

**International Covenant
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HUMAN RIGHTS COMMITTEE
Fifty-second session

DECISIONS

Communication No. 437/1990

Submitted by : Renato Pereira

Alleged victim : Benjamin Colamarco Patiño

State party : Panama

Date of communication : 20 December 1990 (initial submission)

Documentation references : Prior decisions - Special Rapporteur's rule
91 decision, transmitted to
the State party on
17 December 1992
(not issued in document
form)

Date of present decision : 21 October 1994

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL
TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- FIFTY-SECOND SESSION -

concerning

Communication No. 437/1990

Submitted by : Renato Pereira
Alleged victim : Benjamin Colamarco Patiño
State party : Panama
Date of communication : 20 December 1990 (initial submission)

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

Meeting on 21 October 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is Renato Pereira, a Panamanian attorney born in 1936 and a resident of Paris at the time of submission of the communication. He acts on behalf of Mr. Benjamin Colamarco Patiño, a Panamanian citizen born in 1957, detained at the Modelo Prison in Panama City at the time of submission of the communication. It is submitted that Mr. Colamarco is a victim of violations by Panama of articles 9 and 15 of the International Covenant on Civil and Political Rights. Mr. Pereira encloses a power of attorney from Mr. Colamarco Patiño's wife.

The facts as submitted by the author :

2.1 Benjamin Colamarco Patiño was a commander of the Panamanian "Batallones de la Dignidad", according to Mr. Pereira an elite unit which resisted the intervention of United States forces in Panama in December 1989 ("Operation Just Cause"). His active resistance was corroborated by U.S. Colonel D.T., who was in charge of United States Air Force operations during the intervention. On 10 January 1990, Mr. Colamarco Patiño was, according to his representative, taken prisoner by the U.S. forces and interned in the "Nuevo Emperador" camp.

2.2 When, on 31 January 1990, President George Bush declared the end of hostilities with Panama, most prisoners of war were released. Mr. Colamarco Patiño, however, was transferred to the Modelo Prison in Panama, where he continued to be held. He was indicted on charges of having committed certain offences against the (territorial) integrity and internal order of the Republic of Panama.

2.3 Mr. Pereira submits that Mr. Colamarco acted legitimately vis-à-vis

CCPR/C/52/D/437/1990

Annex

English

Page 2

the United States intervention. Article 306 of the Panamanian Constitution indeed obliges all Panamanian citizens to defend the integrity of Panamanian territory and the sovereignty of the State.

2.4 As to the requirement of exhaustion of domestic remedies, Mr. Pereira states, without giving further details, that Mr. Colamarco has exhausted available domestic remedies, including a request for habeas corpus to the Supreme Court of Panama, the country's highest tribunal.

2.5 In further submissions made in the course of 1992 and 1993, Mr. Pereira observed, again without giving any further details, that the Supreme Court of Panama itself had admitted that the acts attributed to Mr. Colamarco and his co-defendants did not constitute criminal offences but that, notwithstanding, his client continued to be detained at Modelo Prison. In early 1993, he indicated that the trial of Mr. Colamarco and his co-defendants was scheduled to start on 19 May 1993 before the Circuit Court Judge No. 4 of Panama City (Juez Cuarto de lo Penal del Primero Circuito Judicial de Panamá), and that the indictment of his client had been changed to include not only offences against the internal order of the State but also crimes against humanity. He objects to the qualification of the offences imputed to Mr. Colamarco Patiño as "political crimes".

The complaint :

3. The author contends that the facts as submitted reveal violations by Panama of articles 9 and 15 of the Covenant.

The State party's information and observations :

4.1 In its submission under rule 91 of the rules of procedure, the State party observes that the trial of Mr. Colamarco and of three co-defendants started as scheduled on 19 May 1993. Mr. Colamarco was represented, both during the preliminary enquiry and during the trial, by a lawyer of his choice. On 4 June 1993, the circuit court judge found Mr. Colamarco and the other co-accused guilty of offences against the internal State order; they were sentenced to forty-four months and ten days of imprisonment and prohibited from running for public office for the same period of time, to run from the day the prison term had been purged. All of the accused were acquitted of the charge of crimes against humanity.

4.2 The Court's decision was notified to Mr. Colamarco. Although his legal representative initially appealed the sentence, he subsequently withdrew the appeal.

4.3 The State party concludes that by February 1994, the case had been filed, because the time spent in preventive detention by Mr. Colamarco had been set off against the prison term imposed on him. He has therefore been released, and no further charges against him remain pending.

Issues and proceedings before the Committee :

5.1 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.

5.2 As to the claim under article 9, paragraph 1, the Committee begins by noting that the author links the alleged arbitrariness of Mr. Colamarco's arrest and detention to his presumed innocence. Nothing in the file,

however, reveals that Mr. Colamarco was not detained on specific charges (see paragraph 2.2 above), pending the determination of his innocence or guilt by a court of law, and that he was not properly indicted. But, in any event, the Committee notes that Mr. Colamarco's counsel, while initially appealing the judgment of 4 June 1993 against his client, later withdrew the appeal, where these issues could have been dealt with. For the purpose of article 5, paragraph 2(b), of the Optional Protocol, an applicant must make use of all judicial or administrative avenues that offer him a reasonable prospect of redress. This Mr. Colamarco's counsel has failed to do, and available domestic remedies have accordingly not been exhausted in the case.

6. The Human Rights Committee therefore decides:

(a) the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol;

(b) that this decision shall be communicated to the State party and the author of the communication.

[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.]