HUMAN RIGHTS COMMITTEE

Pons v. Spain

Communication No. 454/1991

30 October 1995

CCPR/C/55/D/454/1991

VIEWS

Submitted by: Enrique García Pons

Alleged victim: The author

State party: Spain

Date of communication: 29 December 1990 (initial submission)

Date of decision on admissibility: 30 June 1994

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

Meeting on 30 October 1995,

Having concluded its consideration of communication No. 454/1991 submitted to the Human Rights Committee by Mr. Enrique García Pons 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 authors of the communication and the State party,

Adopts its

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

1. The author of the communication is Enrique García Pons, a Spanish citizen born in 1951, currently residing in Badalona, Spain. He claims to be a victim of violations by Spain of articles 14, paragraph 1, 25(c), and 26 of the International Covenant on Civil and Political

Rights.

The facts as submitted

2.1 The author is a civil servant, assigned to the sub-office of the National Employment Agency (Instituto Nacional de Empleo) in the municipality of Badalona. On 20 December 1986, he was appointed substitute for the District Judge of Badalona, a function which he performed until 16 October 1987; following his nomination, he requested his employer, the Ministry of Labour and Social Security (INEM), to formalize his change of status and to certify that he was, in terms of administrative status, assigned to "special services". The Ministry did not grant his request.

2.2 Later in 1987, the author was again appointed substitute District Judge of Badalona; he did not, however, assume his functions, since the post of District Judge had been taken up by a new judge. The author therefore requested unemployment benefits (*prestaciones de desempleo*). Again, he requested the formal recognition of his administrative status, but his employer did not process his request. The same situation prevailed in 1988; the author therefore filed a complaint with the competent administrative tribunal against the Instituto Nacional de Empleo, requesting unemployment benefits. On 27 May 1988, the Juzgado de lo Social No. 9 (Barcelona) rejected his request because the author was free to resume his former post, and therefore did not satisfy the requirements under the unemployment benefits scheme. It was argued that what the author intended was to leave his post at the lower scale in order to claim unemployment benefits at a higher scale, while preparing his entrance into a judicial career.

2.3 On 11 May 1989, the Instituto Nacional de Empleo declared the author to be on "voluntary leave of absence" since the end of 1986. The author contested this decision and continued to assume, whenever called upon to do so, the functions of a substitute district judge. He argued that since all substitute judges contribute to unemployment benefit insurance, he himself should be able to benefit from its coverage. He appealed on these grounds against the decision of 27 May 1988 to the Tribunal Superior de Justicia de Cataluña which, on 30 April 1990, dismissed his appeal.

2.4 On 22 June 1990, the author filed an appeal (recurso de amparo) with the Constitutional Tribunal. On 21 September 1990, the Constitutional Tribunal rejected his complaint. The author re-petitioned the Constitutional Tribunal on 10 November 1990, pointing out that he was the only substitute judge in all of Spain to whom unemployment benefits had been denied, and that this situation violated his constitutional rights. On 3 December 1990, the Constitutional Tribunal confirmed its earlier decision. With this, the author submits, available domestic remedies have been exhausted.

The complaint

3. The author alleges to be a victim of denial of equality before the courts, as provided for in article 14, of discrimination in access to public service, in violation of article 25, paragraph c, and of discrimination because of denial of unemployment benefits, in

contravention of article 26 of the Covenant.

State party's submission on admissibility

4. In a submission dated 17 September 1991, the State party stated that "the communication of Mr. García Pons satisfies, in principle, the conditions of admissibility set forth in articles 3 and 5, paragraph 2, of the Optional Protocol ... and that it is not incompatible with the provisions of the Covenant". While not objecting to the communication's admissibility, it indicated that it would, in due course, make submissions on the merits.

The Committee's admissibility decision

5.1 Before considering any claim 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 found that the author had substantiated his allegations, for purposes of admissibility, and was satisfied that the communication was not inadmissible under articles 1, 2, and 3 of the Optional Protocol. It further noted that the State party conceded that domestic remedies had been exhausted.

6. On 30 June 1994 the Human Rights Committee therefore decided that the communication was admissible inasmuch as it may raise issues under articles 14, 25 and 26 of the Covenant.

State party's submissions on the merits

7.1 In its submissions of 13 February and 15 June 1995 the State party contests any violations of the Covenant. As to the facts of the case, the State party indicates that the author is not unemployed, but a civil servant, and that although on several occasions he has been given leave to assume the post of a substitute judge, he has always been able to return to his established post; thus, he has never been unemployed and accordingly cannot qualify for unemployment benefits. The author's submission suffers from the contradiction between his desire to be a judge on a permanent appointment and his unwillingness to give up the security of his status as civil servant in his current position.

