

HUMAN RIGHTS COMMITTEE

E. P. S. v. Russian Federation

Communication No. 712/1996

20 March 1998

CCPR/C/62/D/712/1996 */

ADMISSIBILITY

Submitted by: E. P. S. (name deleted) (Represented by Ms. Karina A. Moskalenko)

Alleged victim: The author

State party: Russian Federation

Date of communication: 19 June 1996

Date of present decision: 20 March 1998

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is E. P. S., a Russian citizen, born on 8 May 1967, detained at Moscow Pre-trial Detention Centre No. 2. She claims that she is the victim of violations of articles 9 and 14 of the International Covenant on Civil and Political Rights. She is represented by Mrs. K. M., Director of the Centre of Assistance to International Protection.

Fact as submitted by the author

2.1 On 5 February 1993, criminal proceedings were initiated against the author under article 93-a of the Criminal Code (misappropriation of the State property). The author was not informed of this and only learned of the investigation on 14 September 1994, when she and her sister were arrested by officers of the Moscow police. She was released after 36 hours.

2.2 On 26 August 1995, the author was again arrested and detained in the pre-trial detention centre of Moscow's Butyrskaya prison. She was not formally informed of any charges against her until 31 August 1995. She was not provided the assistance of legal counsel and not given an opportunity

to respond to the charges against her. It appears from the enclosure that despite several requests counsel was only allowed to see the author on 2 November 1995.

2.3 According to the author, her arrest and detention is unlawful because she was taken into custody after the expiration of the designated period for preliminary investigation. She explains that under Russian criminal procedure, a suspect can be arrested only pursuant to an official investigation. In the author's case the investigation began on 5 February 1993 and expired on 5 April 1993, pursuant to article 133(1) of the Code of Criminal Procedure. Article 133 (4) of the code allows for a one month extension of suspended and resumed investigations. Pursuant to this article, the preliminary investigation in the author's case was extended six times, three of which illegally, as acknowledged by the Municipal Prosecutor.

2.4 On 27 August 1995, the author submitted to the investigator a complaint pursuant to article 220-1 of the Code of Criminal Procedure, contesting the legality of her arrest and detention. On 1 September 1995, the investigator submitted the complaint to the Court, in violation of the law which provides that such complaints should be submitted to the court within one day. The author's counsel also submitted a complaint under article 220-1 directly to the court, on 1 September 1995. The author states that the Court refused to review her complaint. The Court allegedly decided the matter on 13 September 1995 without having heard the parties, and dismissed the complaint on the ground that it was not competent to review the legality of the arrest and detention since the investigation in the case was completed. According to the author, this decision is wrong in law and on the facts, but cannot be appealed.

2.5 The author states that no trial date has been set as yet and that the judge has announced that her case will not be scheduled until September 1996. According to the author, this is in violation of article 223 of the Code of Criminal Procedure, which guarantees the designation of a trial date within 14 days of the introduction of the case in Court.

2.6 The author further submits that she suffers from a serious skin disease, and that the inadequate circumstances of detention aggravate her condition. In this context, she states that there is no adequate food and medication in prison and that the cells, designed for 24 persons, hold 60. In March 1996, the author was transferred to the hospital ward, where she stayed until 17 May 1996. With regard to the prison conditions, reference is made to the report of the Special Rapporteur on Torture of November 1994.

2.7 As regards the exhaustion of domestic remedies, it is stated that article 331(3) of the Code of Criminal Procedure does not allow judicial appeals of decisions under article 220(2). In the absence of judicial review, the author has complained about the unlawfulness of the judge's decision to the Moscow Municipal Prosecutor, the Moscow District Prosecutor, the General Prosecutor of the Russian Federation, the Moscow Municipal Department of Justice, the Moscow Municipal Court and the Moscow Collegium of Judicial Qualification. These bodies confirmed that the judge's decision was not subject to review. Moreover, the Ministry of Justice acknowledges that the Judge's decision was erroneous, but that it was unable to take any action in the absence of proof of criminal misconduct by the judge. The Municipal Prosecutor acknowledged gratuitous bureaucratic delays in the investigation of the author's case, but nevertheless did not allow her to be released. No further remedies are said to exist.

The complaint

3. The author complains that her continued pre-trial detention is in violation of articles 9 and 14 (3) of the Covenant, since she has been deprived of her liberty in contravention of Russian law on criminal procedure, since she was not informed promptly of the grounds of her arrest and of any charges against her, since she was not brought promptly before a judge or judicial officer, since she was not given prompt access to a legal representative and since she has been detained awaiting trial despite the fact that she has no criminal record, that the crime she is charged with is not a serious offence, and that there is no reason to believe that she would not appear for investigation or trial. Further, she has been denied the right to take proceedings before the court for a decision on the lawfulness of her arrest. She also invokes the rights contained in articles 7 and 10 of the Covenant in respect of the conditions of detention and lack of medical treatment.

State party's observations on admissibility and counsel's comments thereon

4.1 By submission of 8 August 1996, the State party confirms that criminal proceedings were instituted against the author on charges of large-scale fraudulent misappropriation of money. It explains that in view of the serious nature of the charges she was arrested and taken into custody. The investigations are completed and since 8 April 1996, criminal proceedings under article 147, section 3, of the Russian Criminal Code have been under way before the Tverskoy inter-municipal court.

4.2 In view of the above, the State party argues that the communication is inadmissible for non-exhaustion of domestic remedies, under article 5, paragraph 2(b), of the Optional Protocol.

5.1 In her comments, dated 24 April 1997, counsel argues that the State party's submission fails to address the claim that the author was unlawfully arrested and detained and has been denied access to court in order to review the lawfulness of her detention, in violation of articles 9 and 14, paragraph 3, of the Covenant. Counsel acknowledges that the trial against the author has commenced on 8 April 1996, but that it has gone on for over a year without granting due process, and that the court intends to send the case back for further investigation.

5.2 Counsel argues that in respect of her unlawful arrest and detention, the author has exhausted all available domestic remedies, and that the courts refused to examine whether her arrest was unlawful or not. She reiterates that it is not possible to appeal such Court decisions.

Issues and proceedings before the Committee

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

6.2 The Committee notes that the State party has challenged the admissibility of the communication on the ground that the trial against the author is still continuing. The Committee observes, however, that the author's claims do not pertain to the trial against her, but relate to her arrest and detention, which, according to her, were unlawful and with respect to which domestic remedies appear to have been exhausted.

6.3 The Committee further notes that the State party has not addressed the admissibility of the author's claim concerning the circumstances of her detention. In the absence of information by the State party concerning the existence of available remedies, the Committee considers that the requirement of article 5, paragraph 2(b), has been fulfilled.

6.4 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.

6.5 The Committee considers that the communication may raise issues under articles 7, 9, 10 and 14, paragraph 3, of the Covenant which should be examined on its merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author's counsel, with the request that any comments which she may wish to make should reach the Human Rights Committee, in care of the Office of the High Commissioner for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the author's counsel.

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

*/ All persons handling this document are requested to respect and observe its confidential nature.