

HUMAN RIGHTS COMMITTEE

Paraga v. Croatia

Communication No. 727/1996

24 July 1998

CCPR/C/63/D/727/1996*

ADMISSIBILITY

Submitted by: Dobroslav Paraga

Alleged victim: The author

State party: Croatia

Date of communication: 16 April 1996

Date of present decision: 24 July 1998

Decision on admissibility

1. The author of the communication is Dobroslav Paraga, a Croatian citizen residing in Zagreb. He claims to be a victim of violations by Croatia of articles 2, paragraph 3, 9, paragraphs 1 and 5, 7, 12, paragraph 2, 14, paragraphs 2 and 7, 19, paragraphs 1 and 2, 25 and 26 of the International Covenant on Civil and Political Rights. The Covenant entered into force for Croatia on 8 October 1991; the Optional Protocol entered into force for Croatia on 12 January 1996. The author is represented by Mr. Ivan Sladoljev.

The facts and claims as submitted by the author

2.1 The author notes that he has been a human rights activist throughout his life, and that he has been imprisoned, tortured and been the subject of political trials in the former Yugoslavia. In 1990, he re-organized the Croatian Party of Rights (HSP), which had been banned since 1929. He then became the president of the HSP.

2.2 According to the author, the new Croatian Government under F. Tudjman has continued to persecute him, and he has been the subject of numerous repressive measures, such as unlawful arrests, false declarations, political trials, issues of warrants for his arrest without any evidence, etc.

2.3 On 21 September 1991, the vice-president of the HSP, Ante Paradzik, was murdered after attending a political rally. The author contends that the attack had also targeted him, and that it was by pure chance that he had not been in the car with his colleague. In 1993, four officials of the Ministry of Internal Affairs were convicted for the murder; they were released in 1995.

2.4 On 22 November 1991, Mr. Paraga was arrested after a police ambush, on charges of planning to overthrow the Government. He was kept in detention until 18 December 1991, when his release was ordered after the High Court found that there was insufficient evidence in support of the charge. The author alleges a violation of article 9, paragraph 1 and 5, in this connection. He also claims that the president of the High Court was dismissed from his functions after having ruled in his favour.

2.5 On 1 March 1992, an explosion occurred in the offices of the HSP in Vinkovci, where the author was scheduled to be present during the day. Several people died in the blast, but according to the author, no formal investigation has ever taken place. On 21 April 1992, the author was summoned for having called the President of the Republic a dictator. Mr. Paraga claims that these events constitute a violation of article 19 of the Covenant, since the measures against him were aimed at restricting his freedom of expression.

2.6 On 2 June 1992, Mr. Paraga was charged with illegal mobilization of persons into an army. He claims that this charge was designed to prevent him from participating in an election campaign for Parliament and to run for election to the Presidency of the Republic. To the author, this was in violation of article 25 of the Covenant, since he was effectively prevented from running in the elections. Moreover, he argues that the elections were rigged.

2.7 On 30 September 1992, the public prosecutor filed an action in the Constitutional Court, with a view to obtaining a declaration banning the HSP. On 8 November 1992, a military court in Zagreb initiated an investigation against HSP for conspiracy to overthrow the Government. For the author, this action constituted a violation of article 14, paragraph 7, since he had already been acquitted on this charge in 1991. His parliamentary immunity was withdrawn for 13 months. On 4 November 1993, the military court dismissed the charges against the author.

2.8 After a trip to the United States during which the author had called the President of the Republic an oppressor, he was charged with slander on 3 June 1993. Parliament stripped the author of his function as vice-chairman of the parliamentary committee on human and ethnic rights. The author claims that a member of the secret police admitted in a statement printed by a weekly newspaper in July 1993 that he had received an order to assassinate the author.

2.9 On 28 September 1993, the ministry of registrations canceled the author's right to represent the HSP and, according to the author, granted it to an agent who represented the Government, thereby making the HSP a simple extension of the ruling party. The author's complaints to the Court of Registrars and to the Constitutional Court were rejected.

2.10 In the parliamentary elections of October 1995, the author participated with a new party, the Croatian Party of Rights -1861, but failed to secure reelection. He argues that because of the sanctions against him, he could not compete fairly in the election, in violation of article 25 of the Covenant. According to the author, the Polling Committee violated the Election Law by its decision

of 14 November 1995 not to take into account the invalid ballots (accounting for 3.31% of the total votes) when calculating the threshold of a minimum 5% of votes necessary for a party to enter Parliament, thereby artificially lowering the threshold. According to the author, HSP (then led by a Government agent) profited from this manoeuvre, because it entered Parliament although it had not obtained 5% of the total vote. The author and leaders of ten other political parties filed an objection, which the Polling Committee dismissed as unfounded on 16 November 1995. On 20 November 1995, the Constitutional Court dismissed their appeal. To the author, this, and other, irregularities constitute a violation of article 25.

