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HUMAN RIGHTS COMMITTEE
Forty-sixth session

DECISIONS

Communication No. 263/1987

Submitted by : Miguel González del Río

Alleged victim : The author

State party : Peru

Date of communication : 19 October 1987 (initial submission)

Documentation references : Prior decisions
- CCPR/C/WG/32/D/263/1987 (Working Group combined rule 86, rule 91 decision, dated 15 March 1988)
- CCPR/C/40/D/263/1987 (decision on admissibility, dated 6 November 1990)

Date of adoption of Views : 28 October 1992

On 28 October 1992, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 263/1987. The text of the Views is annexed to the present document.

[Annex]

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*/ Made public by decision of the Human Rights Committee.

DEC263.46 cm

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights
- Forty-sixth session -

concerning

Communication No. 263/1987

Submitted by : Miguel González del Río

Alleged victim : The author

State party : Peru

Date of communication : 19 October 1987

Date of decision on admissibility : 6 November 1990

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

Meeting on 28 October 1992,

Having concluded its consideration of communication No. 263/1987, submitted to the Human Rights Committee by Mr. Miguel González del Río 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 noting with concern that no information whatever has been received from the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

The facts as presented by the author :

1. The author of the communication is Miguel González del Río, a naturalized Peruvian citizen of Spanish origin, at present residing in Lima, Peru. He claims to be a victim of violations by Peru of articles 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 From 10 February 1982 to 28 December 1984, the author served as Director-General of the penitentiary system of the Peruvian Government. By Resolution No. 072-85/CG of 20 March 1985, the Comptroller General of Peru accused the author and several other high officials of illegal appropriation of government funds, in connection with purchases of goods and the award of contracts for the construction of additional penitentiaries. With retroactive effect, Mr. González' resignation, tendered on 28 December 1984, was transformed into a dismissal.

2.2 The author contends that a libelous press campaign against him and the other accused in the case, including the former Minister of Justice, Enrique Elías Laroza, accompanied the 1986 presidential elections in Peru. In spite of this campaign, led by papers loyal to the Government, Mr. Elías Laroza was elected deputy. Because of his parliamentary immunity, Mr. Elías Laroza, the principal target of the Comptroller General's report, was not subjected to arrest or detention, although a congressional investigation as to the charges that could be filed against the former Minister was initiated. He notes that the lower officials, including himself, have been subjected to detention or threats of detention.

2.3 The author filed an action for amparo before the Vigésimo Juzgado Civil of Lima to suspend the Resolution of the Comptroller General. The judge granted the suspension and the Comptroller appealed, claiming that an action of amparo was premature and that the author should first exhaust available administrative remedies. The Court, however, ruled that in the circumstances it was not necessary to take the matter before the administrative tribunals, and as to the merits of the case, that the right of defence of the author and the other accused had been violated, since they had been ordered by the Comptroller General to make payments without proper determination of the sum or

opportunity to study the books and compare the figures. The Court further decided that the Comptroller General did not have the authority to dismiss the author, nor to give retroactive effect to his resolutions. On appeal, however, the Superior Court of Lima reversed this finding, and the Supreme Court confirmed. The author then filed for amparo with the Constitutional Court (Tribunal de Garantías Constitucionales) alleging abuse of power by the Comptroller General, breach of the constitutional rights of defence and denial of access to documentation for the defence. By judgement of 15 September 1986, the Constitutional Court decided in the author's favour, ordering the suspension of the Comptroller's Resolution, and declaring the dismissal order to be unconstitutional. The author complains that although the Constitutional Court referred the case back to the Supreme Court for appropriate action, none had been taken as of March 1992, five and a half years later, despite repeated requests from the author.

2.4 In spite of the judgment of the Constitutional Court, the Comptroller's Office initiated criminal proceedings for fraud against the author; Mr. González applied for habeas corpus with the criminal court of Lima on 20 November 1986, against the examining magistrate No. 43; his action was dismissed on 27 November 1986. The author appealed the following day; the Tenth Criminal Tribunal (Décimo tribunal correccional de Lima) dismissed the appeal on 5 December 1986.

