

K. Communication No. 291/1988, Mario I. Torres v. Finland (views adopted on 2 April 1990, at the thirty-eighth session)

Submitted by: Mario Inés Torres (represented by counsel)
Alleged victim: The author
State party concerned: Finland
Date of communication: 17 February 1988
Date of decision on admissibility: 30 March 1989

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

Meeting on 2 April 1990,

Having concluded its consideration of communication No. 291/1988, submitted to the Committee by Mr. Mario Inés Torres 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 by the State party,

Adopts the following:

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

1. The author of the communication, dated 17 February 1988, is Mario I. Torres, a Spanish citizen born in 1954, who claims to be the victim of a violation by Finland of article 7, 9, paragraph 4, and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The background

2.1 A former political activist, Mr. Torres resided at Toulouse, France, from 1957 to 1979. From 1974 to 1977, he served a prison sentence for acts of sabotage committed against Spanish property in France. In 1979, he returned to Spain.

2.2 On 19 March 1984, he was arrested by the special services of the Spanish Guardia Civil, on suspicion of being a member of a terrorist group, and was detained for 10 days.

2.3 From 1985 to 1987, the author resided in France.

2.4 On 26 August 1987, the author travelled to Finland and requested asylum. On 8 October 1987, however, he was detained by the security police pursuant to the Aliens Act. Since that date and until his extradition to Spain in March 1988, the detention order was renewed on seven occasions for seven days at a time by decision of the Ministry of the Interior. On 3 December 1987, the Minister of the interior

rejected the author's request for asylum and his request for a resident's permit. On 9 December 1987, the author appealed to the Supreme Court, requesting his release from detention, and on the same day filed a second request for asylum, which was refused by the Ministry of the Interior on 27 January 1988.

2.5 On 16 December 1987, the Government of Spain requested the author's extradition through the International Criminal Police Commission (Interpol). By decision of the same day, the author's detention was prolonged pursuant to the Finnish law on the Extradition of Criminals. On 23 December 1987, the City Court of Helsinki decided to prolong detention on the same grounds. On 4 January 1988, the Ministry of Justice decreed that, since extradition had not yet been officially requested by Spain, the author could no longer be detained pursuant to the Law on the Extradition of Criminals. On 5 January 1988, an order concerning the prolongation of his detention, pursuant to the Aliens Act, was issued by the police.

2.6 On 8 January 1988, the Embassy of Spain at Helsinki formally requested the extradition of Mr. Torres as a suspect in a robbery committed at Barcelona on 2 December 1984. By a note verbale dated 3 February 1988, the request was extended to cover his alleged membership in an armed group. The City Court of Helsinki thereupon decided, on 11 January 1988, that Mr. Torres could be detained pursuant to the Law on the Extradition of Criminals. On 4 March 1988, the Supreme Administrative Court of Finland considered that there had been justifiable grounds for lawfully detaining the author pursuant to the Aliens Act. On 10 March 1988, the Minister of Justice approved the extradition request and the author was extradited to Spain on 28 March 1988. Until the author's extradition, the City Court of Helsinki reviewed the detention at two-week intervals.

2.7 The detention of Mr. Torres from 8 October to 15 December 1987 and from 5 to 10 January 1988 was based on the Aliens Act and from 16 December 1987 to 4 January 1988 and from 11 January to 28 March 1988 on the law on the Extradition of Criminals; during the entire period, Mr. Torres was detained at the Helsinki District Prison.

2.8 On 14 October 1988, the Juzgado Central de Instrucción convicted the author of armed robbery and sentenced him to seven years' imprisonment. He is currently appealing his conviction and remains on bail.

Complaint

3. The author claims that the extradition order of 10 March 1988 was contrary to article 7 of the Covenant, because the Finnish authorities had been provided with information, on the basis of which it could be feared that the author would be subjected to torture if he were to return to Spain. With regard to his complaint under article 9, paragraph 4, of the Covenant, the author argues that during his detention pursuant to the Aliens Act, he was not provided an opportunity to have recourse to a judicial body, and that the proceedings before the Supreme Administrative Court were unreasonably prolonged.

