HUMAN RIGHTS COMMITTEE

Vuolanne v. Finland

Communication No. 265/1987

7 April 1989

VIEWS

Submitted by: Antti Vuolanne (represented by counsel)

Alleged victim: The author

State party concerned: Finland

Date of communication:31 October 1987

Date of decision on admissibility:8 July 1988

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

Meeting on 7 April 1989,

Having concluded its consideration of communication No. 265/1987, submitted to the Committee by Mr. Antti Vuolanne 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 (initial letter dated 31 October 1987; further submission dated 25 February 1989) is Antti Vuolanne, a Finnish citizen, 21 years of age, resident in Pori, Finland. He claims to be the victim of a violation by the Government of Finland of articles 2, paragraphs 1 to 3, 7 and 9, paragraph 4, of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author states that he started his military service on 9 June 1987. Service duty allegedly caused him severe mental stress and, upon his return from a military hospital early in July 1987, he realized that he could not continue with his service as an infantryman. Unable to discuss the situation with the head of his unit, he decided, on 3 July, to leave his garrison without permission. He alleges to have been greatly preoccupied by the fate of his brother who, about a year earlier, had committed suicide in a similar situation. The author's weekend off duty would have begun on 4 July at noon, ending on 5 July at midnight. On 5 July, he returned to the military hospital and asked to speak with a doctor, but was advised to return to his company, where he registered and left again without permission. Upon advice of an army chaplain he returned on 7 July to his unit , where he spoke to a doctor and was taken to the military hospital. Later on, he sought and obtained a transfer to unarmed service inside the military.

2.2 On 14 July, in a disciplinary procedure, he was sanctioned with 10 days of close arrest, i. e., confinement in the guardhouse without service duties. He claims that he was not heard at all, and that the punishment was immediately enforced. At this stage he was not told that he could have availed himself of a remedy. In the guardhouse, he learned that the Law on Military Disciplinary Procedure provided for the possibility to have the punishment reviewed by a higher military officer through a so-called "request for review". This request was filed on the same day (although the author states that it was documented to have been made a day later, on 15 July) and based on the argument that the punishment was unreasonably severe, taking into account that the author was punished for departing without permission for more than four days, despite the fact that 36 hours overlapped with his weekend off duty, that his brief return to the garrison was considered as an aggravating circumstance and that the motive for his decision to depart was not taken into consideration.

2.3 The author states that after his written request to the supervising military officer the punishment was upheld by decision of 17 July 1987 without a hearing. According to the author, Finnish law provides no other domestic remedies, because section 34 of the Law on Military Disciplinary Procedure specifically prohibits an appeal against the decision of the supervising military officer.

2.4 The author furnishes a detailed account of the military disciplinary procedure under Finnish law, which is governed by chapter 45 of the Criminal Code of 1983. Punishment for absence without leave is either of a disciplinary nature or may entail imprisonment of up to six months. Military confinement (close arrest)is the most severe type of disciplinary punishment. The maximum length of arrest imposable in a disciplinary procedure is 15 days and nights. Only the head of a unit or a higher officer has the authority to impose the punishment of close arrest, and only a commander of a body of troops can impose arrest for more than 10 days and nights.

2.5 If an arrest is imposed by disciplinary procedure, there is no possibility of appeal outside the military. The prohibition of appeal in section 34, paragraph 1, of the above-mentioned law covers both civil courts (the Supreme Court in the last instance) and administrative courts (the Supreme Administrative Court in the last instance). Thus, the lawfulness of the punishment cannot be reviewed by a court or any other judicial body. The only remedy available is the request for review made to a superior military officer. It is claimed that complaints either to a still higher military authority, or to the Parliamentary Ombudsman do not constitute effective remedies in the case at issue, because the Ombudsman has no power to order the E release of a person whose arrest is being

enforced, even if a complaint reached him in time and if he considered the detention to be unlawful.

2.6 Concerning his military confinement, the author considers it "evident that Finnish military confinement in the form of close arrest imposed in a disciplinary procedure is a deprivation of liberty covered by the concepts 'arrest or detention' in article 9, paragraph 4, of the Covenant". He states that his punishment was enforced in two parts, during which he was locked in a cell of 2 x 3 metres with a tiny window, furnished only with a camp bed, a small table, a chair and a dim electric light. He was only allowed out of his cell for purposes of eating, going to the toilet and to take fresh air for half an hour daily. He was prohibited from talking to other detained persons and from making any noise in his cell. He claims that the isolation was almost total. He also states that in order to lessen his distress, he wrote Personal notes about his relations with persons close to him, and that these notes were taken away from him one night by the guards, who read them to each other. Only after he asked for a meeting with various officials were his papers returned to him.

