

HUMAN RIGHTS COMMITTEE

Pasla v. Australia

Communication N° 751/1997

7 April 1999

CCPR/C/65/D/751/1997

ADMISSIBILITY

Submitted by: Gheorghe Pasla

Alleged victim: The author

State party: Australia

Date of communication: 18 September 1995

Prior decisions: Special Rapporteur's rule 91 decision transmitted to the State party on 30 May 1997 (not issued in document form)

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

Meeting on 7 April 1999

Adopts the following:

Decision on admissibility

1. The author of the communication is Gheorghe Pasla, a citizen of both Romania and Australia. He claims to be a victim of violations by Australia of articles 2, 3, 14, paragraph 1, 16 and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author

2.1 On 27 November 1985, the author, who was working for the Australian Postal Commission as a driver, had an accident at work. For the injuries he sustained, he was awarded worker's compensation under section 45 of the Compensation Act 1971. In 1988,

his worker's compensation was terminated by the Australian Postal Commission by determinations dated 6 June 1988, 23 August 1988 and 28 September 1988, on the ground that the condition suffered by the author was not the result of the injury of November 1985.

2.2 The author subsequently challenged the termination in the federal Administrative Appeals Tribunal (AAT), represented by legal aid lawyers funded by the Legal Aid Commission of Victoria. The author's case was fixed for a hearing before the AAT on 30 April 1990. During the three day hearing, the author had several disagreements with his lawyers, which resulted in their withdrawal from the case. Further hearings were held in December 1990 and in April 1991, both times with the author representing himself. On 22 August 1991, the AAT rejected the author's claim, stating that it was satisfied that the author had no entitlement to compensation after June 1988.

2.3 The author states that subsequently, on 30 August 1991, he applied for legal aid to appeal the rejection. His request was declined, and the author failed to lodge an appeal to the Federal Court of Australia within the prescribed timeframe of 28 days.

2.4 While still pursuing the case concerning his worker's compensation, the author also, on 18 June 1990, applied for an invalid pension under the Commonwealth Superannuation Scheme pursuant to section 7(1) of the federal Superannuation Act 1976. On 9 March 1993, the author's application was declined by the federal Retirement Benefits Office on the ground that it was not satisfied that the author was totally and permanently incapacitated. The author did not appeal this decision to the AAT.

2.5 On 30 March 1993, the Australian Postal Commission terminated the author's employment. The author applied for social security and was granted a pension on 29 July 1993.

2.6 In January 1994, the author lodged another application to the Legal Aid Commission of Victoria for financial and legal assistance to challenge before the Federal Court both the AAT's decision concerning his worker's compensation and the Retirement Benefits Office's rejection of his application for invalidity payments. At the same time, the author also applied for financial and legal assistance to file a claim of negligence and misconduct against one of his former solicitors and the barrister who represented him in the first hearing before the AAT, and a claim against the Australian Postal Commission for wrongful dismissal. The application was first rejected by the Legal Aid Commission on 9 May 1994, and then on appeal by the Legal Aid Review Committee on 9 August 1994, on the ground that the author's claims lacked merit.

2.7 On 8 August 1995, the author lodged another application for legal aid, this time to the Office of Legal Aid and Family Services in the Attorney-General's Department. The application was denied on 12 September 1995 on the ground that the application contained no new information.

The Complaint

3.1 The author alleges to be a victim of violations of articles 14, 16 and 26 of the Covenant as the State party, when declining to give him legal aid in 1991 and 1994, de facto denied him access to court. It is submitted that the rejections of his applications for legal aid denied him the right to appeal the AAT's decision of 22 August 1991 and the Retirement Benefits Office's decision of 9 March 1993, and the right to challenge his dismissal and to sue his former legal advisers for malpractice.

3.2 The author also claims that his rights under the Covenant were violated as the decisions made by respectively the AAT, the Retirement Benefits Office and the Legal Aid Commission of Victoria were unlawful. The author claims, in general terms, that he has been denied justice and that the legal system in Australia is corrupt.

