

HUMAN RIGHTS COMMITTEE

Paraga v. Croatia

Communication No. 727/1996

4 April 2001

CCPR/C/71/D/727/1996

VIEWS

Submitted by: Mr. Dobroslav Paraga

Alleged victim: The author

State party: Croatia

Date of communication: 16 April 1996 (initial submission)

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

Meeting on 4 April 2001

Having concluded its consideration of communication No. 727/1996 submitted to the Human Rights Committee by Mr. Dobroslav Paraga, 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 the State party,

Adopts the following:

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

1. The author of the communication, dated 16 April 1996, 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.

He is not represented by Counsel.

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 was imprisoned, tortured and was 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, following the disintegration of the former Yugoslavia, the new Croatian State has similarly subjected him to persecution and to numerous repressive measures, such as unlawful arrests, false declarations, political trials, unjustified arrest warrants, 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 of the murder; they were reportedly 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 had expected to be. 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 states that he 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 for the Presidency of the Republic. To the author, this was in violation of article 25 of the Covenant, since he was effectively prevented from being a candidate 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 the 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 cancelled 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 re-election. 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 which allowed the HSP (then led by a Government agent) to enter Parliament although it had not obtained the required 5 per cent of the total vote. The author and leaders of 10 other political parties filed an objection, which the Constitutional Court dismissed on 20 November 1995.

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 on admissibility 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 declaration 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 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". 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 For the State party, the alleged violations cannot be taken as a continuing process which, together, constitute a separate and continuing violation of the author's Covenant rights. 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.

3.3 It is conceded that an exception to the above observations is the court order issued 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. However, the State party argues that as Mr. Paraga does not claim a violation of article 26 in this regard but a violation of his right to property, which is not protected by the Covenant, this part of the communication is inadmissible *ratione materiae*. 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 have not been exhausted.

3.4 Thus, the State party considers the communication to be inadmissible partly on account of its declaration *ratione temporis* and, partly because of non-exhaustion of domestic remedies.

4.1 In his comments, the author contends that all the consequences, legal or otherwise, of actions taken against him by the Croatian authorities have had continuing effects. He reiterates that:

(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 finalized, 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 was turned into a "satellite" of the ruling party.

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. 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 wilfully 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 an office of the author's political party 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 has dual (Croatian/Canadian) citizenship, that the court decision of 25 March 1996 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 During its sixty-third session, the Committee considered the admissibility of the communication.

5.2 The Committee recalled that upon acceding to the Optional Protocol, the State party entered a declaration restricting the Committee's competence to events following the entry into force of the Optional Protocol for Croatia on 12 January 1996. The Committee noted 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 considered, 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 the proceedings have 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 considered therefore that these claims were admissible and should be examined on the merits.

5.4 The Committee considered that it was precluded *ratione temporis*, in 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 related to events which occurred before 12 January 1996, since the continuing effects claimed by Mr. Paraga did not appear to constitute in themselves a violation of the Covenant, nor could they be interpreted as an affirmation, by act or clear implication, of the alleged previous violations of the State party.

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 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 contended that this remedy is not effective, as the Constitutional Court is "an instrument of the governing oligarchy". The Committee recalled that mere doubts about the effectiveness of domestic remedies do not absolve a complainant from resorting to them; the Committee noted in this context that in respect of other alleged violations of his rights, Croatian tribunals had ruled in the author's favour in the past. In the circumstances, the Committee concluded 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 considered that this claim was admissible and should be examined on its merits.

6. Accordingly, on 24 July 1998, the Human Rights Committee decided that the communication was admissible in so far as it related 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 was a victim of discrimination.

The State party's information and the author's reply on the merits of the communication

7.1 In its submission on the merits, the State party provides further information on the proceedings involving the author's arrest and detention in November 1991, and on the charges of "dissemination of false information" of April 1992, and confirms that proceedings with respect to all related charges have now been terminated.

7.2 The State party confirms that Mr. Paraga was arrested on 22 November 1991, that his detention was ordered by the investigating judge with reference to articles 191, paragraph 2, points 2 and 3 of the Criminal Procedures Act, and that he was released on 18 December 1991, by the Zagreb County Court.

7.3 The State party states that on 25 November 1991 the Zagreb County Public Attorney's Office filed a request under No. KT - 566/91 to initiate an investigation against Mr. Paraga on charges of "armed rebellion" and charges of "illegal possession of weapons and explosives", pursuant to Article 236 (f), paragraphs 1 and 2, and Article 209, paragraphs 2 and 3, respectively, of the Croatian Penal Code, which was in force at the time. A request for custody was also made under Article 191, paragraph 2, points 2 and 3 of the Criminal Procedures Act.

