HUMAN RIGHTS COMMITTEE

Kulomin v. Hungary

Communication No. 521/1992**

22 March 1996

CCPR/C/50/D/521/1992*

VIEWS

Submitted by: Vladimir Kulomin

Victim: The author

State party: Hungary

Date of communication: 6 May 1992 (initial submission)

Date of decision on admissibility: 16 March 1994

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

Meeting on 22 March 1996,

Having concluded its consideration of communication No. 521/1992 submitted to the Human Rights Committee by Mr. Vladimir Kulomin 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 and the State party,

Adopts the following:

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

1. The author of the communication is Vladimir Kulomin, a Russian citizen, born in Leningrad in 1954, currently detained in Budapest, Hungary. He claims to be a victim of violations of his human rights by Hungary. The Optional Protocol to the International

Covenant on Civil and Political Rights entered into force for Hungary on 7 December 1988.

The facts as submitted by the author:

2.1 The author lived in Budapest, Hungary, and was a neighbour of one D.T. and the latter's girlfriend, K.G. On 25 July 1988, the author accompanied D.T. and K.G. to her father's house; K.G. had said that they wanted to pick up some documents and that they needed the author's protection because her father was mentally disturbed. Upon arrival, K.G.'s father, when stepping outside and seeing the author, D.T. and K.G., tried to hit the author. When the author pushed him away, he fell; they then tied him up because K.G. and D.T. claimed that he was dangerous and capable of anything. After K.G. had told him that she had telephoned the psychiatric hospital and that they would pick up her father, the author left the scene.

2.2 On 8 August 1988, while he was in Leningrad, the author received a phone call from D.T. and K.G. He states that he only learned at that moment that K.G.'s father had died, but that they did not tell him about the circumstances of his death.

2.3 On 16 August 1988, the author returned to Budapest by train. Two days later, he was arrested at the Soviet-Hungarian border by the Hungarian police, charged with the murder of K.G.'s father, and brought to Budapest. The author complains that he was not allowed to call his lawyer, or the Soviet consul. After three days of interrogation, in the presence of an interpreter, he was given a form to sign. The police allegedly told him that this was intended for the Soviet consul; however, it was intended for an extension by 30 days of his provisional custody.

2.4 The author was detained at the police station for five months. In this context he states: "The last two months they did not lead me to interrogation and I even thought everybody had forgotten about me. It was terrible. I did not understand one word of Hungarian. In my baggage I had a Hungarian grammar book and dictionaries but the police did not allow me to study Hungarian. Staying in the police station, I asked for my lawyer and Russian consul every day in written form, but without result (no answer). Moreover, I could not write to anywhere for five months." In January 1989, the author was transferred to a prison where he was given the opportunity to study Hungarian.

2.5 As to his legal representation and the preparation of his defence, the author states that, prior to the trial, he wrote several letters to the Public Prosecutor's office. In August 1989, he was allowed during six days to examine the "protocol" (depositions) with the assistance of an interpreter so as to be able to prepare his defence. The author complains that his letters were not included and that he had too little time to examine the file, which consisted of 600 pages. He submits that, after examining the documents, he met with his lawyer for the first time. He complains that the lawyer was old and incapable. In this context he submits that, although he met with the lawyer five times prior to the trial, they had to review the file every time from the start and that after the twelfth day of the trial, his lawyer asked him who K.G. actually was.

2.6 On 26 September 1989, the trial began in the Municipal Court of Budapest. The author was tried together with K.G. The hearing took place during 14 days, spread over a period of four months. The author reiterates that there was no evidence against him. Under cross-examination, K.G. changed her testimony on six different occasions; according to the author, her allegations against him thus became baseless. Furthermore, none of the prosecution witnesses incriminated him.

2.7 The author further submits that during the trial the judge conceded that D.T. together with K.G. had planned the murder. He complains that, despite this finding, no effort was made to find D.T., nor was the latter sentenced in absentia. Furthermore, the author alleges that when he complained to the judge she replied that he should complain about such matters in Siberia and that she wanted him to be the last Russian in Hungary. He submits that the judge's discriminatory remarks were deleted from the trial transcript, but that they are recorded on tape. On 8 February 1990, the author was found guilty of homicide committed with cruelty and sentenced to 10 years' imprisonment, the minimum sentence established by law for this offence, with subsequent expulsion from Hungary.

