

HUMAN RIGHTS COMMITTEE

Delgado Páez v. Colombia

Communication No. 195/1985

12 July 1990

VIEWS

Submitted by: William Eduardo Delgado Páez

Alleged victim: The author

State party concerned: Colombia

Date of communication: 4 October 1985 (initial submission)

Date of decision on admissibility: 4 April 1988

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

Meeting on 12 July 1990,

Having concluded its consideration of communication No. 195/1985, submitted to the Committee by William Eduardo Delgado Páez 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,

Adopts the following:

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

1. The author of the communication is William Eduardo Delgado Páez, a Colombian national who resided in Bogotá, Colombia, at the time of submission. In May 1986 he left the country and sought political asylum in France, where he was granted refugee status.

2.1 In March 1983, the author was appointed by the Ministry of Education as a teacher of

religion and ethics at a secondary school in Leticia, Colombia. He was elected vice-president of the teachers' union. As an advocate of "liberation theology", his social views differed from those of the then Apostolic Prefect of Leticia.

2.2 In October 1983, the Apostolic Prefect sent a letter to the Education Commission withdrawing the support that the Church had given to Mr. Delgado. On 10 December 1983, the Apostolic Prefect wrote to the Police Inspector accusing Mr. Delgado of having stolen money from a student.

2.3 On 25 August 1984, the Circuit Court dismissed all charges against the author, having established that the accusation of theft was unfounded.

2.4 On 5 February 1984, Mr. Delgado was informed that he would no longer teach religion. Instead, a course in manual labour and handicrafts (manualidades y artesanías), for which he had no training or experience, was assigned to him. In order not to lose employment altogether, he endeavoured to teach these subjects.

2.5 On 29 May 1984, the author requested from the Ministry of Education two weeks' leave for the period from 26 June to 10 July 1984 to attend an advanced course at Bogotá to further his teaching qualifications. He and other teachers were admitted to the course on 5 July 1984, but Mr. Delgado was subsequently denied leave. He considered this to be unjustified discrimination and decided to attend the course, also taking into account that, as a result of a national strike (paro nacional), the teachers were, by decree of the Ministry of Education, on enforced vacation (vacaciones forzosas).

2.6 By administrative decisions of the Ministry of Education, dated 12 July, and 11 and 25 September 1984, he was suspended from his post for 60 days, and a six-months' salary freeze was imposed on him on grounds of having abandoned his post without permission from the Principal. On 27 November 1984, the author requested the annulment of these administrative decisions (recurso de reposición), arguing that he had not abandoned his post, but that the law allowed teachers to take such special courses and that he had been duly admitted to the course with the approval of the Ministry of Education. The action was dismissed. He then submitted an appeal, and on 3 December 1985, by decision of the Ministry of Education, the prior decisions of suspension and salary freeze were annulled.

2.7 Convinced that he was a victim of discrimination by the ecclesiastical and educational authorities of Leticia, the author took the following steps:

(a) On 17 May 1985, he submitted a complaint to the Office of the Regional Attorney on grounds of alleged irregularities committed by the Fondo Educativo Regional (Regional Education Fund) in his case;

(b) On 18 May 1985, he submitted a complaint to the penal court of Leticia, accusing the Apostolic Prefect of slander and abuse (injuria y calumnia);

(c) On 28 May, 4 June and 3 October 1985, he wrote to the Office of the Attorney General

of the Republic, expressing concern about the denial of justice at the regional level, attributable to the alleged influence of the Apostolic Prefect;

(d) On 13 May 1986, he again wrote to the Attorney General describing the pressures he had been and was being subjected to in order to force him to resign. He indicated, *inter alia*, that on 23 November 1983 the Apostolic Prefect had written to the Secretary of Education asking the latter in specific and clear terms:

"to bring pressure on me to resign from my post, and this in fact happened. for, on 2 December 1983, I was summoned to the office of the Secretary of Education and orally informed that the Monsignor was putting pressure on him and that I therefore had to resign from my post as a teacher, failing which criminal proceedings would be instituted against me. I promptly informed the president of the teachers' union and the teachers' representative on the Promotion Board of such an outrage and they immediately went to the office of the Secretary of Education, who repeated that it had nothing to do with him, but that he had been acting at the Monsignor's insistence. I of course refused to resign, but the threat was carried out and criminal proceedings were instituted against me."

