

Communication No. 202/1986

Submitted by: Graciela Ato del Avellanal

Alleged victim: The author

State party: Peru

Date of adoption of views: 28 October 1988 (thirty-fourth session)

Subject matter: Sex-based discrimination in representation of matrimonial property in Civilian Court proceedings

Procedural issues: State party's failure to make submission on merits □ State party's duty to investigate allegations in

good faith □ Insufficiency of submission on merits

Substantive issues: Discrimination based on "other" c.q. marital status □ Discrimination based on sex □ Equality

before the law

Articles of the Covenant: 2 (1) and (3), 3, 14 (1), 16, 23 (4) and 26

Articles of the Optional Protocol: 4 (2), 5 (1) and 2 (b)

1. The author of the communication (initial letter dated 13 January 1986 and a subsequent letter dated 11

February 1987) is Graciela Ato de1 Avellanal, a Peruvian citizen born in 1934, employed as professor of music and married to Guillermo Burneo, currently residing in Peru. She is represented by counsel. It is claimed that the Government of Peru has violated articles 2, paragraphs 1 and 3; 3; 16; 23, paragraphs 4; and 26 of the Covenant, because the author has been allegedly discriminated against only because she is a woman.

2.1 The author is the owner of two apartment buildings in Lima, acquired in 1974. It appears that a number of

tenants took advantage of the change in ownership to cease paying rent for their apartments. After unsuccessful

attempts to collect the overdue rent, the author sued the tenants on 13 September 1978. The court of first instance found in her favour and ordered the tenants to pay her the rent due since 1974. The Superior Court reversed the judgement on 21 November 1980 on the procedural ground that the author was not entitled to sue, because, according to article 168 of the Peruvian Civil Code, when a woman is married only the husband is entitled to represent matrimonial property before the Courts ("El marido es representante de la sociedad conyugal"). On 10 December 1980, the author appealed to the Peruvian Supreme Court, submitting *inter alia* that the Peruvian Constitution now in force abolished discrimination against women and that article 2 (2) of the Peruvian Magna Carta provides that "the law grants rights to women which are not less than those granted to men". However, on 15 February 1984, the Supreme Court upheld the decision of the Superior Court. Thereupon, the author interposed the recourse of *amparo* on 6 May 1984, claiming that in her case article 2 (2) of the Constitution had been violated by denying her the right to litigate before the courts only because she is a woman. The Supreme Court rejected the recourse of *amparo* on 10 April 1985.

2.2 Having thus exhausted domestic remedies in Peru, and pursuant to article 39 of the Peruvian Law No.

23506, which specifically provides that a Peruvian citizen who considers that his or her constitutional rights have been violated may appeal to the Human Rights Committee of the United Nations, the author seeks United Nations assistance in vindicating her right to equality before the Peruvian courts.

3. By its decision of 19 March 1986, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting

information and observations relevant to the question of the admissibility of the communication insofar as it may raise issues under articles 14, paragraph 1, 16 and 26, in conjunction with articles 2 and 3 of the Covenant. The Working Group also requested the State party to provide the Committee with (a) the text of the decision of the Supreme Court of 10 April 1985, (b) any other relevant court orders or decisions not already provided by the author and (c) the text of the relevant provisions of the domestic law, including those of the Peruvian Civil Code and Constitution.

4.1 By its submission dated 20 November 1986, the State party noted that "in the action brought by Mrs.

Graciela Ato Avellanal and one other, the decision of the Supreme Court dated 10 April 1985 was deemed accepted, since no appeal was made against it under article 42 of Act No. 23385".

4.2 The annexed decision of the Supreme Court, dated 10 April 1985 declares valid the ruling set out on 12 sheets, dated 24 July 1984, declaring inadmissible the application for amparo submitted on 2 sheets by Mrs. Graciela Ato de1 Avellanal de Burneo and one other against the First Civil Section of the Supreme Court; [and] Orders that the present decision, whether accepted or enforceable, be published in the Diario Oficial, El Peruano, within the time-limit laid down in article 41 of Law No. 23156.

5.1 Commenting on the State party's submission under rule 91, the author, in a submission dated 11 February

167 1987, contends that:

1. It is untrue that the ruling of 10 April 1985, of which I was notified on 5 August 1985, was accepted. As shown by the attached copy of the original application, my attorneys appealed against the decision in the petition of 6 August 1985, which was stamped as received by the Second Civil Section of the Supreme Court on 7 August 1985.

2. The Supreme Court has never notified my attorneys of the decision which it had handed down on the appeal of 6 August 1985.

5.2 The author also encloses a copy of a further application, stamped as received by the Second Civil Section of the Supreme Court on 3 October 1985 and reiterating the request that the appeal lodged should be upheld. She adds that "once again, the Supreme Court failed to notify my attorneys of the decision which it had handed down on this further petition".

6.1 Before considering any claims presented in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee observed that the matter complained of by the author was not being examined and had not been examined under another procedure of international investigation or settlement.

6.3 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee noted the State party's contention that the author has failed to appeal the decision of the Peruvian Supreme Court of 10 April 1985.

However, in the light of the author's submission of 11 February 1987, the Committee found that the communication satisfied the requirements of article 5, paragraph 2 (b), of the Optional Protocol. The Committee further observed that this issue could be reviewed in the light of any further explanations or statements received from the State party under article 4, paragraph 2, of the Optional Protocol.

7. On 9 July 1987, the Human Rights Committee therefore decided that the communication was admissible, insofar as it raised issues under articles 14, paragraph 1, and 16 in conjunction with articles 2, 3 and 26 of the Covenant.

8. The time-limit for the State party's submission under article 4, paragraph 2, of the Optional Protocol expired on 6 February 1988. No submission has been received from the State party, despite a reminder sent to the State party on 17 May 1988.

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, notes that the facts of the case, as submitted by the author, have not been contested by the State Party.

9.2 In formulating its views, the Committee takes into account the failure of the State party to furnish certain information and clarifications, in particular with regard to the allegations of discrimination of which the author has complained. It is not sufficient to forward the text of the relevant laws and decisions, without specifically addressing the issues raised in the communication. 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 all relevant information. In the circumstances, due weight must be given to the author's allegations.

10.1 With respect to the requirement set forth in article 14, paragraph 1, of the Covenant that "all persons shall be equal before the courts and tribunals", the Committee notes that the Court of First Instance decided in favour of the author, but the Superior Court reversed that decision on the sole ground that according to article 168 of the Peruvian Civil Code only the husband is entitled to represent matrimonial property, i. e. that the wife was not equal to her husband for purposes of suing in Court.

10.2 With regard to discrimination on the ground of sex the Committee notes further that under article 3 of the Covenant State parties undertake "to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant" and that article 26 provides that all persons are equal before the law and are entitled to the equal protection of the law. The Committee finds that the facts before it reveal that the application of article 168 of the Peruvian Civil Code to the author resulted in denying her equality before the courts and constituted discrimination on the ground of sex.

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 the events of this case, insofar as they continued or occurred after 3 January 1981 (the date of entry into force of the Optional Protocol for Peru), disclose violations of articles 3, 14, paragraph 1, and 26 of the Covenant.

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 take effective measures to remedy the violations suffered by the victim. In this connection the Committee welcomes the State party's commitment, expressed in articles 39 and 40 of Law No. 23506, to co-operate with the Human Rights Committee, and to implement its recommendations.