

HUMAN RIGHTS COMMITTEE

Celepli v. Sweden

Communication No. 456/1991

18 July 1994

CCPR/C/51/D/456/1991*

VIEWS

Submitted by: Ismet Celepli [represented by counsel]

Victim: The author

State party: Sweden

Date of communication: 17 February 1991

Date of decision on admissibility: 19 March 1993

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

Meeting on 18 July 1994,

Having concluded its consideration of communication No. 456/1991, submitted to the Human Rights Committee by Mr. Ismet Celepli 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, his counsel and the State party,

Adopts its

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

1. The author of the communication (dated 17 February 1991) is Ismet Celepli, a Turkish citizen of Kurdish origin living in Sweden. He claims to be the victim of violations of his human rights by Sweden. He is represented by counsel.

The facts as submitted by the author:

2.1 In 1975, the author arrived in Sweden, fleeing political persecution in Turkey; he obtained permission to stay in Sweden but was not granted refugee status. Following the murder of a former member of the Workers Party of Kurdistan (PKK), in June 1984 at Uppsala, suspicions of the author's involvement in terrorist activities arose. On 18 September 1984, the author was arrested and taken into custody under the Aliens Act; he was not charged with any offence. On 10 December 1984, an expulsion order against him and eight other Kurds was issued, pursuant to sections 30 and 47 of the Swedish Aliens Act. The expulsion order was not, however, enforced as it was believed that the Kurds could be exposed to political persecution in Turkey in the event of their return. Instead, the Swedish authorities prescribed limitations and conditions concerning the Kurds' place of residence.

2.2 Under these restrictions, the author was confined to his home municipality (Västerhaninge, a town of 10,000 inhabitants, 25 kilometres south of Stockholm) and had to report to the police three times a week; he could not leave or change his town of residence nor change employment without prior permission from the police.

2.3 Under Swedish law, there exists no right to appeal against a decision to expel a suspected terrorist or to impose restrictions on his freedom of movement. The restrictions of the author's freedom of movement were alleviated in August 1989 and the obligation to report to the police was reduced to once a week. On 5 September 1991 the expulsion order was revoked; the restrictions on his liberty of movement and the reporting obligations were abolished.

The complaint:

3.1 It is submitted that the Government reached its decision to expel the author after an inquiry by the Municipal Court of Stockholm, which allegedly obtained its information mainly from the Swedish security police. The author claims that the hearing before the Court, which took place **in camera**, was more like an interrogation than an investigation. A request for information about the basis of the suspicions against the nine Kurds was refused on grounds of national security. The author, who states that he was never involved in terrorist activities, claims that he was subjected to a regime of residence restrictions, although the grounds for this measure were not disclosed to him, and although he was not given an opportunity to prove his innocence and to defend himself before an independent and impartial tribunal. Moreover, he claims that he was not afforded the right to a review of the Government's decision. He emphasizes that he was never charged with a crime.

3.2 The author further alleges that he and his family have been harassed by the Swedish security police, and that they have been isolated and discriminated against in their municipality because the Government and the media have labelled them as terrorists. The author also states that his health has deteriorated and that he suffers from a "post-traumatic stress disorder" due to his experiences with the Swedish authorities.

3.3 Although the author does not invoke any specific articles of the Covenant, it appears

from his submission that he claims to be a victim of a violation by Sweden of articles 7, 9, 12, 13 and 17 of the International Covenant on Civil and Political Rights.

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

4.1 By submission, dated 7 October 1991, the State party argues that the communication is inadmissible on the grounds of non-substantiation and incompatibility with the provisions of the Covenant.

4.2 The State party submits that the restrictions placed upon the author were in conformity with the 1980 Aliens Act, article 48(1) of which read: "Where it is required for reasons of national security, the Government may expel an alien or prescribe restrictions and conditions regarding his place of residence, change of domicile and employment, as well as duty to report". In July 1989, this Act was replaced by the 1989 Aliens Act. According to a recent amendment to this Act, the possibility to prescribe an alien's place of residence no longer exists. The State party emphasizes that the measures against aliens suspected of belonging to terrorist organizations were introduced in 1973 as a reaction to increased terrorist activities in Sweden; they were only applied in exceptional cases, where there were substantial grounds to fear that the person in question played an active role in planning or executing terrorist activities.

