



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/85/D/1125/2002
17 November 2005

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October-3 November 2005

VIEWS

Communication No. 1125/2002

Submitted by: Jorge Luis Quispe Roque (not represented by counsel)

Alleged victim: The author

State party: Peru

Date of communication: 17 July 2002 (initial submission)

Document reference: Special Rapporteur's rule 97 decision, transmitted to the State party on 14 October 2002 (not issued in document form)

Date of adoption of Views: 21 October 2005

Subject matter: Trial and conviction of a person under anti-terrorist legislation

Procedural issues: Possible failure to exhaust domestic remedies following the annulment of the conviction and pending a new trial

* Made public by decision of the Human Rights Committee.

GE.05-44925 (E) 191205 201205

Substantive issues: Violation of the right to liberty and security of person and the guarantees of due process

Articles of the Covenant: 9 and 14

Articles of the Optional Protocol: 5, paragraph 2 (b)

On 21 October 2005 the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1125/2002. The text of the Views is appended to the present document.

[ANNEX]

Annex

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,
PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Eighty-fifth session

concerning

Communication No. 1125/2002*

Submitted by: Jorge Luis Quispe Roque (not represented by counsel)
Alleged victim: The author
State party: Peru
Date of communication: 17 July 2002
(initial submission)

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

Meeting on 21 October 2005,

Having concluded its consideration of communication No. 1125/2002, submitted by Mr. Jorge Luis Quispe Roque 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:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr Hipólito Solari Yrigoyen and Mr. Roman Wieruszewski.

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

1.1 The author of the communication, dated 17 July 2002, is Mr. Jorge Luis Quispe Roque, a Peruvian citizen born in 1962, currently being held in the Miguel Castro Castro special closed prison in Lima. He claims to be the victim of violations by Peru of articles 9 and 14 of the Covenant. He is not represented by counsel.

1.2 The Optional Protocol entered into force for the State party on 3 January 1981.

The facts as submitted by the author

2.1 The author was a member of the cleaning staff at the César Vallejo preparatory academy in Lima. On 20 June 1992, at 10 p.m., the author was in his vehicle with his wife and younger son, in front of his in-laws' home in Lima, when he was intercepted by a group of armed police officers who forced him to get into another vehicle; the officers fired shots into the air and beat and shoved the author. They drove the author to his place of work. When they arrived, they forced him to enter one of the offices, where they covered his face with his jacket, sat him down and tied him up. While the author remained seated, the officers conducted a search of the offices.

2.2 The police asserted that "subversive leaflets and explosives" were found during the search. The author maintains that this allegation is false and that the materials that were supposedly found do not exist.

2.3 On 21 June 1992, the author's wife submitted a complaint to the office of provincial prosecutor No. 4 in Lima against the National Police - National Counter-Terrorism Directorate (DINCOTE) - concerning the author's kidnapping, supplying the licence plate numbers of the two vehicles allegedly used in the kidnapping, and of the author's vehicle which, the author alleges, was seized by the officers.

2.4 On 24 June 1992, the author's home was searched but no subversive material was found.

2.5 The author was sentenced to 20 years' imprisonment for an "offence against the public peace - terrorism - [offences] against public and private entities - the State -", by the Special Criminal Counter-Terrorism Division of the High Court of Lima (a "faceless" court) in the collective sentencing of 30 November 1994.

2.6 The author filed a petition of annulment with Special Division of the Supreme Court. On 5 September 1996, the Division rejected the petition and upheld the author's conviction, although it acknowledged that article 285 of the Code of Criminal Procedure had been incorrectly applied, since ordinary public and private entities had been considered as aggrieved parties when in such proceedings the aggrieved party should be the State.

2.7 The author filed a petition for the constitutional guarantee of habeas corpus with the Constitutional Court, alleging irregularities in the trial; in its ruling of 22 June 1999, the Constitutional Court declared the petition inadmissible.

2.8 The author declares that he has not applied to any other international body with regard to the subject matter of the communication.

The complaint

3.1 The author claims to be a victim of a violation of article 9, since he was arbitrarily arrested without being informed of the reasons for his arrest or of any charges against him.

3.2 The author maintains that the sentencing court was composed of faceless judges, that his right to be heard publicly was denied, that the ruling was based exclusively on police testimony and that he was sentenced mainly for his alleged ties with the principal defendant, although the nature of those ties was not specified. Moreover, his lawyer was given only a short time - 30 minutes - to examine the case file, which contained more than 2,000 sheets, and had no opportunity to question witnesses. All of the foregoing constitutes a violation of article 14 of the Covenant.

The State party's observations on admissibility

4.1 In its observations of 7 March 2005, the State party reports that in January 2003 the Constitutional Court declared unconstitutional various procedural and criminal rules for combating terrorism. As a result, the Government issued Legislative Decree No. 926 in February 2003 standardizing the annulment of proceedings for the offence of terrorism conducted before judges and prosecutors whose identity was concealed and where the prohibition of objection applied. It also issued Legislative Decree No. 922, according to which criminal proceedings for the offence of terrorism are to be conducted in accordance with the ordinary procedural arrangements under the Code of Criminal Procedure.

4.2 The author's case has been pending in the National Terrorism Division since 2 September 2004 in the context of a new criminal proceedings case instituted in accordance with the new anti-terrorist legislation. The State party therefore considers that the communication should be declared inadmissible, since domestic remedies have not been exhausted.

