HUMAN RIGHTS COMMITTEE

Stalla Costa v. Uruguay

Communication No. 198/1985

9 July 1987

VIEWS

Submitted by: R. D. Stalla Costa

Alleged victim: the author

State party concerned: Uruguay

Date of communication: 11 December 1985 (date of initial letter)

Date of decision on admissibility: 8 April 1987

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

Meeting on 9 July 1987;

Having concluded its consideration of communication No. 198/1985 submitted to the Committee by R. D. Stalla Costa under the Optional Protocol to the International Covenant on Civil and Political Rights;

Having taken into account all written information made available to it by the author of the communication and by the State party concerned;

Adopts the following:

Views under article 5(4) of the Optional Protocol

1. The author of the communication (initial letter dated 11 December 1985 and three subsequent letters) is Ruben Stalla Costa, a Uruguayan lawyer, residing in Montevideo, who claims to be a victim of violations of articles 2, 25 (c) and 26 of the International Covenant on Civil and Political Rights.

2.1 The author states that he has submitted job applications to various governmental agencies in order to have access to and obtain a job in the public service in his country. He has allegedly been told that only former public employees who were dismissed as a result of the application of Institutional Act No. 7 of June 1977 are currently admitted to the public service. He refers in this connection to article 25 of Law 15,737 of 22 March 1985, which provides that all public employees who were dismissed as a result of the application of Institutional Act No. 7 have the right to be reinstated in their respective posts.

2.2 The author claims that article 25 of Law 15,737 gives more rights to former public employees than to other individuals, such as the author himself, and that it is therefore discriminatory and in violation of articles 2, 25 (c) and 26 of the International Covenant on Civil and Political Rights.

2.3 The author claims to have exhausted all internal remedies. He submitted an action for amparo on grounds of violation of his constitutional rights, in particular his right not to be discriminated against, before the Supreme Court of Justice in June 1985. The Supreme Court dismissed the case.

3. By its decision of 26 March 1986, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication.

4. In its submission under rule 91, dated 24 July 1986, the State party requested that the communication be declared inadmissible, explaining, inter alia, that Act No. 15,737 of 22 March 1985, which the author claimed was discriminatory, had been passed with the unanimous support of all Uruguayan political parties as an instrument of national reconstruction:

"This Act ... seeks to restore the rights of those citizens who were wrongfully treated by the de facto Government. In addition to proclaiming a broad-ranging and generous amnesty, it provides under article 25, that all public officials dismissed on ideological, political or trade-union grounds or for purely arbitrary reasons shall have the right to be reinstated in their jobs, to resume their career in the public service and to receive a pension.

"The right of any citizen to have access, on an equal footing, to public employment cannot be deemed to be impaired by virtue of this Act, the purpose of which is to provide redress.

"Lastly, so far as exhaustion of remedies is concerned, there is an irrefutable presumption that a right has been violated or claimed beforehand. This is not the case here, as the complainant does not have any such right but only the legitimate expectation, common to all Uruguayan citizens, of being recruited to the public service."

5. In his comments on the State party's submission, the author argues, inter alia, that "the enactment of Act No. 15,737 did not have the support of all the political parties ... It is also asserted that article 25 seeks to provide redress and does not infringe the right to access on

an equal footing to posts in the public service. I join in this spirit of reconciliation, like all people in my country, but redress will have to take the form of money.'

6.1 In further observations, dated 10 February 1987, the State party elucidates Uruguayan legislation and practice regarding access to public service:

"Mr. Stalla regards himself as having a subjective right to demand that a given course of action be followed, namely, his admission to the public service. The Government of Uruguay reiterates that Mr. Stalla, like any other citizen of the Republic, may legitimately aspire to enter the public service, but by no means has a subjective right to do so.

"For a subjective right to exist, it must be founded on an objective legal norm. Accordingly, any subjective right presumes the existence of a possession [bien] or legal asset [valor juridico] attached to the subject by a bond of ownership established in objective law, so that the person in question may demand that right or asset as his own. In the case in question, Mr. Stalla has no such subjective right, since the filling of public posts is the prerogative of the executive organs of the State, of State enterprises or of municipal authorities. Any inhabitant of the Republic meeting the requirements laid down in the legal norms (age requirement, physical and moral suitability, technical qualifications for the post in question) may be appointed to a public post and may have a legitimate aspiration to be vested with the status of public servant, should the competent bodies so decide."

