

HUMAN RIGHTS COMMITTEE

Barzana v. Chile

Communication N° 740/1997**

23 July 1998

CCPR/C/66/D/740/1997

ADMISSIBILITY

Submitted by: Vicente Barzana Yutronic

Alleged victim: The author

State party: Chile

Date of communication: 28 July 1996

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

Meeting on 23 July 1998,

Adopts the following:

Decision on admissibility

1. The author of the communication is Vicente Barzana Yutronic. He submits the communication on his own behalf and on that of his sons Vicente Javier and Alvaro Rodrigo Barzana Alvarez all Chilean/Croatian citizens. It is submitted that they are victims of violations by Chile of articles 2, 4, 5, 6, 7, 9, 10, 14, 17. In respect of all three and also of article 26 in respect of Mr. Vicente Barzana Yutronic, of the International Covenant on Civil and Political Rights.

2.1 The author's communication appears to have two main complaints, one based on the alleged harassment suffered by his family, in particular his two sons, allegedly because of Mr. Barzana's human rights activities and his Croatian origin. The second complaint is based on the decision of the Court of Appeal, of 1994, discontinuing the proceedings of investigations related to events which had occurred in 1973.

2.2 Between 17 and 20 September 1973, Mr. Barzana Yutronic was held in detention in Chile. His house was illegally searched and he was subjected to torture, during the events known as "Cora Quillota 2" which had taken place in Villa Alemana and Quillota, Province of Valparaíso.

2.3 On 8 February 1993, proceedings to ascertain the circumstances of Mr. Barzana Yutronic's detention and alleged torture were initiated before the 3rd Criminal Court of Santiago (Tercer Juzgado Criminal de Santiago). The proceedings were temporarily discontinued (sobreseimiento temporal), on 27 May 1994.

2.4 On 31 May 1994, the case was remitted to the Santiago Court of Appeal (Ilustre Corte de Santiago de Apelación), which on 28 June 1994, confirmed the discontinuance (sobreseimiento temporal) decreed by the 3rd Criminal Court of Santiago (Tercer Juzgado Criminal de Santiago) in the case. The author alleges that these proceedings were discontinued in application of the amnesty decree of 1978, which he claims violate human rights. Furthermore, he claims that the authorities did not investigate diligently since high ranking military officers, including General Manuel Contreras had been involved in the events.

2.5 The author states that his involvement in the investigation of the events referred to above have caused problems both for himself and his family. In this respect, the author refers to an incident, in May of 1994, which occurred outside of his home where members of the police force (carabineros) held up his two sons, fired at them and arbitrarily arrested them for several hours. They were then released with no charges. They had been accused of stealing a car and carrying weapons. The author alleges that these events were provoked by the carabineros, allegedly because of his human rights activities. He filed a Recurso de Amparo Secretariat Note: It would appear that the author's intention with the Recurso de Amparo was to criminally prosecute those responsible for the arbitrary arrest of his sons. on behalf of his sons which was dismissed and it is this judicial decision that forms the basis of the author's second complaint.

2.6 The author initiated proceedings, before the 13th Criminal Court of Santiago, against the police (carabineros) who had arrested his sons. These proceedings were dismissed (sobreseimiento total y temporal), on 21 September 1995, by the "2nd Military Court of Santiago. He claims that he was never notified that the proceedings had been transferred to a military court. Further, the author states that this decision of the military court is final and can not be appealed.

The complaint

3.1 The author alleges a violation of his and his family's right to a fair and impartial hearing; as their cases were placed before the military courts, therefore the principle of equality of arms was not respected.

3.2 The author further alleges that the amnesty law of 1978 deprived him of the right to justice, including the right to a fair trial and to adequate compensation for violations of the

Covenant.

3.3_Mr. Barzana claims that he and his family have received death threats because of his Human Rights activities.

3.4 The author claims that his sons have been arbitrarily detained and tortured during the incident which occurred outside the family home in May of 1994.

3.5 The author further alleges that the persecution he is subjected to is also due to his foreign origin as he and his family have dual nationality Chilean/Croatian. He claims that the Chilean authorities are xenophobic.

3.6 He contends that available domestic remedies have exhausted.

State party's observation's and author's comments thereon:

4.1 By submission of 28 August 1997, the State party argues that the communication is inadmissible. It contends that the author has provided no basis for the claim that his sons were illegally arrested and were victims of torture within the meaning of the Covenant.

4.2 The State party argues that the communication should be declared inadmissible under article 1 of the Covenant. They claim that the author has no standing in this case since the alleged victims, Mr. Barzana's sons are both over 18 years old and perfectly able to submitted a complaint on their own behalf.

4.3 The State party further argues that the communication should be ruled inadmissible as having no claim under article 3, of the Optional Protocol on the grounds that the alleged victims were legally detained and released within a few hours once the authorities had verified that there was no reason to hold them.

4.4 With respect to the author's contention that the authorities should revoke the decision of the Courts with respect to the findings of events which occurred in 1973, the State party, points out that the Courts in Chile are independent and that the Government has no authority to revoke decisions handed down by the judicial authorities.

5. In a letter dated 3 January 1998, the author reiterated his claims of victimization, ill-treatment and discrimination in Chile. He claims to have express authorization from one of his sons Vicente Javier Barzana Alvarez,¹ to represent him before the Committee.

Issues and proceedings before the Committee:

6.1 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 it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes the State party's contention that the communication should be

declared inadmissible *ratione personae*. In this respect, it notes that the author has submitted the communication on behalf of his sons both of whom could have submitted the communication themselves and that there is nothing in the material before the Committee in respect to the claims brought on behalf of his sons to show that the sons have authorized their father to represent them. The Committee considers that the author has no standing before the Committee and consequently, declares this part of the communication inadmissible under article 1 of the Optional Protocol.

6.3 The author's claim in respect of the alleged persecution he is subjected to by the Chilean authorities, due to his Croatian origin, remains a blanket allegation with no further substantiation. Consequently, the Committee considers the claim inadmissible under article 2 of the Optional Protocol.

6.4 With respect to the claim that the author has been denied access to court, in violation of articles 14 of the Covenant, since the events known as "Cora Quillota 2" were investigated by the military courts, the author has provided no further substantiation. In the circumstances of the Committee considers that the author has not substantiated a claim under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under articles 1 and 2 of the Optional Protocol;
- (b) that this decision shall be communicated to the State party, and to the author.

*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**Pursuant to rule 85 of the Committee's rules of procedure, Ms. Cecilia Medina Quiroga did not participate in the examination of the case.

1/ There is no indication in the file that such an authorization has ever been received.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Russian as part of the Committee's annual Report to the General Assembly.]