2.7 Finally, the author considers that the 10 days of close confinement constituted an unreasonably severe punishment in relation to the offence. In particular, he objects to the fact that no relevance was attached to the motives of his temporary absence, although, as he claims, the Finnish Criminal Code provides for the consideration of special circumstances. In his opinion, the availability of an appeal to a court or other independent body would have had a real effect, since there would have been a possibility to have the punishment reduced.

3. By its decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of admissibility.

4. In its submission under rule 91, dated 28 June 1988, the State party did not raise any objections to the admissibility of the communication and stated, in particular, that the author had exhausted all domestic remedies available to him by filing his request for review (tarkastuspyyntöö) pursuant to the Act on Military Discipline. Under section 34, paragraph 1, of the Act, decisions made pursuant to such a request are not appealable.

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules Of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. In this connection the Committee noted that the State Party did not object to the admissibility of the communication.

5.2 On 18 July 1988 the Committee decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol the State party was requested to submit to the Committee, within six months of the date of transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the measures that may have been taken by it.

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, the State party first elucidates the relevant legislation as follows:

> "Provisions on the military disciplinary procedure followed in the Finnish Defence Forces

are contained in the Law on Military Disciplinary Procedure (331/83), adopted on 25 March 1983, and in the relevant ordinance (969/83), adopted on 16 December 1983, both in force as of 1 January 1984. The above laws contain detailed provisions on disciplinary sanctions in military disciplinary procedure, on disciplinary competence, on the processing of a disciplinary matter, and on the appellate procedure.

"The most severe sanction in a military disciplinary procedure is close arrest, to be put into effect in the guardhouse or other place Of solitary confinement, usually without service duty. Close arrest, may be imposed by a head of unit for a maximum of 5 days and nights, by a commander of unit for a maximum of 10 days and nights, and by a commander of a body of troops for a maximum of 15 days nights. Prior to imposing a disciplinary punishment, the superior military officer responsible must submit his decision to the military legal advisor for a statement.

"The victim may submit, within three days, a 'request for review' concerning the decision on the disciplinary sanction. A request which concerns the decision of a head of a unit or commander of a unit may be submitted to a commander of a body of troops, and one that concerns the decision made by a commander of a body of troops may be appealed upon to the commander of the military county or a superior disciplinary Officer. If the request for review is processed by a disciplinary officer superior to a commander, the matter must be presented by a legal advisor.

"Close confinement can be put into effect only after the period for submitting an appeal has expired, or after the request submitted has been considered, unless the person concerned has agreed to immediate enforcement in a written declaration or in case the commander of a body of troops has ordered the close arrest to be enforced immediately because he finds it absolutely necessary in order to maintain discipline, order and security amongst the troops."

6.2 With regard to the factual background of the case, the State Party submits that:

"Mr . Vuolanne was heard in preliminary investigations on 8 July 1987 concerning his absence from his unit from 3 to 7 July 1987. The military legal advisor of the military county of Southwestern Finland submitted his written statement to the superior disciplinary officer on 10 July 1987. The decision of the commander of the unit was made on 13 July 1987, stating that Mr. Vuolanne had been found guilty of continued absence without leave (Criminal Code 45: 4.1 and 7: 2) and sanctioning him with 10 days and nights of close confinement.

"Mr. Vuolanne was informed of the decision on 14 July 1987. When signing the acknowledgement of receipt, he had in the same connection indicated in writing that he agreed to an immediate enforcement of the punishment. Consequently, the close arrest was put into effect on the very same day, 14 July 1987. As Mr. Vuolanne was informed of the decision, he also received a copy of it, carrying clear and unambiguous instructions on how the decision could be appealed against by submitting a request for review. The request submitted by Mr. Vuolanne on 15 July 1987 was considered by the commander of the body

of troops I without delay, and he decided that there was no need to change the disciplinary sanction imposed.

"In their basic training all conscripts receive information on legal remedies relating to the disciplinary procedure, including the request for review. Relevant information is also contained in a book distributed to all conscripts at the end of the basic training period."

6.3 With regard to the applicability of article 9, paragraph 4, of the Covenant to the facts of this case, the State party submits:

"It is not open for somebody detained on the basis of military disciplinary procedure, as outlined above, to take proceedings in a court. The only relief is granted by the system of request for review. In other words, it has been the view of Finnish authorities that article 9, paragraph 4, of the Covenant on Civil and Political Rights does not apply to detention in military procedure...