2.5 Undeterred, the author filed an action for nullity of his indictment (recurso de nulidad); on 12 December 1986, the court referred the matter to the Supreme Court. On 23 December 1986, the Second Criminal Chamber of the Supreme Court confirmed the validity of the indictment. Against this decision, the author filed an "extraordinary appeal for cassation" (recurso extraordinario de casación) with the Constitutional Court. On 20 March 1987, the Constitutional Tribunal held, in a split decision (four judges against two), that it could not compel the Supreme Court to execute the Constitutional Court's decision of 15 September 1986, since the author had not been subjected to detention and the Tribunal's earlier decision could not be invoked in the context of the request for amparo filed against examining magistrate No. 43.

2.6 With respect to the criminal action for fraud and embezzlement of public funds pending against the author, the Twelfth Criminal Tribunal of Lima (Duodécimo Tribunal

Correccional de Lima) decided, on 9 December 1988 and upon the advice of the Chief criminal prosecutor of Peru, to file the case and suspend the arrest order against the author, as the preliminary investigations had failed to reveal any evidence of fraud committed by him.

2.7 The author states that this decision notwithstanding, another parallel criminal matter remains pending since 1985, and although investigations have not resulted in any formal indictment, an order for his arrest remains pending, with the result that he cannot leave Peruvian territory. This, according to the author, is where matters currently stand. In a letter dated 20 September 1990, he states that the Supreme Court has "buried" his file for years, and that, upon inquiry with the Court's president, he was allegedly told that the proceedings would "be delayed to the maximum possible extent" while he [the Court's president] was in charge, since the matter was a political one and he would not like the press to question the final decision, which would obviously be adopted in Mr. González' favour ("...que el caso iba a ser retardado al máximo mientras él estuviera a cargo, puesto que tratándose de un asunto político no quería que la prensa cuestionara el fallo final, obviamente a mi favor."). The author contends that the Supreme Court has no interest in admitting that its position is legally untenable, and that this explains its inaction.

The complaint :

3.1 The author complains that he has not been reinstated as a public official, although he has been cleared of the charges against him by the decision of the Constitutional Tribunal and the decision of the Twelfth Criminal Court suspending the proceedings against him. He further alleges that his reputation and honour will be tainted as long as the Supreme Court fails to implement the decision of the Constitutional Court of 15 September 1986.

3.2 The author further complains that as one arrest warrant against him remains pending, his freedom of movement is restricted, in that he is prevented from leaving the territory of Peru.

3.3 It is further claimed that the proceedings against the author have been neither fair nor impartial, in violation of article 14, paragraph 1, as may be seen from the politically

motivated statements of magistrates and judges involved in his case (see statement referred to in paragraph 2.7 above).

3.4 Finally, the author contends that he is a victim of discrimination and unequal treatment, because in a case very similar to his own, concerning a former Minister, the Attorney-General allegedly declared that it would not be possible to accuse lower-level officials as long as the legal issues concerning this former minister had not been solved. The author contends that his treatment constitutes discrimination based on his foreign origin and on his political opinions.

Issues and Proceedings before the Committee :

4.1 By decision of 15 March 1988, the Committee's Working Group transmitted the communication to the State party, requesting it, under rule 91 of the rules of procedure, to provide information and observations on the admissibility of the communication. On 19 July 1988, the State party requested an extension of the deadline for its submission, but despite two reminders addressed to it, no information was received.

4.2 During its 40th session in November 1990, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, it concluded that there were no effective remedies available to the author in the circumstances of his case which he should have pursued. It further noted that the implementation of the Constitutional Court's decision of 15 September 1986 had been unreasonably prolonged within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

4.3 On 6 November 1990, the Committee declared the communication admissible. It requested the State party to clarify exactly what charges had been brought against the author and to forward all relevant court orders and decisions in the case. It further asked the State party to clarify the powers of the Constitutional Court and to explain whether and in which way the Constitutional Court's decision of 15 September 1986 had been implemented. After a reminder addressed to it on 29 July 1991, the State party requested, by note of 1 October 1991, an extension of the deadline for its submission under article 4, paragraph 2, of the Optional Protocol until 29 January 1992. No submission has been received.

