HUMAN RIGHTS COMMITTEE

C.E.A. v. Finland

Communication No. 316/1988

10 July 1991

ADMISSIBILITY

Submitted by: C.E.A. [name deleted]

Alleged victim: The author

State party concerned: Finland

Date of communication: 4 July 1988 (initial submission)

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

Meeting on 10 July 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 4 July 1988 and subsequent correspondence) is C.E.A., a Swedish citizen. He is a representative of a marketing company with headquarters in Gothenburg, Sweden. He claims to be a victim of violations by Finland of articles 2, 14, paragraphs 1 and 3 (a), (b), (e) and (f), and 15 of the International Covenant on Civil and Political Rights.

2.1 The author states that the marketing company employed a Finnish lawyer, P.K., in a legal action
against a Finnish company. The author was not satisfied with P.K.'s work and sued him in civil litigation for malpractice. He also filed a complaint with the general prosecutor against P.K., alleging several serious crimes, including blackmail, which resulted in charges being made against the latter. P.K. filed a counterclaim against the author. The actions were consolidated by the City Court of Helsingfors (Helsinki). In its judgement of 20 September 1984, the court fined the author for bringing unfounded criminal charges against P.K.

2.2 The author alleges that the City Court disregarded the principle of equality before the law, contrary to article 14, paragraph 1, of the Covenant, and that it discriminated against him on account of his Swedish nationality.

2.3 In substantiation, the author states that he was not permitted to present his arguments in his mother tongue, despite the fact that Swedish is one of the official languages of Finland and despite the fact that he is not proficient in Finnish. This, he claims, violated his rights under article 14, paragraphs 3 (a) and (f) of the Covenant.

2.4 The author alleges that P.K. was given the prosecutor's memorial in advance of the trial, thereby denying him "equality of arms". When the author discovered this during the trial, he requested an adjournment. This was denied by the judge. This, he asserts, constituted a violation of his right under article 14, paragraph 3 (b), of the Covenant to be afforded adequate time "for the preparation of his defence".

2.5 The author alleges that the court refused to allow him to call two witnesses on his behalf and failed to register the expert written testimony of one of these witnesses. This, he alleges, constitutes a violation of his rights under article 14, paragraph 3 (e), of the Covenant. He states that he specifically invoked the Covenant in his appeal to the Court of Appeal on this issue, but his appeal was rejected on 6 June 1985.

2.6 The author did not seek leave to appeal from the judgement of the Court of Appeal to the Supreme Court. Instead, he sought to invoke an extraordinary remedy by applying to the Supreme Court for the annulment of the judgements of the City Court and the Court of Appeal on account of miscarriage of justice (domvilla) and referral of the case to the City Court for retrial. The application was denied by the Supreme Court on 13 November 1985. In 1986, the author again filed applications to the Supreme Court to allow the extraordinary remedy to go forth because of domvilla. In his opinion, the Supreme Court had been remiss in its earlier decision to reject the application, because of the alleged serious breaches of the various provisions of article 14 of the Covenant, in particular the minimum guarantees set out in article 14, paragraph 3, for the determination of criminal charges. On 30 September 1987, the Supreme Court again rejected the application.

2.7 The author contends that P.K. should not have been allowed to file a counterclaim against him personally in the City Court, since he had been acting on behalf of his company. This, the author alleges, constituted a violation of article 15 of the Covenant.

2.8 The author further claims that the Finnish courts are obliged to apply the Covenant ex officio, stating that it was incorporated into Finnish law by Act No. 108 of 1976. Their alleged persistent failure to do so, he claims, constitutes a violation of article 2, paragraphs 2 and 3.

3. By decision of 15 July 1988, the Working Group of Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 21 October 1988, the State party contends that the

communication should be declared inadmissible, both because the author has failed to exhaust available domestic remedies and also because the communication fails to relate to any of the rights recognized by the Covenant.

4.2 Describing the general system of judicial appeal in Finland, the State party notes, in particular, that the author has only applied to the Supreme Court for the extraordinary remedies of domvilla but has not applied for leave for ordinary review.

