

## HUMAN RIGHTS COMMITTEE

### Chira Vargas v. Peru

Communication No. 906/2000

22 July 2002

CCPR/C/75/D/906/2000

### VIEWS

Submitted by: Mr. Félix Enrique Chira Vargas-Machuca

Alleged victim: Mr. Félix Enrique Chira Vargas-Machuca

State party: Peru

Date of communication: 15 September 1997 (initial submission)

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

Meeting on 22 July 2002,

Having concluded its consideration of communication No. 906/2000 submitted to the Human Rights Committee by Mr. Félix Enrique Chira Vargas-Machuca 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, the communication and the State party,

Adopts the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Mr. Félix Enrique Chira Vargas-Machuca, a Peruvian citizen who claims to be a victim of violations by Peru of articles 14 and 17 of the International Covenant on Civil and Political Rights. Although this is not explicitly stated by the author, the communication could also raise issues under article 25 (c) and article 2, paragraph 3, of the Covenant. The author is represented by counsel.

## **The facts as submitted by the author**

2.1 The author was a commander in the Peruvian National Police and Chief of the Police Drug Squad in the town of Trujillo. On 2 October 1991, Mr. Áureo Pérez Arévalo, who had been arrested for international drug trafficking, died at the San Andrés police station. According to the author, the deceased was in the custody and charge of officials of the Preventive Police and not of the headquarters of the Drug Investigation Department.

2.2 The author states that, following the death of Mr. Pérez Arévalo, he made the requisite report to the Office of the Criminal Procurator and the magistrate of the Second Court of Investigation, who immediately accepted jurisdiction over the case. However, in a report dated 15 October 1991, the Office of the National Police Headquarters Legal Adviser maintained that the investigating magistrate in Trujillo had not accepted jurisdiction over the case, since the duty provincial procurator had not made the requisite report on the case and, furthermore, he had been apprised of the matter only as a preventive measure and not with a view to instituting judicial proceedings.

2.3 On 16 October 1991, an administrative decision relieved the author of his duties as a disciplinary measure, after 26 years of service.<sup>1/</sup> The decision was based on a report dated 8 October 1991, which contained conclusions based on a police report that the author claims never existed, and a second disciplinary report dated 16 October 1991, in which the author was accused of violating article 84.C.6 of the Disciplinary Regulations, although he contends that the article in question was intended to cover a different situation.

2.4 The same day, an order was issued for the author's arrest, without a judicial order and without his being apprehended in flagrante delicto. The author was taken to Lima, where he was forced to attend a press conference. The author claims that no charges were ever brought against him, in either the ordinary or the military courts, for criminal negligence or liability in the course of his duties, or for any other criminal offence arising from the death of Mr. Pérez Arévalo, and that he was neither tried nor sentenced.

2.5 On 25 October 1991, the Office of the National Police Headquarters Legal Adviser issued a report stating that the author, in his capacity as Chief of the Drug Department, had failed to inform his superiors of the action he had taken against Mr. Pérez Arévalo for illicit drug trafficking. The author, however, maintains that the Institutional Command was informed immediately and expediently of the detention of certain individuals for drug trafficking, in the report of the Trujillo Police Department secretariat dated 1 October 1991. The Ministry of the Interior was also informed of the arrest of Mr. Pérez Arévalo and others, in a letter dated 4 October 1991 from the National Police Directorate-General.

2.6 According to the author, the minutes of the National Police Board of Inquiry dated 16 October 1991, which was based on the disciplinary reports dated 8 and 16 October 1991 and the reports prepared by the Office of the National Police Headquarters Legal Adviser, contained a number of irregularities, such as erasures of time and date, which constituted violations of the rules of procedure of the Board of Inquiry. In addition, the author was not notified in advance of the Board

of Inquiry hearing.<sup>2/</sup> He was under arrest at the time and found it difficult to prepare a defence: he was allowed only two minutes to present his case and had no time to submit any evidence in his own defence.

