



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-first session
5 – 30 July 2004

DECISION

Communication 870/1999

<u>Submitted by:</u>	H.S. (not represented by counsel)
<u>Alleged victim:</u>	P.S.
<u>State party:</u>	Greece ¹
<u>Date of initial communication:</u>	23 March 1999 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 14 July 1999. (not issued in document form)
<u>Date of decision:</u>	27 July 2004

[ANNEX]

* Made public by decision of the Human Rights Committee.

¹ The Optional Protocol entered into force in relation to Greece on 5 August 1997.

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Eighty-first session

concerning

Communication 870/1999**

Submitted by: H.S. (not represented by counsel)
Alleged victim: P.S.
State party: Greece
Date of initial communication: 23 March 1999 (initial submission)

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

Meeting on 27 July 2004

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is H.S., a Polish woman resident in Greece, claiming that her son P.S., a Polish citizen, born in 1979, is the victim of unspecified violations of the Covenant by Greece. She is not represented.

The facts as submitted by the author

2.1 The author submits that on 28 February 1999, her son, together with several other men, were searched by police at a bus stop. They found nothing on her son, but 15 grams of Hashish on one of the other men. All were thereupon taken to the Menidhi police station in Athens.

2.2 On 1 March 1999, the men were each sentenced by the Athens Court of First Instance to 30 days imprisonment, or a fine of 110.000 Drachmas. The author submits that, although the fine was paid immediately, her son was kept in prison for another 18 days. She adds that

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

at no stage was her son provided with a lawyer or a translator, and that he did not have access to medicine to treat his epilepsy.

2.3 In a further communication dated 6 June 1999, in response to questions from the Committee's Secretariat, the author states that she approached the Ministry of the Interior, the Athens Police and the Attorney General about her son's situation, but was informed that his conviction could not be reduced. She notes that her son was subsequently deported from Greece, but that no reasons were provided for his deportation, nor was the deportation ordered by a Court. She states that, despite her requests, she was not provided with a copy of the deportation order, and that her son, who was 20 years old when he was deported, remains separated from his parents, and that he has no-one to live with in Poland.

The complaint

3.1 The author complains of violations of her son's right of access to a lawyer, right to an interpreter and medical treatment whilst in custody, and claims that he was unjustly deported from Greece. She does not invoke any articles of the Covenant.

The State party's submission

4.1 By note dated 2 February 2001, the State party submitted that her son entered Greece on 9 December 1995 on a visa allowing him to remain in the country for 3 months only, but that he did not leave the country upon expiry of the visa. At an unspecified time, he acquired a 'Certificate' for a Limited Duration Residence Permit, which entitled him to remain in Greece pending consideration of his full application for a Limited Duration Residence Permit by the competent authorities.

4.2 On 28 February 1999, the author's son was arrested together with 3 other persons on drug procurement and possession charges. On 1 March 1999, the Athens Court of First Instance convicted the four and sentenced them to 30 days imprisonment, but commuted the sentence to a fine of 1500 drachmas per day of imprisonment.

4.3 Following the author's son's conviction, the Chief of the Branch of Police Security and Order ('the Branch Chief') rejected the application for a Limited Duration Residence Permit, which until then was still under consideration, on the grounds that he constituted a danger to public order and security. An order for his expulsion was then issued, which included a prohibition on him re-entering Greece for a period of 5 years. The Branch Chief, who has power to order the detention of a foreigner pending his deportation if he is considered to be a threat to public order, determined that the author's son should be detained pending his deportation. On 18 March 1999, he was expelled to Poland.

4.4 The State party contends that the communication is inadmissible as the author's son did not exhaust available domestic remedies, and because the allegations are unsubstantiated. It submits that the author's son did not lodge any appeal, either against his detention prior to deportation or the decision to expel him, even though he was aware that such rights existed. Greek law provides that aliens who are subject to a deportation order may appeal to the Minister of Public Order, and thereafter to the Council of State, which is the supreme administrative judicial instance in Greece. Further, the Minister for Public Order may review a decision to detain an alien pending deportation. The author's son chose not to resort to any of these avenues of redress.

4.5 The State party submits that the author's son was informed of these rights, and underlines that aliens who are detained pending deportation are provided with an information bulletin in different languages, including Polish, his mother language. This describes in detail their rights during detention, including the right to retain counsel, appeal the deportation decision, and seek medical assistance. The State party notes that the author's son speaks Greek, and therefore would not have required an interpreter.

4.6 The State party further submits that the author's son did not ask for the assistance of a lawyer. Despite this, during the proceedings before the Athens Court of First Instance in relation to the drug charges, he was assisted by a lawyer. In relation to the allegations regarding the author's son's health, the State party notes that aliens who are detained pending deportation have the right to request a medical examination by a police doctor or a private physician. As the author's son did not present any symptoms of illness, and did not advise the authorities that he suffered from epilepsy or otherwise required medical or pharmaceutical care, no medical assistance was provided to him.

4.7 In relation to the impact of the author's son's deportation on his family, the State party notes that he was already 16 when he arrived in Greece, and had spent only four years in the country at the time of his deportation, during which time he had not acquired residency. His parents, who are resident in Greece, had not acquired Greek citizenship. He had no spouse or children in Greece, and there were no apparent legal or other obstacles to his adapting himself to life in Poland where he had lived until the age of 16. All of these matters were taken into account by the Greek authorities.

Comments by the author on the State party's submissions

5.1 In her undated comments on the State party's submissions, the author states that she had still not received an explanation from the Greek authorities as to why her son was deported from Greece. She states that she had brought her son to Greece from Poland in 1995 after hearing about a new form of treatment for epilepsy that was available in Greece, and that, after two years on the waiting list, the treatment had improved her son's physical state. This treatment was interrupted by her son's deportation to Poland.

5.2 The author alleges, without providing any other details, that the officers who arrested her son were 'drunk', and that her son was subjected to racism and discrimination by police officers at the Menidhi police station.

Issues and proceedings before the Committee

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

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3 The Committee has noted the State party's submissions that the author's son did not file any appeal against his detention or the deportation order. The State party has provided specific and detailed information both in relation to the availability of legal avenues of

redress through which the author's son could have challenged his detention and deportation, and to the fact that he was made aware of these rights. None of this information has been contested by the author, nor has she demonstrated how she or her son were prevented from pursuing domestic remedies. In the circumstances, the Committee cannot conclude that available domestic remedies were exhausted. Accordingly, the Committee considers that the communication is inadmissible under article 5, paragraph (2)(b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) The communication is inadmissible under article 5, paragraph 2(b) of the Optional Protocol;

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

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