4.3 The State party further notes that the author has not been "charged with a criminal offense" and that the provisions of article 14, paragraph 3, and 15, as invoked by him, are simply not applicable in his case.

4.4 As to the allegations of violations of the right to equality before the courts under article 14, paragraph 1, of the Covenant, the State party contends that the author should have provided all the relevant court records and decisions. By not doing so, the State party argues, the author has failed to submit sufficient evidence in substantiation of his allegations and that his communication should be declared inadmissible for the reason also.

4.5 Finally, the State party contends that the author's allegations mostly concern the interpretation of Finnish law and the assessment of evidence by Finnish courts. The Covenant, the State party maintains, is not applicable to such matters, nor can the Human Rights Committee be seen as a "fourth instance" entitled to carry out such review.

5.1 In his comments, dated 20 December 1988, the author concedes that he has not sought leave to appeal to the Supreme Court but asserts that he has not done so because, as he was advised by counsel, such leave is unnecessary in cases of gross procedural errors, in the light of the alternative remedy of domvilla. In such cases, moreover, domvilla would provide more adequate relief.

5.2 The author also asserts that the State party does not address his claims under article 2 of the Covenant and that these are the most important ones. In the author's opinion, the wording of article 2 implies that he does not need to apply for leave to appeal to the Supreme Court.

5.3 The author maintains that the fact that he was privately persecuted in contentious civil litigation and sentenced to pay a fine by the City Court of Helsingfors, in effect means that he was charged with a criminal offence.

5.4 The author states that the court records and decisions in his case amount to some 800 pages. He maintains that the Supreme Court decisions which he has provided (concerning the alleged domvilla) illustrate the grave procedural injustice which allegedly permeates the Finnish judicial system. He claims that the burden of submitting all relevant documents would be better placed on the State party, as it is in a better position to acquire them.

5.5 Finally, the author claims that he is not seeking "fourth instance" review of factual findings or interpretation of domestic law. Rather, he claims that the issue is the relation between the Finnish legal system, as such, and Finland's obligations under the Covenant.

5.6 In further submissions, the author has furnished the Committee with written statements made and signed by a Finnish professor of law, expressing the opinion (a) that the author's communication to the Human Rights Committee discloses that serious procedural errors were made by the court of first instance and that his rights under article 14, paragraph 1, and article 14, paragraph 3, of the Covenant were not respected; (b) that the Covenant is directly applicable in Finnish courts, as having been incorporated into Finnish law; (c) that the author was justified in seeking the remedy of domvilla instead of applying for ordinary leave to appeal to the Supreme Court; (d) that, at any rate, his prospect of being of being granted leave for an ordinary appeal, had he so applied, would have been virtually non-existent, considering that the public prosecutor's request for leave to appeal in the same matter was rejected, and (e) that, accordingly, he has exhausted all domestic remedies.

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

6.2 The Committee observes that the author's allegations of violations of article 14, paragraph 3, ad 15 of the Covenant do not appear to have any factual basis. It further observes that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol. Further, the claim that the author was discriminated against by the Finnish Courts and denied equality before the Courts because he is Swedish, is of a sweeping nature and has not been sufficiently substantiated. As to the claim that the author has suffered a violation of article 14, paragraphs 3 (c) and (f), of the Covenant, the Committee notes that even if article 14 were thought applicable in this case, the author has not shown that, as a Swedish citizen, he was entitled to reply on the official status of the Swedish language in Finland to require court proceedings to be conducted in Swedish. Nor has he substantiated that he needed an interpreter and requested, but was denied the assistance of an interpreter in accordance with article 14, paragraph 3 (f). The jurisprudence of the Committee shows that there is no right under the Covenant simply to have court proceedings conducted in one language of one's choice. a/

6.3 In the light of the above, the Committee does not deem it necessary to address the question whether the author has exhausted domestic remedies.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

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

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

Notes

a/ See the Committee's views in communications Nos. 221/1987 and 323/1988, Yves Cadoret and Hervé Le Bihan v.France, views adopted on 11 April 1991, para. 5.7; 327/1988 Hervé Barzhig v.

France, views adopted on 11 April 1991, para. 5.6.