4.4 The Committee notes with concern the lack of any co-operation on the part of the State party, both in respect of the admissibility and the substance of the author's allegations. It is implicit in rule 91 of the rules of procedure and article 4, paragraph 2, of the Optional Protocol, that a State party to the Covenant investigate in good faith all the allegations of violations of the Covenant made against it and in particular against its judicial authorities, and to furnish the Committee with detailed information about the measures, if any, taken to remedy the situation. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

5.1 As to the alleged violation of article 9, paragraphs 1 and 4, the Committee notes that the material before it does not reveal that, although a warrant for the author's arrest was issued, Mr. González del Río has in fact been subjected to either arrest or detention, or that he was at any time confined to a specific, circumscribed location or was restricted in his movements on the State party's territory. Accordingly, the Committee is of the view that the claim under article 9 has not been substantiated.

5.2 The Committee has noted the author's claim that he was not treated equally before the Peruvian courts, and that the State party has not refuted his specific allegation that some of the judges involved in the case had referred to its political implications (see paragraph 2.7 above) and justified the courts' inaction or the delays in the judicial proceedings on this ground. The Committee recalls that the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception. It considers that the Supreme Court's position in the author's case was, and remains, incompatible with this requirement. The Committee is further of the view that the delays in the workings of the judicial system in respect of the author since 1985 violate his right, under article 14, paragraph 1, to a fair trial. In this connection, the Committee observes that no decision at first instance in this case had been reached by the autumn of 1992.

5.3 Article 12, paragraph 2, protects an individual's right to leave any country, including his own. The author claims that because of the arrest warrant still pending, he is prevented from leaving Peruvian territory. Pursuant to paragraph 3 of article 12, the right to leave any country may be restricted, primarily, on grounds of national security and public order (ordre public). The Committee considers that pending judicial proceedings may justify restrictions on an individual's right to leave his country. But where the judicial proceedings are unduly delayed, a constraint upon the right to leave the country is thus not justified. In this case, the restriction on Mr. González' freedom to leave Peru has been in force for seven years, and the date of its termination remains uncertain. The Committee considers that this situation violates the author's rights under article 12, paragraph 2; in this context, it observes that the violation of the author's rights under article 12 may be linked to the violation of his right, under article 14, to a fair trial.

5.4 On the other hand, the Committee does not find that the author's right, under article 14, paragraph 2, to be presumed innocent until proved guilty according to law was violated. Whereas the remarks attributed to judges involved in the case may have served to justify delays or inaction in the judicial proceedings, they cannot be deemed to encompass a pre-determined judgement on the author's innocence or guilt.

5.5 Finally, the Committee considers that what the author refers

to as a libelous and defamatory press campaign against him, allegedly constituting an unlawful attack on his honour and reputation, does not raise issues under article 17 of the Covenant. On the basis of the information before the Committee, the articles published in 1986 and 1987 about the author's alleged involvement in fraudulent procurement policies in various local and national newspapers cannot be attributed to the State party's authorities; this is so even if the newspapers cited by the author were supportive of the government then in force. Moreover, the Committee notes that it does not appear that the author instituted proceedings against those he considered responsible for the defamation.

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 before it disclose violations of articles 12, paragraph 2, and 14, paragraph 1, of the Covenant.

7. The Committee is of the view that Mr. González del Río is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy, including the implementation of the decision of 15 September 1986, delivered in his favour by the Constitutional Court. The State party is under an obligation to ensure that similar violations do not occur in the future.

8. The Committee would wish to receive information, within ninety days, on any relevant measures taken by the State party in respect of the Committee's Views.

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

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