

## HUMAN RIGHTS COMMITTEE

### Yama and Khalid v. Slovakia

Communication No. 876/1999\*

31 October 2002

CCPR/C/76/D/876/1999

### ADMISSIBILITY

*Submitted by: Mr. L. Yama and Mr. N. Khalid (represented by counsel Mr. Bohumir Bláha)*

*Alleged victim: The author*

*State party: Slovakia*

*Date of communication: 2 August 1999 (initial submission)*

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

Meeting on 31 October 2002,

Adopts the following:

#### **Decision on admissibility**

1. The authors of the communication are Latiphy Yama and Neda Khalid, both nationals of Afghanistan, at the time of submission residing at the Refugee Humanitarian Centre in the Slovak Republic. They claim to be victims of violations by the Slovak Republic 1/ of articles 2, 14, and 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

#### **The facts as submitted by the authors**

2.1 On 10 March 1997, both Latiphy Yama and Neda Khalid arrived in the Slovak Republic and immediately applied for asylum at the migration office of the Ministry of the Interior. Mr. Yama explained in his application that he had fled Afghanistan after the occupation of Kabul by the Taliban rebel group, as he was a member of the Peoples Democratic Party of Afghanistan, which had had

confrontations with the Taliban, and he was in fear of his life. Mr. Khalid explained that he had fled the occupation of Kabul, as his father was a General in the army during the regime of Dr. Najibullah and his eldest brother who was one of the high-ranking officers in the same army was killed on the streets of Kabul during the occupation.

2.2 Mr. Khalid and Mr. Yama's applications were rejected by decisions of the migration office received on 1 December 1997 and 28 November 1998, respectively. The applications were rejected as the migration office found that neither of the authors met the criteria set out in section 7 of the National Council Act No. 283/1995 Coll. on Refugees, that they had a well-founded fear of persecution on the grounds of race, nationality or religious or political opinions or belonging to a specific social group, as a result of which they could not or did not want to return home.

2.3 The authors appealed these decisions to the Minister of the Interior who is advised by the Special Commission of the Ministry of the Interior. Both authors were represented by counsel. The Special Commission of the Ministry of the Interior makes its recommendation on the basis of written documentation only and does not provide for oral hearings. The authors' appeals were rejected.

2.4 The authors then appealed their cases to the Supreme Court on the grounds that the authorities had incorrectly evaluated the facts and evidence of their cases. The authors submitted material evidence of the situation in Afghanistan in support of their arguments. Their applications were considered without oral representations from the authors and both appeals were dismissed by a decision of 27 October 1998.

2.5 Following their initial complaint, the authors informed the Committee that, pursuant to an application by the Attorney-General, the Constitutional Court reviewed the provisions of the Civil Code, which allowed the Supreme Court to consider appeals of decisions of administrative bodies without providing for an oral hearing for the alleged victim. In a decision, dated 22 June 1999, the Court found this law unconstitutional. The law was subsequently amended to allow for oral hearings in such cases.

### **The complaint**

3.1 In their initial submission, the authors claim a violation of article 14 as they did not have a public hearing because they were not given an opportunity to make oral representations on their appeal to the Minister of the Interior or to the Supreme Court.

3.2 The authors also claim that they were not provided with interpreters, either for their appeals to the Minister of the Interior, or to the Supreme Court. They contend that the equal rights of parties to a case before a court of law, as well as their right to equality before the law, guaranteed in articles 2 and 26 of the Covenant, have therefore been violated. In addition, the authors claim that although under Slovak law they have the right to have their court decisions declared in public and the judgement interpreted to the victim in his/her language, the authors were both denied this right.

### **Observations by the State party on admissibility**

4.1 By Note Verbale, of 16 November 1999, the State party made its submission on the admissibility of the communication. The State party contends that the authors have not exhausted domestic remedies and requests the Committee to declare the case inadmissible. Under section 243 (e) and (f) of the Code of Civil Procedure, which came into force on 1 July 1998, the authors had the option of making extraordinary appeals to the "Prosecutor General", if they believed that a valid ruling of a court violated the law. Under this procedure, the State party explains that if the Prosecutor General finds that the law has been violated he (the Prosecutor General) may lodge an extraordinary appeal with the Supreme Court. A different panel of the Supreme Court, to the one that determined the cases at the third instance, would examine such an extraordinary appeal.

