

HUMAN RIGHTS COMMITTEE

Peltonen v. Finland

Communication No. 492/1992*

21 July 1994

CCPR/C/51/D/492/1992*

VIEWS

Submitted by: Lauri Peltonen [represented by counsel]

Victim: The author

State party: Finland

Date of communication: 23 December 1991 (initial submission)

Date of decision on admissibility: 16 October 1992

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

Meeting on 21 July 1994,

Having concluded its consideration of communication No. 492/1992 submitted to the Human Rights Committee by Mr. Lauri Peltonen 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 is Lauri Peltonen, a Finnish citizen born in 1968, residing in Stockholm, Sweden, since 1986. He claims to be a victim of a violation by Finland of article 12 of the International Covenant on Civil and Political Rights. He is

represented by counsel.

The facts as submitted by the author:

2.1 In June 1990, the author applied for a passport at the Finnish Embassy in Stockholm. The Embassy refused to issue a passport, on the ground that Mr. Peltonen had failed to report for his military service in Finland on a specified date. Under Section 9, subsection 1(6), of the Passport Act of 1986, delivery of a passport "may be denied" to persons aged 17 to 30 if they are unable to demonstrate that the performance of military service is not an obstacle to the issuance of a passport.

2.2 The author appealed against the Embassy's decision to the Uusimaa Provincial Administrative Court, invoking his right to leave any country. By decision of 22 January 1991, the Court upheld the Embassy's decision. The author then appealed to the Supreme Administrative Court, which confirmed the previous decisions on 19 September 1991. With this, it is submitted, available domestic remedies have been exhausted.

2.3 The author notes that the administrative and judicial instances seized of his case did not justify the denial of a passport. In its decision, the Supreme Administrative Court merely observed that the Embassy had the right, under Section 9, subsection 1(6), not to issue a passport to the author because he was a conscript and had failed to prove that military service was no obstacle for obtaining a passport. In this context, it is noted that the Finnish government stated during the examination of its third periodic report under article 40 of the Covenant in October 1990 that

"there might have been some misunderstanding concerning the question of obligation of military service. A passport could be issued to a person under duty of performing his military service and conscription, but its validity must temporarily expire during the period of military service. There is no **de facto** possibility for a conscript to leave the country during his military service and accordingly there will be no derogation from article 12 by withholding a valid passport during that period, which is only ... 8 to 11 months." (CCPR/C/SR.1016, paragraph 21).

2.4 The author contends that the interpretation by the Supreme Court of the words "may be denied" in Section 9, subsection 1(6), means that Finnish Embassies around the world have full discretion to deny passports to Finnish citizens until they reach the age of 30. The duration of the denial of a passport is likely to exceed by far the period of "eight to eleven months", as it did in this case. The author acknowledges that failure to report for military service is an offence under the Finnish Military Service Act. He observes, however, that the authorities could have instituted criminal or disciplinary proceedings against him; failure to do so is said to further underline that the denial of a passport was and continues to be used as a **de facto** punishment.

The complaint:

3. It is submitted that the denial of a passport pursuant to Section 9, subsection 1(6), of the

Passport Act is (a) a disproportionate punishment in relation to the offence of failure to report for military service, (b) a violation of the author's right, under article 12 of the Covenant, to leave any country, and (c) a punishment not prescribed by law.

The State party's information and observations:

4. The State party concedes that domestic remedies have been exhausted, and that the claim is admissible **ratione materiae** and sufficiently substantiated. Accordingly, the State party raises no objections to the admissibility of the communication.

The Committee's admissibility decision:

5.1 During its 46th session, the Committee considered the admissibility of the communication. It noted that the State party did not raise objections to the admissibility of the communication. It nevertheless **ex officio** examined the author's claims, and concluded that the admissibility criteria laid down in articles 2, 3 and 5, paragraph 2, of the Optional Protocol had been met.

5.2 On 16 October 1992, the Committee declared the communication admissible.

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

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, the State party explains the operation of the relevant Finnish law. It notes that Section 7, paragraph 1, of the Constitution Act (94/1919) provides for the right of a Finnish citizen to leave his/her own country; this is further spelled out in the Passport Act (642/1986) and Passport Decree (643/86), which regulate the right to travel abroad. Furthermore, Section 75, paragraph 1, of the Constitution Act regulates the obligation of Finnish citizens to participate in the defense of the country; this is spelled out in the Military Service Act (452/50) and the Non-Military Service Act (1723/91). In relation to the legal obligation of military service, both Acts contain certain restrictions on a conscript's freedom of movement. The State party adds that the Nordic States have agreed upon that their citizens do not need a passport to travel within the area of the Nordic States, and that passport inspections on their borders have been abolished.

