

HUMAN RIGHTS COMMITTEE

Orihuela v. Peru

Communication No 309/1988

14 July 1993

CCPR/C/48/D/309/1988

VIEWS

Submitted by: Carlos Orihuela Valenzuela

Alleged victims: The author and his family

State party: Peru

Date of communication: 29 June 1988

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

Meeting on 14 July 1993,

Having concluded its consideration of communication No. 309/1988, submitted to the Human Rights Committee by Mr. Carlos Orihuela Valenzuela 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 noting with serious concern that no information on the merits of the case has been received from the State party,

Adopts its:

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

1. The author of the communication dated 29 June 1988 is Carlos Orihuela Valenzuela, a Peruvian citizen residing at Lima, Peru. He claims to be a victim of a violation by the Government of Peru of his human rights but does not invoke any articles of the International Covenant on Civil and Political Rights.

Facts as submitted

2.1 The author, a member of the Peruvian bar (Colegio de Abogados) and a civil servant for 26 years, was named counsel for the Chamber of Deputies in 1982 and served in the Peruvian Human Rights Commission for five years. Following the change of government in Peru in 1985, he was dismissed from his post at the Chamber of Deputies without any administrative proceedings. The author states that he has six school-age children and that he is not receiving the civil servant's pension to which he claimed to be entitled.

2.2 With regard to the requirement of exhaustion of domestic remedies, the author states that he has unsuccessfully tried all administrative and judicial remedies. He alleges that the proceedings have been frustrated for political reasons and have been unduly prolonged. On 7 November 1985 he petitioned for the reconsideration of his dismissal (recurso de reconsideración) but he alleges that, on the express order of a senior deputy, his petition was not processed. On 10 April 1986, he renewed his request by way of a complaint (queja), which was similarly not processed by the authorities. On 8 May 1986, he lodged an action (denuncia) before the President of the Chamber of Deputies, again without any response. On 11 June 1986, he addressed a request to the Chamber of Deputies based on Law 24514 and Legislative Decree No. 276, again without any response. On 23 June 1986, he presented an appeal (recurso de apelación) to the President of the Chamber of Deputies, which was similarly ignored.

2.3 On 2 July 1986, he had recourse to the Civil Service Tribunal (Tribunal del Servicio Civil en Apelación), but three months later the Chamber of Deputies addressed a memorandum to the Tribunal ordering it to respect its resolution dismissing the author, invoking article 177 of the Peruvian Constitution. This last administrative instance allegedly complied with the order of the Chamber of Deputies and terminated its investigation of the case.

2.4 On 5 September 1986, the author filed an action for reinstatement in the civil service with a court of first instance in Lima, which, on 23 July 1987, decided against him. On appeal, the matter was taken up by the Superior Court of Lima (Segunda Sala Civil de la Corte Superior de Lima), which, on 21 March 1988, requested the Civil Service Tribunal to forward the author's dossier. The Civil Service Tribunal did not comply with the request of the Superior Court and, by order of 29 December 1988, the Superior Court dismissed the appeal.

2.5 An action against the Chamber of Deputies concerning the author's rights to severance pay (pensión de cesantía) has been pending before the Supreme Court (Segunda Sala de la Corte Suprema) since 1 February 1989. In October 1989 the competent organ of the Chamber of Deputies resolved to grant him severance pay corresponding to his 26 years of civil service. The President of the Chamber, however, never signed the resolution and to this date no pension has been paid.

2.6 He further alleges that members of his family have been subjected to ill-treatment and humiliation, in particular that in 1989 his 22-year-old son Carlos was arbitrarily detained by

the police and subjected to beatings, that he was given a shower in his clothes at the Lince police station, as a consequence of which he became ill and had to be hospitalized in the bronchio-pulmonary section of a clinic and that his other son Lorenzo was subjected to arbitrary arrest and detention on two occasions; moreover, that as part of the general harassment against the Orihuela family, his son Carlos has been barred from participating in the entrance examinations to the university. He has denounced these abuses to the competent prosecuting authorities (Fiscalía Penal de Turno), without redress.