4.3 The State party submits that, on 31 August 1989, a decision was taken to allow the author to stay within the boundaries of the whole county of Stockholm; his obligation to report to the police was reduced to once a week. On 5 September 1991, the expulsion order against the author was revoked.

4.4 The State party argues that a right to asylum is not protected by the Covenant and refers to the Committee's decision with regard to communication No. 236/1987.¹

4.5 The State party argues that article 9 of the Covenant, protecting the right to liberty and security of the person, prohibits unlawful arrest and detention, but does not apply to mere restrictions on liberty of movement which are covered by article 12. The State party argues that the restrictions on his freedom of movement were not so severe that his situation could be characterized as a deprivation of liberty within the meaning of article 9 of the Covenant. Moreover, the author was free to leave Sweden to go to another country of his choice. The State party therefore contends that this part of the communication is not substantiated and should be declared inadmissible. 4.6 With regard to the author's claim that he is a victim of a violation of article 12 of the Covenant, the State party submits that the freedom of movement protected by this article is subject to the condition that the individual is "lawfully within the territory of a State". The State party contends that the author's stay in Sweden, after the decision was taken to expel him on 10 December 1984, was only lawful within the boundaries of the Haninge municipality and later, after 31 August 1989, within the boundaries of the county of Stockholm. The State party argues that the author's claim under article 12 is incompatible with the provisions of the Covenant, since the author can only be regarded as having been lawfully in the country to the extent that he complied with the restrictions imposed upon him.

4.7 Moreover, the State party invokes article 12, paragraph 3, which provides that restrictions may be imposed upon the enjoyment of article 12 rights, if they are provided by law and necessary for the protection of national security and public order, as in the present case. The State party argues therefore that these restrictions are compatible with article 12, paragraph 3, and that the author's claim is unsubstantiated within the meaning of article 2 of the Optional Protocol. In this connection, the State party refers to the Committee's decision declaring communication No. 296/1988 inadmissible.²

4.8 With regard to article 13 of the Covenant, the State party argues that the decision to expel the author was reached in accordance with the relevant domestic law. In this context, the State party refers to the Committee's decision in communication No. 58/1979,³ where the Committee considered that the interpretation of domestic law was essentially a matter for the courts and authorities of the State party concerned. The State party contends that in the present case, compelling reasons of national security required that exceptions be made with regard to the right to review of the decision. According to the State party, the communication is therefore unsubstantiated with respect to article 13 and should be declared inadmissible under article 2 of the Optional Protocol.

4.9 The State party forwards copy of the text of the decision of the European Commission of Human Rights in a similar case,⁴ which was declared inadmissible as manifestly ill-founded and incompatible **ratione materiae**.

5.1 In his comments on the State party's submission, the author reiterates that he was never accused of having committed any crime and that the State party's decision to declare him a potential terrorist was solely based upon information from the SAPO.

5.2 As regards the revoking of the expulsion order and the abolition of the restrictions, the author points out that the State party has not yet recognized that he was no potential terrorist. In this context, he states that the SAPO has provided information about him to Interpol. He claims that this means in practice that he can never leave Sweden without fearing for his safety. 5.3 With regard to the State party's arguments that the restrictions on his freedom of movement cannot be considered to be so severe as to constitute a deprivation of liberty, the author argues that a residence restriction can be considered a deprivation of liberty when it is of considerable duration or when it has serious consequences. He claims that his condition, being under residence restriction for nearly seven years and having to report to the police three times a week for five years, was so severe as to amount to a deprivation of liberty, within the meaning of article 9 of the Covenant.

5.4 The author further submits that, although he has not been charged with any criminal offence, the effects of the treatment he was subjected to were such as to make him a criminal in the eyes of the public and amounted to a harsh punishment for an offence of which he has not been charged and for which he has not been able to defend himself.

5.5 The author further claims that the residence restriction imposed upon him amounted to inhuman treatment, prohibited by article 7 of the Covenant. He supports this claim by referring to the opinion of Mr. Pär Borgå, a Swedish doctor working for the Centre for

Tortured Refugees, where the author received treatment. In this connection, the author refers to alleged harassment by the police.