2.11 The author notes that attacks on his person continue. He refers to a court order dated 31 January 1995, which was confirmed on 25 March 1996, that he must vacate the office premises he occupies. To him, this was done to obstruct him in his political activities. He further notes that his political party was elected as part of the coalition Government in the County Government of Zagreb, but that the President of the Republic did not accept the results of the election and blocked the appointment of a mayor.

State party's observations and author's comments

3.1 In comments dated 31 October 1997, the State party recalls that when acceding to the Optional Protocol, it made the following reservation which limits the competence *ratione temporis* of the Committee to examine communications: "The Republic of Croatia interprets article 1 of this Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of the Republic of any rights set forth in the Covenant which results either from acts, omissions of events occurring after the date on which the Protocol entered into force for the Republic of Croatia." For the State party, the author's allegations relate almost exclusively to events and acts which occurred well before the Protocol entered into force for Croatia on 12 January 1996.

3.2 The State party recalls that the Committee, in its General Comment 24[52], insisted on its competence to consider communications related to events and acts which occurred before the entry into force of the Protocol for a State party, even in the event of reservations such as the above-mentioned one, if these events or acts continue to have an effect on the rights of the victim subsequent to that date. Mr. Paraga claims that attacks against him continue, adducing the confirmation of the court order to vacate his premises on 25 March 1996 in support of his argument. The Government notes, however, that the author claims a violation of separate articles of the Covenant, and each alleged violation relates to a separate and unconnected set of events, which were addressed in separate domestic judicial proceedings. If each violation is to be understood as a separate violation of the Covenant, the consequences deriving from each case and related action impacted merely on the concrete legal situation relevant for each case; no such consequences deprived the author of the enjoyment of the rights he claimed to have been violated.

3.3 For the State party, the alleged violations cannot be taken as a continuing process which, taken together, constitute a separate and continuing violation of the author's Covenant rights. Mr. Paraga himself does not claim a violation of article 2(1) in relation to the prohibition of discrimination (including discrimination on the basis of his political opinion) in connection with the rights allegedly violated. Moreover, some of the judicial procedures referred to by the applicant were resolved in

his favour, such as the proceedings related to the ban of the HSP, which the public prosecutor decided to discontinue. That the author was involved in a number of judicial procedures over the years does not prove that these procedures were mutually inter-related, nor does it generate the continuing effect the procedures may have had on the enjoyment of the author's rights. It is thus said to be "evident" that the acts and events said to constitute violations of the Covenant were completed before the entry into force of the Protocol for Croatia, without producing any continuing effects.

3.5 It is conceded that an exception to the above observations is the court order against Mr. Paraga to vacate the premises he and his party occupy, which was confirmed on 25 March 1996, i.e. after the entry into force of the Optional Protocol for Croatia. But as Mr. Paraga does not claim a violation of article 26 on any of the grounds listed therein, what he claims to have been violated here is the right to property, which is not protected by the Covenant and a violation of which thus cannot be considered by the Committee. Besides, the State party notes, the Constitutional Court of Croatia can address both the prohibition of discrimination on the basis of political opinion and the protection of property, in the context of the protection of fundamental rights and freedoms guaranteed by the Constitution. As this avenue was not used by the author in respect of this allegation, available domestic remedies had not been exhausted.

3.6 On the basis of the above, the State party considers the communication inadmissible *ratione temporis* and, in respect of the claim in paragraph 3.5 above, because of non-exhaustion of domestic remedies.

4.1 In his comments, the author rejects the State party's arguments related to the inadmissibility *ratione temporis* of his claims as "utterly unfounded and false", on the following grounds:

- (a) the murder of his former deputy and vice-president of the HSP, Ante Paradzik, was never completely solved. After the second trial of four members of the Interior Ministry, the perpetrators of the crime were pardoned, and the judge who had sentenced them for conspiracy lost his job;
- (b) the legal action initiated against the author which led to his arrest on 22 November 1991 and which resulted in his release for lack of evidence was never formally finalised, so that the author cannot initiate an action for compensation for unlawful arrest and unlawful detention;
- (c) the procedure against the author initiated on 21 April 1992 for the offence of slander has not been terminated;
- (d) no fair and impartial investigation into the bombing of the headquarters of his party on 1 March 1992 in Vinkovci was ever conducted;
- (e) no impartial investigation into the alleged rigging of the elections of 2 August 1992 was carried out;
- (f) no investigation into the alleged assassination scheme against the author in March 1993, claimed to have been plotted by members of the Government, was ever carried out;
- (g) and finally, after the author was stripped of the leadership of the HSP, his (former) party turned into a "satellite" of the ruling party.