State party's comments and observations

4.1 The State party submits that article 7 of the Covenant does not cover the issue of extradition, and adds that the decision on the extradition of Mr. Torres was taken in conformity with the international obligations of Finland:

"The request for extradition by Spain concerned armed robbery as well as membership in an armed group. The extradition was considered possible only on the basis of the former but not of the latter. The Finnish extradition order specifically provided that the Spanish authorities do not prosecute Mr. Torres for crimes other than the one for which extradition was granted (armed robbery). The rights guaranteed under the Covenant have thus not been affected by the extradition. Even if an extradition were treated as potential complicity to a violation of article 7, the State party argues that Mr. Torres did not submit the necessary evidence to indicate that he would, after his extradition, be subjected to treatment in violation of article 7."

4.2 The State party further elaborates on the grounds for the author's detention: the first decision, dated 7 October 1987, was based on reasons relating to a presumed risk of crime (Aliens Act, section 23, subsections 1 and 2). The second decision, dated 3 December 1987, was justified by the preparations for his extradition to Spain and a presumed risk of crime and evasion (Aliens Act, section 23, subsections 1 and 2). The third decision, dated 5 January 1988, was predicated, *inter alia*, on a presumed risk of crime (Aliens Act, section 23, subsections 1 and 2).

4.3 Under section 33 of the Aliens Act, Mr. Torres could have appealed the extension of his detention to the Supreme Administrative Court within 14 days of the decision. He did appeal the decision made by the Ministry of the Interior on 26 November 1987 on the extension of detention, and his appeal was dismissed by the Supreme Administrative Court on 4 March 1988. Under section 32 of the Aliens Act ("Seeking annulment of a decision rendered by the police or a passport control officer"), Mr. Torres had the right to submit the decisions on detention (concerning the first seven days) taken by the police on 7 October 1987, 3 December 1987 and 5 January 1988, respectively, to review by the Ministry of the Interior. He did seek annulment of the two latter decisions of the police. In its decision of 23 February 1988, the Ministry of the Interior considered that there had been reasonable grounds for detention.

4.4 The State party further submits that detention under the Extradition Act must, pursuant to section 19, be referred "without delay" to the City Court which in turn shall, according to section 20, decide "without delay" whether detention should be continued. The detention order of 16 December 1987 was prolonged by decision of 23 December 1987 of the Helsinki City Court. According to section 22 of the Extradition Act, the decision of the City Court can be appealed to the Supreme Court. There is no time-limit for an appeal. The State party notes that the files do not indicate that Mr. Torres ever filed this appeal and submits that this domestic remedy was thus not exhausted and is, in principle, still available to him.

4.5 Finally, the State party indicates that a government bill with a view to amending the Aliens Act will be submitted to Parliament shortly so as to guarantee the right to have detention order reviewed by a court without delay.

Issues to be considered by the Committee

5.1 On the basis of the information before it, the Committee concluded that all conditions for declaring the communication admissible were met, including the requirement of exhaustion of domestic remedies under article 5, paragraph 2, of the Optional Protocol.

5.2 In its decision on admissibility, the Committee reserved consideration of the author's allegations under article 7 for the merits in order to be able to ascertain whether the Finnish Government, when deciding upon Mr. Torres' extradition, was in possession of such information as to indicate that he might upon extradition be subjected to torture or to other cruel, inhuman or degrading treatment.

5.3 The Committee further recalled that according to the uncontested facts, Mr. Torres was unable to challenge his detention under the Aliens Act during the first week of detention on several occasions. The Committee noted that the Aliens Act did not contain a right of complaint for detention up to seven days; therefore, it had to consider whether the provisions of the Aliens Act, which were concretely applied to the author, conformed with the requirements of article 9, paragraph 4, of the Covenant. The Committee observed that the State party had not furnished any information on the domestic remedies which the author could have pursued with respect to this particular complaint; it thus concluded that in respect of this complaint there were no domestic remedies available to Mr. Torres.