4.2 The State party also states that, on 13 November 1998, both authors made a *second application for refugee status* but were both dismissed in a decision, dated 10 February 1999, as they failed to meet the criteria set out in section 7 of the National Council Act No. 283/1995 Coll. on Refugees. The authors' subsequent appeals to the Minister of the Interior were similarly rejected and this issue is currently before the Supreme Court for review; for this reason, the State party contests that the authors have not yet exhausted domestic remedies.

### **Comments by the authors**

5.1 On the question of non-exhaustion of domestic remedies, the authors contest the State party's argument that an appeal to the "Prosecutor General" would be an ineffective remedy. The authors state that as the initiation of such proceedings depends exclusively on the Prosecutor and not on the authors alone, this remedy is neither available nor accessible to them.<sup>2/</sup>

5.2 On the State party's claim that domestic remedies have not been exhausted as they are still employing procedures with respect to their *second application for refugee status*, the authors argue that as these appeals relate to a different application, which is not the subject of this communication, the exhaustion of domestic remedies in this regard is not relevant.

5.3 The authors reiterate that the law relating to the absence of oral hearings during the Supreme Court appeal has been amended, but argue that article 14, paragraph 3, of the Covenant is violated as parties to such procedures are informed prior to the hearing that their presence in court is not compulsory, and in the authors' opinion this is a means to prevent parties from exercising their right to an oral hearing.

### **Additional submission by the State party and the authors' comments thereon**

6.1 In a Note Verbale, dated 7 March 2001, the State party submitted additional information in relation to this communication. The State party confirms that the authors' *first asylum applications* were heard by the Supreme Court on the basis of written information only, as the Constitutional Court's decision which deemed the law against oral hearings unconstitutional, was not decided until 22 June 1999, and the authors' cases were before the Supreme Court on 27 October 1998. However, it does submit that the decision was handed down in public and that the parties to the proceedings had been duly notified of the day of announcement.

6.2 The State party confirms that the authors' appeals to the Supreme Court relating to their *second applications for asylum*, which had not been decided at the date of its first submission, were rejected on 16 November 1999.

6.3 The State party submits that with respect to their *second asylum applications*, interpreters were provided for both authors during the Supreme Court Appeal. However, Mr. Yama, did not avail of this facility as he was not present during the proceedings, despite having been notified,<sup>3/</sup> and his lawyer did not insist on the proceedings being held in the presence of his client. With respect to the case of Mr. Khalid, the State party submits that he was present, was given the opportunity to be heard by the Supreme Court and did avail himself of the use of his interpreter.<sup>4/</sup>

6.4 The State party also submits that even though the authors were not granted refugee status they were both granted permanent residence permits in 1999 (Mr. Yama on 7 September 1999 and Mr. Khalid on 5 November 1999) and therefore their fear of returning to Afghanistan is no longer realistic.

7. In response to the State party's submission, the authors reiterate their claims and point to the fact that only 10 asylum-seekers out of 1,556 applications were granted refugee status by the Slovak Republic in the year 2000.

### **Issues and proceedings before the Committee**

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

8.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. With respect to article 5, paragraph 2 (b) of the Optional Protocol, the Committee considers that the authors have exhausted available and effective domestic remedies.

8.3 As to the author's claims that their rights under articles 14 and 26 were violated as they were not given an opportunity to make oral statements or to avail of interpretation facilities while their asylum applications were considered on appeal, the Committee notes the information provided by the State party that these rights were afforded to the authors during the appeal to the Supreme Court with respect to their second asylum applications. As the authors have not denied that this was the case, the Committee finds that this part of the communication is inadmissible as the authors have failed to show that they have a claim within the meaning of article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides that:

- (a) The communication is inadmissible under article 2 of the Optional Protocol;
- (b) This decision be communicated to the authors and to the State party.

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[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.]

\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

### **Notes**

1/ The Optional Protocol entered into force for the Czech and Slovak Federal Republic on 12 March 1991. The Czech and Slovak Federal Republic ceased to exist on 31 December 1992. On 1 January 1993, the new Slovak Republic notified its succession to the Covenant and Optional Protocol.

2/ Counsel refers to the opinion of Daniel Svaby who gave a lecture in Bratislava on the exhaustion of domestic remedies under article 26 of the European Convention on Human Rights. In his lecture, he refers to a case of the European Court of Human Rights, *H. v. Belgium* (No. 8950/80, judgement 16.5 1984, DR No. 37, P.5), in which it was decided that domestic remedies had been exhausted, despite the fact that an application could have been made to the Attorney-General, as the initiation of such proceedings depended exclusively on the Prosecutor and not on the complainant.

3/ The State party has provided evidence of this in the form of a letter from the court administrator who referred to the minutes of the hearing.

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