2.7 On 30 January 1995, the author submitted an application for *amparo* to the Trujillo Third Special Civil Court, requesting that the Supreme Decision relieving him of his duties should be declared unenforceable. In its judgement of 2 March 1995, the Court declared the decision unenforceable and ordered the reinstatement of the author to active service in the National Police with the rank of commander. The judgement was appealed by the Public Prosecutor of the Ministry of the Interior in the Trujillo First Civil Division which, on 20 June 1995, upheld the order for the author's reinstatement. The Public Prosecutor then appealed to the Constitutional Division of the Supreme Court, which, in its decision of 6 December 1995, declared itself incompetent to hear the appeal. On 27 December 1995, the appeal was declared inadmissible by the Trujillo First Civil Division.

2.8 On 12 January 1996, the Trujillo Third Special Civil Court ordered the execution of the judgement of 2 March 1995, with the reinstatement of the author as commander in the police force. In a written submission dated 1 February 1996, the Public Prosecutor opposed the author's reinstatement, arguing that administrative procedures must be carried out prior to such reinstatement.

2.9 On 15 February 1996, the author requested the Trujillo Third Special Civil Court to urge the Ministry of the Interior to implement the Supreme Decision ordering his reinstatement and to publish it in the Official Gazette. On 23 May 1996, the Court issued a decision giving the Ministry of the Interior 10 days to implement and publish the Supreme Decision. However, on 28 May 1996, the National Police Public Prosecutor declared the decision null and void, claiming that the relevant procedures had not been completed and that the decision should be signed by the President of the Republic.

2.10 The author sent notarized communications to the Ministry of the Interior and to the President of the Republic on 8 and 12 August 1996 respectively, informing them that the judicial order had not been executed. The Trujillo Third Special Civil Court sent a note dated 9 April 1997 to the Secretary of the Office of the President of Peru requesting information on the outcome of the draft Supreme Decision that the Minister of the Interior had transmitted to the President on 15 February 1996. On 25 June 1997, the Court again requested the President to sign the decision, to no avail.

### **The complaint**

3.1 The author states that the events described constitute a violation of the provisions of article 14, paragraphs 1 and 2, of the Covenant, relating to presumption of innocence and the right to a defence, insofar as he was punished and relieved of his duties without being brought before a competent court. He also draws attention to irregularities in administrative procedures.

3.2 The author maintains that article 17 of the Covenant was violated insofar as the accusation made against him affected his reputation, honour and image in his performance of his duties as a police officer. In particular, he contends that the holding of the press conference jeopardized his

future promotion to colonel.

### **Observations by the State party**

4.1 The State party submitted its observations on admissibility on 22 March 2000 and on the merits on 27 July 2000.

4.2 The State party challenges the admissibility of the communication, arguing that, in compliance with the judgement in which the decision relieving the author of his duties was declared unenforceable, the Ministry of the Interior took the necessary steps to resolve the case and, in its Supreme Decision of 21 August 1997, ordered the author's reinstatement to active service as a commander in the Peruvian National Police. Consequently, the State party claims that there is no longer any victim since the case has been resolved.

4.3 Furthermore, the State party considers that the communication should be declared inadmissible inasmuch as it constitutes an abuse of process, having been submitted one month after publication of the Supreme Decision reinstating the author in his post.

4.4 In its observations on the merits, the State party confines itself to a repetition of the arguments used in its observations on admissibility, and requests the Committee to declare the communication inadmissible.

### **Comments by the author**

5.1 The author submitted his comments on the State party's observations on admissibility on 2 December 2000 and on the State party's observations on the merits on 23 January and 15 August 2001.

5.2 The author responds to the State party's arguments with regard to admissibility and points out that, on 15 February 1996, he brought constitutional enforcement proceedings before the Trujillo Third Special Civil Court, which ruled in his favour. The Civil Court's decision was subsequently transmitted to the Constitutional Court. On 2 February 1998, the Prosecutor of the Ministry of the Interior transmitted the Supreme Decision of 21 August 1997 concerning the author's reinstatement in his duties, to the Constitutional Court. However, the Prosecutor failed to mention a subsequent decision, issued on 29 August 1997, which arbitrarily forced the author to retire owing to the reorganization of the police force. The author claims, therefore, that the whole exercise was a sham since, from 16 October 1991, the date on which he was relieved of his duties, until 2 December 2000,<sup>3/</sup> and he has not been reinstated to active service.

