

HUMAN RIGHTS COMMITTEE

Orihuela v. Peru

Communication No. 309/1988

22 March 1991

CCPR/C/41/D/309/1988*

ADMISSIBILITY

Submitted by: Carlos Orihuela Valenzuela

Alleged victim: The author and his family

State party concerned: Perú

Date of communication: 29 June 1988

Documentation references: Prior decisions - CCPR/C/WG/33/D/309/1988 (Working Group rule 91 decision, to the author only, dated 15 July 1988) - CCPR/C/WG/34/D/309/1988 (Working Group rule 91 decision, dated 2 November 1988)

Date of present decision: 22 March 1991

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

1. The author of the Communication (initial submission dated 29 June 1988 and subsequent correspondence) is Carlos Orihuela Valenzuela, a Peruvian citizen residing at Lima, Peru. He claims to be a victim of a violation by the Government of Peru of his human rights but does not invoke any articles of the International Covenant on Civil and Political Rights.

Background

2. The author, a member of the Peruvian bar (Colegio de Abogados) and a civil servant for 26 years, was named counsel for the Chamber of Deputies in 1982 and served in the Peruvian Human Rights Commission for five years. Following the change of Government in Peru in 1985, he was

dismissed from his post at the Chamber of Deputies without any administrative proceedings. The author states that he has six school-age children and that he is not receiving the civil servant's pension to which he would be entitled.

Complaint and relief sought

2. The author alleges that he and his family have been subjected to defamation and discrimination because of their political opposition to the Government of the then President Alan García of the American Popular Revolutionary Alliance party, and that all attempts to obtain redress have been met by a politically motivated denial of justice. In particular, he claims that he was unjustly dismissed from the civil service, that he has been denied a fair hearing in the courts, that he is being boycotted from reinstatement in any post in the civil service, that his pension after 26 years of service is not being paid out, that his honour and reputation have been unjustly attacked, that his son Carlos has been arbitrarily detained by the police and subjected to beatings, that Carlos has been barred from participating in the entrance examinations to the university, and that his son Lorenzo has been subjected to arbitrary arrest and detention on two occasions. He seeks, inter alia, reinstatement in his post and compensation for the unjust dismissal.

Exhaustion of domestic remedies

4.1 With regard to the requirement of exhaustion of domestic remedies, the author states that he has unsuccessfully tried all administrative and judicial remedies. He alleges that the proceedings have been frustrated for political reasons and have been unduly prolonged. On 7 November 1985 he petitioned for the reconsideration of his dismissal (recurso de reconsideración) but he alleges that, on the express order of a senior deputy, his petition was not processed. On 10 April 1986, he renewed his request by way of a complaint (queja), which was similarly not processed by the authorities. On 8 May 1986 he lodged an action (denuncia) before the President of the Chamber of Deputies, again without any response. On 11 June 1986, he addressed a request to the Chamber of Deputies based on Law 24514 and legislative Decree No. 276, again without any response. On 23 June 1986 he presented an appeal (recurso de apelación) to the President of the Chamber of Deputies, which was similarly ignored.

4.2 On 2 July 1986, he had recourse to the Civil Service Tribunal (Tribunal del Servicio Civil en Apelación), but three months later the Chamber of Deputies addressed a memorandum to the Tribunal ordering it to respect its resolution dismissing the author, invoking article 177 of the Peruvian Constitution. This last administrative instance allegedly complied with the order of the Chamber of Deputies and terminated its investigation of the case.

4.3 On 5 September 1986, the author filed an action for reinstatement in the civil service with a court of first instance in Lima, which, on 23 July 1987, decided against him. On appeal, the matter was taken up by the Superior Court of Lima (Segunda Sala Civil de la Corte Superior de Lima), which, on 21 March 1988, requested the Civil Service Tribunal to forward the author's dossier. The Civil Service Tribunal did not comply with the request of the Superior Court and by order of 29 December 1988 the Superior Court dismissed the appeal.

4.4 An action against the Chamber of Deputies concerning the author's rights to a pension has been

pending before the Supreme Court (Segunda Sala de la Corte Suprema) since 1 February 1989.

Admissibility considerations

5.1 On 21 November 1988, the State party was requested to furnish information on the question of admissibility of the communication within two months, including details of effective domestic remedies, should it contend that domestic remedies had not been exhausted. The State party was also requested to furnish the Committee with copies of all relevant administrative and judicial orders and decisions in the case, in so far as they have not already been submitted by the author, and to inform the Committee of the status of the action pending before the Superior Court of Lima (Segunda Sala de la Corte Superior de Lima). There has been no submission from the State party on the question of admissibility, in spite of a reminder sent on 14 August 1989.

5.2 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 the communication is admissible under the Optional Protocol to the Covenant.

5.3 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b) of the Optional Protocol, concerning the exhaustion of domestic remedies, the Committee is unable to conclude, on the basis of the information before it, that there are effective remedies available to the author which he could or should have pursued. Moreover, the application of existing remedies has been unreasonably prolonged within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.4 The Committee considers that the author's allegations relating to the arbitrary denial of redress for the dismissal from his post as counsel for the Chamber of Deputies, as well as his claim to have been subjected to unfair judicial proceedings and judicial bias, have not been sufficiently substantiated, for purposes of admissibility. In this respect, accordingly, the author has no claim under article 2 of the Optional Protocol.

5.5 Other allegations, in particular those related to the arbitrary denial of the author's pension as well as those related to the harassment of his family, notably his two sons, have been sufficiently substantiated, for purposes of admissibility, and may raise issues under articles 10, 17 and 26 of the Covenant; they will, accordingly, be considered on the merits.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible inasmuch as it may raise issues under articles 10, 17 and 26 of the Covenant;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That the State party shall be further requested to forward copies of any relevant orders or decisions in the author's case; in particular, the State party should clarify the relationship between the Chamber of Deputies and the Civil Service Tribunal and other courts;

(d) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the Committee's rules of procedure to the author to enable him to comment thereon; any such comments 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 transmittal;

(e) That this decision shall be communicated to the State party and to the author of the communication.

(Done in English, French, Russian and Spanish, the English text being the original version.)

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