6.2 Section 3, paragraph 1, of the Passport Act provides that a Finnish citizen shall obtain a passport, unless otherwise stipulated in the Act. As stated above (see para. 2.1), a passport may be denied to persons aged 17 to 30 if they are unable to demonstrate that the performance of military service is not an obstacle to the issuance of a passport (Section 9, subsection 1(6)). In such cases, a request for a passport should be accompanied, e.g. with a police clearance certificate, a military passport, a call-up certificate, an order to enter into military service, a call-up certificate exempting the applicant from active military service during peace-time, a call-up certificate entirely exempting him from active military service or a certificate of non-military service (Section 4 of the Passport Decree). A Finnish citizen living abroad, and falling into the category of Section 9(1)(6), must obtain a statement from the police of his last place of residence in Finland, showing that he is not liable for military

service.

6.3 As to the authorities' discretion to deny a person a passport or not, the State party points out that, when considering a passport application from a person falling within the category of Section 9(1), consideration must be given to "the significance of travel related to the applicant's family relations, state of health, subsistence, profession and other circumstances", in accordance with Section 10 of the Act. ¹ In this context, the State party refers to the **ratio legis** of the Passport Act as explained in Parliament, where it was noted that the decision to grant a passport is taken by legal discretion, based on acceptable objective grounds. Furthermore, according to a circular of the Legal Office of the Ministry for Foreign Affairs of 22 June 1992 (No. 0IK-4, 1988/1594/68.40), an Embassy must consider its decisions in Section 9(1) cases on the basis of the statement obtained from the police of the applicant's last residence in Finland, and must take into account the circumstances of the case and the grounds referred to in Section 10. Thus, the Embassy's discretion to grant a passport is not unlimited, since the Passport Act contains clearly specified grounds for rejecting a request for a passport.

6.4 As regards the time dimension, it is submitted that the application of Section 9(1)(6) of the Passport Act cannot be limited solely to the period of a person's actual military service, but that it necessarily covers a more extensive period before and after such service, in order to secure that a conscript really performs his military service. The State party explains that, for a person who has participated in his call-up for military or alternative service, and who has been granted a deferral, e.g. for up to three years, of performance of such service, a passport is generally granted up to 28 years of age. Once the person liable for military service has reached the age of 28, the passport is generally granted for a shorter period of time, so that by the age of 30, he must perform his military service. Generally, citizens are not called for military service after the age of 30.

6.5 The State party notes that Mr. Peltonen did not react to his military call-up in 1987, and that he has disregarded all subsequent call-ups. Pursuant to Section 42 of the Military Service Act, a person liable for military service, who commits the offence referred to in Section 40 of the Act (non-appearance in a military call-up), and who, after investigation, is deemed fit for service, can immediately be called to service, unless he has reached the age of 30 years. Thus, if the author arrives in Finland, he may be subjected to a preliminary enquiry as a result of his non-appearance in the military call-up, be disciplined for the offence, and immediately called to service. The State party points out that the author, by arguing before the courts that he is not under an obligation to carry out the military duties imposed by the State, referred to one of the basic purposes of the provision of Section 9(1)(6) of the Passport Act, i.e. to make sure that those who have not fulfilled their civic obligation of military or alternative service will do so, and shall not avoid it by any other means. The State party further notes that the author did not show that his liability for military service did not constitute a bar to the issuing of a passport, and that there were no changes in his situation which would have warranted another conclusion. Furthermore, no mention was made in his request of any of the grounds referred to in Section 10. In this context, the State party emphasizes that the author does not require a passport e.g. for professional reasons and that he merely needed one for holiday travels.