5.3 The author responds to the State party's observations on the merits, arguing that the supreme decisions regarding his retirement owing to the reorganization of the police force, issued by the Government of Alberto Fujimori, were not in keeping with due process because no reasons were given. The author claims that the decision of 29 August 1997 was irregular because no reason was given and his retirement was therefore arbitrary.

### **Issues and proceedings before the Committee**

6.1 In accordance with rule 87 of its rules of procedure, before considering any claims contained in a communication, the Human Rights Committee must decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required 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.

6.3 The Committee notes that the State party challenges the admissibility of the communication on the grounds that the author's reinstatement to active service was stipulated in Supreme Decision of 21 August 1997 and that the case was thereby resolved. Nevertheless, the Committee notes the author's statements claiming that he was not reinstated. In the circumstances of the present case, the Committee declares the communication admissible, particularly as regards article 25 of the Covenant, and turns now to the merits.

### **Consideration as to the merits**

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes that the State party did not provide any information concerning the merits of the author's complaints. In the absence of a reply from the State party, due consideration should be given to the author's complaints, to the extent that they are substantiated.

7.3 With regard to the alleged violations of article 14, paragraphs 1 and 2, of the Covenant, the author alleges a violation of his right to the presumption of innocence and his right to a defence inasmuch as he was relieved of his duties without having been brought before a competent court. The Committee recalls that article 14, paragraph 1, guarantees everyone the right, in the determination of his rights and obligations, to a hearing by an impartial tribunal or court, including the right of access to a civil court. In that regard, the Committee notes that both the Trujillo Third Special Civil Court and the Trujillo First Civil Division found that the author had been unlawfully dismissed and reinstated him in his post. Consequently, the Committee considers that, in this case, there was no violation of due process within the meaning of article 14, paragraph 1, of the Covenant. The Committee also considers that the domestic courts recognized the author's innocence and that consequently there was no violation of the right contained in article 14, paragraph 2, of the Covenant and, for the same reason, there was no violation of article 17 of the Covenant.

7.4 Although not explicitly stated by the author, the Committee considers that the communication raises issues under article 25 (c) concerning every citizen's right to have access, on general terms of equality, to public service in his country, together with the right to the execution of decisions and judgements. In this regard, the Committee notes the author's claims that, notwithstanding the Supreme Decision of 21 August 1997, he was never reinstated in his post, and that another Supreme Decision was issued on 29 August 1997 forcing him to retire owing to the reorganization

of the police force. Considering that the State party has not demonstrated in what way it reinstated the author in service, what rank he was given or on what date he resumed his post, as required by law in the light of the annulment ruling of 2 March 1995, the Committee considers that there has been a violation of article 25 (c), in conjunction with article 2, paragraph 3, of the Covenant.

8. 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 that have been set forth constitute violations of article 25 (c) of the Covenant, in conjunction with article 2, paragraph 3, of the Covenant.

9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee is of the view that the author is entitled to an appropriate remedy, namely: (a) effective reinstatement to his duties and to his post, with all the consequences that that implies, at the rank that he would have held had he not been dismissed in 1991, or to a similar post;<sup>4/</sup> (b) compensation comprising a sum equivalent to the payment of the arrears of salary and remuneration that he would have received from the time at which he was not reinstated to his post.<sup>5/</sup> Finally, the State party must ensure that similar violations do not recur in the future.

10. Bearing in mind that, in acceding to the Optional Protocol, the State party has recognized the Committee's competence to determine whether there has been a violation of the Covenant or not and that, under article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and applicable remedy in the event that violation has been found, the Committee wishes to receive information from the State party within 90 days on the measures it has adopted to give effect to the Committee's Views. It also requests the State party to publish the Committee's Views.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be translated also into Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

### **Notes**

1/ According to the decision, the author had committed serious breaches of discipline and police regulations through his improper handling of a drug trafficking case, which resulted in the death of the suspect, Áureo Pérez Arévalo.

2/ The author does not mention the date of the hearing in the communication.

3/ Date on which the author submitted his comments on admissibility.

4/ See the Committee's Views concerning communication No. 630/1995, *Abdoulaye Mazou v. Cameroon*, paragraph 9, and communication 641/1995, *Gedumbe v. Democratic Republic of the Congo*.

5/ See the Views concerning communications No. 422/1990, No. 423/1990 and No. 424/1990, *Adimado M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, paragraph 9.