

HUMAN RIGHTS COMMITTEE

González del Río v. Peru

Communication No. 263/1987

6 November 1990

CCPR/C/40/D/263/1987*/

ADMISSIBILITY

Submitted by: Miguel González del Río

Alleged victim: The author

State party concerned: Perú

Date of communication: 19 October 1987

Documentation references: Prior decisions - CCPR/C/WG/32/D/263/1987 (Working Group rule 91 decision, dated 15 March 1988)

Date of present decision: 6 November 1990

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 19 October 1987 and subsequent correspondence) is Miguel A. González del Río y Gil, a naturalized Peruvian citizen born in Spain, at present residing in Lima, Perú. He claims to be a victim of a violation by the Government of Perú of his rights under article 9, paragraphs 1 and 4, 12, 14, paragraphs 1 and 2, 17 and 26 of the International Covenant on Civil and Political Rights.

2.1 The author states that from 10 February 1982 to 28 December 1984 he served as Director-General of the Penitentiary System of the Peruvian Government. By resolution of 20 March 1985, the Comptroller General of Perú accused Mr. González and other officials of responsibility in wrongful appropriation of Government funds in connection with the award of construction contracts to build additional penitentiaries. Mr. González' resignation was retroactively transformed into a

dismissal. Against this resolution the author interposed an action of amparo and the Constitutional Court (Tribunal de Garantías Constitucionales) decided in his favour by judgement of 15 September 1986. The author complains that although the Constitutional Court referred the case back to the Supreme Court for appropriate action, none has been taken as of October 1990, four years later, in spite of repeated requests from the author. He complains inter alia that he has not been reinstated as a public official, that his reputation continues to be tainted until the Supreme Court implements the decision of the Constitutional Court, that his freedom of movement is restricted and that he cannot leave the territory of Perú.

2.2 Mr. González further alleges that a libelous press campaign against him and the other accused, including former Justice Minister Enrique Elías Laroza accompanied the 1986 Congressional elections in Perú. In spite of this campaign led by newspapers loyal to the Government of Perú, Mr. Elías Laroza was elected Deputy. Because of his parliamentary immunity, Mr. Elías Laroza the main target of the Comptroller General, has not been subjected to arrest or detention, although a Congressional investigation is in progress as to the charges, if any, that could be levelled against the former Minister. The author alleges that the lower officials, including himself, have been subjected to detention or threats of detention and that they are victims of political persecution, characterized by sensationalist defamatory newspaper articles and by politically-motivated declarations of judges supposed to be impartial. In this connection the author alleges to be the victim of unequal treatment, since in a very similar case concerning former Minister Manuel Ulloa Elías, the Attorney-General declared that it would not be possible to accuse lower officials for as long as the legal issues concerning the principal accused, i.e. the former Minister, had not been resolved. He claims that his treatment constitutes discrimination on account of his foreign origin and because of his political opinions.

2.3 With regard to one penal action for fraud pending against the author, the Criminal Tribunal No. 12 of Lima (Duodécimo Tribunal Correccional de Lima) decided on 9 December 1988, to close it and lift the arrest order against him, because the investigations initiated against him failed to reveal any evidence of fraud. However, by letter of 10 September 1990, the author states that there is still a parallel penal matter pending since 1985, that although investigations have not resulted in any indictment, an order for his arrest is still outstanding and that he cannot leave the territory of Perú.

3. By decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the rules of procedure to the State party, requesting information and observations relevant to the question of admissibility, in particular details about the effective remedies available to the author. The State party was further requested to indicate what action the Supreme Court of Perú had taken following the decision of the Constitutional Court concerning Mr. González del Río, dated 15 September 1986, and if no action had been taken, to explain why.

4. The deadline for the State party's submission under rule 91 of the rules of procedure expired on 27 June 1988. By note of 19 July 1988 the State party indicated that it needed additional time to make its submission. Reminders were sent to the State party on 15 November 1988 and 6 February 1989. No further submission has been received from the State party.

5.1 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 the communication

is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation of settlement. With regard to article 5, paragraph 2 (b) of the Optional Protocol, concerning the exhaustion of domestic remedies, the Committee is unable to conclude, on the basis of the information before it, that there are effective remedies available to the author which he could or should have pursued. The Committee further notes that the implementation of the decision of the Constitutional Court of 15 September 1986 concerning Mr. González del Río has been unreasonably prolonged within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That the State party shall be further requested to clarify exactly what charges have been brought against the author and to forward copies of any relevant court orders or decisions in his case; in particular, the State party should clarify the powers of the Constitutional Court and explain whether and in which way the decision of the Constitutional Court of 15 September 1986 has been implemented;

(d) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the Committee's rules of procedure to the author to enable him to comment thereon; any such comments should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of transmittal;

(e) That this decision shall be communicated to the State party and to the author of the communication.

*/ All persons handling this document are requested to respect and observe its confidential nature.