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HUMAN RIGHTS COMMITTEE
Fifty-fourth session

VIEWS

Communication No. 473/1991

Submitted by: Mrs. Isidora Barroso

Victim: Her nephew, Mario Abel del Cid Gómez

State party: Panama

Date of communication: 24 August 1991 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 29 January 1992 (not issued in document form)
- CCPR/C/49/D/473/1991 (Decision on admissibility, dated 11 October 1993)

Date of adoption of Views: 19 July 1995

On 19 July 1995, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 473/1991. The text of the Views is appended to the present document.

[ANNEX]

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

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-fourth session -

concerning

Communication No. 473/1991

Submitted by: Mrs. Isidora Barroso

Victim: Her nephew, Mario Abel del Cid Gómez

State party: Panama

Date of communication: 24 August 1991 (initial submission)

Date of decision on admissibility: 11 October 1993

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

Meeting on 19 July 1995,

Having concluded its consideration of communication No. 473/1991 submitted to the Human Rights Committee by Mrs. Isidora Barroso on behalf of her nephew, Mario Abel del Cid Gómez, 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 Isidora Barroso, a Panamanian citizen currently domiciled in the United States of America. She submits the communication on behalf of her nephew, Mario Abel del Cid Gómez, a Panamanian citizen born in January 1949 and at the time of submission detained at a prison in Panama City. The author claims that her nephew is the victim of violations by Panama of articles 2; 9, paragraphs 3 to 5; and 14, paragraphs 2, 3, 6 and 7, of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 Mario del Cid was arrested on 25 December 1989, several days after the intervention of United States troops in Panama. A career military officer, he had held the post of major in the Panamanian armed forces and allegedly turned himself in to United States troops. The author deduces from this that her nephew should have been treated as a prisoner of war, in accordance with the Geneva Conventions, and been accorded the appropriate treatment. On 31 January 1990, he was handed over to the new Government of Panama, which immediately placed him under arrest and brought charges against him on 1 February 1990.

2.2 Early in 1990, Mr. del Cid was publicly associated with the assassination, by a paramilitary group, of a doctor, Hugo Spadafora Franco. The author submits that this charge was wholly unfounded and based on the simple fact that her nephew had been present in the town of Concepción on 13 September 1985, when Mr. Spadafora's body was found. Mrs. Barroso, who qualifies Mr. Spadafora as a guerrillero, notes that newspaper reports stated that her nephew had been implicated in the death of Mr. Spadafora by one Colonel Diaz Herrera, who allegedly himself was implicated in the doctor's death and who has since obtained political asylum in Venezuela. The author observes that the legislature of Panama, by act deemed unconstitutional, nominated a special prosecutor to investigate Mr. Spadafora's death. The special prosecutor, it is submitted, has displayed a similarly biased attitude vis-à-vis Mr. del Cid.

2.3 On 17 January 1990, a request for habeas corpus was filed on behalf of Mr. del Cid, with a view to securing his release. It allegedly took the Government over one month to reply that it had no idea of Mr. del Cid's whereabouts, and that no charges were known to exist against him. His mother subsequently tried to visit him at the Fort Clayton Detention facility, where the authorities allegedly denied her access to her son. It is claimed that at Fort Clayton, Mr. del Cid was interrogated on a daily basis, in violation of the Geneva Conventions.

2.4 Since mid-1990, a number of unsuccessful requests for Mr. del Cid's release on bail have been filed by his lawyers. One habeas corpus request was granted by the Superior Tribunal (Tribunal Superior del Tercer Distrito Penal); the special prosecutor, however, appealed, and in August 1990, the Supreme Court reversed the release order. Since that date, the Superior Tribunal has not been willing to grant further requests for bail, for fear of coming into conflict with the Supreme Court's decision. In a letter dated 5 December 1992, Mrs. Barroso affirms that her nephew was "to be set free ... several months ago", but that again the prosecutor appealed the decision.

2.5 Besides the repeated denials of bail, the author claims that her nephew's trial has similarly been postponed on several occasions, for unexplained reasons. Late in 1992, she informed the Committee that her nephew's trial was set for February or March 1993; in April 1993, the court

hearing had once again been postponed, according to her, to "June or July 1993". By letter dated 25 June 1993, Mrs. Barroso confirmed that the trial was scheduled to begin on 6 July 1993.

