HUMAN RIGHTS COMMITTEE

A. P. A. v. Spain

Communication No. 433/1990***

25 March 1994

CCPR/C/50/D/433/1990**

ADMISSIBILITY

Submitted by: A.P.A. (name deleted) (represented by counsel)

Alleged victim: The author

State party concerned: Spain

Date of communication: 13 December 1990 (initial submission)

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

Meeting on 25 March 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is A.P.A., a Spanish citizen residing in Madrid. He claims to be the victim of a violation by Spain of article 14, paragraphs 1, 2, 3 (a), (b), (c) and (e) of the International Covenant on Civil and Political Rights. The author is represented by counsel.

The facts as submitted by the author:

2.1 The author was arrested on 7 October 1985 and charged with the robbery of several grocery shops. He was tried in the District Court (Audiencia Provincial) of Salamanca on 7 June 1986, found guilty as charged and sentenced to four years, two months and one day of imprisonment.

2.2 The author contends that the proceedings before the District Court suffered from various procedural defects. Throughout the trial he maintained his innocence, arguing that he had bought the groceries found in his possession the day before the alleged offence. The prosecution only tendered as evidence statements made by the author during interrogation. The court allegedly ignored large parts of the evidence, in particular some circumstantial evidence, without giving reasons. Furthermore, the Prosecutor allegedly only cross-examined the author and the defence witnesses but did not question the prosecution witnesses. Author's counsel protested against this and requested that more plausible evidence in support of the charge be produced; such evidence never materialized.

2.3 The author appealed to the Supreme Court of Spain on procedural grounds. On 2 June 1989, the Supreme Court confirmed the judgement of first instance. Allegedly because of summer holidays, the author was not notified of the Supreme Court's decision until 11 September 1989, that is considerably after the expiration of the deadline of 20 working days allowed for the filing of a constitutional motion against the decision (recurso de amparo).

2.4 On 15 January 1990, A.P.A. appealed to the Constitutional Tribunal, alleging a breach of article 24 of the Constitution, which guarantees the right to a fair trial. On 26 February 1990, the Constitutional Tribunal declared the amparo inadmissible, as statutory deadlines for the filing of the motion had expired.

2.5 In the above context, the author notes that during the month of August, the Spanish judicial system is virtually paralysed because of summer holidays. For this reason, article 304 of the Spanish Civil Code stipulates that the month of August is not counted for the purpose of determining deadlines for the filing of appeals. Article 2 of an agreement (Acuerdo de Pleno) of 15 June 1982, however, stipulates that for the purpose of a number of procedures before the Constitutional Tribunal, including amparo proceedings, August does count for the determination of such deadlines.

The complaint:

3. It is submitted that the above reveals violations by Spain of the author's rights under article 14, paragraphs 1, 2, and 3 (a), (b), (c) and (e) of the Covenant.

The State party's information and observations and author's comments thereon:

4.1 In its submission under rule 91 of the rules of procedure, the State party submits that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. It refers to the author's own petition for amparo, which states "on 24 July 1989, the Supreme Court's decision was notified to the prosecutor, who immediately notified the author's legal representative". With this, the State party submits, its obligations under article 438 of the Organic Law on Judicial Administration (Ley Organica del Poder Judicial) have been complied with. Such delays as occurred thereafter in the submission of the request for amparo must be attributed to the author (respectively to his legal representative).

4.2 The State party adds that if the request for amparo was dismissed as out of time, this must mean, for purposes of the Optional Protocol, that domestic remedies have not been exhausted. Reference is made in this context to the established jurisprudence of the European Commission of Human Rights.

4.3 Apart from the arguments in paragraphs 4.1 and 4.2 above, the State party points to contradictions in the author's own version of the chronology of events. Thus, in a written submission to the Constitutional Tribunal of 20 September 1989, prepared and signed by A.P.A. himself, it is noted that "on 24 July 1989, this party was informed of the content of the judgement of the Second Chamber of the Supreme Court" ("Que con fecha 24 de Julio de 1989, se notificó a esta parte la sentencia dictada por la Sala Segunda del Tribunal Supremo ..."). Besides, the State party notes that it is implicit in the author's complaint about the "irrationality" for the Constitutional Tribunal to sit in August because of the quasi impossibility to obtain legal advice during that month, that he was aware of the decision of the Supreme Court before the expiry of the deadline for his recourse for amparo.

4.4 With regard to the alleged violations of article 14, paragraphs 1 and 2, the State party affirms that the judgement of the Supreme Court speaks for itself, in that it reveals that there is no prima facie evidence of a violation of the right to a fair trial or of the presumption of innocence ("Lo expuesto prueba una vez más la ligereza con que la representación de los procesados suelan apelar al fundamental principio de presunción de inocencia, sin base alguna, con grave quebranto del derecho de los justiciables a una pronta administración de justicia").

