

HUMAN RIGHTS COMMITTEE

Mátyus v. Slovakia

Communication No. 923/2000

22 July 2002

CCPR/C/75/D/923/2000

VIEWS

Submitted by: Mr. Istvan Mátyus

*State party: Slovakia***

Date of communication: 15 October 1999 (initial submission)

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

Meeting on 22 July 2002,

Having concluded its consideration of communication No. 923/2000, submitted to the Human Rights Committee by Mr. Istvan Mátyus 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 is István Mátyus, a Slovakian citizen, residing in Slovakia at the time of submission of the communication. He claims to be a victim of violations by Slovakia of article 25, paragraph a) and c), of the International Covenant on Civil and Political Rights. He is not represented by counsel.

The facts as submitted by the author:

2.1 The author states that, on 5 November 1998, the RoňÁava Town Council passed Resolution 193/98 establishing five voting districts in the region and 21 representatives in total, for the elections to the RoňÁava Town Council, due to take place on 18 and 19 of December 1998. Each voting district was to have the following number of representatives: five in voting district number one; five in voting district number two; seven in voting district number three; two in voting district number four; two in voting district number five. In accordance with paragraph 9 section 1 of Law no. 346/1990 Coll. on elections to municipal bodies, “in every town, multi-mandate voting districts shall be established in which representatives shall be elected to the village or town council proportional to the number of inhabitants in the town, and at most 12 representatives in one electoral district”.

2.2 According to the author, when comparing the number of residents per representative in the individual voting districts in the town of RoňÁava, he came up with the following figures; one representative per 1,000 residents in district number one; one per 800 residents in district number two; one per 1,400 residents in district number three; one per 200 residents in district number four; and one per 200 residents in district number five. The number of representatives in each district was not therefore proportional to the number of inhabitants therein. The author was a candidate in voting district number three but failed to secure a seat as he came number eighth and only seven deputies were elected for this district.

2.3 With respect to the requirement to exhaust domestic remedies, the author notes the following administrative and judicial means employed by him to seek redress.

- The author voiced a complaint on 5 November 1998 and sent a written complaint, referred to as a A Public Notice, on 20 November 1998, to the mayor of RoňÁava, under paragraph 13, section 4, of Law No. 369/1990 Coll. on municipal matters, alleging the “illegality” of Resolution 193/98. According to this law, the mayor has the power to veto the enforcement of a resolution of the town council, if it is determined that it violates the law. The author claims that his complaint was not considered.

- On 20 November 1998, the author submitted a request to the District Attorney in RoňÁava, to investigate the legality of Resolution 193/98, in accordance with, paragraph 11, section 1, of Law no. 314/1996 Coll. on prosecutions. The District Attorney examined the author's request but found that the author failed to establish a breach of legislation.

- On 23 December 1998, the author submitted a petition to the President of the National Council, in accordance with paragraph 48, of Law no. 346/1990 Coll. on elections to municipal bodies. This law allows the National Council of the Slovak Republic to call new elections, no later than a week after the announcement of election results, if such elections were not in accordance with law. The author claims that he did not receive a response to either his petition or his reminder of 8 March 1999.

- On 29 December 1998, the author petitioned the Constitutional Court questioning the constitutionality of Resolution 193/98, under article 129 of the Constitution, and requesting the court to declare the elections invalid, in accordance with paragraph 63, of the Law No. 38/1993 Coll. on organisation of the Constitutional Court. The Court considered but rejected

the author's submission on 12 May 1999.

The complaint:

3.1 The author contends that the rights of the “citizens of RoňÁava”, under article 25(a) and (c) of the Covenant, were violated as they were not given an equal opportunity to influence the results of the elections, in exercising their right to take part in the conduct of public affairs, through the election of representatives. In addition, the author states that their rights were violated as they were not given an equal opportunity to exercise their right to be elected to posts in the town council.

3.2 The author contends that his rights, under article 25(a) and (c), were violated, as he would have needed substantially more votes to be elected to the town council than candidates in other districts, due to the fact that the number of representatives in each district was not proportional to the number of inhabitants therein. The author claims that this resulted in his loss of the election.

State party's submission on admissibility

4.1 By submission of 9 June 2000, the State party argues that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies, as the author failed to apply for the correct remedy on time and, therefore, lost his opportunity to challenge the resolution in question.