"In its General Comment 8 (16)of 27 July 1982, regarding article 9, the Committee had occasion to single out what types of detention were covered by article 9, paragraph 4. It listed detentions on grounds such as 'mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. '. Significantly, the Committee omitted deprivation of liberty in military disciplinary procedure from this list. What is common to the forms of detention listed by the Committee is that they involve the possibility of prolonged, unlimited detention. Also in most cases these forms of detention are not strictly regulated but the manner of detention is made dependent on its purpose (cure of illness, for example)and engages a wide degree of discretion on the part of the detaining authority. However, this is in striking contrast with the process of detention in military disciplinary procedure, where the grounds for detention, the length of detention and the manner of conducting the detention are clearly laid down in military law. In the event that the military authorities overstep the boundaries set by the law, the normal ways of judicial appeal are open. In other words, it might be that the Committee did not include military disciplinary process in its list of different kinds of 'detention' because it realized the material difference between it and those other forms of detention from the point of view of an individual's need of protection.

"It is clearly the case that an official -a commander -is acting in a judicial or at least quasi-judicial capacity as he, under military disciplinary procedure, orders detention. Likewise, the consideration of a request for review is comparable to judicial scrutiny of an appeal. As explained, the conditions and manner of carrying out military disciplinary detention are clearly set down by law. The discretion they imply is significantly less than discretion in some of the cases listed by the Committee. In this respect, too, the need to judicial control, if not strictly superfluous, is significantly less in military disciplinary procedure than in detention on, say, rounds of mental illness."

Notwithstanding these considerations concerning the non-applicability of article 9, paragraph 4, to Mr. Vuolanne's case, the State party notes that preparations are under way for amending the law on military disciplinary procedure so as to allow recourse to a court for detention in such procedure.

6.4 With regard to the author's allegations concerning a violation of article 7 of the Covenant, the State party notes:

> "Mr. Vuolanne claims that his treatment was degrading because it was 'unreasonably severe in relation to the offence'. He contends that the commanding officer did not take adequately into account Finnish laws concerning mitigating circumstances and the measurement of sentences. However, this is not a matter on which the Committee is competent to pronounce, as it has itself acknowledged, namely that it is not a 'fourth instance' entitled to review the conformity of the acts or decisions by national authorities with national law. The State party further observes that 10 days arrest in close confinement does not per se constitute the sort of Punishment prohibited by article 7; it does not amount to 'cruel, inhuman or degrading treatment or punishment'.
>
> "It is generally held that the terms 'torture', 'inhuman treatment' and 'degrading treatment' in article 7 imply a sliding scale from the most serious violations ('torture')to the least serious -but nevertheless serious -ones ('degrading treatment'). What constitutes 'degrading treatment' (or 'degrading punishment') is nowhere clearly defined. In practice, cases which have been deemed to constitute 'degrading treatment' have usually involved some sort of corporal punishment. Mr. Vuolanne does not claim that he was subjected to such punishment . . . The question still remains whether Mr. Vuolanne's confinement can be interpreted as ,the kind of incommunicado detention which, as implied in General Comment 7 (16) by the Committee, amounts to a violation of article 7. The matter, as the Committee saw it, was to be determined on the basis of contextual appraisal. In the present case, the relevant contextual criteria go clearly against holding the detention of Mr. Vuolanne as 'degrading treatment or punishment'. In the first place, the detention of Mr. Vuolanne lasted only a relatively short period (10 days and nights)and even that was divided into a period of 8 and a further separate period of 2 days. Secondly, his confinement was not total. He was taken out for meals and for a short exercise daily - though he was not allowed to communicate with other detainees. Thirdly, there was no official hindrance to his correspondence; the fact that the guards on duty may have violated their duties by reading his letters does not involve a violation by the Government of Finland. Of course, it would have been open to Mr. Vuolanne to complain of his treatment by his guards. He appears to have made no formal complaint. In short, the context of Mr. Vuolanne's detention cannot be regarded as amounting to 'degrading treatment'(or 'degrading punishment') within the meaning of article 7 of the Covenant."