2.8 The author subsequently appealed to the Supreme Court of Hungary, on the following grounds:

(a) The trial judge ruled that the author had admitted his guilt, whereas his statements to the police and depositions made at the preliminary hearing proved otherwise;

(b) The judge ruled that the blood found on the victim belonged to the author, whereas, according to the forensic expert, this evidence was highly questionable;

(c) The pathologist testified that the deceased died sometime between 25 and 28 July 1988. The judge ruled that the deceased died on 25 July 1988 (the day the author had accompanied D.T. and K.G. to the deceased's house), thereby implicating the author in the crime.

2.9 On 30 October 1990, the Supreme Court, after having heard the appeal of both the prosecutor and the defendants, sentenced the author to another four years of imprisonment, as it qualified the act for which the author had been convicted by the court of first instance as an offence committed with the objective of financial gain. The author points out that he had not been charged with robbery or theft and that there was no such evidence against him. According to the author, the Supreme Court's decision is further proof of discrimination against him. He further alleges that the Supreme Court did not take his lawyer's submissions into account and simply ignored the many contradictions in the trial transcript.

2.10 The author subsequently applied to the President of the Supreme Court for review of his case. On 12 December 1991, the Supreme Court dismissed the author's application. With this, it is submitted, all domestic remedies have been exhausted.

The complaint:

3. Although the author does not invoke any of the provisions of the International Covenant

on Civil and Political Rights, it appears from his submissions that he claims to be a victim of violations by Hungary of articles 9, 10, 14 and 26 of the Covenant.

State party's observations on admissibility and author's comments:

4.1 In its submission of 25 March 1993, the State party points out that the Optional Protocol entered into force for Hungary on 7 December 1988, and argues that, in view of the provisions of article 28 of the Vienna Convention on the Law of Treaties, the Committee has no competence to consider individual complaints that refer to events that occurred prior to the date of entry into force of the Optional Protocol for Hungary. It submits that, accordingly, the Committee is precluded ratione temporis from considering the author's complaints in so far as they relate to his arrest and the first few months of his detention.

4.2 The State party further argues that the Committee is not competent to consider alleged violations of rights that are not set forth in the Covenant. It submits that the Covenant contains no provision preventing a tribunal of first instance from freely considering the facts that were established during the process of evaluation of the evidence drawing reasonable conclusions with respect to the guilt of the accused and qualifying the act from the established facts. It is submitted that, accordingly, the Committee cannot consider the author's complaint ratione materiae.

4.3 The State party further submits that, similarly, the Committee has no competence to consider the author's complaint that D.T., a Bulgarian citizen, was not prosecuted or sentenced. It explains that D.T. disappeared during the proceedings and that the court of first instance issued a warrant of arrest against him. The State party further explains that it did not request the Bulgarian authorities to extradite D.T. since, under the Hungarian-Bulgarian Extradition Treaty, extradition is not possible when the person to be extradited is a citizen of the other Signatory Party.

4.4 The State party concedes that the author has exhausted available domestic remedies in his case. It submits however that the author did not exhaust domestic remedies in respect of his complaint that the prison authorities obstructed his contacts with the outside. It contends that, in accordance with paragraph 36, (f), section (1), of Decree 11 of 1979 on the execution of penal measures, the author could have filed a complaint to the competent authorities if he believed that he had been obstructed in maintaining contacts with other persons. Furthermore, pursuant to paragraph 22 of Decree 8/1979 (VI.30) of the Ministry of Justice, any convict may submit a complaint requesting a remedy against personal injury. The competent authorities of the penitentiary institution are obliged to examine the complaint and the request. If the convict is not satisfied with the measures undertaken, he may submit a complaint to the officer in charge of the institution, who must take a decision within 15 days. If the convict is not satisfied with the officer's decision either, the headquarters of the Hungarian penitentiary administration will examine the complaint. The State party concludes that the author has not availed himself of his right to submit a complaint, and therefore has not exhausted domestic remedies in this respect.

5. In his reply dated 5 May 1993, the author challenges the State party's contention that part

of the communication is inadmissible ratione temporis.

