HUMAN RIGHTS COMMITTEE

Casanovas v. France

Communication No. 441/1990

7 July 1993

CCPR/C/48/D/441/1990 *

ADMISSIBILITY

Submitted by: Robert Casanovas [represented by counsel]

Alleged victim: The author

State party concerned: France

Date of communication: 27 December 1990 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted the State party on August 1991 (not issued in document form)

Date of present decision: 7 July 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Robert Casanovas, a French citizen residing in Nancy. He claims to be the victim of a violation by France of articles 2, paragraphs 3 (a) and (b), and 14, paragraph 1, of the International Covenant on Civil and Political Rights. The facts of the case may also be seen to raise issues under article 25 (c) of the Covenant.

The facts as submitted by the author:

2.1 The author is a former employee of the *sapeurs-pompiers* (fire brigade) of Nancy. On 1 September 1987, he was appointed head of the *Centre de Secours* Principal of Nancy. On 20 July 1988, he was dismissed for alleged incompetence, by decision of the regional and departmental authorities. The author appealed to the Administrative Tribunal (*Tribunal Administratif*) of Nancy,

which quashed the decision on 20 December 1988. Mr. Casanovas was reinstated in his post by decision of 25 January 1989.

2.2 The city administration, however, initiated new proceedings against the author which resulted, on 23 March 1989, in a second decision terminating his employment. The author challenged this decision before the Administrative Tribunal of Nancy on 30 March 1989. On 19 October 1989, the President of the Tribunal ordered the closure of the preliminary enquiry. By letter of 20 November 1989, Mr. Casanovas requested the President of the Tribunal to put his case on the court agenda at as early a date as possible; this request was repeated on 28 December 1989. By letter dated 11 January 1990, the President informed him that the matter was not considered urgent and that, since no special circumstances prevailed, it would be registered in chronological order, which implied that the case would not be heard either in 1990 or in 1991.

2.3 On 23 January and again on 2 February 1990, the author notified the Court that he considered such a delay to constitute a breach of article 6 of the European Convention on Human Rights and Fundamental Freedoms and, accordingly, requested the inscription of his case on the court calendar, pursuant to articles 506 and 507 of the French Code of Civil Procedure. Again, he received no reply and therefore asked the Tribunal, on 13 February 1990, to acknowledge receipt of his earlier submissions. On 15 March 1990, the Court informed him that he was not discriminated against, but that the delays encountered were due to a backlog in the handling of earlier cases dating back to 1986; in the circumstances, it was impossible to examine the case at an earlier date.

2.4 On 21 March 1990, the author once again requested the President of the Administrative Tribunal to hear the case. The request was reiterated on 5 June 1990, but refused by the President of the Court on 11 June 1990.

2.5 On 20 July 1990, Mr. Casanovas appealed to the European Commission of Human Rights, invoking article 6 of the European Convention on Human Rights and Fundamental Freedoms. By decision on 3 October 1990, the Commission declared his communication inadmissible, considering that the Convention does not cover procedures governing the dismissal of civil servants from employment.

2.6 As to the requirement of exhaustion of domestic remedies, the author submits that he cannot appeal to any other French judicial instance, unless and until the Administrative Tribunal of Nancy has adjudicated his case. He therefore submits that he should be deemed to have complied with the requirements of article 5, paragraph 2(b), of the Optional Protocol.

The complaint:

3.1 The author submits that the State party has failed to provide him with an "effective remedy", since the delay to have his case adjudicated would be of at least three years. The author claims that this delay is manifestly unreasonable and cannot be justified by the work backlog of the Administrative Tribunal. The author argues that it is incomprehensible that the Administrative Tribunal was able to adjudicate his first case (concerning the 1988 dismissal) within five months, whereas it apparently will take several years to adjudicate his second petition.

3.2 The author further claims that States parties to the Covenant have the duty to provide their tribunals with the necessary means to render justice effectively and expeditiously. According to the author, this is not the case if at least three years pass before a case can be heard at first instance. The author claims that in case of appeal to the Administrative Court of Appeal (Cour Administrative d'Appel), and subsequently to the Council of State (Conseil d'Etat), a delay of about ten years could be expected.

3.3 The author further submits that a case which concerns the dismissal of a civil servant is by nature an urgent matter; in this context, he claims that he has not received any salary since 23 March 1989. He claims that a decision reached after three years, even if favourable, would be ineffective. The author moreover argues that, since the chairman of the Administrative Tribunal has discretionary power to put cases on the roll, he could have granted the author's request, taking into account the particular nature of the case.

