

HUMAN RIGHTS COMMITTEE

Asensio López v. Spain

CCPR/C/72/D/905/2000

23 July 2001

Communication No. 905/2000

ADMISSIBILITY

*Submitted by: Mr. Francisco Asensio López (represented by
Mr. José Luis Mazón Costa)*

Alleged victim: Author

State party: Spain

Date of communication: 12 July 1999 (initial submission)

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

Meeting on 23 July 2001

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 12 July 1999, is Mr. Francisco Asensio López, a Spanish citizen, who claims that the judgement handed down in an action brought by his wife for a review of their separation arrangements constituted defamation. He also alleges that the courts failed to deal with the criminal suit he filed on account of insulting and slanderous statements contained in that judgement. He claims to be the victim of a violation by Spain of article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The author is represented by counsel.

The facts as submitted by the author

2.1 An action for a review of separation arrangements was brought against Mr. Francisco Asensio

López by his wife, from whom he was legally separated. The judgement of the court of first instance of 31 May 1996, which terminated the proceedings, contained references to the author's state of mind. It stated that "it was not possible to obtain the prescribed expert opinion assessing his psychiatric state, which would certainly have found that he suffers from some kind of mental disturbance. This may be gathered just from talking to him or reading one of the complaints he has lodged: Mr. Asensio is clearly using his daughter to waste the time of the three courts in this district, misusing his rights and directing unjustifiable public criticism, through statements in the newspaper La Opinión - thus bringing them to the attention of the public - against the presiding judges, the lawyers who have rendered him proper assistance since the separation - they have all withdrawn their services, a step accepted as being more than justified - and the officers of the Molina de Segura local police force".

2.2 On 1 July 1996, the author lodged a complaint with the Guardia Court against the humiliating language used by the court in the judgement of 31 May 1996, alleging that it could be characterized as insulting or slanderous. The complaint was drafted by the author himself as a layman. Since the body competent to hear complaints against judges in the jurisdiction concerned is the High Court of Justice in Murcia, the complaint was referred to that court and was dismissed on 10 September 1996. The Court informed the author that he had three days to submit an application for reconsideration, and this was done by the author on 3 October 1996.

2.3 On 9 October 1996, the High Court of Justice in Murcia informed the author that it would not consider the application since the assistance of counsel was required for its consideration.

2.4 The author, assisted by counsel, submitted the application for reconsideration on 30 October 1996 to the High Court of Justice in Murcia, which took no decision until 25 February 2000.

The complaint

3.1 The author argues in the communication he submitted to the Committee that the statements contained in the judgement of the court of first instance of 31 May 1996 constitute a clear violation of his right to an impartial and objective hearing. He furthermore considers that referring in the judgement to the defendant as a person "suffering from some kind of mental disturbance" without any psychiatric evidence to support such a claim constitutes an act that is not only frivolous but also incompatible with article 14, paragraph 1, of the Covenant.

3.2 With regard to the dismissal order by the High Court of Justice of 10 September 1996, the author argues that such a decision violates the right to fair and impartial consideration of a complaint against a judge for damaging the author's reputation in the judgement rendered. The author therefore contends that there was a denial of justice since the court declined to examine the merits of the case, thus violating article 14, paragraph 1.

3.3 The author argues that he has exhausted all domestic remedies with his application to the High Court of Justice, the highest judicial body in the Autonomous Community of Murcia. He attributes his failure to bring an amparo application before the Constitutional Court to the unlikelihood of its success.

3.4 The same matter is not being examined under another procedure of international investigation or settlement.

Information and observations of the State party and comments of the author on admissibility

4.1 In its observations of 7 February 2000, the State party challenges the admissibility of the communication, arguing that Asensio López has not exhausted all domestic remedies since he had the possibility of appointing counsel and submitting the application for reconsideration in the proper manner. It should be noted that the author had by that time already submitted such an application, on 30 October 1996.

4.2 In his comments of 17 May 2000, the author replies that although the application for reconsideration was filed on 30 October 1996, the High Court of Justice took its decision only on 25 February 2000, when the application was dismissed. The author therefore considers that domestic remedies have been exhausted.

Issues and proceedings before the Committee

5.1 Before considering any claim 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 required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With regard to the requirement of exhaustion of domestic remedies, the Committee notes that the High Court of Justice in Murcia had not ruled on the application for reconsideration when the author submitted his communication to the Human Rights Committee on 12 July 1999. However, taking into account the subsequent decision by the High Court of Justice to dismiss the application for reconsideration and noting that the State party has not objected thereto, the Committee considers that domestic remedies have been exhausted.

5.4 Bearing in mind that the High Court of Justice in Murcia reviewed its decision on the claims contained in the communication and the author's failure to demonstrate that the said Court violated his rights under article 12, paragraph 1, of the Covenant, or that he has been denied justice, the Committee considers that the said claims have not been duly substantiated for the purposes of admissibility.

6. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author's counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfik Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden.

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