2.6 For Mrs. Barroso, her nephew was used by the Government of Panama as a scapegoat for various unfounded charges. She asserts, for example, that he was accused of being responsible for the disappearance of material worth US$ 35,000 donated by the Panama Canal Commission, and that the Government asked him to pay back $ 50,000 by way of compensation. She further contends that the State party's authorities restricted Mr. del Cid's contacts with members of his family, denying him for example the right to visit his dying mother.

2.7 Furthermore, in late 1991, his wife's telephone allegedly was disconnected without valid reason, and Mr. del Cid was unable to talk to his children for a prolonged period of time thereafter. According to Mrs. Barroso, all the charges against her nephew are fabricated. The author refers to what she perceives as the desire of the (then) Government to deny their rights to those individuals in detention who are associated in one way or another with the former regime of General Manuel Noriega.

2.8 By a letter of 26 September 1993, Mrs. Barroso indicates that her nephew was acquitted of the charges against him. She contends, however, that new charges against him have been formulated and are pending, as his acquittal caused considerable public protest. In the circumstances, she requests the Committee to continue consideration of the case.

The complaint :

3. It is claimed that the facts outlined above constitute violations of articles 9, paragraphs 3 to 5, and 14, paragraphs 2, 3, 6 and 7, of the Covenant. In particular, the author contends that her nephew was denied bail arbitrarily and contrary to article 9, paragraph 3, and that he has not been tried without undue delay, as required under article 14, paragraph 3(c). She finally asserts that the judicial authorities and particularly the office of the special prosecutor have done everything to portray her nephew as guilty, in violation of article 14, paragraph 2.

The State party's information and observations :

4.1 In its submission under rule 91, the State party submits that the author's allegations are unfounded, and that Mr. del Cid's procedural guarantees under Panamanian criminal law have been and are being observed.

4.2 The State party contends that there is no basis for the author's allegation of "political interventionism" in the judicial process, and adds that the investigations in the case have produced sufficient evidence about Mr. del Cid's involvement in the death of Mr. Spadafora and that, accordingly, Mr. del Cid's arrest and his detention without bail are compatible with

article 9 of the Covenant.

4.3 According to the State party, Mr. del Cid's rights under the Criminal Code, the Code of Criminal Procedure, the Constitution of Panama and other applicable laws have been strictly observed. Such delays as may have occurred are merely attributable to the protracted and thorough investigatory process, the volume of documentary evidence, as well as the fact that apart from Mr. del Cid, nine other individuals were indicted in connection with the death of Mr. Spadafora.

4.4 Finally, the State party is adamant that the rights of the defence have been and are being observed, and that Mr. del Cid was represented, at all stages of the procedure, by competent lawyers.

The Committee's decision on admissibility:

5.1 During its forty-ninth session, the Committee considered the admissibility of the communication. It noted that Mr. del Cid was acquitted of the charges against him, upon conclusion of a trial which had started on 6 July 1993. It observed however that he had been detained for well over three and a half years without bail, and that the scheduled date for his trial had been postponed on several occasions. While the State party had pointed to the thoroughness of the investigations, it had failed to explain the delays in pre-trial and judicial proceedings. The Committee considered that a delay of over three and a half years between arrest and trial and acquittal justified the conclusion that the pursuit of domestic remedies had been "unreasonably prolonged" within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.2 The Committee considered that the author had sufficiently substantiated her allegations under articles 9 and 14 and, accordingly, on 11 October 1993, declared the case admissible in so far as it appeared to raise issues under articles 9 and 14 of the Covenant.

State party's observations on the merits and author's comments thereon:

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, the State party reiterates that the author's rights under articles 9 and 14 were respected. It notes that in the trial against 14 ex-military officers accused of involvement in the death of Mr. Spadafora, Mr. del Cid was indicted on charges of participation in and having covered up the crime (partícipe y encubridor). In this case, he was acquitted by a decision which was notified to him on 7 September 1993.

6.2 The State party observes that separate proceedings, filed subsequent to those concerning the death of Mr. Spadafora, are currently before the Superior Tribunal (Tribunal Superior del Segundo Distrito Judicial), where Mr. del Cid faces charges of homicide together with seven other individuals, and notes that a summons to present himself in court (auto de llamamiento) was served

on him on 28 July 1993. Mr. del Cid filed grounds of appeal and, according to the State party, the Second Chamber of the Supreme Court is now in the process of deciding on the appeal.

