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E. B. v. S, Communication No. 29/1978, U.N. Doc. CCPR/C/OP/1 at 11 (1984).

Submitted by: E. B. on 7 April 1978

Alleged victims: B, C, D, E

State party: S

Date of decision on admissibility: 14 August 1979 (seventh session)

Author's standing to act for alleged victims--Exhaustion of domestic remedies--Burden of proof --
Harassment of counsel

Articles of Optional Protocol: 2 and 5 (2) (b)

The author of the communication dated 7 April 1978 is a Spanish national living in Spain. He submitted the communication on behalf of his brother, B. The author also purported to act on behalf of C, D, and E. All four persons are allegedly imprisoned in S.

The author claimed that on 10 July 1977 his brother and the latter's son had been arrested at their place of work, a photographic studio in city X by members of the military police who had confiscated all the photographic equipment. The author believed that the arrest had occurred because his brother and his brother's son had made photographs showing people being tortured. The author further stated that his brother's son had been released after three days, after having been forced to remain on a chair with his head covered, with a view to persuading his father, who was subjected to severe torture, to confess guilt. The author claimed that his brother had subsequently been detained at an undisclosed place and that the family had only been informed of his whereabouts after threatening to take action against the S Consulate in Madrid.

By its decision of 26 July 1978 the Human Rights Committee:

(a) Decided that the author was justified, by reason of close family connection, in acting on behalf of his brother, B;

(b) Requested the author to furnish detailed information as to the grounds and circumstances justifying his acting on behalf of the other three alleged victims, the efforts made and steps taken by or on behalf of all the alleged victims to exhaust domestic remedies and whether the same matter had been submitted to the Inter-American Commission on Human Rights;

(c) Decided that the communication be transmitted, under rule 91 of the provisional rules of procedure, to the State party concerned requesting information and observations relevant to the question of admissibility

in so far as the communication related to B, pointing out, in particular, that if the State party contended that domestic remedies had not been exhausted, it was requested to give details of the effective remedies available to the alleged victim in the particular circumstances of his case.

The State party, in its response dated 29 December 1978, stated that B had not exercised any domestic remedies and it enclosed in an annex a description of the rights available to accused persons before the military criminal tribunals and the domestic remedies designed to protect and safeguard the rights of the accused under the S judicial system. The State party expressed the opinion that the author of the communication would have to prove that a certain legal remedy has been exercised or that it would be ineffective.

In his reply, dated 7 February 1979, to the Committee's request, the author described the steps taken to exhaust domestic remedies in respect of his brother, B. He claimed that an appeal had been filed and that every kind of legal proceeding had been instituted on behalf of his brother.

He further claimed that his brother's first defense lawyer, L, had been detained because of his efforts to act in the case, that a second defense lawyer had subsequently disappeared and that the third lawyer, engaged by the Spanish Consulate in X, had been imprisoned. The author furnished no information as to the other points raised in the Committee's decision of 26 July 1978.

After having considered all submissions by the author, the Human Rights Committee finds that the information furnished so far by the author does not justify his acting on behalf of C, D, and E.

With regard to the exhaustion of local remedies the Committee is unable to conclude on the basis of the information before it, that there are further remedies available to the author's brother, B which he could or should have pursued. It seems to the Human Rights Committee that an attempt has been made to file an appeal on behalf of the alleged victim and that the three lawyers who have been acting in his defense have either been imprisoned or disappeared. This statement by the author has so far not been contested by the State party. Accordingly, the Committee finds that the communication is not inadmissible under article 5 (2) (b) of the Optional Protocol. This decision may be reviewed in the light of further explanations which the State party may submit under article 4 (2) of the Optional Protocol, giving details of any domestic remedies which it claims to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective.

The Human Rights Committee therefore decides:

1. That the communication is admissible as far as it relates to the author's brother, B;
2. That the consideration of the communication shall be discontinued as far as it relates to C, D and E, because of lack of information;
3. That, in accordance with article 4 (2) of the Optional Protocol, the State party shall be requested to

submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

4. That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations of the Covenant alleged to have occurred. The State party is requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

5. That any explanations or statements received from the State party shall be communicated by the Secretary-General to the author of the communication, under rule 93 (3) of the provisional rules of procedure of the Committee, with the request that any additional observations which he may wish to submit should reach the Human Rights Committee, in care of the Division of Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

6. That this decision be communicated to the State party and to the author of the communication.