

HUMAN RIGHTS COMMITTEE

Portorreal v. Dominican Republic

Communication No. 188/1984

5 November 1987

VIEWS

Submitted by: Ramon B. Martinez Portorreal

Alleged victim: The author

State party concerned: Dominican Republic

Date of communication: 10 October 1984 (date of initial letter)

Date of decision on admissibility: 2 April 1986

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

Meeting on 5 November 1987,

Having concluded its consideration of communication No. 188/1984, submitted to the Committee by Ramon B. Martinez Portorreal 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 regret that no information has been received from the State party concerned,

Adopts the following:

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

1. The author of the communication (initial letter dated 10 October 1984 and further letter dated 30 September 1985) is Ramon B. Martinez Portorreal, a national of the Dominican Republic born in 1943, at present a practising attorney, Law Professor and Executive Secretary of the Comité Dominicano de los Derechos Humanos (CDH). He claims to be the

victim of violations by the Government of the Dominican Republic of article 9 paragraphs 1 to 5, and article 10, paragraphs I and 2 (a), of the International Covenant on Civil and Political Rights.

2.1 The author alleges that on 14 June 1984 at 6 a.m. six members of the National Police came to his home in Santo Domingo and told him that an assistant of the prosecutor was with them and had received an order to have him arrested. He was taken to the headquarters of the National Police, where he saw several political opposition leaders (four names are given) who had also been arrested in the early morning. They were taken to the Casa de Guardia of the Secret Service where they were put in a cell (known as the "cell of the drivers"), where approximately 50 individuals were being held. They learned that the Government had ordered a police raid that day against all leaders or personalities considered to be members of the leftist opposition.

2.2 Later the same day, the author was allegedly separated from the other political opposition leaders and transferred to another cell (known as the "Viet Nam cell"), measuring 20 by 5 metres, where approximately 125 persons accused of common crimes were being held. Conditions were allegedly inhuman in this overcrowded cell, the heat was unbearable, the cell extremely dirty and owing to lack of space some detainees had to sit on excrement. The author further states that he received no food or water until the following day.

2.3 On 16 June 1984, after 50 hours of detention, the author and the others were released. The author points out that at no time during his detention was he informed of the reasons for his arrest. He maintains that his detention was aimed at serving the following purposes:

To intimidate CDH because it had internationally criticized the Government's repression of a demonstration in April 1984 (no other details are given);

To prevent the Executive Secretary of CDH from denouncing the police raid against all individuals considered to be leftist leaders;

To damage the reputation of CDH. The fact that the Executive Secretary of CDH was arrested on the same day as leftist opponents of the Government was used by some media to affirm that CDH was an anti-governmental and subversive organization.

2.4 Concerning the exhaustion of domestic remedies, the author states that, although the Penal Code of the Dominican Republic provides that civil servants, agents or officials of the Government who have ordered or committed arbitrary acts or acts against the freedom and political rights of one or several individuals may be sentenced to civilian demotion (degradacion Civica), there is no recourse available in the national penal law that would enable him to present his accusations and to seek redress. The author does not indicate whether the same matter is being examined under another procedure of international investigation or settlement.

3. By its decision of 5 July 1985, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the Committee's provisional rules of

procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the author to provide the Committee with more detailed information concerning the grounds for alleging that there was no recourse available in the national penal law that would enable him to present the accusations made in his communication and to seek redress.

4. By letter dated 30 September 1985, the author indicates that chapter II, section 2, of the Penal Code of the Dominican Republic refers to infringements of liberty and that articles 114 to 122 deal with the penalties to be imposed on civil servants and agents or representatives of the Government ordering or committing an act that is arbitrary or constitutes an infringement of individual freedom, the political rights of one or more citizens of the Constitution. According to the article in question, the penalty is civilian demotion (degradacion Civica). The author alleges, however, that the articles in question are a dead letter in the Dominican Republic, since in the 141 years of the Republic's existence, no civil servant has been brought to trial for an offence against this provision. He further alleges that the Dominican Code of Criminal Procedure lays down no procedure for the enforcement of the above-mentioned articles of the Penal Code. There is no court to deal with applications of this kind. Thus, the author concludes, it is quite inconceivable that any attempt to make use of the procedures established by the present Code of Criminal Procedure will prove successful.

5. The time-limit for the observations requested from the State party under rule 91 of the Committee's provisional rules of procedure expired on 1 October 1985. No submissions were received from the State party.

6.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee ascertained that the case was not being examined under another procedure of international investigation or settlement.

6.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee could not conclude, on the basis of the information before it, and in the absence of a submission from the State party, that there were available remedies in the circumstances of the present case which could or should have been pursued.

7. On 2 April 1986, the Human Rights Committee therefore decided that the communication was admissible, and in accordance with article 4, paragraph 2, of the Optional Protocol, requested the State party to submit to the Committee, within six months of the date of the transmittal to it of the Committee's decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it.

8. The time-limit for the State party's submission under article 4, paragraph 2 of the Optional Protocol expired on 6 November 1986. No submission has been received from the State party, apart from a note, dated 22 July 1987, stating that the Government of the Dominican Republic intended "to submit its explanations concerning communication No. 188/1984 ... and the admissibility decision adopted by the Human Rights Committee on 2 April 1986, during the forthcoming General Assembly". The Committee informed the State party that

any submission should be addressed to the Committee, care of the Centre for Human Rights. No further submission has been received.

9.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it, as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts and uncontested allegations.

9.2 Mr. Ramon B. Martinez Portorreal is a national of the Dominican Republic, a lawyer and Executive Secretary of the Comité Dominicano de los Derechos Humanos. On 14 June 1984 at 6 a.m., he was arrested at his home, according to the author, because of his activities as a leader of a human rights association, and taken to a cell at the secret service police headquarters, from where he was transferred to another cell measuring 20 by 5 metres, where approximately 125 persons accused of common crimes were being held, and where, owing to lack of space, some detainees had to sit on excrement. He received no food or water until the following day. On 16 June 1984, after 50 hours of detention, he was released. At no time during his detention was he informed of the reasons for his arrest.

10.1 In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish any information or clarifications. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. The Committee notes with concern that, despite its repeated requests and reminders and despite the State party's obligation under article 4, paragraph 2, of the Optional Protocol, no explanations or statements clarifying the matter have been received from the State party in the present case. In the circumstances, due weight must be given to the author's allegations.

10.2 The Committee observes that the information before it does not justify a finding as to the alleged violation of articles 9, paragraphs 3 and 4, and 10, paragraph 2, of the Covenant.

11. 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 these facts disclose violations of the Covenant, with respect to:

Articles 7 and 10, paragraph 1, because Ramon Martinez Portorreal was subjected to inhuman and degrading treatment and to lack of respect for his inherent human dignity during his detention;

Article 9, paragraph 1, because he was arbitrarily arrested; and

Article 9, paragraph 2, because he was not informed of the reasons for his arrest.

12. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to provide Mr. Martinez Portorreal with effective remedies, including compensation under article 9, paragraph 5, of

the Covenant, for the violations that he has suffered, and to take steps to ensure that similar violations do not occur in the future.