According to the author, all the consequences, legal or otherwise, of actions taken against him by the Croatian authorities have had lasting effects and continue, and it is wrong for the State party to assert that the author was not deprived of any of his rights.

4.2 The author affirms that he is a victim of a violation of article 26, on the grounds that he has been

discriminated against because of his political opinions. He notes that in August 1997, proceedings were initiated against him, after a newspaper in Rijeka had published some of the author's statements linked to his filing an action against President Tudjman with the International Tribunal in The Hague, for violation of the laws of war. On 7 October 1997, the County Court of Zagreb initiated proceedings against the author on the basis of article 191 of the Criminal Code of Croatia, for spreading false information; the author notes that he may be sentenced to six months' imprisonment if found guilty. On 4 December 1997, the author was arrested at the Austrian border, allegedly after misinformation about the purpose of the author's visit had willfully been given to the Austrian authorities by the Croatian Ministry of Foreign Affairs - the author was kept 16 hours in Austrian detention. A similar event had already occurred on the occasion of a visit by the author to Canada, when he was kept detained for six days in Toronto in June 1996, allegedly because the Croatian Government had accused him of subversive activities.

4.3 The author rejects as incorrect the Government's argument that the legal procedures related to the evacuation and dispossession of the flat used as party office had nothing to do with discrimination on the basis of political opinion. Rather, he asserts, it was only because of international public pressure and due to the intervention of the flat's owner, who also has Canadian citizenship, that the court decision of 25 March was not enforced.

4.4 As to the possibility of having the Constitutional Court rule on claims of unlawful discrimination and illegal expropriation and violations of other fundamental rights, the author contends that the Court "is an instrument of the governing oligarchy and that [on] essential matters, the decisions of ... President Tudjman" are not questioned. Therefore, such constitutional remedies are said to be ineffective, and the author argues that in respect of all the above issues and claims, he has exhausted domestic remedies.

Admissibility considerations

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee recalls that upon acceding to the Optional Protocol, the State party entered the following declaration: "The Republic of Croatia interprets article 1 of this Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of the Republic of Croatia who claim to be victims of a violation by the Republic of any rights set forth in the Covenant which results either from acts, omissions or events occurring after the date on which the Protocol entered into force for the Republic of Croatia", that is, after 12 January 1996. The Committee notes that most of the alleged violations of Mr. Paraga's rights under the Covenant result from a series of acts and events which occurred between 1991 and 1995 and thus precede the date of entry into force of the Optional Protocol for Croatia.

5.3 The Committee considers, however, that the author's claims that he cannot initiate an action for compensation for his allegedly unlawful arrest and detention of 22 November 1991, since it has never been formally finalized, as well as his claim that the procedure initiated against him on 21 April 1992 for slander has never been terminated, relate to incidents that have continuing effects,

which in themselves may constitute a violation of the Covenant. The Committee considers therefore that these claims are admissible and should be examined on the merits.

5.4 The Committee considers that it is precluded *ratione temporis*, in the light of the declaration made by the State party upon accession to the Optional Protocol, from considering the remainder of the communication in so far as it relates to events which occurred before 12 January 1996, since the continuing effects claimed by Mr. Paraga do not appear to constitute in themselves a violation of the Covenant, nor can they be interpreted as an affirmation, by act or clear implication, of the alleged previous violations of the State party. 1/

5.5 In relation to the court order ordering the author to vacate the apartment he uses as an office of his political party, the Committee has noted the State party's argument that complaints about unlawful and arbitrary dispossession of property and unlawful discrimination may be adjudicated by the Constitutional Court. The author merely contends that this remedy is not effective, as the Constitutional Court is "an instrument of the governing oligarchy". The Committee recalls that mere doubts about the effectiveness of domestic remedies do not absolve a complainant from resorting to them; the Committee notes in this context that in respect of other alleged violations of his rights, Croatian tribunals have ruled in the author's favour in the past. In the circumstances, the Committee concludes that recourse to the Constitutional Court in relation to the order to vacate the apartment used as office premises by the author would not be a priori futile; accordingly, the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met in this respect.

5.6 With regard to the author's claim that he is a victim of a violation of article 26, referred to in paragraph 4.2 above, the Committee considers that this claim is admissible and should be examined on its merits.

6. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it relates to the author's arrest and detention on 22 November 1991, the slander proceedings initiated against him on 21 April 1992, and his claim that he is a victim of discrimination;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Office of the High Commissioner for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision on admissibility may be reviewed upon consideration of the merits, in the light of any explanations or statements submitted by the State party, pursuant to rule 93, paragraph 4, of the Committee's rules of procedure.

(e) that this decision shall be communicated to the State party and to the author.

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ See the Committee's Views on communication No. 516/1992 (Simunek et al. v. Czech Republic), adopted 19 July 1995, paragraph 4.5.