

HUMAN RIGHTS COMMITTEE

Hom v. Philippines

Communication No. 1169/2003

30 July 2003

CCPR/C/78/D/1169/2003

ADMISSIBILITY

Submitted by: Mr. Antonio Hom

Alleged victim: The author

State party: The Philippines

Date of communication: 20 December 2001 (initial submission)

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

Meeting on 30 July 2003

Adopts the following:

Decision on admissibility

1. The author of the communication is Antonio Hom. He claims to be a victim of a violation by the Philippines of his rights under articles 1, paragraph 2, 14, paragraph 1, and 26 of the Covenant. The author, a member of the bar, is not represented by counsel.

The facts as presented

2.1 On 3 October 1992, the author, who had retired in 1987 from employment with the Philippine National Bank, brought an action for sum of money against the bank. He claimed that the bank had illegally deducted withholding tax from the money value of his unused leave credits. On 29 June 1994, the Regional Trial Court of Negros Occidental, at first instance, found against the author, determining that the bank had properly applied the relevant taxation law, as it then stood. On 27

October 1998, a bench of three justices of the Manila Court of Appeals dismissed the author's appeal.

2.2 On 25 November 1998, the author moved for review on certiorari of the Court of Appeal's decision on the basis of alleged jurisdictional error. The petition was served and filed by mail, without reasons as to why it was not served and filed in person, as generally required by the applicable rules of procedure.

2.3 On 22 February 1999, the Supreme Court denied the author's motion for review on certiorari of the Court of Appeals' decision, on the basis (i) that the impugned judgment had not been properly certified by a clerk of the court, (ii) that the motion was insufficient in form and substance, and (iii) that the motion had not been personally served.

2.4 On 26 April 1999, the author filed a "motion for reconsideration", arguing that the judgment in question had been properly certified, that his substantive argument was sound, and that there were practical reasons why personal service had not been pursued. On 23 June 1999, the Court finally denied the author's motion for reconsideration of its resolution of 22 February 1999, on the basis that no substantial arguments were raised to warrant such reconsideration.

2.5 On 2 August 1999, the author moved the Supreme Court for reconsideration of its 23 June 1999 decision, making extensive argumentation on the substantive issues of alleged errors of law and miscarriage of justice committed by the lower court. On 8 September 1999, the Supreme Court rejected the author's motion of 2 August 1999, on the basis of procedural rules which excluded consecutive motions for reconsideration from the same party. As a result, on 27 October 1999, judgment was formally entered in the author's case.

2.6 On 25 March 2000, the author complained to the Chief Justice about the denial of his petition for review. On 8 May 2000, a Justice of the Supreme Court responded, explaining that a petitioner had to show prima facie merit in an attack on an appellate decision, without which a petition would be summarily denied. On 26 May 2000, the author again complained to the Chief Justice. On 26 June 2000, the Supreme Court formally noted the author's letter of 25 March 2002 to the Chief Justice, but took no action.

2.7 On 25 August 2000, the author again complained to the Chief Justice. On 21 September 2000, the Chief Justice's Staff Head responded. On 17 October 2000, the author again complained to the Chief Justice's Staff Head contesting the Court's resolution of 22 February 1999. On 24 January 2001, the author complained to Staff Head, contending that the Supreme Court's decisions of 22 February 1999, 23 June 1999, 26 June 2000 and 8 September 1999, as well as the Associate Justice's letter of 8 May 2000, were in error.

2.8 On 24 January 2001, the Supreme Court, treating the author's letter of 17 October 2000, as a third motion for reconsideration, resolved to "reiterate the bases of its ruling" of 22 February 1999 first dismissing the author's appeal. It detailed that (i) the appellate judgment had not been certified by a clerk of that court, as required, (ii) that the author's petition had not explained his failure to render personal service, and (iii) that the petition, "by any standard, is manifestly insufficient in

form and substance", failing to show prima facie any reversible error committed by the appellate court. It accordingly denied the motion.

The complaint

3.1 The author claims a violation of article 1, paragraph 2, of the Covenant in that he has been allegedly deprived of his retirement benefits, which constitute the very means of his subsistence.

3.2 He further claims a violation of article 14, paragraph 1, in that he was allegedly denied both equality before the courts and a fair hearing in determining his rights in a suit at law. In particular, the author contends, firstly, that the Supreme Court did not grant him a hearing, when it stated in its resolution of 24 January 2001 that no further pleading would be entertained in his case. Secondly, the Supreme Court improperly distinguished between certification applied by a Clerk of the Regional Trial Court and a Clerk of the Court of Appeals in finding that procedural requirement not satisfied. Secondly, the Supreme Court decided to treat the author's letter of 17 October 2000 as a third motion for reconsideration, while having earlier decided that it could not receive any further such motions. Thirdly, the Supreme Court improperly rejected his failure to exercise personal service, on the basis that the physical distance involved was obvious and that it had allegedly previously accepted service by mail.

3.3 The author also cites a violation of article 26 as to the equal protection of the law, without further substantiating any argumentation as to this claim.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 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 the communication is admissible under the Optional Protocol to the Covenant.

4.2 As to the author's claim under article 1 of the Covenant, the Committee refers to its jurisprudence that, for the purposes of a communication under the Optional Protocol, article 1 cannot on its own be the subject of a communication under the Optional Protocol. (1) Moreover, the author has not presented his communication in the context of any claim of a "people", within the meaning of article 1 of the Covenant. Accordingly, this aspect of the communication falls outside the Optional Protocol *ratione materiae* and *ratione personae*, respectively, and the claim is inadmissible under articles 3 and 1 of the Optional Protocol.

4.3 As to the author's claims under articles 14, paragraph 1, the Committee notes that these claims have their origins in a lawsuit by the author concerning the withholding of some 10% in taxes on the value of his unused leave credits upon retirement. To the extent that the communication can be understood as relating to the interpretation of domestic law and further the evaluation of the facts and evidence by the Regional Trial Court, the Committee observes that that the author appealed to the Court of Appeals, which had full authority to address these issues. The Committee refers to its

constant jurisprudence that it is not for the Committee to review these issues, unless the appreciation of the domestic courts is manifestly arbitrary or amounts to a denial of justice. The Committee considers that the author has failed to substantiate, for the purposes of admissibility, any such exceptional element in his present case, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.4 As to the aspects of the authors' claims under articles 14, paragraph 1, and 26 relating to the circumstances of the subsequent refusal of the Supreme Court to review the outcome of his case, the Committee similarly considers that the author has failed to substantiate, for purposes of admissibility, any claim that would raise issues under these provisions. These claims are thus also inadmissible under article 2 of the Optional Protocol.

5. Accordingly, the Committee decides:

- a) that the communication is inadmissible; and
- b) that this decision will be transmitted to the author and, for information, to the State party.

[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.]

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Notes

1. See, for example, *Ominayak et al. v Canada* Case No 167/1984, Views adopted on 26 March 1990, at para 13.3.