The Committee's admissibility decision:

6.1 At its 50th session, the Committee considered the admissibility of the communication.

6.2 The Committee observed that the Optional Protocol entered into force for Hungary on 7 December 1988. It recalled that the Optional Protocol could not be applied retroactively and that the Committee was precluded ratione temporis from examining alleged violations of the Covenant in so far as the alleged events occurred prior to the date of entry into force of the Optional Protocol for the State party concerned. It noted that, in the instant case, part of the author's pre-trial detention, as well as his trial, occurred after 7 December 1988, and that it was not precluded from considering the author's claims under articles 9 and 10 in so far as they related to that period of time.

6.3 With respect to the author's complaint that one of the suspects in the case had not been prosecuted and convicted, the Committee observed that the Covenant did not provide for the right to see another person criminally prosecuted. Accordingly, it found that this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.4 The Committee observed that the author claimed that he did not have a fair trial, within the meaning of article 14 of the Covenant. In this context, the Committee noted that the author claimed that he was discriminated against because of his nationality. The Committee was of the opinion that these issues should be examined on the merits.

7. Accordingly, on 16 March 1994, the Human Rights Committee decided that the communication was admissible inasmuch as it appeared to raise issues under articles 9, 10, 14 and 26 of the Covenant.

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

8.1 By submission of 27 December 1994, the State party notes that most of the author's claims concerning his detention in police custody relate to the period before entry into force of the Optional Protocol for Hungary and were therefore declared inadmissible by the Committee. However, the State party, in appreciation of the Committee's work, also submits its explanations with regard to the merits of these claims.

8.2 As regards the author's claims under article 9, paragraphs 2 and 3, the State party submits that the author was immediately informed of the reasons of his arrest, and that he was informed of the charges against him on 20 August 1988. He was interrogated on 29 August, 5, 14 and 20 September 1988. On 22 August 1988, he was ordered to be kept in custody, in accordance with Hungarian law. On 18 November 1988 he was informed of the extension of his remand in custody. On 19 December 1988 he was confronted with his co-accused, and on 5 and 6 January 1989 the presentation of the documents took place. As regards the author's complaint that he "was forgotten" for two months, the State party points out that the

investigating authority after 20 September 1988 carried out several other investigations, ordered the preparation of several expert opinions, and questioned some 60 witnesses. The State party concludes that its investigating authority proceeded actively and energetically towards solving the case and that no violation of article 9 has taken place. In this context, the State party notes that the author, being a foreigner, was kept in custody since, had he returned to his home country, he could not have been extradited under the Hungarian-Soviet agreement.

8.3 As regards the issues under article 10, paragraphs 1 and 2(a), the State party, after having carefully examined all the documents, states that according to the "service note", which lists the contents of the author's luggage, his luggage did not contain books of any kind. Nor does a request for a grammar book or dictionary appear on any so-called request sheets, which contain the requests of those in custody. In this connection, the State party notes that the author did file a total of 17 requests sheets, and that he requested "permission for reading" only on 9 November 1988, after which it was granted. As regards the author's claim that he was not allowed to write letters for the first five months of his custody, the State party states that there is no record kept of the detainees' correspondence, so that it is difficult to verify this allegation. The State party notes, however, that no request or complaint related to correspondence appears on the requests sheets or in the criminal records, and concludes that it is improbable that the author was denied the right to write letters. Finally, the State party submits that the author was detained throughout as a prisoner on remand, separated from convicted prisoners, while awaiting trial. The State party concludes that no violation of article 10 occurred in the author's case.

8.4 As regards the author's claim that he did not have enough time for the preparation of his defence, the State party notes that a lawyer was appointed for the author on 20 August 1988 and that the requests sheets show that the author asked for a meeting with the lawyer on 30 September and on 13 October 1988, whereupon the lawyer was informed. Also, the author's requests of 23 August and 30 September 1988 to meet the Soviet consul were forwarded to the consulate.

8.5 As regards the author's complaint that he did not have enough time to study the documents in preparation for his defence, the State party submits that the six days that were available to the author cannot be considered too short, and that he could have applied for an extension of the period either personally or through his lawyer. As to the quality of the lawyer, the State party notes that there is no indication that the author ever complained that his lawyer was unsuitable or that he was insufficiently prepared.

8.6 As regards the author's claim that he should not have been convicted on the basis of the evidence against him, the State party submits that this is a matter for the court of first instance to decide.

