

HUMAN RIGHTS COMMITTEE

Maroufidou v. Sweden

Communication No. R.13/58

9 April 1981

VIEWS

Submitted by: Anna Maroufidou

State party concerned: Sweden

Date of communication: 5 September 1979 (date of initial letter)

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

Meeting on 9 April 1981;

Having concluded its consideration of communication No. 13/58 submitted to the Committee by Anna Maroufidou under the Optional Protocol to the International Covenant on Human Rights;

Having taken into account all written information made available to it by the author of the communication and by the State party concerned;

Adopts the following:

Views under article 5(4) of the Optional Protocol

1. The author of this communication (initial letter dated 5 September 1979 and further letters of 20 December 1979, 30 May 1980 and 20 January 1981) is Anna Maroufidou, a Greek citizen. She submitted the communication on her own behalf through her legal representative.

2.1 The author alleges that she is a victim of a breach by Sweden of article 13 of the International Covenant on Civil and Political Rights. She describes the relevant facts as follows:

2.2 In 1975 she came to Sweden seeking asylum. In 1976 she was granted a residence permit. Early in 1977 several aliens and Swedish citizens were arrested in Sweden on suspicion of being involved in a plan to abduct a former member of the Swedish Government. This plan had allegedly been contrived by the alleged terrorist Norbert Krocher from the Federal Republic of Germany, who was at the time staying in Sweden illegally. He and other arrested foreigners were subsequently expelled from Sweden.

2.3 The author of the communication was arrested in connexion with the foregoing events in April 1977, because she had met some of the suspects in the Refugee Council's office in Stockholm which was a meeting place for young people of many nationalities and also a counselling centre for persons seeking asylum. At first the author was held as a suspect under the Swedish law governing arrest and remand in custody in criminal cases (Rattengångsbalken 24/5) as it was suspected that information concerning acts of sabotage had been communicated to her. It seems that after a few days this allegation was dropped and that she continued to be detained under the Swedish Aliens Act of 1954 (Utlänningslagen sec. 35, nom. 1). The Government, however, raised the issue of her expulsion as a presumed terrorist. A lawyer was appointed to represent her in that connexion. Her expulsion was decided upon on 5 May 1977. The decision was immediately executed and she was transported, under guard, to Greece. In spite of a certificate, issued by the Swedish Embassy in Athens on 6 May 1977, that she was not being prosecuted for any punishable act in Sweden, her expulsion as a potential terrorist made it impossible for her to find any meaningful employment in Greece. She was harassed and even physically attacked by persons whom she assumed to be right-wing extremists. She returned illegally to Sweden at the end of 1978 in order to apply for reconsideration of her case, which seemed to her to be the only solution to her problems. A review of the case was granted, but on 14 June 1979 the Swedish Government confirmed its previous decision of 5 May 1977.

2.4 The Swedish Government based its decisions on the Aliens Act of 1954 which, since 1975, contains provisions against terrorism. The relevant provisions applied in the author's case were in sections 20, 29, 30 and 31. Section 29 provides that an alien may be expelled from Sweden "if there is founded reason to assume that he belongs to, or works for, a terrorist/organization or group", as defined in section 20, and if "there is a danger, considering what is known about his previous activities or otherwise, that he will participate in Sweden in an act" as referred to in section 20. Section 20 defines a terrorist organization or group as "an organization or group which, considering what is known about its activities, can be expected to use violence, threat or force outside its home country for political purposes and, in this connexion, to commit such acts in Sweden". According to section 30 of the Aliens Act, the decision to expel an alien would in these cases be taken by the Government, which, however, must first hear the views of the Central Immigration Authority. According to section 31 expulsion has to be preceded by an interrogation of the person concerned. a/

2.5 The decision of the Swedish Government to expel her is contested by the author on the ground that it was based only on the allegation that she had had such contact with Krocher and other persons involved in the kidnapping plan that she was not likely to have remained ignorant about the planned abduction. She denies such knowledge and argues further that

even if she had had such knowledge this would not have been a sufficient Basis to expel her under the Aliens Act because that law stipulates that the person concerned has to belong to, or work for, an organization or group as described by its provisions. Mere knowledge of planned terrorist activities was, therefore, in her submission, not sufficient to Justify an expulsion in accordance with the law. In addition, she points out that Krocher and other persons involved had not formed a group or organization as described by the Aliens Act. They were just several young persons of various nationalities who had met in Stockholm, and therefore their "home country" in that context should be considered to be Sweden.