4.2 With regard to the author's claim that he made a complaint to the mayor of the Town Council of RoňÁava, the State party contends that it is not in a position to comment, as it is not aware of the contents or form of this notice. Once the contents of this complaint have been communicated to it, the State party reserves its right to comment thereon

4.3 The State party confirms that the author lodged a motion with the District Attorney in RoňÁava to investigate the legality and constitutionality of Resolution 193/98, alleging that this resolution was contrary to section 9 of the Act No. 346/1990 Coll. on Municipal Elections, as amended by Act No. 331/1998 Coll., and contrary to article 30, paragraph 4 of the Slovak Republic's Constitution. The State party explains that this complaint was considered by the District Attorney, who determined that the complainant had failed to establish a breach of legislation. As to the question of constitutionality, the State party claims that this was not an issue that could be considered by the District Attorney's office. It explains the function of the District Attorney under Law No. 314/1996 as follows, “The prosecutor supervises the observance of laws and other generally binding legal standards in the course of action and the decision of public administration bodies; and also ensures that mainly the supervising bodies meet their legal obligations actively”. Therefore, the District Attorney's office is not empowered to assess the constitutionality of such decisions.

4.4 Similarly, the State party explains that the petition to the President of the National Council of the Slovak Republic was dismissed, as the constitutionality of Resolution 193/98 is an issue that can only be considered by the Constitutional Court.

4.5 With regard to the author's application to the Constitutional Court, the State party explains that the Court dismissed the complaint made by the author, as the alleged violation did not occur during

the time the election was held but during the “preparatory phase” of the election. The Court determined that the claimant should have contested Resolution 193/98 before the Constitutional Court immediately after its adoption by RoňÁava Town Council on 5 November 1998, and prior to the holding of the election itself. The State party contends that a declaration by the Constitutional Court at this late stage, that the elections were invalid, would have significantly interfered with the rights acquired in good faith by third parties, mainly deputies, who obtained their mandates bona fides and without violating the law, and would also have brought “uncertainty into the public life of our society”.

4.6 The State party affirms that the Constitutional Court is the only instance empowered to decide upon the constitutionality of a resolution which is alleged to violate any article of the Slovak Republic's Constitution. The State party contends that the author applied to the inappropriate organs for the protection of his rights, thereby missing the opportunity to apply for effective protection, guaranteed by the Constitution. According to the State party, “one of the principles of a state under the rule of law is the establishment of legal certainty, a precondition of which is the requirement to exercise one's rights in time. That means not only observing the period set by law for lodging a complaint, but also the exercise of the right at the time when the contested violation occurred”.

Comments by the author

5. The author rejects the State party's contention that the Constitutional Court is the only court empowered to decide upon the constitutionality and legality of decisions by regional self-governing bodies. The author also rejects the contention that any such complaint to the Constitutional Court should have been filed immediately after the adoption of the resolution and during the preparatory phase of the election. According to the author, section 53 of clause 3 of the Act No. 38/1993, provides that a constitutional claim may be filed within a period of two months from the date the resolution attained its full legal force. Therefore, the author argues that, as he had at least up until 5 January 1999 (two months from the passing of the resolution) to file his complaint, and actually did so on 29 December 1998, he was well within the limitation period. With respect to the State party's claim that had the Constitutional Court declared the elections invalid it would have brought “uncertainty into the public life of our society”, the author stresses that it is in the best interest of the public to ensure adherence to the Constitution and human rights.

Admissibility decision

6.1 During the 71st session, the Committee considered the admissibility of the communication.

6.2 The Committee noted the State party's argument that domestic remedies had not been exhausted, as the author had failed to apply the appropriate remedy in time. The Committee also noted that the author had applied various procedures to exhaust domestic remedies, from the date the resolution in question was passed, until his petition to the Constitutional Court. The Committee observed that the Constitutional Court did consider the issues raised by the author in his complaint and dismissed his claim, only after a complete review of the matters raised, on the ground that the author should have made the application earlier; during the preparatory phase of and prior to the elections. In addition, the Committee observed that the State party had failed to substantiate that an application, in a case

like the author's, could be entertained by any administrative or judicial instance other than the Constitutional Court within a statutory period of time. The Committee was of the view that it would be unreasonable to have expected the author to anticipate, prior to the hearing of the case, the Constitutional Court's determination on the question of the delay in bringing the application. For these reasons, the Committee considered that the author had exhausted domestic remedies for the purposes of article 5, paragraph 2(b) of the Optional Protocol.