8.7 With regard to the author's claims that he is a victim of discrimination, the State party notes that the author states that the discriminatory remarks made by the judge were recorded on the audio tape of the hearing, but deleted from the record. The State party refers to the rules governing the record of serious criminal cases, which stipulate that the judge shall

dictate the record aloud on an audio tape during the hearing and that the defendant or his lawyer have a right at any time to make comments on what the judge has dictated, and to move that something other than that which the judge has dictated be placed on the record. Even if the objection by the defence has been denied by the judge, the judge's ruling is placed on record. The record dictated on the audio tape is then transcribed by the court clerks and at that point again objections can be made by the defence. It is clear from the record that neither the author nor his lawyer requested the inclusion of the judge's remarks on the record, nor made any proposal or comment concerning either the written or the verbal record. The State party concludes therefore that there is no indication that the judge indeed made the remarks attributed to her. Furthermore, the State party points out that at any stage of the proceedings, an objection can be made about the perceived prejudice of a judge with the president of the Court. No such objection has been made by either the author or his representative. In the light of the above, the State party denies that the author has been the victim of discrimination by the judge.

8.8 From the English translation of the judgment of the Court of First Instance, submitted by the State party, it appears that the Court found that the victim had died as a consequence of having been tied up too tightly, causing paralysis of the chest muscles, of being sedated with ethyl chloride and of suffocation because of plastic bags placed over his head. The Court also found that the author had been present when the victim was sedated with the ethyl chloride and that he had actively participated in the tying up of the victim, and considered that he could have foreseen that the victim would die as a consequence of his actions.

9.1 On 15 February 1995, the author submitted his comments on the State party's submission. He submits that the main point of his complaint is that, as a consequence of the violations of his rights, he has been convicted of murder whereas he is innocent.

9.2 The author denies ever having pleaded guilty to the murder. He further states that it is clear from the State party's submission that he was interrogated only five times during his five months' detention in the police station.

9.3 The author further maintains that his Hungarian grammar and dictionary were in the luggage he brought with him on the train from the Soviet Union and were kept in the deposit in the police station during his detention there. As regards the requests sheets, the author states that in fact he could not ask for anything without the cooperation of the investigating detective. He further states that none of the detainees were allowed to have pen and paper in the cell. He claims that he verbally requested permission to write letters, through the interpreter. The author further states that he knows that on the first page of his personal file in the prison, it is written that he was not allowed to write a letter to anyone until 1 June 1989, by order of the public prosecutor.

9.4 The author reiterates that no lawyer was present during the first and second interrogations at the police station, and that he did not meet his lawyer during the investigations. He further states that the six days to read through the documents was too short, since he needed the assistance of an interpreter, which costs more time. He also submits that he had not enough time to go through the documents with his lawyer.

9.5 As to the trial, the author reiterates his allegation that the judge told him he wished him to be the last Russian in Hungary. He further reiterates that there was no proof against him.

9.6 Finally, the author states that the judge of the Supreme Court did not give any reasoning for sentencing him to an additional four years of imprisonment, and that there are many contradictions in the judgment.

9.7 The author concludes that the State party is trying to mislead the Committee and has not examined the documents carefully.

Further submission by State party:

10.1 By note verbale of 4 December 1995, the State party was requested to clarify the legal provisions in force regarding arrest and detention at the time of Mr. Kulomin's arrest and their application to the author. By submission of 28 February 1996, the State party explains that in 1988 arrest and detention were regulated by section 91 of the Code of Criminal Procedure, under which persons suspected of having committed a serious offence could be held in detention by the police for no longer than 72 hours. After 72 hours, detention could only be extended by decision either of the public prosecutor or the court. The State party explains that, before committing a suspect to trial, the public prosecutor had the authority to renew his detention, and after committal to trial, this authority was conferred on the trial court. Pre-trial detention ordered by a prosecutor could not exceed one month, but was subject to extensions by order of superior prosecutors. If after one year of pre-trial detention, a person was not yet committed to trial, further detention could only be ordered by the court.

