

HUMAN RIGHTS COMMITTEE

del Cid v. Panama

Communication No. 473/1991

11 October 1993

CCPR/C/49/D/473/1991*/

ADMISSIBILITY

Submitted by: Mrs. Isidora Barroso

Alleged 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, dated 29 January 1992 (not issued in document form)

Date of present decision: 11 October 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Isidora Barroso, a Panamanian citizen currently residing in the United States. She submits the communication on behalf of her nephew, Mario Abel del Cid Gómez, a Panamanian citizen born in January 1949 and currently detained in a prison in Panama City. Mrs. Barroso contends that her nephew is a 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 presented by the author:

2.1 Mario A. del Cid was arrested on 25 December 1989, several days after the invasion of Panama by United States troops. A career military officer, he had been a major in the Panamanian armed

forces and he allegedly surrendered to United States troops “without hesitation”. The author deduces from this that her nephew should have been treated as a prisoner of war, and been accorded the appropriate treatment under the Geneva Conventions. Instead, he was handed over to the new Panamanian Government, which immediately arrested him and subsequently refused to release him on bail.

2.2 Early in 1990, Mr. del Cid was publicly associated with the assassination, by a paramilitary group, of a prominent doctor, Hugo Spadafora Franco. The author notes that the charge was unfounded and based on the simple fact that her nephew had been present in the town of Concepción on 14 September 1985, the day of the murder. Mrs. Barroso, who refers to Mr. Spadafora as a “guerrilla”, asserts that her nephew was accused of being implicated in Mr. Spadafora’s death by one Colonel Diaz Herrera, who allegedly was himself implicated in the doctor’s death and has since obtained political asylum in Venezuela. The author notes that the legislature of Panama, by an act deemed unconstitutional, nominated a special prosecutor to investigate Mr. Spadafora’s death. This special prosecutor, it is claimed, displays 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 obtaining 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 there were no charges against him. His mother subsequently tried to visit him at the Fort Clayton detention centre, where the authorities denied her access to her son. It is submitted that at Fort Clayton, Mr. del Cid was interrogated on a daily basis, in violation of the Geneva Conventions.

2.4 Since the early summer of 1990, several 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 then, the Tribunal Superior apparently has been unwilling 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, the author asserts that her nephew was “to be set free ... several months ago”, but again the prosecutor appealed the decision.

2.5 Similar to the repeated denials of bail, the author claims that her nephew’s trial has been postponed on several occasions, for unexplained reasons. In the autumn of 1992, she informed the Committee that her nephew’s trial was set for February or March 1993; in April 1993, the court hearing had again been postponed, according to her, “to June or July 1993”. In a letter, dated 25 June 1993, Mrs. Barroso confirmed that the trial was to begin on 6 July 1993.

2.6 According to the author, her nephew has been used by the Government of Panama as a scapegoat for a number of unfounded charges. He asserts, for example, that he was accused of being responsible for the disappearance of material worth \$35,000 donated by the Panama Canal Commission, and that the Government asked him to repay \$50,000 by way of compensation. The author further asserts that the Panamanian authorities have unduly restricted Mr. del Cid’s contact with members of his family, denying him for example the right to visit his dying mother. Furthermore, in the autumn of 1991, his wife’s telephone allegedly was disconnected, and Mr. del Cid has been unable to talk to his children since. According to Mrs. Barroso, all of the charges against her nephew are fabricated.

2.7 According to the author, it is now felt even in political circles in Panama that her nephew's case is a highly political one, in which the application of the law is deliberately geared towards the Government's self-proclaimed desire to deny their rights to those individuals in detention who are associated in one way or another with the former régime of General Manuel Noriega. This assertion is repeated by the author in different variations throughout her correspondence with the Committee.

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

The complaint:

3. It is submitted that the facts outlined above constitute violations of article 9, paragraphs 3 to 5, and article 14, paragraphs 2, 3, 6, and 7, of the Covenant. In particular, the author contends that her son has been 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), of the Covenant. She finally asserts that the judicial authorities and in particular the office of the special prosecutor have done everything to portray her nephew as guilty, in violation of the presumption of innocence in article 14, paragraph 2, of the Covenant.

The State party's information and observations:

4.1 In its submissions under rule 91 of the rules of procedure, the State party contends that the author's allegations are unfounded, and that Mr. del Cid's procedural guarantees under Panamanian 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; it adds that the investigations 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 attributable to the protractedness and thoroughness of the investigatory process, the volume of the documentary evidence, as well as the fact that apart from Mr. del Cid, nine other individuals have been indicted in connection with the death of Mr. Spadafora.

4.4 Finally, the State party affirms that the rights of the defense have been and are being observed in the case, and that Mr. del Cid has been represented, at all stages of the procedure, by qualified lawyers.

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 The Committee has taken note of the information that Mr. del Cid was acquitted of the charges against him, upon conclusion of the trial which had begun on 6 July 1993. On the other hand, it observes that Mr. del Cid 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. The State party has pointed to the thoroughness of the investigations but otherwise failed to explain the delays in the pre-trial and judicial proceedings. The Committee considers that a delay of well over three and a half years between arrest and trial respectively acquittal justifies the conclusion that the pursuit of domestic remedies was “unreasonably prolonged” within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.3 The Committee considers that the author has made reasonable efforts to substantiate his allegations relating to articles 9 and 14 of the Covenant; these shall, accordingly, be considered on their merits.

6. The Human Rights Committee therefore decides:

- (a) that the communication is admissible in as much as it appears to raise issues under articles 9 and 14 of the Covenant;
- (b) that, in accordance with article 4, paragraph 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 the present decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;
- (c) that any explanations or statements received from the State party shall be communicated by the Secretariat under rule 93, paragraph 3, of the rules of procedure, to the author with the request that any comments that she may wish to submit thereon should reach the Human Rights Committee, care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;
- (d) that this decision shall be communicated to the State party and the author of the communication.

(Done in English, French, and Spanish, the English text being the original version.)

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