7.4 The investigating judge rejected the request to conduct an investigation and delivered the case to a panel of judges who decided to conduct an investigation with respect to Article 209, paragraphs 2 and 3 only. However, the County Public Attorney's Office failed to issue an indictment, and did not ask the investigating judge to proceed with the investigation. Therefore, the investigating judge forwarded the file to the panel of three judges again, who decided to discontinue further proceedings against Mr. Paraga, pursuant to Article 162, paragraph 1, point 3, of the Criminal Procedures Act, in a decision dated No. Kv-48/98 of 10 June 1998. According to the State party, the decision was

sent to Mr. Paraga on 17 June 1998 and received by him on 19 June 1998.

7.5 The State party claims that Mr. Paraga's arrest was conducted legally, in accordance with the Criminal Procedures Act in force at the time and that, therefore, the Republic of Croatia did not violate Article 9, paragraph 1, of the Covenant. Moreover, the State party notes that since the procedure has been terminated the author may take an action for compensation before the Croatian courts, in accordance with Article 9, paragraph 5, of the Covenant.

7.6 The State party confirms that proceedings were instituted by the Municipal Public Attorney's Office, in April 1992, for "dissemination of false information", under Article 191 of the Penal Code (Article 197, paragraph 1, of the earlier Code), pursuant to Article 425, paragraph 1, with reference to article 260, paragraph 1, point 1 of the Criminal Proceedings Act. (See further below). The State party states that due to amendments made to the respective provisions of the Penal Code, and the passage of time, the Split Municipal Court, who had received the indictment from the Public Attorney's office, dismissed the charges against Mr. Paragon in a decision, No. IK-504/92, issued on 26 January 1999.

7.7 As for the alleged discrimination due to the author's political views, especially after his interviews with Novi list daily, the State party confirms that the Zagreb Municipal Public Attorney's Office instituted proceedings against Mr. Paraga on 7 October 1997, for "dissemination of false information", pursuant to Article 191 of the Penal Code in force at that time. However, upon completion of the ensuing inquiry, the criminal proceedings were dismissed on 26 January 1998.

7.8 The State party explains, that the dissemination of false information, pursuant to the then applicable Article 191 of the Penal Code, could have been "committed by a person who transmits or spreads news or information known by the person to be false, and likely to disturb a greater number of citizens, and also intended to cause such disturbance." Under the new Penal Code, in force since 1 January 1998, the same criminal offence is now referred to as "dissemination of false and disturbing rumours" (Article 322 of the Penal Code) and to be convicted thereon "the perpetrator must know that the rumours he/she spreads are false, his/her purpose is to disturb a greater number of citizens, and a greater number of citizens are disturbed." What is required, therefore, is that the effect corresponds with the intent. According to the State party, as this was not the case in this instance, the criminal charges were dropped and proceedings against Mr. Paraga were terminated on 26 January 1998.

7.9 Regarding the author's allegation that he was arrested and detained on the Austrian border on 4 December 1997 and on the Canadian border in June 1996, on the basis of false information given earlier by the Croatian Ministry of Foreign Affairs about the purpose of his travel, the Croatian Ministry of Foreign Affairs strongly reject such allegations as malicious and entirely unfounded. According to the State party, the Croatian Embassy in Vienna requested and received an official explanation from the Austrian authorities about Mr. Paraga's detention which, it claims, was only brought to its attention by the Austrian press. The State party was informed that Mr. Paraga had entered Austria as a Slovenian citizen, and was detained until certain facts were established on why Mr. Paraga had been denied entry to Austria back in 1995. It was also informed that a complaint filed by Mr. Paraga himself against his detention was still being processed. The State party claims that as Mr. Paraga had not notified the Croatian diplomatic mission of the incident, it was not

possible to protect him under the international conventions.

7.10 Similarly, the State party claims that it was only informed by the press of Mr. Paraga's detention by the Canadian Immigration Office in Toronto and that on becoming aware of his detention, the Consul General of the Republic of Croatia in Mississauga contacted Mr. Paraga's attorney who refused to give him any information. The Consul General then attempted to contact Mr. Henry Ciszek, supervisor of the Canadian Immigration Office at Toronto Airport, who informed him that Mr. Paraga travelled with a Slovenian passport (his Croatian passport did not have a valid Canadian visa), and that he refused consular protection by refusing to speak to the Consul General.

8.1 The author rejects the State party's submissions on the merits as "completely untrue". With respect to his arrest and detention in November 1991, the author claims that he was arrested "without charge" and arrested and detained "arbitrarily and absolutely without basis" for political reasons only. The author alleges that the President of the Republic of Croatia exerted pressure on the then president of the Supreme Court to sentence him "illegally" and that when he refused to do so, he was dismissed from his position as the President of the Supreme Court on 24 December 1991.

8.2 The author confirms that the court decision terminating these proceedings against him was issued on 10 June 1998. However, he states that this was only issued after he had filed a communication with the Human Rights Committee, and after filing a fourth "rush note" for termination of the procedure, with the County Court of Zagreb. In addition, the author states that at least from 1991 to 1998 he was under criminal investigation and that this deprived him of his civil and political rights as "person under investigation cannot have any permanent job, he is not allowed to use social and health care or to be employed".

