country, that his wife has since then lived with him in Denmark and that they have two children. He describes the facts of the case as follows:

2.2 On 31 July 1980, he was involved in a violent fight in Odense, Denmark, with several other men from Pakistan, Morocco and Algeria. At least four people were severely injured and one of them died. The author subsequently stood trial on charges including "bodily injuries with death as a result" and on 30 January 1981 he was convicted by the Eastern

Court of Appeal (Oestre Landsret), sitting with a jury, and sentenced to three and a half years imprisonment. The author applied to the Special Court for Revision (Den saerlige Klageret) for a new trial. The Court rejected the request on 4 December 1981.

2.3 On 21 April 1981, A.M. was informed by the Danish Immigration authorities that he would have to leave Denmark after serving his sentence. This decision was upheld by the Ministry of Justice and A.M. was so informed on 23 October 1981. He states that he is due to be released from prison on 15 August 1982 and that he will be deported on that date.

3.1 The author claims before the Human Rights Committee that he has been unjustly treated because he is a foreigner. He alleges that the police were dishonest in the conduct of pre-trial investigations into the matter and that the Court denied him a fair trial by giving undue weight to evidence against him, including testimony allegedly obtained from his Pakistani enemies in Denmark. He believes that a fair assessment of the evidence would have led to his acquittal. The author further claims that the decision of the Danish authorities to deport him upon release from prison constitutes degrading treatment and punishment.

3.2 In particular he claims to be a victim of breaches by Denmark of articles 5, 7 and 10 of the Universal Declaration of Human Rights as regards the right not to be subjected to degrading treatment or punishment, the right to equality before the law and the right to a fair trial. He also invokes article 11 (a) of the Universal Declaration of Human Rights concerning the presumption of innocence. These articles correspond, in substance, to articles 7, 14 and 26 of the International Covenant on Civil and Political Rights.

4. It appears from the communication that the author has submitted the same matter to the European Commission of Human Rights. His application before that body was declared inadmissible on 1 March 1982 as manifestly ill-founded.

5. Before considering any claims contained in a communication, the Human Rights Committee must decide whether the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights. The Committee observes in this connexion that when ratifying the Optional Protocol and recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction, the State party Denmark, made a reservation, with reference to article 5 (2) (a) of the Optional Protocol, in respect of the competence of the Committee to consider a communication from an individual if the matter has already been considered under other procedures of international investigation.

6. In the light of the above-mentioned reservation and observing that the same matter has already been considered by the European Commission of Human Rights and therefore by another procedure of international investigation within the meaning of article 5 (2) (a) of the Optional Protocol to the International Covenant on Civil and Political Rights, the Committee concludes that it is not competent to consider the present communication.

The Human Rights Committee, accordingly, decides, That the communication is inadmissible.⁸ This decision shall be communicated to the author of the communication

and, for information, to the State party concerned.

* The text of an individual opinion submitted by a Committee member is appended to the present Decision.

APPENDIX

Individual opinion

Mr.- Bernhard Graefrath, member of the Human Rights Committee, submits the following individual opinion relating to the admissibility of communication No. R.26/121/(A.M. v. Denmark):

I concur in the decision of the Committee that the communication is inadmissible. However, in my view the communication is inadmissible in accordance with article 3 of the Optional Protocol. The claims of the author do not raise issues under any of the provisions of the Covenant.

I cannot, however, share the view that the Committee is barred from considering the communication by the reservation of Denmark relating to article 5 (2) (a) of the Optional Protocol. That reservation refers to matters that have already been considered under other procedures of international investigation. It does not in my opinion refer to matters, the consideration of which has been denied under any other procedure by a decision of inadmissibility.

In the case of the author of communication R. 26/121, the European Commission of Human Rights has declared his application inadmissible as being manifestly ill-founded. It has thereby found that it has no competence to consider the matter within the legal framework of the European Convention. An application that has been declared inadmissible has not, in the meaning of the reservation, been "considered" in such a way that the Human Rights Committee is precluded from considering it.

The reservation aims at preventing the Human Rights Committee from reviewing cases that have been considered by another international organ of investigation. It does not seek to limit the competence of the Human Rights Committee to deal with communications merely on the ground that the rights of the Covenant allegedly violated may also be covered by the European Convention and its procedural requirements. If that had been the aim of the reservation, it would, in my opinion, have been incompatible with the Optional Protocol.

If the Committee interprets the reservation in such a way that it would be excluded from considering a communication when a complaint referring to the same facts has been declared

inadmissible under the procedure of the European Convention, the effect would be that any complaint that has been declared inadmissible under that procedure. could later on not be considered by the Human Rights Committee, despite the fact that the conditions for admissibility of communications are set out in a separate international instrument and are different from those under the Optional Protocol.

An application that has been declared inadmissible under the system of the European Convention is not necessarily inadmissible under the system of the Covenant and the optional Protocol, even if it refers to the same facts. This is also true in relation to an application that has been declared inadmissible by the European Commission as being manifestly ill-founded. The decision that an application is manifestly ill-founded can necessarily be taken only in relation to rights set forth in the European Convention. These rights, however, differ in substance and in regard to their implementation procedures from the rights set forth in the Covenant. They, as well as the competence of the European Commission, derive from a separate and independent international instrument. A decision on non-admissibility of the European Commission, therefore, has no impact on a matter before the Human Rights Committee and cannot hinder the Human Rights Committee from reviewing the facts of a communication on its own legal basis and under its own procedure and from ascertaining whether they are compatible with the provisions of the Covenant. This might lead to a similar result as under the European Convention, but not necessarily so.

The reservation of Denmark was intended to avoid the same matter being considered twice. It did not aim at closing the door for a communication that might be admissible under the Optional Protocol despite the fact that it has been declared inadmissible by the European Commission.