The Committee's admissibility decision:

6.1 During its 47th session, the Committee considered the admissibility of the communication. It observed that the same matter was not being or had not been examined under another procedure of international investigation or settlement. The Committee considered that the author had not substantiated, for purposes of admissibility, his claim under articles 7 and 17 of the Covenant, and that his claims under articles 9 and 13 of the Covenant were incompatible with these provisions.

6.2 On 19 March 1993, the Committee declared the communication admissible in so far as it might raise issues under article 12 of the Covenant.

The State party's submission on the merits and the author's comments thereon:

7.1 The State party, by submission of 9 November 1993, argues that Mr. Celepli was not lawfully within the territory of Sweden after an expulsion order had been issued against him on 10 December 1984. The State party submits that whether a person is lawfully within the territory of the State or not is determined according to national law. It explains that the expulsion order could not be enforced for humanitarian reasons, but that in principle the decision was taken that the author should not be allowed to stay in Sweden. The State party refers to its submission on admissibility and reiterates that the author's stay in Sweden after 10 December 1984 was only lawful under the condition that it did not extend beyond the borders of first the Haninge community and, later, the borders of the county of Stockholm.

7.2 The State party further submits that, if the author would have left Sweden at any time after 10 December 1984, he would not have been allowed to return. The State party argues that the issuing of the expulsion order made the author's stay unlawful, even though the order was not enforced; in this connection the State party argues that, if the order would have been enforced, the author would have been outside the country, as a consequence of which no issue under article 12 could arise.

7.3 As regards the second issue identified by the Committee, whether a person's freedom of movement may lawfully be restricted for reasons of national security without allowing appeal against such decision, the State party notes that article 12 does not contain a right to appeal against a decision restricting a person's liberty of movement.

7.4 In the present case, the State party submits that, although the author did not have a possibility of a formal appeal against the decision, the decision was in fact open to review. In this context, the State party recalls that the author was sentenced on several occasions for not complying with the restriction order and argues that in order to convict a person and sentence him, the court has to examine that the restrictions were imposed in accordance with domestic law and to assess whether they were imposed on reasonable grounds. The State party furthermore indicates that, according to domestic law, the expulsion order, on which

the restriction order was based, had to be reconsidered by the Government whenever there was cause to do so. In this context, the State party emphasizes that the restrictions on the author's freedom of movement were reviewed several times, resulting in their complete abolishment on 11 October 1990.

7.5 The State party further invokes compelling reasons of national security which made it necessary to restrict the author's freedom of movement without providing a possibility of appeal and refers in this context to article 13 of the Covenant, which allows an exception to the provision that a decision of expulsion be subjected to review when compelling reasons of national security so require. It concludes, taking into account that it in fact did review the restrictions on the author's freedom of movement several times, that article 12 has not been violated in Mr. Celepli's case.

8. In his comments, dated 30 December 1993, the author emphasizes that if the State party had grounds to suspect him of criminal or terrorist activities, it should have charged him and brought him to trial. He claims that he never was a member of the PKK and that the restrictions were placed upon him for internal political reasons and that he never was given the opportunity to challenge the reasons underlying the restriction order.

Issues and proceedings before the Committee:

9.1 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.

9.2 The Committee notes that the author's expulsion was ordered on 10 December 1984, but that this order was not enforced and that the author was allowed to stay in Sweden, subject to restrictions on his freedom of movement. The Committee is of the view that, following the expulsion order, the author was lawfully in the territory of Sweden, for purposes of article 12, paragraph 1, of the Covenant, only under the restrictions placed upon him by the State party. Moreover, bearing in mind that the State party has invoked reasons of national security to justify the restrictions on the author's freedom of movement, the Committee finds that the restrictions to which the author was subjected were compatible with those allowed pursuant to article 12, paragraph 3, of the Covenant. In this connection, the Committee also notes that the State party **motu proprio** reviewed said restrictions and ultimately lifted them.

10. 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 do not reveal a violation by the State party of any of the articles of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

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

1/ V.M.R.B. v. Canada , declared inadmissible on 18 July 1988.

2/ J.R.C. v. Costa Rica , declared inadmissible on 30 March 1989.

3/ Anna Maroufidou v. Sweden , Views adopted on 9 April 1981.

4/ Application No. 13344/87, Ulusoy v. Sweden , declared inadmissible on 3 July 1989.