

HUMAN RIGHTS COMMITTEE

Bonelo v. Spain

Communication No 698/1996

29 July 1997

CCPR/C/60/D/698/1996

ADMISSIBILITY

Submitted by: Gonzalo Bonelo Sánchez [represented by counsel, Mr. José Luis Mazón Costa]

Victim: The author

State party: Spain

Date of communication: 21 September 1995 (initial submission)

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

Meeting on 29 July 1997,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 21 September 1995, is Gonzalo Bonelo Sánchez, a Spanish citizen living in Seville, Spain. He claims to be a victim of violations by Spain of articles 14, paragraph 1, and 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel, Mr. José Luis Mazón Costa.

The facts as submitted by the author

2.1 On 29 August 1984, the author, a fully qualified pharmacist, requested an authorization to open a pharmacy from the Association of Pharmacists in Cádiz (Colegio Oficial de Farmacéuticos de Cádiz). He sought to open a pharmacy in a suburb of San Roque, Cádiz

and based his request on the requirements of Royal Decree 909/78 (Real Decreto 909/1978). His request was denied by the decision of 10 October 1985, on the ground that the new pharmacy was not sufficiently far from the town nucleus to be separated by a natural or artificial barrier. The author filed an appeal with the Spanish General Council of Official Colleges of Pharmacists (Consejo General de Colegios Oficiales de Farmacéuticos), which was also dismissed, on 14 May 1986.

2.2 The author then filed an administrative complaint (recurso contencioso administrativo) with the Territorial Court (Audiencia Territorial) in Seville. On 20 January 1989, the General Council's administrative decision of 14 May 1986 was reversed, on the ground that the requirement of the separation was illegal as it was derived from a 1979 Ministerial Order (Orden Ministerial), which could not supersede a Royal Decree; the author was authorized to open his pharmacy.

2.3 The Spanish General Council of Official Colleges of Pharmacists (Consejo General de Colegios Oficiales de Farmacéuticos) in turn filed an appeal with the Supreme Court of Spain (Tribunal Supremo). On 25 March 1991, the decision of the Territorial Court (Audiencia Territorial) was quashed and the author was denied the disputed authorization. In its judgment, the Supreme Court accepted that Royal Decree 909/78 only required that the new pharmacy give service to a population of over 2,000 people, whereas the Ministerial Order required, additionally, that the new nucleus of population be separated from the existing township by a natural or physical barrier. The Court held that a Ministerial Order could not supersede a Royal Decree, as this would breach the principle of hierarchy; but it went on to argue that the requirement of separation had not been complied with fully in the author's case.

2.4 On 8 July 1994, a Special Chamber of the Supreme Court (Sala Especial del Tribunal Supremo) dismissed the author's further appeal (recurso de revisión). The author's subsequent appeal (recurso de amparo) before the Constitutional Court was declared inadmissible on 13 February 1995.

The complaint

3.1 The author claims that the Supreme Court's judgment of 25 March 1991 was arbitrary and denied him the right to equality before the courts, in violation of article 14, paragraph 1. In this respect, his lawyer contends that the Supreme Court has traditionally ruled in favour of the opening of pharmacies, and encloses copies of two judgments to this effect¹. However, counsel himself states that the Supreme Court judgment declared that the jurisprudence invoked did not correspond with the facts of the author's case.

3.2 Counsel claims a further violation of article 14, paragraph 1, in respect of the denial of the author's appeal (recurso de amparo). In this respect, he alleges that the judges on the Constitutional Court do not themselves decide the question of inadmissibility, but that decisions are routinely prepared by a team of lawyers (cuero de letrados) who work for the Constitutional Court, and that the judges simply sign the decisions. Finally, counsel claims that the author was denied a fair hearing by the Constitutional Court when it dismissed his

request for amparo, as only the Public Prosecutor's Office (Ministerio Fiscal) was given the possibility to appeal.

3.3 The author claims that as the result of unjust and partial judicial decisions, together with the application of legislation which he claims to be a relic of medieval times, only applied to pharmacists in the exercise of their profession as dispensers of medicinal goods, he has been subjected to discrimination, in violation of article 26 of the Covenant.

Issues and proceedings before the Committee

4.1 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.

4.2 The Committee has carefully examined the material submitted by the author and refers to its established jurisprudence² that interpretation of domestic legislation is essentially a matter for the courts and authorities of the State party concerned. In the present case, the author has not substantiated his claim that the law was interpreted and applied arbitrarily or that its application amounted to a denial of justice which could constitute a discrimination in violation of article 26 of the Covenant, the Committee considers that the communication is inadmissible under article 2 of the Optional Protocol.

4.3 With regard to the author's claim of a violation of article 14, paragraph 1, of the Covenant in respect of the dismissal of his appeal by the Constitutional Court, the Committee has carefully examined the material submitted by the author. It considers that the author's counsel does not substantiate, for purposes of admissibility, how the fact that the Office of the Public Prosecutor (Ministerio Fiscal), in defence of the general interest of the public, may appeal against the rejection of a recurso de amparo or how the way in which the Constitutional Court organizes its agenda and conducts its hearings would constitute a violation of the author's right to a fair hearing within the meaning of article 14, paragraph 1, of the Covenant.

5. The Committee therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the author and his counsel and, for information, to the State party.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin and Mr. Maxwell Yalden.

1/ Judgments of the Third Chamber of the Supreme Court of 19 September 1983 and 28 February 1986, which interpret Royal Decree 909/1978 in an extensive manner, i.e in favour of the principle "pro aperture".

2/ See inter alia the Committee's decision in communication No. 58/1979 (Anna Maroufidou v. Sweden, paragraph 10.1; Views adopted on 9 April 1981.)

[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.]