The author's comments

5.1 The author points out that the State party's comments were not submitted within the six-month time limit established by rule 97, paragraph 2, of the Committee's rules of procedure. Consequently, the State party has not complied with the provisions of article 4, paragraph 2, of the Optional Protocol.

5.2 The author notes that, while the Constitutional Court urged the Congress of Peru to replace, within a reasonable period of time, the relevant anti-terrorist legislation, Congress abdicated its responsibility and, in Authoritative Act No. 27913 of 8 January 2003, delegated its legislative powers to adopt anti-terrorist measures to the executive branch. The author alleges that Legislative Decrees Nos. 921 to 927, which were adopted as a result of this mandate, have not substantially changed the legislative framework, since the existing unconstitutional legislation has not been replaced but has been supplemented in some cases and amended in

others. Thus, not all of the previous anti-terrorist legislation has been repealed. Specifically, article 2 of Decree-Law No. 25475 retains the basic definition of the offence of terrorism. Moreover, the Decree-Law provides for the establishment of a commission composed of representatives of the three branches of Government, by representatives of the Public Prosecutor's Office, the armed forces and the police to monitor its implementation; such a commission is unconstitutional because it violates the principle of separation of powers. On the basis of all of the foregoing, the author states that 5,186 citizens, including himself, filed an action of unconstitutionality (registered under No. 003-2005-PI/TC) with the Constitutional Court against the ruling of January 2003, referred to in the observations by the State party; the action is currently pending.

5.3 The author maintains that new Decree-Law No. 926 is unconstitutional and contrary to article 9, paragraph 3, of the Covenant, since it provides for the ex officio annulment of proceedings conducted by faceless courts but does not alter the legal situation of the defendants; that is, it continues to deprive them of their liberty, as in the case of the author, who has been serving his sentence for the past 13 years. The author cites the case of *Cruz Flores v. Peru*, in which the Inter-American Commission on Human Rights considered that the fact that the new legislation did not take account of the time spent in deprivation of liberty as a result of the previous trial constituted arbitrary detention.

5.4 The author maintains that Legislative Decree No. 922 is also unconstitutional and contrary to article 14, paragraph 1, of the Covenant, since it establishes a special court, the National Terrorism Division, for cases of terrorism, and not courts of ordinary jurisdiction.

5.5 The author reiterates that he has exhausted all available domestic remedies, having filed a special remedy with the Constitutional Court.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement, in compliance with the provisions of article 5, paragraph 2 (a), of the Optional Protocol.

6.3 With regard to the requirement of the exhaustion of domestic remedies, the Committee takes note of the State party's assertion that the case is pending in the National Terrorism Division in the context of new criminal proceedings instituted in accordance with the new anti-terrorist legislation and that, consequently, domestic remedies have not been exhausted. However, the Committee notes that the author was arrested on 20 June 1992 and subsequently tried and sentenced under Decree-Law 25475 of 5 May 1992, and that he filed all the appeals permitted under that legislation against his sentence. All of this took place prior to the date on

which the author submitted his communication to the Committee. The fact that the legislation that applied to the author and on which his communication was based was declared null and void several years later cannot be considered to his disadvantage. In the circumstances, it cannot be claimed that the author should wait for the Peruvian courts to take a new decision before the Committee can consider the case under the Optional Protocol, particularly when the author has been deprived of liberty for 13 years.

6.4 The Committee accordingly declares the communication admissible with regard to the alleged violations of articles 9 and 14 of the Covenant and proceeds to consider the merits of the complaint under article 5, paragraph 1, of the Optional Protocol, bearing in mind the information provided by the parties.

Consideration of the merits

7.1 The Committee regrets that the State party has not submitted observations on the merits of the case under consideration. In this regard, it recalls that it may be inferred from article 4, paragraph 2, of the Optional Protocol that the State party must examine in good faith all the charges against it and provide the Committee with all the information at its disposal. Since the State party has not cooperated with the Committee in the matters raised, the author's claims must be given their due importance insofar as they are substantiated.

7.2 With regard to the author's contentions concerning a violation of article 9, since he was arrested without being informed of the reasons for his arrest, the Committee considers that, as the State party has not replied to these allegations, due weight must be given to them and it must be taken that the events occurred as the author described them. The Committee thus considers that there has been a violation of article 9 of the Covenant.

7.3 With regard to the author's complaints in relation to article 14, the Committee takes note of his allegations that his trial was conducted by a court composed of faceless judges, that the interrogation of witnesses was not permitted and that his lawyer had only 30 minutes to examine the case file. In the circumstances, the Committee, recalling all of its previous jurisprudence in similar cases, concludes that article 14 of the Covenant as a whole was violated.

8. 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 disclose a violation of articles 9 and 14 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy and appropriate compensation. In the light of the long period that he has already spent in prison and the nature of the acts of which he is accused, the State party should consider the possibility of terminating his deprivation of liberty, pending the outcome of the current proceedings against him. Such proceedings must comply with all the guarantees required by the Covenant.

10. Bearing in mind that, as a party to the Optional Protocol, the State party recognizes the competence of the Committee to determine whether there has been a violation of the Covenant,

and that, under 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 and to offer an effective and enforceable remedy when a violation is found to have occurred, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the Spanish 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.]
