**Casanovas v. France, Communication No. 441/1990,
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HUMAN RIGHTS COMMITTEE

Fifty-first session

VIEWS

Communication No. 441/1990

Submitted by: Robert Casanovas

Victim: The author

State party: France

Date of communication: 27 December 1990 (initial submission)

Documentation references:

Prior decisions:

- Special Rapporteur's rule 91 decision, transmitted to the State party on 1 August 1991 (not issued in document form)

- CCPR/C/48/D/441/1990 (Decision on admissibility, dated 7 July 1993)

Date of adoption of Views: 19 July 1994

On 19 July 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 441/1990. The text of the Views is appended to the present document.

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

- Fifty-first session -

concerning

Communication No. 441/1990

Submitted by: Robert Casanovas

Victim: The author

State party: France

Date of communication: 27 December 1990 (initial submission)

Date of decision on admissibility: 7 July 1993

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

Meeting on 19 July 1994,

Having concluded its consideration of communication No. 441/1990 submitted to the Human Rights Committee by Mr. Robert Casanovas 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 the State party,

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

1. The author of the communication is Robert Casanovas, a French citizen residing in Nancy. He claims to be the victim of a violation by France of articles 2, paragraphs 3(a) and (b), and 14, paragraph 1, of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 The author is a former employee of the *sapeurs-pompiers* (fire brigade) of Nancy. On 1 September 1987, he was appointed head of the *Centre de Secours* Principal of Nancy. On 20 July 1988, he was dismissed for alleged incompetence, by decision of the regional and departmental authorities. The author appealed to the Administrative Tribunal (*Tribunal Administratif*) of Nancy, which quashed the decision on 20 December 1988. Mr. Casanovas was reinstated in his post by decision of 25 January 1989.

2.2 The city administration, however, initiated new proceedings against the author which resulted, on 23 March 1989, in a second decision terminating his employment. The author challenged this decision before the Administrative Tribunal of Nancy on 30 March 1989. On 19 October 1989, the President of the Tribunal ordered the closure of the preliminary enquiry. By letter of 20 November 1989, Mr. Casanovas requested the President of the Tribunal to put his case on the court agenda at as early a date as possible; this request was repeated on 28 December 1989. By letter dated 11 January 1990, the President informed him that the matter was not considered urgent and that, since no special circumstances prevailed, it would be registered in chronological order, which implied that the case would not be heard either in 1990 or in 1991.

2.3 On 23 January and again on 2 February 1990, the author notified the Court that he considered such a delay to constitute a breach of article 6 of the European Convention on Human Rights and Fundamental Freedoms and, accordingly, requested the inscription of his case on the court calendar, pursuant to articles 506 and 507 of the French Code of Civil Procedure. Again, he received no reply and therefore asked the Tribunal, on 13 February 1990, to acknowledge receipt of his earlier submissions. On 15 March 1990, the Court informed him that he was not discriminated against, but that the delays encountered were due to a backlog in the handling of earlier cases dating back to 1986; in the circumstances, it was impossible to examine the case at an earlier date.

2.4 On 21 March 1990, the author once again requested the President of the Administrative Tribunal to hear the case. The request was reiterated on 5 June 1990, but refused by the President of the Court on 11 June 1990.

2.5 On 20 July 1990, Mr. Casanovas appealed to the European Commission of Human Rights, invoking article 6 of the European Convention on Human Rights and Fundamental Freedoms. By decision of 3 October 1990, the Commission declared his communication inadmissible, considering that the Convention does not cover procedures governing the dismissal of civil servants from employment.

2.6 As to the requirement of exhaustion of domestic remedies, the author submits that he cannot appeal to any other French judicial instance, unless and until the Administrative Tribunal of Nancy has adjudicated his case. He therefore submits that he should be deemed to have complied with the requirements of article 5, paragraph 2(b), of the Optional Protocol.

The complaint:

3.1 The author submits that the State party has failed to provide him with an "effective remedy", since the delay to have his case adjudicated would be of at least three years. The author claims that this delay is manifestly unreasonable and cannot be justified by the work backlog of the Administrative Tribunal. The author argues that it is incomprehensible that the Administrative Tribunal was able to adjudicate his first case

(concerning the 1988 dismissal) within five months, whereas it apparently will take several years to adjudicate his second petition.

3.2 The author further claims that States parties to the Covenant have the duty to provide their tribunals with the necessary means to render justice effectively and expeditiously. According to the author, this is not the case if at least three years pass before a case can be heard at first instance. The author claims that in case of appeal to the Administrative Court of Appeal (*Cour Administrative d'Appel*), and subsequently to the Council of State (*Conseil d'Etat*), a delay of about ten years could be expected.

3.3 The author further submits that a case which concerns the dismissal of a civil servant is by nature an urgent matter; in this context, he submits that he has not received any salary since 23 March 1989. He claims that a decision reached after three years, even if favourable, would be ineffective. The author moreover argues that, since the chairman of the Administrative Tribunal has discretionary power to put cases on the roll, he could have granted the author's request, taking into account the particular nature of the case.

