

HUMAN RIGHTS COMMITTEE

Kulomin v. Hungary

Communication No. 521/1992

16 March 1994

CCPR/C/50/D/521/1992 *

ADMISSIBILITY

Submitted by: Vladimir Kulomin

Alleged victim: The author

State party: Hungary

Date of communication: 6 May 1992 (initial submission)

Document references: Prior decisions - Special Rapporteur's rule 91 decision, dated 28 December 1992 (not issued in document form)

Date of present decision: 16 March 1994

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Vladimir Kulomin, a Russian citizen, born at St. Petersburg in 1954, currently detained at Budapest, Hungary. He claims to be a victim of violations of his human rights by Hungary. The Optional Protocol to the International Covenant on Civil and Political Rights entered into force for Hungary on 7 December 1988.

Facts as submitted by the author

2.1 The author lived in Budapest, Hungary, and was a neighbour of one D.T. and the latter's girlfriend, K.G. On 25 July 1988, the author accompanied D.T. and K.G. to her father's house; K.G. had said that they wanted to pick up some documents and that they needed the author's protection because her father was mentally disturbed. Upon arrival, K.G.'s father ran out of the house and

attacked the author. When the author pushed him away, he fell; K.G. and D.T., who claimed that he was dangerous and capable of anything, then tied him up. After K.G. had told him that she had telephoned the psychiatric hospital and that they would pick up her father, the author left the scene.

2.2 On 8 August 1988, while he was in St. Peterburg, the author received a phone call from D.T. and K.G. He states that he only learned at that moment that K.G.'s father had died, but that they did not tell him about the circumstances of his death.

2.3 On 16 August 1988, the author returned to Budapest by train. Two days later, he was arrested at the Russian-Hungarian border by the Hungarian police, charged with the murder of K.G.'s father, and brought to Budapest. The author complains that he was not allowed to call his lawyer, or the Russian consul. After three days of interrogation, in the presence of an interpreter, he was given a form to sign. The police allegedly told him that this was intended for the Russian consul; however, it was intended for an extension by 30 days of his provisional custody.

2.4 The author was detained at the police station for five months. In this context he states: "The last two months they did not lead me to interrogation and I even thought everybody had forgotten about me. It was terrible. I did not understand one word of Hungarian. In my baggage I had a Hungarian grammar book and dictionaries but the police did not allow me to study Hungarian. Staying in the police station, I asked for my lawyer and Russian consul every day in written form, but without result (no answer). Moreover, I could not write to anywhere for five months." It appears from the author's submissions that a preliminary hearing was held in the first three months after his arrest; he submits that he then learned that K.G. (Who had been arrested on 15 August 1988) had implicated him in the crime, that there was no evidence against him other than her testimony, and that the hearing took place before a public prosecutor.¹ In January 1989, the author was transferred to a prison where he was given the opportunity to study Hungarian.

2.5 As to his legal representation and the preparation of his defence, the author states that, prior to the trial, he wrote several letters to the Public Prosecutor's office. In August 1989, he was allowed during six days to examine the "protocol" (depositions) so as to be able to prepare his defence.² The author complains that his letters were not included and that he had too little time to examine the file, which consisted of 600 pages. He submits that, after examining the documents, he met with his lawyer for the first time. He complains that the lawyer was old and incapable. In this context he submits that, although he met with the lawyer five times prior to the trial, they had to review the file every time from the start and that after the twelfth day of the trial, his lawyer asked him who K.G. actually was.

2.6 On 26 September 1989, the trial began in the Municipal Court of Budapest. The author was tried together with K.G. The hearing took place during 14 days, spread over a period of four months. The author reiterates that there was no evidence against him. Under cross-examination, K.G. changed her testimony on six different occasions; according to the author, her allegations against him thus became baseless. Furthermore, none of the prosecution witnesses incriminated him.

2.7 The author further submits that during the trial the judge conceded that D.T. together with K.G. had planned the murder. He complains that, despite this finding, no effort was made to find D.T.,

nor was the latter sentenced in absentia. Furthermore, the author alleges that when he complained to the judge about his unfair treatment she replied that he should complain about such matters in Siberia and that she wanted him to be the last Russian in Hungary.³ He submits that the judge's discriminatory remarks were deleted from the trial transcript, but that they are recorded on tape. On 8 February 1990, the author was found guilty of homicide committed with great cruelty and sentenced to 10 years' imprisonment, with subsequent expulsion from Hungary.

2.8 The author subsequently appealed to the Supreme Court of Hungary, on the following grounds:

(a) The trial judge ruled that the author had admitted his guilt, whereas his statements to the police and depositions made at the preliminary hearing proved otherwise;

(b) The judge ruled that the blood found on the victim belonged to the author, whereas, according to the forensic expert, this evidence was highly questionable;

(c) The pathologist testified that the deceased died sometime between 25 and 28 July 1988, after prolonged torture. The judge ruled that the deceased died on 25 July 1988 (the day the author had accompanied D.T. and K.G. to the deceased's house), thereby implicating the author in the crime.

2.9 On 30 October 1990, the Supreme Court dismissed the author's appeal and sentenced him to another four years of imprisonment, as it qualified the act for which the author had been convicted by the court of first instance as an offence committed with the objective of financial gain. The author points out that he had not been charged with robbery or theft and that there was no such evidence against him. According to the author, the Supreme Court's decision is further proof of discrimination against him. He further alleges that his lawyer was denied the right to explain his case, and that the Supreme Court simply ignored the many contradictions in the trial transcript.

2.10 The author subsequently wrote to the Attorney-General, but received no reply. Finally, he applied to the President of the Supreme Court for review of his case. On 12 December 1991, the Supreme Court dismissed the author's application. With this, it is submitted, all domestic remedies have been exhausted.