Complaint and relief sought

3. The author alleges that he and his family have been subjected to defamation and discrimination because of their political opposition to the Government of the then President Alan García of the American Popular Revolutionary Alliance party, and that all attempts to obtain redress have been met by a politically motivated denial of justice. In particular, he claims that his sons have been subjected to arbitrary arrest and ill-treatment, and that he was unjustly dismissed from the civil service and denied a fair hearing in the courts, that he is being debarred from reinstatement in any post in the civil service, that he received no severance pay upon dismissal after 26 years of service, and that his honour and reputation have been unjustly attacked. He seeks, inter alia, reinstatement in his post and compensation for the unjust dismissal.

Admissibility considerations

4.1 On 21 November 1988, the State party was requested to furnish information on the question of admissibility of the communication, including details of effective domestic remedies. The State party was also requested to furnish the Committee with copies of all relevant administrative and judicial orders and decisions in the case, in so far as they had not already been submitted by the author, and to inform the Committee of the status of the action pending before the Superior Court of Lima (Segunda Sala de la Corte Superior de Lima). No submission from the State party on the question of admissibility was received, in spite of a reminder sent on 14 August 1989.

4.2 During its forty-first session, the Committee considered the admissibility of the communication. It ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that there were effective remedies available to the author which he could or should have pursued. Moreover, the application of existing remedies had been unreasonably prolonged within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

4.3 With regard to the author's allegations relating to an arbitrary denial of redress for the dismissal from his post as counsel for the Chamber of Deputies, as well as his claim to have been subjected to unfair judicial proceedings and judicial bias, the Committee found that these allegations had not been substantiated, for purposes of admissibility.

4.4 The Committee found that the author's other allegations, in particular those related to the arbitrary denial of severance pay as well as those related to the harassment of his family, notably his two sons, had been substantiated, for purposes of admissibility, and should be considered on the merits.

5. On 22 March 1991, the Human Rights Committee declared the communication admissible inasmuch as it might raise issues under articles 10, 17 and 26 of the Covenant. The Committee again requested the State party to forward copies of any relevant orders or decisions in the author's case, and to clarify the relationship between the Chamber of Deputies and the Civil Service Tribunal and other courts.

Examination of the merits

6.1 In spite of reminders sent to the State party on 9 January and 26 August 1992, only a submission concerning domestic remedies was received, but no submission on the merits of the case. The Committee notes with concern the lack of any cooperation on the part of the State party in respect of the substance of the author's allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol that a State party to the Covenant must investigate in good faith all the allegations of violations of the Covenant made against it and its authorities, and furnish the Committee with detailed information about the measures, if any, taken to remedy the situation. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.2 As to the alleged violation of article 10, paragraph 1, of the Covenant, in respect of the author's children, the Committee notes that the material before it indicates that the author's two adult sons have been subjected to ill-treatment during detention, including beatings. The author's adult sons, however, are not co-authors of the present communication and therefore the Committee makes no finding in regard to a violation of their rights.

6.3 The Committee notes that these allegations of ill-treatment against members of the author's family have not been contested by the State party. However, the author's allegations do not provide sufficient substantiation so as to justify a finding of a violation of article 17 of the Covenant.

6.4 The Committee has noted the author's claim that he has not been treated equally before the Peruvian courts in connection with his pension claims. The State party has not refuted his allegation that the courts' inaction, the delays in the proceedings and the continued failure to implement the resolution of October 1989 concerning his severance pay are politically motivated. The Committee concludes, on the basis of the material before it, that the denial of severance pay to a long-standing civil servant who is dismissed by the Government constitutes, in the circumstances of this case, a violation of article 26 and that Mr. Orihuela Valenzuela did not benefit "without any discrimination [from] equal protection of the law". Therefore, the Committee finds that there has been a violation of article 26 of the Covenant.

7. 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 before it reveal a violation of article 26 of the Covenant.

8. The Committee is of the view that Mr. Carlos Orihuela Valenzuela is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy, including a fair and non-discriminatory examination of his claims, appropriate compensation and such severance pay as he would be entitled to under Peruvian law. The State party is under an obligation to take measures to ensure that similar violations do not occur in the future.

9. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

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