2.6 For these reasons the author considers that the decision to expel her from Sweden, while she was lawfully staying in that country, was not taken in accordance with Swedish law and was therefore in violation of article 13 of the International Covenant on Civil and Political Rights.

2.7 The author states that all available domestic remedies have been exhausted.

3. On 14 March 1980 the Working Group of the Human Rights Committee decided to transmit the communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

4. The State party, in its reply of 19 May 1980, did not contest the admissibility of the communication, but reserved its right to reply on the merits, stating merely that it considered the complaint to be unfounded.

5. On 25 July 1980, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should 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.

6.1 In its submission under article 4 (2) of the Optional Protocol, dated 8 December 1980, the State party stated that Anna Maroufidou was arrested on 4 April 1977. She was interrogated by the police on 15, 25 and 26 April. On 28 April 1977 the Central Immigration Authority declared that, in its opinion, there was good reason to assume that Anna Maroufidou belonged to, or worked for, an organization of the kind dealt with in section 20 of the Aliens Act, and that there was a danger that she would participate in Sweden in an act envisaged by that article. The Central Immigration Authority therefore concluded that the conditions for her expulsion pursuant to section 29 of the Aliens Act were fulfilled. On 5 May 1977 the Swedish Government decided to expel Anna Maroufidou and the decision was immediately executed. In a petition dated 15 September 1978 Anna Maroufidou, through her lawyer, asked the Government to revoke its decision to expel her. After obtaining the comments of the National Board of the Police as well as the reply of Anna Maroufidou's lawyer to these comments the Government decided on 14 June 1979 to reject the petition.

6.2 As to the application of article 13 of the Covenant, in the opinion of the Swedish Government article 13 requires that there shall be a legal basis for a decision regarding expulsion. The decision shall be taken by a public authority which has competence in the matter, and in accordance with procedure prescribed by law. The decision shall also be taken on the basis of legal provisions or rules which lay down the conditions for expulsion. On the other hand, the interpretation of national law must primarily be the task of the competent national authorities. In this regard the task of the Human Rights Committee should be limited to an examination of whether the national authorities interpreted and applied the law in good faith and in a reasonable manner.

6.3 The State party pointed out that the conditions for expulsion which were found to be fulfilled in the case of Anna Maroufidou were laid down in sections 20 and 29 of the Aliens Act. The provisions of these articles were interpreted and applied by the State party in good faith and in a reasonable manner. Krocher and his collaborators must be considered to constitute an organization or group of the kind envisaged in section 20, and there were clear indications that Anna Maroufidou had been actively involved in the work of that organization or group. She was known to have found a flat for Krocher and to have taken steps, after Krocher's arrest, to remove from the flat objects which were of interest as evidence against Krocher. Suspicions against Anna Maroufidou were further strengthened by certain objects (masking equipment etc.) which were found in her possession. Subsequent disclosures, in particular at the trial against the Swedish nationals involved in the Krocher conspiracy, confirmed, in the opinion of the State party, that she was a close collaborator of Krocher and had been actively involved in discussions concerning the planned abduction and that she had been designated by Krocher to play an active role in the abduction itself.

6.4 The State party submitted therefore that the decision to expel Anna Maroufidou was "reached in accordance with law" and that there has been no violation of article 13 of the Covenant in this case.

7.1 On 20 January 1981, the author of the communication submitted, through her legal representative, comments on the State party's submissions under article 4 (2) of the Optional Protocol. In her comments she states that she does not dispute the opinion of the Swedish Government that article 13 of the Covenant requires a legal basis for a decision to expel an alien. In the opinion of the author, however, if the ground for the decision is one which cannot be found in the applicable domestic law of the State party, then the conclusion must be drawn that article 13 has been violated. In this regard the author submits that it is clear that mere knowledge of a terrorist plan is not a ground for expulsion under the relevant provisions of the Swedish Aliens Act. She contends that it is obvious from the travaux préparatoires of this law and all legal literature about it that the legislation against terrorism is of an extraordinary nature and that it should be applied in a restrictive manner. It is also clear, in her submission, that the only charge against her at the time of the decision which she is contesting was this alleged knowledge. She maintains that all the circumstances mentioned by the State party have natural explanations and are by no means decisive. As stated in her original communication all the refugees who met and made each other's acquaintance at the Refugee Council's office in Stockholm found themselves in a similar situation and often had common interests. Many of them had difficulties in finding rooms

or flats to live. It was common knowledge that they assisted each other and often crowded into rather small quarters. They frequently rented their rooms on short-term conditions and there was for this reason much moving around. The author helped several people to find a place to live. After Krocher's arrest she was afraid that she might be arrested herself. The newspapers were full of news and big headlines about this arrest and Krocher's dramatic plans of terrorism. Therefore she did hide certain things not to protect Krocher but to protect herself against any unjust suspicion of collaboration with him.