6.6 The State party dismisses as groundless the claim that the denial of a passport is used as a **de facto** punishment for the author's failure to report for military service. It submits that the denial of the passport is based on considerations which are specified in the Constitution Act, Passport Act and Passport Decree, and which are related to the Military Service Act; the denial of a passport neither constitutes a punishment nor in any other way replaces the investigation of, and the corresponding punishment for, the offence of failing to report for military service. If the author returns to Finland and is arrested, his failure to attend the call-ups will be investigated and sanctioned. However, the offence cannot serve as a basis for an extradition request.

6.7 The State party notes that, pursuant to article 12, paragraph 3, of the Covenant, the right to leave any country may be subject to restrictions which are provided for by law, are necessary to protect e.g. national security and public order (**ordre public**), and are consistent with the other rights recognized in the Covenant. For the State party, it is clear from the above that the Passport Act, which was passed by Parliament, is based on the Constitution Act and is linked to the Military Service Act, fulfils the requirement of "provided by law". The State party further submits that the competent authorities and tribunals have affirmed that the provisions of the Passport Act are an adequate legal basis in the author's case, and that their assessment of the case is neither arbitrary nor unreasonable.

6.8 As regards the legitimate aim of the restriction, the State party asserts that the denial of a passport falls under the notion of "public order (**ordre public**)", within the meaning of article 12, paragraph 3; the denial of a passport to a conscript has additional, even if indirect, links to the notion of "national security". It argues that the authorities' decision to reject the author's application for a passport was necessary for the protection of public order, and constituted an interference by the public authorities with the author's right to leave the country under the relevant provisions of the Passport Act, which was however justified. It concludes that the denial of a passport in the case was also proportional in relation to the author's right to leave any country, and that the restriction is consistent with the other rights recognized by the Covenant.

7.1 Counsel, in his comments, challenges the State party's contention that when applying the Passport Act, the authorities follow precise legal rules that circumscribe their discretion. In this context, he notes that, during consideration of the third periodic report of Finland by the Committee, several Committee members expressed concern about the restrictions on the issuance of passports under the Passport Act and Decree.² Moreover, after the examination of the report, the Ministry for Foreign Affairs recommended to the Ministry of the Interior that the Passport Act be amended. Counsel further notes that the circular mentioned in the State party's submission (paragraph 6.3) is dated 22 June 1992, i.e. **after** Mr. Peltonen's case was decided by the administrative and judicial authorities and **after** he had submitted the case to the Committee.

7.2 Counsel submits that article 12 of the Covenant does not make any distinction between travel for professional reasons and travel for holiday purposes; he argues that the right to freedom of movement does not allow States parties to draw such artificial distinctions.

7.3 The author does not challenge the State party's position that a State must have some means at its disposal to secure that conscripts actually perform their military service; he submits that what is at issue in the case is not whether the State party is allowed to take "some measures", but whether the measures taken in the case are acceptable in light of the provisions of the Covenant. If the State party wishes to take "some measures" to secure the performance of military service, it must take legislative action, e.g. by amending the Criminal Code. It is submitted that if the State does not take such measures, it cannot use the Passport Act as a legal basis for a **de facto** punishment lasting for more than ten years.

Examination of the merits:

8.1 The Human Rights Committee has considered the present communication in light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 As to the question of whether the State party's refusal to issue a passport to Mr. Peltonen pursuant to Section 9, subsection 1(6), of the Finnish Passport Act, violates his right, under article 12, paragraph 2, of the Covenant, to leave any country, the Committee observes that a passport is a means of enabling an individual "to leave any country, including his own" as required by article 12, paragraph 2. The Committee further observes that, pursuant to paragraph 3 of article 12, the right to leave any country may be subject to such restrictions as are "provided by law, are necessary to protect national security, public order (**ordre public**), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant". There are, therefore, circumstances in which a State, if its law so provides, may refuse a passport to one of its citizens.

8.3 The **travaux préparatoires** to article 12, paragraph 3, of the Covenant reveal that it was agreed upon that the right to leave the country could not be claimed, **inter alia**, in order to avoid such obligations as national service.³ Thus, States parties to the Covenant, whose laws institute a system of mandatory national service, may impose reasonable restrictions on the rights of individuals, who have not yet performed such service, to leave the country until service is completed, provided that all the conditions laid down in article 12, paragraph 3, are complied with.

