

HUMAN RIGHTS COMMITTEE

Garcia v. Ecuador

Communication No. 319/1988

18 October 1990

CCPR/C/40/D/319/1988 *

ADMISSIBILITY

Submitted by: Edgar A. Canon Garcia (represented by counsel)

Alleged victim: The author

State party concerned: Ecuador

Date of communication: 4 July 1988

Documentation references: Prior decision - CCPR/C/WG/35/D/319/1988 (Working Group rule 91 decision, dated 4 April 1989)

Date of present decision: 18 October 1990

The Human Rights Committee, acting through its Working Group under rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 4 July 1988 and subsequent correspondence) is Edgar A. Canon Garcia, a national of Columbia, at present detained at a penitentiary in the United States of America. He claims to be a victim of violations of articles 2, 5, paragraph 2, 7, 9, paragraph 1, 13 and 17 of the International Covenant on Civil and Political Rights by Ecuador. He is represented by counsel.

2.1. The author states that he lived in the United States for 13 years until 1982, when he returned to Bogotá, Colombia, where he resided until July 1987. He claims that on 22 July 1987 he travelled on a pleasure trip with his wife to Guayaquil, Ecuador, that, at approximately five p.m. on the same day, while walking near the reception of the Oro Verde Hotel, they were surrounded by ten armed persons, allegedly Ecuadorian police officials acting on behalf of Interpol and the United States

Drug Enforcement Agency (DEA), who forced them into a vehicle waiting outside the hotel; following a trip of approximately one hour they arrived at what appeared to be a private residence, where the author was separated from his wife. He was then allegedly subjected to torture, including the forcing of salt water into his nasal passages; after spending the night handcuffed to a table and without receiving as much as a glass of water, he was taken at seven a.m. to the International Airport Simon Bolivar at Guayaquil, where two persons, who had participated in the “kidnapping” at the hotel the day before, identified themselves as agents of the DEA and informed him that he would be flown to the United States on the basis of an arrest warrant that had been issued against him in 1982. After it was established that the author could speak and understand English, the so-called “Miranda rights” (following a decision of the United States Supreme Court requiring that criminal suspects be informed of their right to have the assistance of a lawyer during interrogation, their right to remain silent and that any statement they make may be used against them in court) were read out to him and he was informed that he was being arrested by order of the United States Government. The author states that he requested to speak with a lawyer or with the Colombian Consul at Guayaquil, but claims that his requests were ignored and that instead he was immediately placed on an airplane bound for the United States. He contends that his human rights were violated because he was unable to bring his case before an Ecuadorian judge so as to determine whether there was justification to order his expulsion from the country.

2.2. It was not stated what steps were taken to exhaust domestic remedies in Ecuador, if any were available, with respect to his allegations of torture and with respect to the actual expulsion or extradition.

3. By decision of 4 April 1989, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication, in particular details about the effective remedies available to the author in the case that domestic remedies had not been exhausted with respect to the alleged violation of his rights.

4. The deadline for the State party’s submission under rule 91 of the rules of procedure expired on 11 July 1989. A reminder was sent to the State party on 30 April 1990. No submission has been received from the State party.

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 the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation of settlement. With regard to article 5, paragraph 2(b), of the Optional Protocol, concerning the requirement of exhaustion of domestic remedies, the Committee is unable to conclude, on the basis of the information before it, that there were effective remedies available to the author which he could or should have pursued.

5.3 The Committee notes that some of the author’s allegations appear to be directed against the United States of America or against its agents. Such parts of the communications are inadmissible

since the United States has not ratified or acceded to the Covenant or to the Optional Protocol. Further, with regard to article 17 of the Covenant, the Committee finds that the author has not sufficiently substantiated, for purposes of admissibility, his allegations.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible insofar as it may raise issues under articles 7, 9, and 13 in conjunction with article 2 of the Covenant;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That the State party shall be further requested to forward to the Committee the text of its extradition treaty with the United States, a copy of the decision to extradite Mr. Canon Garcia, if any, and the text of the relevant laws and regulations governing the expulsion of aliens; in this connection the State party should provide specific details on the domestic remedies available to Mr. Canon Garcia in the specific circumstances of his case. The State party should also forward copies of the arrest warrant and any police report in relation to the arrest and detention of Mr. Canon Garcia, and inform the Committee whether any investigations of the author's torture allegations have been carried out;

(d) That any explanations or statements received from the State party shall be communicated by the Secretary-General, under rule 93, paragraph 3, of the Committee's rules of procedure, to the author to enable him to comment thereon; any such comments should reach the Human Rights Committee in care of the Centre of Human Rights, United Nations Office at Geneva, within six weeks of the date of transmittal;

(e) That this decision shall be communicated to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

*/ All persons handling this document are requested to respect and observe its confidential nature.