The State party's information and observations:

4.1 The State party argues that the communication is inadmissible, on the account of the reservation made by the French Government upon the deposit of the instrument of ratification of the Optional Protocol to the International Covenant on Civil and Political Rights, with respect to article 5, paragraph 2 (a), that the Human Rights Committee "shall not have the competence to consider a communication from an individual if the same matter is being examined or has already been examined under another procedure of international investigation or settlement".

4.2 The State party submits that this reservation is applicable to the present case, because the author of the communication has already submitted a complaint to the European Commission of Human Rights, which declared it inadmissible. The State party argues that the fact that the European Commission has not decided on the merits does not preclude the application of the reservation, as the case concerns the same individual, the same facts and the same claim. In this context, the State party refers to the Committee's decision with regard to communication No. 168/1984[1], where the Committee held that the phrase "the same matter" "refers, with regard to identical parties, to the complaints advanced and facts adduced in support of them".

4.3 The State party further submits that the communication is inadmissible as incompatible *ratione materiae* with the Covenant. The State party argues that article 14, paragraph 1, of the Covenant is not applicable, since the procedure before the Administrative Tribunal does not involve "rights and obligations in a suit at law". In this context, the State party refers to the decision of the European Commission, which held that the European Convention on Human Rights does not cover procedures governing the dismissal from employment of civil servants, and points out that the text on which the European Commission based its decision, is identical to the text of article 14, paragraph 1, of the Covenant. Moreover, unlike article 6, paragraph 1, of the European Convention, article 14, paragraph 1, of the Convention does not contain any provision on the right to a judicial decision within a reasonable time.

4.4 The State party further argues that article 2, paragraph 3, of the Covenant, which guarantees an effective remedy to any person whose rights or freedoms as recognized in the Covenant are violated, has not been breached, since the procedure before the Administrative Tribunal can be considered

an effective remedy. Accordingly to the State party, this is shown by the decision of the Administrative Tribunal, which quashed the author's dismissal in December 1988.

4.5 In respect of possible issues under article 25 (c) of the Covenant, the State party argues that the author has not raised the issue of discrimination, within the meaning of article 25 (c), before the Administrative Tribunal, nor before the Human Rights Committee. Moreover, the State party contends that, with regard to article 25 (c), domestic remedies have not been exhausted, since the Administrative Tribunal of Nancy has not yet issued its judgment. The State party further argues that it does not appear from the communication that the delay in the hearing of the author's case is the result of a discriminatory practice towards him.

The issues and proceedings before the Committee:

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 has taken note of the State party's claim that the communication is inadmissible by reason of the reservation made by France to article 5, paragraph 2, of the Optional Protocol, that the Committee "shall not have the competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement". The Committee observes that the European Commission has declared the author's application inadmissible as incompatible *ratione materiae* with the European Convention. The Committee, however, considers that, since the rights of the European Convention differ in substance and in regard to their implementation procedures from the rights set forth in the Covenant, a matter that has been declared inadmissible *ratione materiae* has not, in the meaning of the reservation, been "considered" in such a way that the Committee is precluded from examining it.

5.3 The Committee observes that the guarantees laid down in article 14, paragraph 1, of the Covenant are limited to criminal proceedings and to the determination of rights and obligations in a suit at law. The Committee reiterates that the concept of "suit of law" or the equivalent in the other language texts is based on the nature of the right in question rather than on the status of one of the parties[2]. Accordingly, the Committee considers that a procedure concerning a dismissal from employment constitutes the determination of rights and obligations in a suit at law, within the meaning of article 14, paragraph 1, of the Convention[3].

5.4 The Committee considers that the facts of the case raise issues, which should be considered on the merits.

6. The Human Rights Committee therefore decides:

(a) that the communication is admissible

(b) that, in accordance with article 4(2) of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal of it of the present

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 he may wish to submit should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that, in accordance with rule 93, paragraph 4, of the Committee's rules of procedure, the State party will have the opportunity to request review of this decision on admissibility at the time the Committee makes its decision on the merits;

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

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

---

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

1/ V.O. v. Norway, declared inadmissible on 17 July 1985, paragraph 4.4.

2/ Communication No. 112/1981, Y.L. v. Canada, declared inadmissible on 8 April 1986, paragraph 9.2.