7.2 The author argues that, if it was true that she had participated in the preparations for the crimes planned by Krocher, she would have been prosecuted for conspiracy and preparations for those crimes under Swedish law but she was not. In addition, subsequent disclosures at the trial against the Swedish nationals involved in the Krocher conspiracy could not justify the decision to expel her because that trial took place a long time afterwards, and because the author as well as many other foreigners who had been expelled were not present at that trial. So the Swedish citizens then accused were free, without being challenged to make any reference to the absent aliens which they and their defence counsel saw fit.

7.3 The author also argues that section 20 of the Swedish Aliens Act requires that the organization or group must, while being suspected of planning or committing acts in Sweden, be outside its home country. She claims, therefore, that the application of the relevant provisions of this law to a group which has been formed in Sweden is an evident misinterpretation.

7.4 For all these reasons, the author does not agree with the State party's statement that the task of the Human Rights Committee should be limited to an examination of whether the competent authorities have applied the law in good faith and in a reasonable manner. She states that it is not her intention to enter into a debate as to whether the Swedish Government at the time of the decision acted in good faith or not: her case is that this decision was not reached in accordance with the provisions of the Aliens Act since it was based on one ground which was not to be found in those provisions and on another ground which was an obvious misinterpretation of them.

8. The Committee considering the present communication in the light of all information made available to it by the parties as provided for in article 5 (1) of the Optional Protocol, hereby decides to base its views on the following facts which have been essentially confirmed by the State party: Anna Maroufidou, a Greek citizen, who came to Sweden seeking asylum, was granted a residence permit in 1976. Subsequently on 4 April 1977 she was arrested on suspicion of being involved in a plan of a terrorist group to abduct a former member of the Swedish Government. In these circumstances the Central Immigration Authority on 28 April 1977 raised the question of her expulsion from Sweden on the ground that there was good reason to believe that she belonged to, or worked for, a terrorist organization or group, and that there was a danger that she would participate in Sweden in a terrorist act of the kind referred to in sections 20 and 29 of the Aliens Act. A lawyer was appointed to represent her in the proceedings under the Act. On 5 May 1977 the Swedish Government decided to expel her and the decision was immediately executed.

9.1 Article 13 of the International Covenant on Civil and Political Rights provides that

"An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

9.2 Article 13 lays down a number of conditions which must be complied with by the State party concerned when it expels an alien from its territory. The article applies only to an alien "lawfully in the territory": of the State party, but it is not in dispute that when the question of Anna Maroufidou's expulsion arose in April 1977 she was lawfully resident in Sweden. Nor is there any dispute in this case concerning the due observance by the State party of the procedural safeguards laid down in article 13. The only question is whether the expulsion was "in accordance with law".

9.3 The reference to "law" in this context is to the domestic law of the State party concerned, which in the present case is Swedish law, though of course the relevant provisions of domestic law must in themselves be compatible with the provisions of the Covenant. Article 13 requires compliance with both the substantive and the procedural requirements of the law.

10.1 Anna Maroufidou claims that the decision to expel her was in violation of article 13 of the Covenant because it was not "in accordance with law". In her submission it was based on an incorrect interpretation of the Swedish Aliens Act. The Committee takes the view that the interpretation of domestic law is essentially a matter for the courts and authorities of the State party concerned. It is not within the powers or functions of the Committee to evaluate whether the competent authorities of the State party in question have interpreted and applied the domestic law correctly in the case before it under the Optional Protocol, unless it is established that they have not interpreted and applied it in good faith or that it is evident that there has been an abuse of power.

10.2 In the light of all written information made available to it by the individual and the explanations and observations of the State party concerned, the Committee is satisfied that in reaching the decision to expel Anna Maroufidou the Swedish authorities did interpret and apply the relevant provisions of Swedish law in good faith and in a reasonable manner and consequently that the decision was made "in accordance with law" as required by article 13 of the Covenant.

11. The Human Rights Committee acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is therefore of the view that the above facts do not disclose any violation of the Covenant and in particular of article 13.

a/ The English translation of the quoted section is that provided by the State party.