7.1 In his comments, dated 25 February 1989, author's counsel submits, *inter alia*, that if the Committee considers the evidence presented by Mr. Vuolanne insufficient for finding a violation under article 7, article 10 might become relevant. He further contends that the State party is incorrect in implying that the behaviour of Mr. Vuolanne's guards would not come within its responsibility. He points out that the guards were "persons acting in an official capacity" within the meaning of article 2, paragraph 3 (a)of the Covenant. He further argues:

> "it is true that Mr. Vuolanne could have instituted a civil charge against the guards in question. In the communication their behaviour is not, however, presented as a separate

violation of the Covenant, but only as one part of the evidence showing the enforcement of military arrest to be humiliating or degrading. Also the State party seems to have accepted this line of argument: had the Government regarded the behaviour of Mr. Vuolanne's guards as something exceptional, it would surely have presented in its submission information on some kind of an inquiry into the concrete facts of the case. However, no measures concerning the behaviour of Mr. Vuolanne's guards have been taken."

7.2 With respect to article 9, paragraph 4, the author comments on the State party's reference to the Committee's General Comment No. 8 (16) on article 9, and notes that the State party does not mention that, according to the General Comment, article 9, paragraph 4, "applies to all persons deprived of their liberty by arrest or detention". He further submits:

"military confinement is a punishment that can be ordered either by a court or in military disciplinary procedure. The duration of the punishment is comparable to the shortest prison sentences under normal criminal law (14 days is the Finnish minimum) and exceeds the length of pre-trial detention acceptable in the light of the Covenant. This shows that there is no substantial difference between these forms of detention from the point of view of an individual's need of protection. It is true that the last sentence of paragraph 1 of the Committee's General Comment in question is somewhat ambiguous. This might be the basis for the State party's opinion that military confinement is not covered by article 9, paragraph 4. However, article 2, paragraph 3, would remain applicable " even in this case."

The author then offers the following comments in order to show that the Finnish military disciplinary procedure does not correspond to the requirements of article 2, paragraph 3, either:

" (a) According to the State party, 'the normal ways of judicial appeal are open in case the military authorities overstep the boundaries set by the law'. This statement is misleading. There is no way a person punished with military confinement can bring the legality of the punishment before a court. What can in principle be challenged is the behaviour of the military authorities in question. This would mean instituting a civil charge in court, not any kind of an 'appeal'. This kind of a procedure is in no way 'normal' and even if the procedure was instituted, the court could not order the release of the victim;

"(b)Also some other statements are misleading. An official ordering detention and another officer considering the request for review are not acting in a 'judicial or at least quasi-judicial capacity'. The officers have no legal education. The procedure lacks even the most elementary requirements of a judicial process: the applicant is not heard and the final decision is made by a person who is not independent, but has been consulted already before ordering the punishment. It also is stated that Mr. Vuolanne, when informed of the decision to punish him with close confinement, indicated in writing that he agreed to an immediate enforcement of the punishment. This statement is somewhat misleading, because Mr. Vuolanne only signed the acknowledgement of receipt on a blank form. It is true that on this blank form there is a part printed with small letters, where one accepts the immediate enforcement by signing the acknowledgement itself."

7.3 With respect to the proposed amendment to the law (see para. 6.3 above), Mr. Vuolanne notes that a proposed model would possibly remedy the situation in relation to article 9, paragraph 4, but not in relation to article 7. He submits that the only proposal acceptable in this respect would be to amend the Law on military disciplinary procedure so that only a part (up to 8 or 10 days)of the punishment would be enforced as close confinement and the rest as light arrest (e.g., with service duties).

8. The Human Rights Committee has considered the present communication in the light of all written information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

9.1 The author of the communication claims that there have been breaches of article 2, paragraphs 1 and 3, article 7, article 9, paragraph 4, and article 10 of the Covenant.

9.2 The Committee recalls that article 7 prohibits torture and cruel or other inhuman or degrading treatment. It observes that the assessment of what constitutes inhuman or degrading treatment falling within the meaning of article 7 depends on all the circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim. A thorough examination of the present communication has not disclosed any facts in support of the author's allegations that he is a victim of a violation of his rights set forth in article 7. In no case was severe pain or suffering, whether physical or mental, inflicted upon Antti Vuolanne by or at the instigation of a public official; nor does it appear that the solitary confinement to which the author was subjected, having regard to its strictness, duration and the end pursued, produced any adverse physical or mental effects on him. Furthermore, it has not been established that Mr. Vuolanne suffered any humiliation or that his dignity was interfered with apart from the embarrassment inherent in the disciplinary measure to which he was subjected. In this connection, the Committee expresses the view that for punishment to be degrading, the humiliation or debasement involved must exceed a particular level and must, in any event, entail other elements beyond the mere fact of deprivation of liberty. Furthermore, the Committee finds that the facts before it do not substantiate the allegation that during his detention Mr. Vuolanne was treated without humanity or without respect for the inherent dignity of the Person, as required under article 10, paragraph 1, of the Covenant.