6.2 With regard to article 8 of the Uruguayan Constitution, which provides that 'all persons are equal before the law, no other distinctions being recognized among them save those of talent and virtue", the State party comments:

"This provision of the Constitution embodies the principle of the equality of all persons before the law. The Government of Uruguay wishes to state in this respect that to uphold Mr. Stalla's petition would unquestionably violate this principle by according him preference over other university graduates who, like Mr. Stalla, have a legitimate aspiration to secure such posts, without any distinction being made between them, other than on the basis of talent and virtue."

6.3 With regard to article 55 of the Uruguayan Constitution, which provides that "the law shall regulate the impartial and equitable distribution of labour", the State party comments:

'This provision is one of the 'framework rules', under which legal measures will be enacted developing the established right to work (art. 53) and combining the existence of this right with good administration.

'It will not have escaped the Committee that it is obviously impossible for the Government of Uruguay, or of any other State with a similar system, to absorb all university graduates into the public service.'

6.4 The State party further emphasizes the necessity of "provision for redress made in the legislation enacted by the first elected Parliament after more than 12 years of military

authoritarianism, legislation which has made it possible to restore the rights of those public and private officials who were removed from their posts as a result of ideological persecution'.

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

7.2 The Human Rights Committee therefore ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. Regarding the requirement of prior exhaustion of domestic remedies, the Committee concluded, based on the information before it, that there were no further domestic remedies which the author could resort to in the particular circumstances of his case. The Committee noted in that connection the author's statement that his action for amparo had been dismissed by the Supreme Court (see para. 2.3 above), as well as the State party's observation to the effect that there could be no remedy in the case as there had been no breach of a right under domestic law (see para. 4 above).

7.3 With regard to the State party's submission that the communication should have been declared inadmissible on the ground that the author had no subjective right in law to be appointed to a public post, but only the legitimate aspiration to be so employed (see para..4 and the State party's further elaboration in para. 6.1 above), the Committee observed that the author had made a reasonable effort to substantiate his claim and that he had invoked specific provisions of the Covenant in that respect. The question whether the author's claim was well-founded should, therefore, be examined on the merits.

7.4 The Committee noted that the facts of the case, as set out by the author and the State party, were already sufficiently clear to permit an examination on the merits. However, the Committee deemed it appropriate at that juncture to limit itself to the procedural requirement of deciding on the admissibility of the communication. It noted that, if the State party should wish to add to its earlier submissions within six months of the transmittal to it of the decision on admissibility, the author of the communication would be given an opportunity to comment thereon. If no further explanations or statements were received from the State party under article 4, paragraph 2, of the Optional Protocol, the Committee would then proceed to adopt its final views in the light of the written information already submitted by the parties.

7.5 On 8 April 1987 the Human Rights Committee therefore decided that the communication was admissible and requested the State party, if it did not intend to make a further submission in the case under article 4, paragraph 2, of the Optional Protocol, so to inform the Committee, to permit an early decision on the merits.

8. By note dated 26 May 1987, the State party informed the Committee that, in the light of its prior submission, it would not make a further submission in the case.

9. The Human Rights Committee has considered the merits of the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The facts of the case are not in dispute.

10. The main question before the Committee is whether the author of the communication is a victim of a violation of article 25 (c) of the Covenant because, as he alleges, he has not been permitted to have access to public service on general terms of equality. Taking into account the social and political situation in Uruguay during the years of military rule, in particular the dismissal of many public servants pursuant to Institutional Act No. 7, the Committee understands the enactment of Act No. 15.737 of 22 March 1985 by the new democratic Government of Uruguay as a measure of redress. Indeed, the Committee observes that Uruguayan public officials dismissed on ideological, political or trade-union grounds were victims of violations of article 25 of the Covenant and as such are entitled to have an effective remedy under article 2, paragraph 3 (a), of the Covenant. The Act should be looked upon as such a remedy. The implementation of the Act, therefore, cannot be regarded as incompatible with the reference to 'general terms of equality' in article 25 (c) of the Covenant. Neither can the implementation of the Act be regarded as an invidious distinction under article 2, paragraph 1, or as prohibited discrimination within the terms of article 26 of the Covenant.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as submitted do not sustain the author's claim that he has been denied access to public service in violation of article 25 (c) or that he is a victim of an invidious distinction, that is, of discrimination within the meaning of articles 2 and 26 of the Covenant.