The State party's information and observations with regard to the admissibility of the communication:

4.1 The State party argues that the communication is inadmissible, on account of the reservation made by the French Government upon the deposit of the instrument of ratification of the Optional Protocol to the International Covenant on Civil and Political Rights, with respect to article 5, paragraph 2(a), that the Human Rights Committee "shall not have the competence to consider a communication from an individual if the same matter is being examined or has already been examined under another procedure of international investigation or settlement".

4.2 The State party submits that this reservation is applicable to the present case, because the author of the communication has already submitted a complaint to the European Commission of Human Rights, which declared it inadmissible. The State party argues that the fact that the European Commission has not decided on the merits does not preclude the application of the reservation, as the case concerns the same individual, the same facts andthe same claim. In this context, the State party refers to the Committee's decision with regard to communication No. 168/1984 [V.O. v. Norway , declared inadmissible on 17 July 1985, paragraph 4.4.] , where the Committee held that the phrase "the same matter" "refers, with regard to identical parties, to the complaints advanced and facts adduced in support of them".

4.3 The State party further submits that the communication is inadmissible as incompatible **ratione materiae** with the Covenant. The State party argues that article 14, paragraph 1, of the Covenant is not applicable, since the procedure before the Administrative Tribunal does not involve "rights and obligations in a suit at law". In this context, the State party refers to the decision of the European Commission, which held that the European Convention on Human Rights does not cover procedures governing the dismissal from employment of civil servants, and points out that the

text on which the European Commission based its decision, is identical to the text of article 14, paragraph 1, of the Covenant. Moreover, unlike article 6, paragraph 1, of the European Convention, article 14, paragraph 1, of the Covenant does not contain any provision on the right to a judicial decision within a reasonable time.

4.4 The State party further argues that article 2, paragraph 3, of the Covenant, which guarantees an effective remedy to any person whose rights or freedoms as recognized in the Covenant are violated, has not been breached, since the procedure before the Administrative Tribunal can be considered an effective remedy. According to the State party, this is shown by the decision of the Administrative Tribunal, which quashed the author's dismissal in December 1988.

The Committee's admissibility decision:

5.1 At its 48th session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the reservation made by the State party to article 5, paragraph 2, of the Optional Protocol. The Committee observed that the European Commission had declared the author's application inadmissible as incompatible **ratione materiae** with the European Convention. The Committee considered that, since the rights of the European Convention differed in substance and in regard of their implementation procedures from the rights set forth in the Covenant, a matter that had been declared inadmissible **ratione materiae** had not, in the meaning of the reservation, been 'considered' in such a way that the Committee was precluded from examining it.

5.2 The Committee recalled that the concept of 'suit at law' under article 14, paragraph 1, was based on the nature of the right in question rather than on the status of one of the parties. The Committee considered that a procedure concerning a dismissal from employment constituted the determination of rights and obligations in a suit at law, within the meaning of article 14, paragraph 1, of the Covenant. Accordingly, on 7 July 1993, the Committee declared the communication admissible.

Information received after the decision on admissibility:

6.1 By letter, dated 17 June 1994, the author informs the Committee that the Administrative Tribunal of Nancy, on 20 December 1991, ruled in his favour and that he was reinstated in his post. He adds, however, that the city administration, on 17 December 1992, has again unilaterally terminated his employment and that this decision now is again before the administrative tribunals. He further submits that the continuing conflict with the administration and the long delays before the Tribunal have resulted in feelings of anguish and depression, as a result of which his health has seriously deteriorated.

6.2 No information or observations have been forwarded by the State party, despite a reminder sent on 3 May 1994. The Committee notes with regret the absence of cooperation from the State party, and recalls that it is implicit in article 4, paragraph 2,

of the Optional Protocol, that a State party make available to the Committee all the information at its disposal. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

Issues and proceedings before the Committee:

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes that the issue before it is whether the duration of the proceedings before the Administrative Tribunal of Nancy concerning the author's second dismissal of 23 March 1989 violated the author's right to a fair hearing within the meaning of article 14, paragraph 1, of the Covenant.

7.3 The Committee recalls that the right to a fair hearing under article 14, paragraph 1, entails a number of requirements, including the condition that the procedure before the courts must be conducted expeditiously [See the Committee's Views concerning communication No. 207/1986 (Yves Morael v. France , Views adopted on 28 July 1989), paragraph 9.3.] . The Committee notes that in the instant case, the author, on 30 March 1989, initiated proceedings against his dismissal before the Administrative Tribunal of Nancy, and that the Tribunal, after having concluded the preliminary enquiry on 19 October 1989, rendered its judgment in the case on 20 December 1991.

7.4 The Committee notes that the author obtained a favourable decision from the Administrative Tribunal of Nancy and that he was reinstated in his post. Bearing in mind the fact that the Tribunal did consider whether the author's case should have priority over other cases, the Committee finds that the period of time that has elapsed from the submission of the complaint of irregular dismissal to the decision of reinstatement, does not constitute a violation of article 14, paragraph 1, of the Covenant.

8. 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 do not reveal a violation of any of the provisions of the Covenant.

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

footnotes

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