10.2 As to the application of the provisions to Mr. Kulomin, the State party notes that the author was arrested on 20 August 1988, and that the Office of the Public Prosecutor in Budapest ordered his detention on 2 August 1988, that is within the 72 hours prescribed by law. This detention was extended by various public prosecutors, by decisions of 14 September 1988, 11 November 1988, 17 January 1989, 8 February 1989, 17 April 1989 and 17 May 1989. After the author's committal for trial in May 1989, the court extended the detention on 29 May 1989 until the final court judgment. The State party concludes that the procedure followed was in compliance with Hungarian law, as required by article 9, paragraph 1, of the Covenant ("no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law").

10.3 The State party refers to the Committee's admissibility decision in which the Committee decided that the Committee was precluded from considering alleged violations occurring prior to the date of entry into force of the Optional Protocol for the State party. The State party recalls that the Optional Protocol entered into force for Hungary on 7 December 1988, that is after the author's arrest on 20 August 1988. The State party argues that the obligation under article 9, paragraph 3, to bring the author promptly before a judge or other officer authorized by law to exercise judicial power had to be fulfilled as of that date. With reference to the Committee's jurisprudence and to its General Comment, the State party argues that it is clear that the delay must not exceed a few days. From this the State party concludes that the applicability of article 9, paragraph 3, is limited in time and, in the

author's case, ended somewhere in August 1988. According to the State party, compliance or non-compliance with the obligation under article 9, paragraph 3, does not have a continuing effect and the State party concludes that the question whether Mr. Kulomin's detention was in compliance with the requirement of article 9, paragraph 3, is inadmissible ratione temporis.

10.4 As regards the compatibility of the procedure with the requirements of article 9, paragraph 3, the State party interprets the term "other officers authorized by law" as meaning officers with the same independence towards the executive as the Courts. In this connection, the State party notes that the law in force in Hungary in 1988 provided that the Chief Public Prosecutor was elected by and responsible to Parliament. All other public prosecutors were subordinate to the Chief Public Prosecutor. The State party concludes that the prosecutor's organization at the time had no link whatsoever with the executive and was independent from it. The State party therefore argues that the prosecutors who decided on the continued detention of Mr. Kulomin can be regarded as other officers authorized by law to exercise judicial power within the meaning of article 9, paragraph 3, and that no violation of the Covenant has occurred.

10.5 Finally, the State party informs the Committee that the provisions referred to above were amended by Act XXVI of 1989, which entered into force on 1 January 1990. Under the amended law, persons arrested on criminal charges shall be brought before the Court within 72 hours and the court decides on pre-trial detention, after having heard the prosecutor and the defence. The Court's orders are subject to appeal.

Examination of the merits:

11.1 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.

11.2 The Committee has taken note of the State party's argument that the question whether the author was, after arrest, promptly brought before a judge or other officer authorized by law to exercise judicial power, is inadmissible ratione temporis. The Committee observes, however, that article 9(3), first sentence, is intended to bring the detention of a person charged with a criminal offense under judicial control. A failure to do so at the beginning of someone's detention, would thus lead to a continuing violation of article 9(3), until cured. The author's pre-trial detention continued until he was brought before the Court in May 1989. The Committee is therefore not precluded ratione temporis to examine the question whether his detention was in accordance with article 9(3).

11.3 The Committee notes that, after his arrest on 20 August 1988, the author's pre-trial detention was ordered and subsequently renewed on several occasions by the public prosecutor, until the author was brought before a judge on 29 May 1989. The Committee considers that it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the instant case, the Committee is not satisfied that the public

prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9(3).

11.4 The author has further claimed that he was not allowed to study Hungarian while in police custody and that he was not allowed to correspond with his family and friends. The State party has denied the allegations, stating that the author requested permission for reading on 9 November 1988, which request was granted, and that there is no trace of a request concerning correspondence, but that no records of the inmates' correspondence are kept. In the circumstances, the Committee finds that the facts before it do not sustain a finding that the author was a victim of a violation of article 10 of the Covenant.

11.5 As regards the author's claim under article 14 of the Covenant, the Committee notes that a lawyer was appointed for the author on 20 August 1988, that the author requested to meet his lawyer, that the State party submits that it did forward the author's requests to the lawyer, and that the author states that he did not meet his lawyer. The Committee further notes that it is unclear when the author met his lawyer for the first time, but that it appears from the file that the author had several meetings with his lawyer before the beginning of the trial against him. Further, the Committee notes that the author was given opportunity to study the case file in preparation for his defence with the assistance of an interpreter and that there is no indication that he ever complained to the Hungarian authorities about this being insufficient. As to his representation at the trial, the author has not made any specific complaint about any particular failure of his lawyer in the conduct of his defence, nor does it appear from the file that the lawyer did not represent the author properly. In the circumstances, the Committee finds that the facts before it do not show that the author was denied adequate time and facilities to prepare his defence, nor does the information before the Committee permit to conclude that the author's lawyer did not provide effective representation in the interests of justice.