The State party's submission and the author's comments thereon

4.1 In its submission of 24 October 1997, the State party submits that the whole of this communication should be ruled inadmissible ratione materiae under article 3 of the Optional Protocol on the ground that the right to workers' compensation, the right to invalidity payments, claims for professional negligence, claims for unlawful dismissal and the rights to legal aid in non-criminal matters are not referable to any right set forth in the Covenant.

4.2 With regard to the author's claims relating to his worker's compensation, the State party submits that these should also be ruled inadmissible ratione temporis on the ground that the author's right to lodge an appeal in this matter before the Federal Court of Australia lapsed on 20 September 1991, while the Optional Protocol entered into force for Australia on 25 December 1991. Reference is made to the jurisprudence of the Committee, in which it is well established that the Optional Protocol can not be applied retroactively.

4.3 With regard to the author's claims that the federal Retirement Benefits Office erred in the application of the federal Superannuation Act 1976 when declining his application for invalidity payments, the State party submits that it should be declared inadmissible ratione materiae under article 3 of the Optional Protocol as the interpretation of the Superannuation Act is a question for domestic authorities and does not engage the jurisdiction of the Committee.

4.4 Finally, the State party submits that the whole of the communication should be ruled inadmissible under article 5, paragraph 2(b), of the Optional Protocol for failure to exhaust domestic remedies. The State party argues

- that the author failed to lodge an appeal in the Federal Court of Australia in relation to the AAT's decision on his worker's compensation payment

- that the author failed to lodge an appeal in the AAT in relation to the federal Retirement Benefits Office's decision to reject his claim for invalidity payments

- that the author failed to commence proceedings in the Australian courts against the Australian Postal Commission for wrongful dismissal and against his former solicitor and

barrister for negligence and misconduct

- and that the author failed to seek review of the decisions of the Legal Aid Commission of Victoria and the Office of Legal Aid and Family Services to deny him legal aid in these matters.

The State party submits that these remedies were all effective and available.

5.1 In his submission of 24 February 1998, the author reiterates that he was denied justice by all the previously mentioned authorities and that *de facto* he was denied access to court when he was denied legal aid. He submits that this constitutes a breach of the Covenant, and that there is no basis for ruling the communication inadmissible *ratione materiae*.

5.2 With reference to the State party's submission that all claims relating to the decision of 22 August 1991 by the AAT should be declared inadmissible *ratione temporis*, the author notes that both the federal Retirement Benefits Office and the Australian Postal Commission took the AAT's decision into consideration when they in 1993 respectively denied him invalidity payments and dismissed him from employment. The author submits that this constitutes continuing violations of his rights under the Covenant.

5.3 With regard to the State party's submission that the communication should be ruled inadmissible under article 5, paragraph 2(b), of the Optional Protocol for failure to exhaust domestic remedies, the author argues that the remedies mentioned by the State party were in fact not available or effective as he was denied legal aid.

Issues and proceeding before the Committee

6.1 Before considering any claim 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 With regard to the author's claim that *de facto* he was denied access to court through the rejections of his applications for legal aid, the Committee notes, as pointed out by the State party, that the author did not seek review of the decisions taken by the Legal Aid Commission of Victoria and the Office of Legal Aid and Family Services. The Committee therefore finds this part of the communication inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

6.3 The Committee finds that also the author's claim that the procedure before and the decisions made by respectively the AAT, the Retirement Benefits Office and the Legal Aid Commission of Victoria amounted to denial of justice in violation of the Covenant is inadmissible under article 5, paragraph 2(b), as the author has not exhausted all available domestic remedies.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

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

*The following members of the Committee participated in the examination of the communication: Mr. Afdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Lord Colville, Ms. Pilar Gaitán 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 and Mr. Abdallah Zakhia.

[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.]