

HUMAN RIGHTS COMMITTEE

Maleki v. Italy

Communication No. 699/1996

11 July 1997

CCPR/C/60/D/699/1996 *

ADMISSIBILITY

Submitted by: Ali Maleki (represented by his son, Zambiz Maleki)

Victim: The author

State party: Italy

Date of communication: 28 January 1996 (initial submission)

Documentation references: List - CCPR/C/CL/R.64 Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 17 July 1996 (not issued in document form)

Date of present decision: 11 July 1997

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 Ali Maleki, a sixty five old Iranian citizen currently serving a 10 year prison sentence in Italy for drug trafficking. The case is submitted on his behalf by his son Kambiz Maleki. He claims that his father is a victim of violations by Italy of the International Covenant on Civil and Political Rights, although he does not specify which provisions of the Covenant he considers to have been violated.

The facts as submitted by the author:

2.1 The author, a truck driver for over 40 years who transported consignments between Iran and Italy, was tried and sentenced, in absentia, on 21 November 1988 to 10 years imprisonment for having imported and sold narcotic drugs in Italy. His sentence was confirmed by the Court of

Appeal on 16 October 1989.

2.2 In 1991, while in California on a family visit, the author was arrested and detained for about six months, while awaiting his extradition to Italy. On 9 April 1992, the United States District Court, Central District of California, denied the Italian Government's request for his extradition. In May or June of 1995, the author returned to Iran via Italy. He was arrested at Rome airport, and has been detained since.

The complaint:

3.1 The author claims that his father was wrongly convicted, and that the case was one of mistaken identity based on one single tapped telephone conversation between his father and a known drug dealer, who was also a truck driver and who had been under police surveillance for some time.

3.2 Kambiz Maleki alleges that his father was tried in his absence and that the Public Prosecutor's Office appealed the sentence twice in order to effectively bar his father from appealing. This, he claims, means that domestic remedies have been exhausted or are unavailable. In support of his contention, he submits a letter from an Italian lawyer, which states that article 630 of the Criminal Code of Procedure precludes a reopening of the case and concludes that the only possibility remaining is to request the transfer of Mr. Maleki to Iran, to serve the remainder of the sentence there.

3.3 The author notes that the only connection in the file submitted by the Italian authorities to the United States in substantiation of the extradition request, contains one single reference to his father.

3.4 The author adds that his father has been on a hunger strike to obtain a review of his conviction. He claims that his father has a serious heart ailment, having refused heart surgery while in the United States because he wanted to die in his native country. The author's father claims that he has also been denied the possibility of serving his sentence in his own country (Iran).

The State party's information and author's comments thereon:

4.1 In its submission of 17 September 1996, the State party explains that Mr. Maleki was tried and convicted in absentia, duly represented by his court-appointed attorney. The decision of the court of first instance was appealed both by Mr. Maleki's counsel and the public prosecutor. The State party assumes that he was informed by his counsel of the proceedings followed against him in Italy. He was charged for drug trafficking. When the authorities were unable to execute the warrant, he was declared a fugitive. The State party notes that when the author was arrested in the United States, he was assisted by an American attorney who argued against the extradition. It further notes that the Office of the Public Prosecutor informed Mr. Maleki of the ways and means still open to him for a revision or reversal of the judgements.

4.2 The State party contends that Mr. Maleki's medical condition is being closely monitored and submits a substantial file in this respect.

4.3 The State party argues that the claims about unfair trial relate to the evaluation of facts and

evidence in the case which is better left to the appellate Courts of States parties.

4.4 With respect to the claim that Mr. Maleki should be transferred to his own country (Iran) to serve his sentence, the State party notes that his petition could not be entertained in view of the fact that Iran is not a signatory country of the Convention on the Transfer of Sentenced Prisoners (Strasbourg, 21 March 1983) nor is there a bilateral agreement on the matter between Italy and Iran.

5. In his comments the author reiterates his claims that a trial in absentia constitutes a violation of the Covenant even if his father had a court-appointed lawyer, and that his father suffers from an acute heart condition for which he requires surgery.

Issues and proceedings before the Committee:

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

6.2 As regards the author's complaint that he has a heart condition which is not treated adequately, the Committee notes that the State party has submitted a comprehensive file showing that Mr. Maleki's medical condition is being closely monitored. In the circumstances, the Committee considers that the author has failed to substantiate this claim, for purposes of admissibility.

6.3 With respect to the author's complaint that his father has not been transferred to his own country to serve his sentence, the Committee notes that the Covenant does not provide that an alien convicted and sentenced for a crime has a right to serve his sentence in his own country. Accordingly, this part of the communication is inadmissible ratione materiae.

6.4 The author's claim that he was tried in absentia was not contradicted by the State party. On the contrary, the State party conceded that the author was not present at his trial, but argued that he was represented by court-appointed counsel and that he therefore had a fair trial. The Committee is of the opinion that, in these circumstances, the author has substantiated, for the purposes of admissibility, his claims that his right to a fair trial, under article 14, paragraph 1, and his right, under article 14, paragraph 3(d), to be tried in his presence, were violated, and these should be examined on their merits.

6.5 In deciding on admissibility the Committee is aware that upon ratification of the Covenant the State party made the following declaration: "The provisions of article 14, paragraph 3 (d), are deemed to be compatible with existing Italian provisions governing trial of the accused in his presence and determining the cases in which the accused may present his own defence and those in which legal assistance is required". The State party did not refer to this declaration in its detailed reply to the author's communication. The declaration's scope, and its effect on the author's claim of a violation of article 14, paragraph 3(d), therefore remain unclear. Both the State party and the author may include in their replies on the merits arguments relating to the scope of the above declaration, and its effect on the admissibility of the author's claim under article 14. The Committee will examine such arguments together with the arguments on the merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible;

(b) that the State party and the author are invited to submit to the Committee information and observations in respect of the applicability of the Italian declaration. If the State party seeks to challenge the admissibility of the claim, it is invited to join its observations in this respect to those on the substance of the claim, and the Committee will address them when considering the merits of the present communication;

(c) 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 the transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(d) 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 High Commissioner/Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal.

(e) that this decision shall be communicated to the State party and to the author and to his representative.

(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.