8.4 In the present case, the Committee notes that the refusal by the Finnish authorities to issue a passport to the author, indirectly affects the author's right under article 12, paragraph 2, to leave any country, since he cannot leave his country of residence, Sweden, except to enter countries that do not require a valid passport. The Committee further notes that the Finnish authorities, when denying the author a passport, acted in accordance with Section 9, subsection 1(6), of the Passport Act, and that the restrictions on the author's right were thus provided by law. The Committee observes that restrictions of the freedom of movement of individuals who have not yet performed their military service are in principle to be considered necessary for the protection of national security and public order. The Committee notes that the author has stated that he needs his passport for holiday-travelling and that he has not claimed that the authorities' decision not to provide him with a passport was discriminatory or that it infringed any of his other rights under the Covenant. In the

circumstances of the present case, therefore, the Committee finds that the restrictions placed upon the author's right to leave any country are in accordance with article 12, paragraph 3, of the Covenant.

9. 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 provisions 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.

*/ The text of an individual opinion, signed by one Committee member, is appended to the present document.

1/ Section 10 is entitled: "Considering the restrictions and obstacles for the granting of a passport".]

2/ CCPR/C/SR.1016, see in particular paragraphs 19, 35 to 40.]

3/ See E/CN.4/SR.106, page 4 (USA); E/CN.4/SR.150, paragraph 41 (DK); E/CN.4/SR.151, paragraph 4 (U); E/CN.4/SR.315, page 12 (USA).]

Appendix

Individual opinion by Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure concerning communication No. 492/1992 (Lauri Peltonen v. Finland)

Under article 12, paragraph 2, of the Covenant, everyone shall be free to leave any country, including his own. This right shall not, according to paragraph 3 of this article, be subject to any restrictions, except those which are provided by law, are necessary to protect national security, public order (**ordre public**), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant. The **travaux préparatoires** to article 12 reveal that it was agreed that the right to leave one's country could not be claimed in order to escape legal proceedings or to avoid such obligations as national service, the payment of fines, taxes or maintenance allowances. A proposed text that "anyone who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his

own" was rejected earlier. The limitations agreed upon are covered by the text of paragraph 3. According to Section 9 of the Finnish Passport Act (Law No. 642/86), which entered into force on 1 October 1987, a passport may be denied to a person, **inter alia**, if he is liable to perform military service and is at least 17 but not yet 30 years of age, unless he shows that his liability to perform military service does not constitute an obstacle to the issue of a passport.

The Nordic States have agreed that their citizens do not require a passport to travel within the territory of the Nordic States. The author therefore could leave Finland in 1986 and take residence in Sweden without a passport. He has been residing in Sweden ever since and disregarded all call-ups for military service of the Finnish authorities. It is therefore unsurprising that the Supreme Administrative Court of Finland rejected his appeal against the Finnish Embassy's decision to refuse to provide him with a passport. As the Court observed, he was a conscript and had failed to prove that military service was no obstacle for him to obtain a passport.

What is at issue now is not the author's right to leave Finland. Thanks to the agreement among the Nordic States, he has been able to do so without a passport. What is at issue is his right to leave "any country", which, because of the aforementioned agreement, means "any of the other Nordic countries", as he can move freely from one of them to the other. Without a passport he cannot leave any Nordic State to travel to non-Nordic countries. To me, it is difficult to see that article 12, paragraph 3, entitles the State party to deny the author a passport on any of the grounds mentioned in this paragraph. None of them justifies the State party's prohibition on Mr. Peltonen to leave any country other than Finland. Article 12, paragraph 2, of the Covenant, in my view, obliges the State party to respect the author's freedom of leaving any country other than Finland by issuing a passport to him.

It would not be justified to interpret paragraph 3 of article 12 as entitling a State party to deny a passport to a person if a passport would enable him to leave a country other than Finland because he avoids military service in Finland. Such an interpretation would allow the State party to use and abuse the refusal of a passport as a means of exerting pressure on a conscript, so as induce him to return to Finland and perform his military service and be disciplined for his non-appearance in the military call-ups. It is not necessary either for the protection of national security, public order or public morals to use the refusal of a passport for restrictions on a person's freedom to leave any country for such purposes. This would be entirely incompatible with the object and purpose of paragraph 3; I therefore am of the opinion that the State party has violated article 12, paragraph 2, by refusing a passport to the author, which is a prerequisite for the exercise of his freedom to leave any country.

Bertil Wennergren

[Done 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.]