5.4 The Committee noted the State party's statement that although the author had, on 9 December 1987, filed an appeal to the Supreme Administrative Court against the decision by the Ministry of the Interior of 26 November 1987, the Court did not decide until nearly three months later. In the light of the circumstances, the Committee found that Mr. Torres' complaint relating to the delay in having his detention adjudicated upon could raise issues under article 9, paragraph 4, of the Covenant.

5.5 On the basis of the written information before it, the Committee considered that there was no evidence in substantiation of the author's claim that he was a victim of any of the rights set forth in article 14 of the Covenant.

5.6 On 30 March 1989, the Human Rights Committee declared the communication admissible in so far as it related to complaints under articles 7 and 9, paragraph 4, of the Covenant.

6. The Committee notes the author's allegation that Finland is in violation of article 7 of the Covenant for extraditing him to a country where there were reasons to believe that he might be subjected to torture. The Committee finds, however, that the author has not sufficiently substantiated his fears that he would be subjected to torture in Spain.

7.1 Three separate questions arise with respect to article 9, paragraph 4, of the Covenant: (a) whether the fact that the author was precluded, under the Aliens Act, from challenging his detention for the periods of 8 to 15 October 1987, 3 to 10 December 1987 and 5 to 10 January 1988 before a court when he was being detained under orders of the police, constitutes a breach of this provision; (b) whether once he was by law entitled to challenge his detention under the Aliens Act, alleged delays in the handing down of the judgement constitute a breach; and (c) whether the application of the Extradition Act to the author entails any violation of this provision.

7.2 With respect to the first question, the Committee has taken note of the State party's contention that the author could have appealed the detention orders of 7 October, 3 December 1987 and 5 January 1988 pursuant to section 32 of the Aliens Act to the Ministry of the Interior. In the Committee's opinion, this possibility,

while providing for some measure of protection and review of the legality of detention, does not satisfy the requirements of article 9, paragraph 4, which envisages that the legality of detention will be determined by a court so as to ensure a higher degree of objectivity and independence in such control. The Committee further notes that while the author was detained under orders of the police, he could not have the lawfulness of his detention reviewed by a court. Review before a court of law was possible only when, after seven days, the detention was confirmed by order of the Minister. As no challenge could have been made until the second week of detention, the author's detention from 8 to 15 October 1987, from 3 to 10 December 1987 and from 5 to 10 January 1988 violated the requirement of article 9, paragraph 4, of the Covenant that a detained person be able "to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful" (emphasis added).

7.3 With respect to the second question, the Committee emphasizes that, as a matter of principle, the adjudication of a case by any court of law should take place as expeditiously as possible. This does not mean, however, that precise deadlines for the handing down of judgements may be set which, if not observed, would necessarily justify the conclusion that a decision was not reached "without delay". Rather, the question of whether a decision was reached without delay must be assessed on a case by case basis. The Committee notes that almost three months passed between the filing of the author's appeal, under the Aliens Act, against the decision of the Ministry of the Interior and the decision of the Supreme Administrative Court. This period is in principle too extended, but as the Committee does not know the reasons for the judgment being issued only on 4 March 1988, it makes no finding under article 9, paragraph 4, of the Covenant.

7.4 With respect to the third question, the Committee notes that the Helsinki City Court reviewed the author's detention under the Extradition Act at two-week intervals. The Committee finds that such reviews satisfy the requirements of article 9, paragraph 4, of the Covenant.

8. 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 of the communication disclose a violation of article 9, paragraph 4, of the International Covenant on Civil and Political Rights, because the author was unable to challenge his detention from 8 to 15 October 1987, from 3 to 10 December 1987 and from 5 to 10 January 1988 before a court.

9. In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to remedy the violations suffered by the author and to ensure that similar violations do not occur in the future. The Committee takes this opportunity to indicate that it would welcome information on any relevant measures taken by the State party in respect of the Committee's views. In this context, the Committee welcomes the State party's expressed intention to amend its legislation so as to guarantee the right to have detention based on the Aliens Act reviewed without delay by a court.