5.1 In his comments, the author reaffirms that the State party did not comply with the requirements of article 160 of the Law governing the institution of criminal proceedings (Ley de Enjuiciamiento Criminal), which stipulates that final judgements must be notified to the parties on the day they are released/signed, or at the very latest the day thereafter; it is submitted that the Supreme Court did not comply with the requirement. 1/ In the author's opinion, article 160 must be understood to include a right of personal notification of the accused; it transpires from his submission that he does not consider that the inaction or the neglect of his counsel exonerates the judicial authorities from their obligations vis-à-vis himself.

5.2 The author further contends that the requirement of non-exhaustion of domestic remedies in article 5, paragraph 2 (b), of the Optional Protocol must be interpreted flexibly. It is submitted that the possibility of filing a request for amparo during the summer vacation period should not lead to the conclusion that requests for amparo which could have been filed during the month of August but were in fact filed outside that period must be dismissed as belated. The author also submits that the text of the agreement of 15 June 1982 cannot supersede other formal legislation setting statutory deadlines for the filing of appeals.

5.3 As to the presumed chronological inconsistencies in his own submissions (para. 4.3 above), the author contends that the date of "24 July 1989" clearly refers to the notification of the Supreme Court judgement to his counsel, not to himself.

5.4 Finally, with respect to the insufficiency of the evidence against him, the author refers to a report prepared at his request by two specialists in criminal procedure at the University of Granada; this report concludes that the pick-up van (furgoneta) which according to the prosecution was used to transport thegoods seized in the robberies attributed to the author could not possibly have transported all the goods. This, in the author's opinion, underscores that there was no real evidence against him, and that he did not receive a fair trial.

Issues and proceedings before the Committee:

6.1 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.

6.2 The Committee has noted the parties' arguments relating to the question of exhaustion respectively non-exhaustion of domestic remedies. It notes that while the month of August does not count for the determination of deadlines in the filing of most criminal appeals, it does count under regulations governing amparo proceedings before the Constitutional Tribunal. While it is true that local remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol must only be exhausted to the extent that they are both available and effective, it is an established principle that an accused must exercise due diligence in the pursuit of available remedies. In this context, the principle that ignorance of the law excuses no one - ignorantia iuris neminem excusat -also applies to article 5, paragraph 2 (b), of the Optional Protocol.

6.3 In the instant case, the decision of the Supreme Court of 2 June 1989 was duly notified to the author's counsel. The author claims that counsel did not inform him of this notification until after the expiration of the amparo proceedings deadline. Nothing in the file before the Committee indicates that author's counsel was not privately retained. In the circumstances, counsel's inaction or neglect in communicating the Supreme Court's judgement to his client cannot be attributed to the State party but must be attributed to the author; the Committee does not consider that, under article 14 of the Covenant, it was incumbent upon the Supreme Court's registry or upon the Prosecutor's office to directly notify the author personally of the decision of 2 June 1989 in the circumstances of the case. It must, accordingly, be concluded that local remedies were not pursued with the requisite diligence and, therefore, that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

7. The Human Rights Committee therefore decides:

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

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

[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.]

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

**/ Made public by decision of the Human Rights Committee.

***/ The text of an individual opinion, submitted by Mr. Francesco Aguilar is appended to the present document.

1/ At the same time, the author's mother concedes that the procurator informed her son's lawyer in time of the decision of the Supreme Court, whereas the lawyer did not inform A.P.A. for some time thereafter.

Appendix

Communication No. 433/1990
A.P.A. against Spain
Concurring Opinion of Mr. Aguilar Urbina

1. While we agree with the observations of the Human Rights Committee on the communication in question, we believe that there is another significant aspect that should be borne in mind when considering admissibility.

2.1 It is clear that the author filed the amparo motion after the deadline expired. The author himself admitted - in his petition of 20 December 1989 -that on the previous 24 July he had been notified of the judgement of the Second Chamber of the Supreme Court. The term of 20 working days within which the author had to file the motion should be calculated as of that date. The author admits that he did not do so because the Spanish judicial system is virtually paralysed during the month of August; by using the word "virtually", the author's statement intimates that during the holiday period, not all judicial offices are paralysed.

2.2 The author concedes, moreover, that there was negligence or omission on the part of his counsel, but holds that that conduct cannot be imputed to himself. However, it cannot be maintained that the supposed negligence of the author's lawyer can be ascribed to the State party and not to the author himself, who should have made the necessary arrangements to take the requisite steps within the time-periods established by law.

3. It may be concluded, from the facts described by the author and the State party, that the amparo motion submitted to the Constitutional Tribunal was rejected because of negligence attributable to the author. We therefore agree with the Committee that local remedies have not been exhausted. Nevertheless, since the non-exhaustion can be attributed to negligent conduct on the part of the author, in our view the right to submit communications to the Human Rights Committee under the Optional Protocol has also been abused. We

consequently believe that the communication submitted by Mr. Antonio Peñalver Achaques is inadmissible under the terms of article 3 of the Optional Protocol.

(Signed)

[Original: Spanish]