2.8 While at his residence in Bogotá, the author received anonymous phone calls threatening him with death if he returned to Leticia and did not withdraw his complaint against the Apostolic Prefect and the education authorities. He also received death threats at the teachers' residence at Leticia, which he reported to the military authorities at Leticia, the teachers' union, the Ministry of Education and the President of Colombia.

2.9 On 2 May 1986, a work colleague, Ms. Rubiela Valencia, was shot to death outside the teachers' residence in Leticia by unknown killers. On 7 May 1986, the author was himself attacked in the city of Bogotá, and, fearing for his own life, left the country and obtained political asylum in France in June 1986.

2.10 By letter dated 10 June 1986, he tendered to the Ministry of Education at Leticia his resignation from his post, justifying his decision on account of the pressures and threats he had received. His resignation was rejected "in those terms". He resubmitted his resignation on 27 June 1986, without adducing any reasons, and this time it was accepted, effective 14 July 1986.

The complaint

3.1 The author claims to be a victim of violations by Colombia of articles 14, 18, 19, 25 and 26 in conjunction with article 2 of the International Covenant on Civil and Political Rights.

3.2 He maintains that he was subjected to persecution - ideologically, politically and in his work - by the Colombian authorities, because of his "progressive ideas in theological and social matters", that his honour and reputation were attacked by the authorities who falsely accused him of theft, whereas the reason behind the charge was to intimidate him because of his religious and social opinions. Moreover, his professional qualifications were unjustly put into question, although he had studied and taken a degree at the University of Santo

Tomás and had taught several years at a high school in Bogotá.

3.3 Furthermore, he claims to have been denied the freedom to teach, having been suspended from his teaching post in breach of the decree concerning appointments and of the teachers' statute (decrees No. 2277 of 1979 and No. 2372 of 1981). When he applied for a transfer, his request was ignored by the administration.

3.4 More importantly, he charges that manifold threats were used to force him to resign: first, being threatened with prosecution; then, when he refused to resign, preliminary proceedings on the theft charges were initiated without prior notice, thereby violating the right of defence; he was not heard by the examining magistrate during the preliminary investigation and was not assisted by a court-appointed lawyer; furthermore, the authorities sent copies of the unfounded allegations, even before they were investigated, to all offices in the Ministry of Education and to all the schools; as a result, he was subjected to public scorn and essentially convicted before the charges had been investigated. Furthermore, copies of the allegations were included in his personal file. This caused him harm in economic, moral and social terms. Nevertheless, he was acquitted of all charges.

3.5 Additionally, he was suspended from practising his profession for 60 days, for alleged dereliction of duty, and from the National Teachers' Register for six months; every possible kind of offence was invoked so that the outcome of the administrative inquiries would not only be contrary to the truth, but would also cause prejudice by leading to criminal proceedings and in this manner implicate his colleagues in the teachers' union who supported him. The case was again dismissed on all points. He then addressed complaints, without success, to the authorities concerning alleged offences, perpetrated by others, of falsifying public documents, forging his signature, making a false accusation to the authorities and breaching administrative confidentiality.

3.6 He claims that he "found it absolutely essential to leave the country, as there are no guarantees for the protection of the most basic human rights, such as equality, justice and life, which the Colombian Government has a constitutional and moral obligation to protect". Allegedly, the threats on his life and on the lives of other teachers have not been duly investigated by the State party.

The State party's observations

4.1 The State party argues, although only after the communication had been declared admissible, that domestic remedies have not been exhausted, since various actions are still pending.