8.3 With regard to the charges initiated against Mr. Paragon in April 1992 for slander, the author concedes that these charges were terminated but contends that this took seven years from the date he was charged.

8.4 In relation to the charges made on 7 October 1997 for the dissemination of false information the author contends that, despite the State party's claim to the contrary, these proceedings have not yet been finalized. The author states that he has not received any decision on the termination of these proceedings. The author reiterates his belief that his arrest by border guards in Canada in 1996 and in Austria in 1997 resulted from the Croatian authorities information to the border controls of both countries that the author was involved in subversive activities. In fact, the author claims that he was informed of such by both the Canadian and Austrian immigration authorities. He refutes the State party's contention that they were prepared to offer him help during his detention in Canada and Austria and claims that on neither occasion did the Croatian authorities assist to have him released. The author claims that he lodged a complaint against the Government of Croatia for compensation for damages after his detention in Canada and Austria for what he refers to as "misuse of power".

Reconsideration of the admissibility decision and examination of the merits

9.1 The Human Rights Committee has examined the communication in light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 With respect to the author's alleged unlawful arrest and detention of 22 November 1991 the Committee decided, in its admissibility decision of 24 July 1998, that the communication was admissible in so far as it related to the continuing effects of the criminal proceedings, which were instituted against the author at this time and were still pending at the time of the submission of the communication. The Committee recalls that its decision on admissibility was predicated on the alleged continuing effects of violations that are said to have occurred prior to the entry into force of the Optional Protocol for Croatia.

9.4 The Committee notes the State party's contention that these proceedings were terminated on 17 June 1998, and its contention that the author can now file a claim for compensation in the domestic courts. Given this new information provided since the decision on admissibility, the Committee reviews its previous decision on admissibility, in accordance with rule 93(4) of its rules of procedure, and declares that the claims relating to an alleged violation of article 9, paragraph 5, is inadmissible because of the authors failure to exhaust domestic remedies in this respect under article 5, paragraph 2(b) of the Optional Protocol. The author should avail himself of domestic remedies in this regard.

9.5 The Committee proceeds without delay to the consideration of the merits of the claim with respect to the slander proceedings and the alleged discrimination.

9.6 In relation to the slander proceedings, the Committee has noted the author's contention that proceedings were instituted against him because he referred to the President of the Republic as a dictator. While the State party has not refuted that the author was indeed charged for this reason, it has informed the Committee that the charges against the author were finally dismissed by the court in January 1999. The Committee observes that a provision in the Penal Code under which such proceedings could be instituted may, in certain circumstances, lead to restrictions that go beyond those permissible under article 19, paragraph 3 of the Government. However, given the absence of specific information provided by the author and the further fact of the dismissal of the charges against the author, the Committee is unable to conclude that the institution of proceedings against the author, by itself, amounted to a violation of article 19 of the Covenant.

9.7 The Committee observes, that the charges brought against Mr. Paraga in November 1991 and the slander charges brought against him in April 1992 raise the issue of undue delay (article 14, paragraph 3 (c) of the Covenant). The Committee is of the view that this issue is admissible as the proceedings were not terminated until two and a half years and three years, respectively, after the entry into force of the Optional Protocol in respect of the State party. The Committee notes that both procedures took seven years altogether to be finalized, and observes that the State party, although it has provided information on the course of the proceedings, has not given any explanation on why the procedures in relation to these charges took so long and has provided no special reasons that could justify the delay. The Committee considers, therefore, that the author was not given a trial "without undue delay", within the meaning of article 14, paragraph 3 (c) of the Covenant.

9.8 As to the author's claim that he is a victim of discrimination because of his political opposition to the then Government of Croatia, the Committee notes that the proceedings which were instituted against the author on 7 October 1997 were dismissed, a few months later, on 26 January 1998. In view of this fact, and lacking any further information that would substantiate this claim, the Committee cannot find a violation of any of the articles of the Covenant in this regard.

9.9 With regard to the author's allegation that he was subjected to defamation by the Croatian authorities in Austria and Canada, the Committee notes that the State party has stated that in neither case did the author inform the Croatian authorities of his detention and that with respect to his entry into Canada he was travelling on a Slovenian passport. The Committee notes that the author has not further commented on these points. Therefore, the Committee concludes that the author has not substantiated his claim and considers that there has been no violation in this respect.

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 facts as found by the Committee reveal a violation by Croatia of article 14, paragraph 3 (c).

11. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an effective remedy, including appropriate compensation.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

** The following members of the Committee participated in the examination of the case: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfic Khalil, Mr. Patrick Vella, Mr. Maxwell Yalden.

Notes

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

2. The author does not provide any details that may substantiate this claim.

3. It is noted that the claimant registered two communications with the European Court of Human Rights in 1999, however, the issues raised therein differ from those raised in this communication.