7.2 As to the author's allegation that he is the only unemployed substitute judge who does not receive unemployment benefits, the State party states that the author has not cited a single example of a person in the same circumstances as himself, i.e. a civil servant on temporary leave from an established post, who has been treated differently. Only those unemployed substitute judges receive unemployment benefits who are, in fact, unemployed. This is not the author's situation. Nor can he expect the adoption of special legislation for himself to allow him to retain his civil service post while not performing its functions and, instead, preparing for competitive exams while receiving unemployment benefits on his expired substitute judge assignment.

7.3 With regard to an alleged violation of article 14 of the Covenant, the State party affirms

that the author has had equal access to all Spanish courts, including the Constitutional Court, and that all of his complaints were examined fairly by the competent tribunals, as evidenced in the respective judgments and other submissions. Admittedly, the author disagrees with the disposition of his case, but he has not substantiated a claim that procedural guarantees were not observed by the various instances involved.

7.4 As to the alleged violation of article 25 of the Covenant, the State party points out that at no time in the many proceedings engaged by the author did he invoke the right protected under article 25 of the Covenant. Moreover, this issue is not germane to the case, which focuses not on the right of equal access to public service but on the alleged denial of unemployment benefits.

Author's comments

8.1 In his comments, dated 29 March and 29 July 1995, the author reiterates his claim to be a victim of discrimination and contends that the relevant Spanish laws are incompatible with the Covenant, in particular the 1987 Rules and Circular 10/86 of the Undersecretary in the Justice Ministry concerning the status of substitute judges. He further alleges that the lack of permanence and the insecurity of substitute judges endangers the independence of the judiciary.

8.2 He rejects the State party's contention that he has primarily economic concerns and expects special legislation for himself. Far from having earned substantially more as a judge, he was compelled to return to his civil service post in order to attend to his minimum needs. He further stresses that during various periods from 1986 to 1992 he served as a devoted substitute judge and paid unemployment insurance. He contends that the relevant legislation and practice should be adjusted to ensure that persons who pay unemployment insurance benefit therefrom when the terms of temporary employment end, notwithstanding the possibility of returning to another post in the civil service.

8.3 The author concludes that since his is the only substitute judge who does not receive unemployment benefits, he is a victim of discrimination within the meaning of article 26 of the Covenant.

Review of admissibility and examination of the merits

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

9.2 With regard to the author's allegations concerning article 25, paragraph c, of the Covenant, the Committee notes that the State party has submitted that the author never invoked the substance of this right in any proceedings before Spanish tribunals; the author has not claimed that it would not have been open to him to invoke this right before the local courts. Therefore, pursuant to rule 93, paragraph 4, of the Committee's rules of procedure the Committee sets aside that part of its admissibility decision concerning article 25 of the

Covenant and declares it inadmissible because of non-exhaustion of domestic remedies.

9.3 Before addressing the merits in this case, the Committee observes that although the right to social security is not protected, as such, in the International Covenant on Civil and Political Rights, issues under the Covenant may nonetheless arise if the principle of equality contained in articles 14 and 26 of the Covenant is violated.

9.4 In this context the Committee reiterates its jurisprudence that not every differentiation in treatment can be deemed to be discriminatory under the relevant provisions of the Covenant [1]. A differentiation which is compatible with the provisions of the Covenant and is based on reasonable grounds does not amount to prohibited discrimination.

9.5 The Committee notes that the author claims to be the only unemployed substitute judge who does not receive unemployment benefits. The information before the Committee reveals, however, that the relevant category of recipients of unemployment benefits encompasses only those unemployed substitute judges who cannot immediately return to another post upon termination of their temporary assigments. The author does not belong to this category, since he enjoys the status of a civil servant. In the Committee's opinion, a distinction between unemployed substitute judges who are not civil servants on leave and those who are cannot be deemed arbitrary or unreasonable. The Committee therefore concludes that the alleged differentiation in treatment does not entail a violation of the principle of equality and non-discrimination enunciated in article 26 of the Covenant.

9.6 With regard to the author's allegations concerning article 14, the Committee has carefully studied the various judicial proceedings engaged by the author in Spain as well as their disposition and concludes that the evidence submitted does not support a finding that he has been denied a fair hearing within the meaning of article 14, paragraph 1, of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, finds that the facts before it do not reveal a violation by Spain of any provision of the International Covenant on Civil and Political Rights.

1/ Zwaan de Vries v. The Netherlands, Communication No. 182/1984, Views adopted on 9 April 1987, para. 13. Alina Simunek v. The Czech Republic, Communication No. 516/1992, Views adopted on 19 July 1995, para 11.3.

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