4.2 It further denies that Mr. Delgado's rights under the Covenant have been violated. In particular, it indicates that Mr. Delgado was cleared of all charges against him and contends that his complaints against various Colombian authorities were duly investigated:

"William Eduardo Delgado Páez has not been subjected to restrictions on his freedom of thought, conscience, religion, speech or expression, as is demonstrated by the steps he was

able to take under the criminal law and in the administrative sphere throughout this investigation."

4.3 In the disciplinary action initiated by Mr. Delgado against various officials, the court of first instance of Leticia acquitted three persons and sanctioned two others with a suspension of 15 days without remuneration. Appeals are pending.

4.4 The criminal action against the Apostolic Prefect on grounds of slander and abuse was referred to the Apostolic Nuncius pursuant to the Concordat between the Republic of Colombia and the Vatican. The investigation was terminated upon the death of the Apostolic Prefect in 1990.

4.5 With respect to Mr. Delgado's qualifications as a teacher, the State party forwards a copy of a statement from the Ministry of Education setting forth the general requirements for teachers, without, however, specifically addressing the application of these requirements in the author's case.

4.6 As to the legal basis for the appointment of teachers of religion in Colombia, the State party states that:

"Applicants for the post of teacher of religion in Colombia must present a certificate of suitability in the area of religious and moral education, along the lines laid down in article 12 of Act 20 of 1974, which reads: In pursuance of the right of Catholic families to arrange for their children to receive religious education in keeping with their faith, educational plans at the primary and secondary level shall include religious education and training in official establishments in accordance with the teaching of the church. In order to put this right into practice, it falls to the competent church authority to supply curricula, approve religious education texts and verify how such education is provided. The civil authorities shall take into consideration certificates of suitability for teaching religion issued by the competent church authority."

The State party submits the text of the agreement of 31 July 1986 between the Ministry of Education and the Colombian Episcopal Conference, without, however, showing the relevance of this Concordat to the case of Mr. Delgado, whose resignation had already been accepted on 9 July 1986.

4.7 The State party does not address the author's allegations concerning death threats against himself and other teachers, the alleged assault on his person on 7 May 1986, nor the general situation of persecution against named journalists and intellectuals, amounting to a violation of the right of security of the person.

The issues and proceedings before the Committee

5.1 When considering the communication at its thirty-second session, the Committee concluded, on the basis of the information before it, that the conditions for declaring the communication admissible had been met. In particular, the Committee noted that while the

State party had claimed that there was no violation of the Covenant, it had not argued that the communication was inadmissible.

5.2 On 4 April 1988, the Committee declared the communication generally admissible, without specifying articles of the Covenant. The Committee, however, requested the State party to address the issues raised in one of the author's submissions, which focused on the right of security of the person.

5.3 The Committee has considered the present communication in the light of all the information provided by the parties. It has taken note of the State party's contention that domestic remedies have not been exhausted and that actions are still pending. The Committee finds, however, that, in the particular circumstances of the author's case, the application of domestic remedies has been unreasonably prolonged and, for purposes of article 5, paragraph 2 (b) of the Optional Protocol, they need therefore not be further pursued.

5.4 Although the author has not specifically invoked article 9 of the Covenant, the Committee notes that his submission of 14 September 1987, which was transmitted to the State party prior to the adoption of the Committee's decision on admissibility, raised important questions under this article. The Committee recalls that upon declaring the communication admissible, it requested the State party to address these issues. The State party has not done so.

5.5 The first sentence of article 9 does not stand as a separate paragraph. Its location as a part of paragraph one could lead to the view that the right to security arises only in the context of arrest and detention. The travaux préparatoires indicate that the discussions of the first sentence did indeed focus on matters dealt with in the other provisions of article 9. The Universal Declaration of Human Rights, in article 3, refers to the right to life, the right to liberty and the right to security of the person. These elements have been dealt with in separate clauses in the Covenant. Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty. At the same time, States parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because that he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant.