11.6 The author further has claimed that the judge at the trial of first instance was biased against him and, more specifically, that she discriminated against him because of his nationality. The Committee notes that the judgment of the Court of First Instance shows no trace of bias on the part of the judge and, moreover, that the author or his representative made no objection during the trial to the judge's attitude. In the circumstances, the Committee finds that there is no substantiation for the author's claim that he was discriminated against on the basis of his nationality.

11.7 As regards the appeal, the author has claimed that the Supreme Court increased his sentence for having acted with the objective of financial gain, whereas he had never been charged with robbery or theft. The Committee notes, however, that it appears from the court documents that the author was in fact charged with murder, committed with cruelty and out of financial gain. Although the Court of First Instance found him guilty only of murder committed with cruelty, the Supreme Court quashed the judgment and found the author guilty of murder committed with cruelty and out of financial gain. The Committee further notes that the conviction and sentence imposed by the Supreme Court upon the author, was reviewed by the President of the Supreme Court. The Committee finds therefore that the

facts before it do not show a violation of the Covenant with regard to the author's appeal.

11.8 The Committee takes this opportunity to reiterate that it is not for the Committee, but for the courts of the States parties concerned, to evaluate facts and evidence in a criminal case, and that the Committee cannot assess a person's guilt or innocence. This is so, unless it is manifest from the information before the Committee that the Courts' decisions were arbitrary or amounted to a denial of justice. In the present case, nothing in the written submissions before the Committee permits such a conclusion.

12. 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 disclose a violation of article 9, paragraph 3, of the International Covenant on Civil and Political Rights.

13. Under article 2, paragraph 3(a), of the Covenant, Mr. Kulomin is entitled to an appropriate remedy. The State party is under an obligation to ensure that similar violations do not occur in the future.

14. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

[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.

*/ Pursuant to rule 85 of the rules of procedure, Committee member Tamás Bán did not take part in the adoption of the Views.

**/ The text of an individual opinion by Committee member Nisuke Ando is appended to the present document.

Appendix

Individual opinion by Committee member Nisuke Ando

I do not consider that the Committee's finding of a violation of article 9, paragraph 3, in the instant case (see paragraph 12) is sufficiently persuasive. The reason behind that finding is reflected in paragraph 11.3: in the circumstances of the instant case, the Committee is not satisfied that the Public Prosecutor could be regarded as an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3.

Article 9, paragraph 3, of the International Covenant on Civil and Political Rights stipulates: anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. The State party interprets the term "other officer authorized by law" as meaning an officer with the same independence towards the executive as a court. It also notes that the law in force in Hungary in 1988 provided that the Chief Public Prosecutor was elected by and responsible to Parliament and that all other public prosecutors were subordinate to the Public Prosecutor (paragraph 10.4).

As a matter of fact, in the domestic law of many States parties, public prosecutors are granted certain judicial power, including the power to investigate and prosecute suspects in criminal cases. In the case of Hungarian law in 1988, this power included the power to extend the detention of suspects up to one year before they were committed to trial (paragraph 10.1).

In my opinion, the pre-trial detention of suspects for the period of one year seems to be too long. In addition, while I do understand that under the Hungarian law of 1988 the Public Prosecutor who should decide on the extension of detention was to be different from the one who requested the extension, excessive detention was likely to occur in that type of system.

Nevertheless, I am unable to accept the categorical statement of the Committee, as quoted above, to the effect that in the Hungarian type of system the Public Prosecutor necessarily lacks the institutional objectivity and impartiality necessary to be considered as an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3. Even in that type of system, a prosecutor's decision on the extension of the detention of a particular suspect in a given case may well be impartial and objectively justifiable. To deny such impartiality and objectivity, the Committee needs to clarify the detailed circumstances of the instant case on which it bases its finding, but such clarification is totally lacking in the Committee's Views.

N. Ando

[signed]

[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.]