9.3 The Committee has noted the contention of the State party that the case of Mr. Vuolanne does not fall within the ambit of article 9, paragraph 4, of the Covenant. The Committee considers that this question must be answered by reference to the express terms of the Covenant as well as its purpose. It observes that as a general proposition, the Covenant does not contain any provision exempting from its application certain categories of persons. According to article 2, paragraph 1, "each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The all-encompassing character of the terms of this article leaves no room for distinguishing between different categories of persons, such as civilians and members of the military, to the extent of holding the Covenant to be applicable in one case but not in the other. Furthermore, the travaux préparatoires as well as the Committee's general

comments indicate that the purpose of the Covenant was to proclaim and define certain human rights for all and to guarantee their enjoyment. It is, therefore, clear that the Covenant is not, and should not be conceived of in terms of whose rights shall be protected but in terms of what rights shall be guaranteed and to what extent. As a consequence the application of article 9, paragraph 4, cannot be excluded in the present case.

9.4 The Committee acknowledges that it is normal for individuals Performing military service to be subjected to restrictions in their freedom of movement. It is self-evident that this does not fall within the purview of article 9, paragraph 4. Furthermore, the Committee agrees that a disciplinary penalty or measure which would be deemed a deprivation of liberty by detention, were it to be applied to a civilian , may not be termed such when imposed upon a serviceman. Nevertheless, such penalty or measure may fall within the scope of application of article 9, paragraph 4, if it takes the form of restrictions that are imposed over and above the exigencies of normal military service and deviate from the normal conditions of life within the armed forces of the State party concerned. In order to establish whether this is so, account should be taken of a whole range of factors such as the nature, duration, effects and manner of the execution of the penalty or measure in question.

9.5 In the implementation of the disciplinary measure imposed on him, Mr. Vuolanne was excluded from performing his normal duties and had to spend day and night for a period of 10 days in a cell measuring 2 x 3 metres. He was allowed out of his cell solely for purposes of eating, going to the toilet and taking air for half an hour every day. He was prohibited from talking to other detainees and from making any noise in his cell. His correspondence and personal notes were interfered with. He served a sentence in the same way as a prisoner would. The sentence imposed on the author is of a significant length, approaching that of the shortest prison sentence that may be imposed under Finnish criminal law. In the light of the circumstances, the Committee is of the view that this sort of solitary confinement in a cell for 10 days and nights is in itself outside the usual service and exceeds the normal restrictions that military life entails. The specific disciplinary punishment led to a degree of social isolation normally associated with arrest and detention within the meaning of article 9, paragraph 4. It must, therefore, be considered a deprivation of liberty by detention in the sense of article 9, paragraph 4. In this connection, the Committee recalls its General Comment No. 8 (16)according to which most of the provisions of article 9 apply to all deprivations of liberty, whether in criminal cases or in other cases of detention as for example, for mental illness, vagrancy, drug addiction, educational purposes and immigration control. The Committee cannot accept the State party's contention that because military disciplinary detention is firmly regulated by law, it does not necessitate the legal and procedural safeguards stipulated in article 9, paragraph 4.

9.6 The Committee further notes that whenever a decision depriving a person of his liberty is taken by an administrative body or authority, there is no doubt that article 9, paragraph 4, obliges the State party concerned to make available to the person detained the right of recourse to a court of law. In this particular case it matters not whether the court would be civilian or military. The Committee does not accept the contention of the State party that the request for review before a superior military officer according to the Law on Military Disciplinary Procedure, currently in effect in Finland is comparable to judicial scrutiny of an appeal and that the officials ordering detention act in a judicial or quasi-judicial manner. The procedure followed in the case of Mr. Vuolanne did not have a judicial character, the supervisory military officer who upheld the decision of 17 July 1987 against Mr.

Vuolanne cannot be deemed to be a "court" within the meaning of article 9, paragraph 41 therefore, the obligations laid down therein have not been complied with by the authorities of the State party.

9.7 The Committee observes that article 2, paragraph 1, represents a general undertaking by States parties in relation to which a specific finding concerning the author of this communication has been made in respect to the obligation in article 9, paragraph 4. Accordingly, no separate determination is required under article 2, paragraph 1.

10. 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 communication discloses a violation of article 9, paragraph 4, of the Covenant, because Mr. Vuolanne was unable to challenge his detention before a court.

11. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy, in accordance with article 2, paragraph 3 (a), the violation suffered by Mr. Vuolanne and to take steps to ensure that similar violations do not occur in the future.