5.6 There remains the question of the application of this finding to the facts of the case under consideration. There appears to have been an objective need for Mr. Delgado to be provided by the State with protective measures to guarantee his security, given the threats made against him, including the attack on his person, and the murder of a close colleague. It is arguable that, in seeking to secure this protection, Mr. Delgado failed to address the competent authorities, making his complaints to the military authorities in Leticia, the

teachers' union, the Ministry of Education and the President of Colombia, rather than to the general prosecutor or the judiciary. It is unclear to the Committee whether these matters were reported to the police. It does not know either with certainty whether any measures were taken by the Government. However, the Committee cannot but note that the author claims that there was no response to his request to have these threats investigated and to receive protection, and that the State party has not informed the Committee otherwise. Indeed, the State party has failed to comply with the request by the Committee to provide it with information on any of the issues relevant to article 9 of the Covenant. Whereas the Committee is reluctant to make a finding of a violation in the absence of compelling evidence as to the facts, it is for the State party to inform the Committee if alleged facts are incorrect, or if they would not, in any event, indicate a violation of the Covenant. The Committee has, in its past jurisprudence, made clear that circumstances may cause it to assume facts in the author's favour if the State party fails to reply or to address them. The pertinent factors in this case are that Mr. Delgado had been engaged in a protracted confrontation with the authorities over his teaching and his employment. Criminal charges, later determined unfounded, had been brought against him and he had been suspended, with salary frozen, in the circumstances indicated in paragraphs 2.2 to 2.6 above. Further, he was known to have instituted a variety of complaints against the ecclesiastical and scholastic authorities in Leticia (see para. 2.7 above). Coupled with these factors were threats to his life. If the State party neither denies the threats nor co-operates with the Committee to explain whether the relevant authorities were aware of them, and, if so, what was done about them, the Committee must necessarily treat as correct allegations that the threats were known and that nothing was done. Accordingly, while fully understanding the situation in Colombia, the Committee finds that the State party has not taken, or has been unable to take, appropriate measures to ensure Mr. Delgado's right to security of his person under article 9, paragraph 1.

5.7 With respect to article 18, the Committee is of the view that the author's right to profess or to manifest his religion has not been violated. The Committee finds, moreover, that Colombia may, without violating this provision of the Covenant, allow the Church authorities to decide who may teach religion and in what manner it should be taught.

5.8 Article 19 protects, *inter alia*, the right of freedom of expression and of opinion. This will usually cover the freedom of teachers to teach their subjects in accordance with their own views, without interference. However, in the particular circumstances of the case, the special relationship between Church and State in Colombia, exemplified by the applicable Concordat, the Committee finds that the requirement, by the Church, that religion be taught in a certain way does not violate article 19.

5.9 Although the requirement, by the Church authorities, that Mr. Delgado teach the Catholic religion in its traditional form does not violate article 19, the author claims that he continued to be harassed while teaching the non-religious subjects to which he had been assigned. The Committee must for the reasons elaborated in paragraph 5.6 above, accept the facts as presented by the author. This constant harassment and the threats against his person (in respect of which the State party failed to provide protection) made the author's continuation in public service teaching impossible. Accordingly, the Committee finds a violation of

article 25, paragraph (c), of the Covenant.

5.10 Article 26 requires that all persons are entitled without discrimination, to be equal before the law and to receive equal protection by the law. The Committee finds that neither the terms of Colombian law nor the application of the law by the courts or other authorities discriminated against Mr. Delgado, and finds that there was no violation of article 26.

6. 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 of the communication disclose violations of articles 9, paragraph 1, and 25, paragraph (c), of the Covenant.

7.1 In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by the author, including the granting of appropriate compensation, and to ensure that similar violations do not occur in the future.

7.2 The Committee would wish to receive information on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Spanish and Russian, the English text being the original version.]