

HUMAN RIGHTS COMMITTEE

Tovar v. Venezuela

Communication N° 739/1997

25 March 1999

CCPR/C/65/D/739/1997*

ADMISSIBILITY

Submitted by: Larry Salvador Tovar Acuna

Alleged victim: The author

State party: Venezuela

Date of communication: 21 June 1997

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

Meeting on 25 March 1999,

Adopts the following:

Decision on admissibility

1. The author of the communication is Larry Salvador Tovar Acuña, a Venezuelan citizen born in 1958, an industrial engineer. At the time of submission of his communication he was detained at the Internado Judicial "El Rodeo", in Guatire, Estado de Miranda, Venezuela. He claims to be the victim of violations by Venezuela of the International Covenant on Civil and Political Rights. No articles are specifically invoked, but it would appear that articles 7; 9, paragraphs 3 and 4; 10, paragraph 1; 14, paragraphs 1, 2, 3 (c) and paragraph 7; and 17, paragraph 1, of the Covenant are at issue.

2.1 On 31 March 1989, the author was arrested at his home when five policemen came with a search warrant. They searched the house allegedly looking for drugs. The public prosecutor and two witnesses were present.

2.2 On 2 April 1989, a second search was carried out, this time without a search warrant. The public prosecutor was present but no witnesses accompanied the police. The police claim that USD 200,000 were found, wrapped up in packages similar to those used for transporting drugs.

2.3 The author states that he has been set up by the police (Policia Técnica Judicial). He claims that the police have stolen his possessions (house, car, money etc) and have tried to link him to a couple of drug dealers who had been caught at Caracas International Airport with 20 kgs of cocaine. Mr. Tovar states that he is being victimized because the Venezuelan fight against drug trafficking is ineffective. In this respect he points out that none of the drug barons are in prison, yet when he submitted his case to the Human Rights Committee he had served seven years, without there being any evidence against him.

2.4 The author further submits that all his belongings and those of his family, his father and an aunt, have been confiscated by corrupt police officers, and sold off. The proceeds have been pocketed by the police and judge mafia. He states that the officers involved in the theft of his and his family's possessions have been expelled from the PTJ (Policia Técnica Judicial). In this respect, he submits a report from the Drug commission (Comisión Permanente Contra el uso indebido de las Drogas) of the Venezuelan Congress to the Court of First Instance which contained various allegations of misconduct by certain police officers who were dismissed from the force.

The Complaint:

3.1 The author claims that he has been in prison for over six years without having been tried.¹ It would appear therefore that the author has been convicted, but has not been able to appeal his conviction.

3.2 The author further claims that the conditions of detention in Venezuela are exceedingly harsh, that he has been tortured and ill-treated. In this respect, he states that he was beaten by the National Guard, that the PTJ subjected him to electrical shocks and used a plastic bag to try to suffocate him. Handcuffs were used to hang him from his wrists. The beatings he received have resulted in permanent damage to his knees and kidneys. The author claims that he has been held in solitary confinement, with the lights on 24 hours a day, making sleep impossible.

3.3 He alleges that his life is being threatened since the "judicial mafias" want him dead, so he cannot denounce their actions. In this respect, the author refers to various newspaper articles where it was stated that the author had died while in prison. He further alleges that he sent the President of the Republic a copy of his file, in 1991, to prove his innocence. He states that this was the basis for the Presidential pardon he received.

3.4 On 21 October 1993, the author was granted a presidential pardon, which was published in the Official Journal (Gaceta Oficial de la República de Venezuela) as presidential decree No. 35.322. On 27 October 1993, by decree No 35.326 the President revoked the pardon granted six days earlier. The author's release complied with all the requirements of release

including the corresponding notification to the judge responsible for the case. A new warrant was issued for his arrest, he was apprehended and returned to prison. In this respect, he states that the cancellation of his Presidential pardon was an illegal act, since the President cannot revoke a Pardon. Pardons may only be revoked by submitting the issue to the Supreme Court, and the author claims that this was never done. Furthermore, the author alleges that the cancellation of his pardon is contrary to law, as it entails a retroactive application of a law, which is not beneficial to the accused.

3.5 The author's father, who is 80 years old, and the President of the Republic's secretary were imprisoned for allegedly having misled the President into signing the author's pardon. Mr. Tovar states that it was the judicial mafias' pressure that forced the President to revoke his pardon and arrest two innocent people. He further states that under Venezuelan law a father may not be prosecuted for his son's crimes, and that this is exactly what has been done to his father.

3.6 The author at the time of submission of his complaint has been in prison for seven years and nine months. He claims that during the time he has been in prison he has accumulated five years and 2 months to be credited to him for remission work. This brings his time in prison to a total of 12 years and eleven months, whereas the maximum sentence he could receive would be 10 years and six months. According to the author he has been in prison for 2 years in excess of his possible sentence. This is said to constitute a violation of international law. Furthermore, the author contends that the criminal action against him is statute barred, consequently his case should be dismissed. In this respect, the author refers to the Venezuelan "Drug Law" (Ley Orgánica de Sustancias Estupefacientes y Psicotrópicas), where he claims it is held that if a process takes over five years, without a sentence being handed down the criminal action becomes statute barred, and the case should be dismissed.

3.7 On 27 February 1996, a request for Habeas Corpus was submitted on behalf of the author, to the Supreme Court; to date no response has been received.

3.8 The author claims that he should have been granted the benefit of bail in accordance with Venezuelan law. In this regard, the law states that an individual will be granted bail if within one year of having been sentenced the Superior Court does not confirm the sentence. The author claims that he has been discriminated against in the application of this legislation.

3.9 The author alleges that he has not been provided with legal aid, as prescribed by law, in respect of his case before the Supreme Court where he challenges the cancellation of his presidential pardon.

3.10 The author claims that with his appeal to the Supreme Court for bail and the Habeas Corpus motion he has exhausted domestic remedies, in respect of any criminal proceedings against him in what he calls his regular defence. Furthermore, he considers that any criminal proceedings which might be initiated against him would be statute barred.

The State party's information:

4.1 In its submission under rule 91 of the rules of procedure, dated 13 May 1997, the State party informs the Committee that the author of the communication submitted the same complaint to the Inter-American Commission on Human Rights, on 1 April 1996 and that his case is registered under No. 11611. The State party consequently requests that the Committee declare this communication inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, as the matter is currently being examined by another instance of international investigation.

4.2 No comments have been received from the author in respect to the State party's submission which was transmitted to him on 15 September 1997 and reiterated on 16 December 1997.²

Issues and proceedings before the Committee:

5.1 Before considering any claims 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 verified that the same matter is being examined by the Inter-American Commission on Human Rights, and consequently notes that it is precluded from considering the communication while it remains pending before the other international procedure.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (a), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the author may request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden.

1/ However he also claims that the judicial authorities (whom he calls the "Judicial

Mafias") are "playing around" with first instance judgments and that the Superior Court has not decided in his case.

2/ The Inter-American secretariat has informed the Human Rights Committee's Secretariat that the case is in fact pending before them, and that the author has been released.

[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.]