Complaint

3. Although the author does not invoke any of the provisions of the International Covenant on Civil and Political Rights, it appears from his submissions that he claims to be a victim of violations by Hungary of articles 9, 10, 14 and 26 of the Covenant.

State party's information and observations and author's comments

4.1 In its submission of 25 March 1993, the State party points out that the Optional Protocol entered into force for Hungary on 7 December 1988, and argues that, in view of the provisions of article 28 of the Vienna Convention on the Law of Treaties, the Committee has no competence to consider individual complaints that refer to events that occurred prior to the date of entry into force of the Optional Protocol for Hungary. It submits that, accordingly, the Committee is precluded ratione temporis from considering the author's complaints in so far as they relate to his arrest and

the first few months of his detention.⁴

4.2 The State party further argues that the Committee is not competent to consider alleged violations of rights that are not set forth in the Covenant. It submits that the Covenant contains no provision preventing a jury from freely considering the facts that were established during the process of evaluation of the evidence drawing reasonable conclusions with respect to the guilt of the accused and qualifying the act from the established facts. It is submitted that, accordingly, the Committee cannot consider the author's complaint ratione materiae.

4.3 The State party further submits that, similarly, the Committee has no competence to consider the author's complaint that D.T., a Bulgarian citizen, was not prosecuted or sentenced. It explains that D.T. disappeared during the proceedings and that the court of first instance issued a warrant of arrest against him. The State party further explains that it did not request the Bulgarian authorities to extradite D.T. since, under Hungarian-Bulgarian Extradition Treaty, extradition is not possible when the person to be extradited is a citizen of the other Signatory Party.

4.4 The State party concedes that the author has exhausted available domestic remedies in his case. It submits however that the author did not exhaust domestic remedies in respect of his complaint that the prison authorities obstructed his contacts with the outside. It contends that, in accordance with paragraph 36, (f), section (1), of Decree 11 of 1979 on the execution of penal measures, the author could have filed a complaint to the competent authorities if he believed that he had been obstructed in maintaining contacts with other persons. Furthermore, pursuant to paragraph 22 of Decree 8/1979 (VI.30) of the Ministry of Justice, any convict may submit a complaint requesting a remedy against personal injury. The competent authorities of the penitentiary institution are obliged to examine the complaint and the request. If the convict is not satisfied with the measures undertaken, he may submit a complaint to the officer in charge of the institution, who must take a decision within 15 days. If the convict is not satisfied with the officer's decision either, the headquarters of the Hungarian penitentiary administration will examine the complaint. The State party concludes that the author has not availed himself of his right to submit a complaint, and therefore has not exhausted domestic remedies in this respect.

5. In his reply dated 5 May 1993, the author challenges the State party's contention that part of the communication is inadmissible ratione temporis; he asks whether before the date of entry into force of the Optional Protocol for Hungary there was a law in Hungary under which it was allowed to mislead an accused with the help of an interpreter, or to sentence an innocent man to 14 years' imprisonment without proof.

Issues and proceedings before the Committee

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

6.2 The Committee observes that the Optional Protocol entered into force for Hungary on 7 December 1988. It recalls that the Optional Protocol cannot be applied retroactively and that the Committee is precluded ratione temporis from examining alleged violations of the Covenant in so

far as the alleged events occurred prior to the date of entry into force of the Optional Protocol for the State party concerned. It notes that, in the instant case, some part of the author's pre-trial detention, as well as his trial, occurred after 7 December 1988. The Committee therefore is not precluded from considering the author's claims under articles 9 and 10 in so far as they related to that period of time.

6.3 With respect to the author's complaint that one of the suspects in the case has not been prosecuted and convicted, the Committee observes that the Covenant does not provide for the right to see another person criminally prosecuted. Accordingly, it finds that this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.4 The State party submits that the Committee has no competence to examine the author's claims relating to the judicial proceedings against him, as the Covenant does not contain a provision dealing with a situation in which, in a trial by jury, the jury does not have the possibility to consider freely the facts and the evidence in a particular case. The Committee observes, however, that the author claims that he did not have a fair trial, within the meaning of article 14 of the Covenant. It is in principle for the courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case, unless it can be ascertained that the proceedings were manifestly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. In this context, the Committee notes that the author claims that he was discriminated against because of his nationality. The Committee is of the opinion that these issues should be examined on their merits.

7. The Human Rights Committee therefore decides:

(a) That the communication is admissible inasmuch as it appears to raise issues under articles 9, 10, 14 and 26 of the Covenant;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall 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 measures, if any, that may have been by it. The State party is further requested to provide the Committee with a translation of the judgement of the court of first instance and of the judgement of the Supreme Court in the case. It is also requested to provide the Committee with the exact dates of the author's detention at the police station and at the general penitentiary;

(c) That any explanations or statements received from the State party shall be communicated by the Secretary-General, under rule 93, paragraph 3, of the rules of procedure, to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) That this decision shall be communicated to the State party and to the author.

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

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ It is not clear whether the author benefited from legal assistance during the preliminary hearing. In one of his submissions, he states that: “four of my lawyers were assigned to me by the judicial authorities, but not at the same time; they came one after another.” In view of the fact that the author’s English is poor, it has to be assumed that by “public prosecutor” he means an examining magistrate.

2/ The author was assisted by an interpreter during these six days.

3/ In this context, the author states that: “The judge is anti-Soviet but it is not my fault that Hungary was on bad terms with the Soviet Union.”

4/ The State party specifies these complaints as: the circumstances of the arrest, the level of interpretation provided to the author, the appointment of a legal aid attorney, the obligation to bring the case to court, maintaining contacts, etc.