6.3 The State party reiterates that in the criminal proceedings against him, Mr. del Cid has benefited from legal assistance and had lawyers assigned to defend him at all stages of the proceedings.

6.4 The State party submits that it has no knowledge of other criminal charges against Mr. del Cid, with the exception of those mentioned in paragraph 6.2 above, which are related to the death of several individuals who, at the time of their death, were serving prison terms at the penitentiary on the island of Coiba, of which Mr. del Cid, at the material time, was the director.

7.1 In her comments, the author contends that the charges still pending against her nephew, related to his alleged activities as director of the Coiba Island penitentiary, are fabricated and based on false accusations. She submits, without providing further details, that these charges were dismissed at Penomene City, Panama, but that "someone appealed the case" to cause her nephew further harm.

7.2 The author argues that while her nephew was director of the Coiba Island penitentiary, "he was the only one who made it possible for family members of those detained to be able to visit". He allegedly also allowed the detainees to obtain "raw materials", so as to enable them to produce small objects and sell them. The author places confidence in the magistrate of the Second Chamber of the Supreme Court responsible for the case at the level of the Supreme Court (see para. 6.2 above).

Examination of the merits:

8.1 The Human Rights Committee has examined the communication in the light of all the submissions made by the parties. It bases its views on the following considerations. In so doing, it recalls that during its 53rd session, it had decided to seek certain clarifications from the State party, which were requested in a note dated 28 April 1995. No reply to this request for clarifications has been received from the State party.

8.2 The Committee has noted the author's claim that her nephew was arrested and detained arbitrarily, and that he was denied bail primarily out of "political motives". However, the material before the Committee does not reveal that Mr. del Cid was not detained on specific criminal charges; accordingly, his detention cannot be qualified as "arbitrary" within the meaning of article 9, paragraph 1. There is further no indication that Mr. del Cid was denied bail without a proper weighing, by the judicial authorities, of the possibility of releasing him on bail; accordingly, there is no basis for a finding of a violation of article 9, paragraph 3. Similar considerations apply to the alleged violation of article 9, paragraph 4: the Superior Tribunal did in fact review the lawfulness of Mr. del Cid's

detention.

8.3 The author has alleged a violation of article 14, in particular of paragraphs 2, 3, 6 and 7. On the basis of the material before it, the Committee does not find that the presumption of innocence has been violated in the instant case as it relates to the death of Mr. Spadafora: no documentation has been provided which would corroborate the author's claim that the office of the special prosecutor was biased against Mr. del Cid and portrayed him as guilty ab initio: on the contrary, in the proceedings related to the death of Mr. Spadafora, Mr. del Cid was acquitted of the charges against him. Nor is there any indication that his rights under article 14, paragraph 3, were not respected: the State party's contention that he had access to legal advice throughout the proceedings has not been refuted by the author.

8.4 The Committee takes note of the State party's argument that the investigations were necessarily protracted and thorough, given the number of individuals indicted in the context of the assassination of Mr. Spadafora. The author has, on the contrary, pointed to the "political nature" of the proceedings and contends that they were unduly delayed, as her nephew was indicted on 1 February 1990 and not tried until the summer of 1993. The Committee further observes that the State party did not reply to its request of 28 April 1995 for further clarifications on the issue of the length of the proceedings against Mr. del Cid.

8.5 The Committee considers that a delay of over three and a half years between indictment and trial in the present case cannot be explained exclusively by a complex factual situation and protracted investigations. In cases involving serious charges such as homicide or murder, and where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible. The burden of proof that there are other factors which might have justified the delays in the present case lies with the State party. As the State party has not replied to the Committee's request for further clarifications on this issue, the Committee has no choice but to conclude that no such other factors did in fact exist, and that Mr. del Cid was not tried without "undue delay", contrary to article 14, paragraph 3(c), of the Covenant.

8.6 The Committee notes that the proceedings before the Superior Tribunal referred to in paragraphs 6.2 and 7.1 above, relating to Mr. del Cid's activities in the Coiba Island penitentiary, remain pending. As these proceedings were not part of the author's initial complaint and are not covered by the terms of the decision on admissibility of 11 October 1993, the Committee makes no finding in their respect.

9. 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 disclose a violation of article 14, paragraph 3(c), of the Covenant.

10. Under article 2, paragraph 3(a), of the Covenant, Mr. del Cid is entitled to an effective remedy, including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

[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.]

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