6.3 Accordingly, on 21 March 2001, the Committee decided that the communication was admissible in so far as it relates to the author's rights under article 25 of the Covenant.

The State party's submission on the merits

7.1 By letter of 12 November 2001, the State party made its submission on the merits of the communication.

7.2 In its submission on the merits, the State party reiterates its arguments made at the admissibility stage and provides a summary of the Constitutional Court's judgement. The Constitutional Court found that in comparing the number of voters per deputy in the five different electoral districts there were five times more voters per candidate in electoral district no. 3 than in electoral district no. 5. For this reason the Court decided that Resolution 193/98 breached the author's constitutional rights as well as paragraph 9 of section 1 of Law no. 346/1990 Coll. on elections to municipal bodies.¹ However, the Court went on to say that basic rights and freedoms protected under the Constitution can only be protected to the extent that the enforcement of these rights do not restrict or nullify the rights of others. In this case, as the breach occurred at the time of the preparatory stage of the elections rather than at the hearing itself, the court was of the opinion that the author should have submitted his complaint prior to the elections, to avoid interfering with the rights of third parties, including elected council members, who had attained their positions in good faith. It was on this basis that the Court dismissed the author's complaint.

7.3 The State party acknowledges that there was an error in the setting up of electoral districts and regrets "the infringement of the author's right to be elected for a deputy of the town council under equal conditions..." and submits that had the complaint been filed during the preparatory stage of the elections, the Constitutional Court would have been in a position to cancel the resolution.

Comments by the author

8.1 By letter of 24 October 2001, the author responded to the State party's submission on the merits. The author reiterates the points made in his initial submission. He also submits that he received legal advice to the effect that he could not have taken an action in the Constitutional Court until the elections had taken place as prior to that there was no infringement of his constitutional rights, only a violation of the electoral law.

8.2 Furthermore, the author provides details of two constitutional actions, alleging breaches of law during the preparatory stages of local government elections, for which the Court declared the elections null and void. The author alleges that the issue of having to file the complaint before the

elections were held, was not a bar to nullifying the elections. In these cases, on the issue of balancing the rights of the author with those of third parties, the author again makes reference to the two actions taken prior to his case where elections were cancelled without considering the rights of those elected. He also submits that the interest of every democratic society is to uphold the Constitution thereby guaranteeing essential human rights.

Issues and proceedings before the Committee

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. As regards the question whether article 25 of the Covenant was violated, the Committee notes that the Constitutional Court of the State party held that by drawing election districts for the same municipal council with substantial differences between the number of inhabitants per elected representative, despite the election law which required those voting districts to be proportional to the number of inhabitants, the equality of election rights required by the State party's constitution was violated. In the light of this pronouncement, based on a constitutional clause similar to the requirement of equality in article 25 of the Covenant, and in the absence of any reference by the State party to factors that might explain the differences in the number of inhabitants or registered voters per elected representative in different parts of RoñÁava, the Committee is of the opinion that the State party violated the author's rights under article 25 of the Covenant.

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 Slovakia of article 25 paragraphs a and c of the Covenant.

11. The Committee acknowledges that cancelling elections after they have already taken place may not always be the appropriate remedy in the case of an inequality in the elections, especially when the inequality was inherent in the laws and regulations laid down before the elections, rather than irregularities in the elections themselves. Furthermore, in the specific circumstances of the case, given the time lapse since the elections in December 1998, the Committee is of the opinion that its finding of a violation is of itself a sufficient remedy. The State party is under an obligation to prevent similar violations in the future.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised 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 recognised in the Covenant, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

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

Notes

** The Czech and Slovak Federal Republic ratified the Optional Protocol in March 1991, but on 31 December 1992 the Czech and Slovak Federal ceased to exist. On 28 March 1993, the Slovak Republic notified its succession to the Covenant and Optional Protocol.

¹ According to the judgement, the author's rights under article 30, paragraph 3 of the Constitution which stipulates that "The right to vote shall be exercised through universal, equal and direct suffrage by secret ballot.....and paragraph 4 which stipulates that "Citizens shall have access to the elected and public offices under equal conditions", were breached.