

HUMAN RIGHTS COMMITTEE

G. W. G. v. Panama

Communication No. 466/1991

17 March 1994

CCPR/C/50/D/466/1991*

ADMISSIBILITY

Submitted by: G. W. G. (name deleted)(represented by counsel)

Alleged victim: The author

State party: Panama

Date of communication: 13 May 1991 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, dated 28 December 1992 (not issued in document form)

Date of present decision: 17 March 1994

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 dated 13 May 1991, is G. W. G., a Panamanian citizen currently under house arrest in Panama City. He claims to be a victim of violations by Panama of articles 9 and 10 of the International Covenant on Civil and Political Rights. The author is represented by counsel.

The facts as submitted by the author:

2.1 The author was a high-ranking military officer in the armed forces of Panama, having served, *inter alia*, on the Chief of Staff (Estado Mayor) of the armed forces. On 3 October 1989, some officers, including the author, staged a mutiny against the then Commander-in-Chief of the Panamanian armed forces, General Manuel Noriega. The rebellion was put down and the author

discharged of his functions and imprisoned. He claims that the conditions of his detention were such that they seriously affected his health, which, it is submitted, had been excellent up to that moment. When the author was released by United States Armed forces on 22 December 1989, he allegedly weighed no more than 45 kilograms. He was then offered a high-level post in the reorganized Panamanian armed forces but declined to accept it.

2.2 The author notes that after the military intervention of United States troops in Panama in December 1989, numerous complaints filed against himself and against members of his former unit were filed by Panamanian citizens, who claimed to have been the victims of human rights violations by members of that unit. Although none of these complaints is said to directly incriminate the author as the perpetrator of these violations, the authorities charged the author with offences under article 160 of the Panamanian Criminal Code and ordered his detention as of 19 April 1990 in the El Renacer Camp in Panama City, allegedly under harsh conditions. It appears that the author was accused, inter alia, of having tortured or ill-treated a number of civilians during his tenure as military officer.

2.3 The author considers himself to be a political prisoner and the victim of a “witch hunt” for military officers and officials, inspired by a feeling of vendetta and vengeance against those associated with the former régime of General Noriega. He contends that the charges against him are vague and without foundation. As to his conditions of detention, he claims that he was kept in (total) isolation from other prisoners, without recreational facilities and allegedly without any medical attention.

2.4 Since February 1991, the author has displayed the symptoms of a serious heart disease which according to the diagnosis of his cardiologist, dated 18 April 1991, necessitated his immediate hospitalization. This disease may cause heart failure if the patient is exposed to continued physical or psychological stress.

2.5 Given the author’s state of health, his counsel requested his immediate release on bail, in accordance with Sections 2039 and 2147 litera (d) of the Panamanian Code of Criminal Procedure, as amended by article 31 of Law No. 3 of 22 January 1991, which prohibits the preventive detention of individuals in a precarious state of health. Counsel’s request for bail, first formulated on 19 February 1991 and reiterated on 17 April 1991, was rejected on 23 April 1991 by judge L.G. Z., who also refused to substitute house arrest for detention, as also provided for under Law No. 3 of 22 January 1991. The author contends that the judge’s decision might result in his transfer from hospital to prison, where he might again be subject to mental stress with possibly fatal consequences.

2.6 As to the requirement of exhaustion of domestic remedies, it is submitted that the judge’s decision of 23 April 1991 to refuse bail, coupled with the fact that two prosecutors and one judge were discharged of their functions in 1991, allegedly for having sought to apply Law No. 3 of 22 January 1991 to political prisoners, shows that there is clear judicial bias and discrimination against prisoners like the author. Accordingly, no effective domestic remedies are said to be available. Given the seriousness of the author’s health problems, any further delay in the adoption of a judgement which would reverse the decision of 23 April 1991, would be unjustifiable.

2.7 In the circumstances, counsel requests the adoption of interim measures of protection, under

rule 86 of the rules of procedure of the Human Rights Committee.

The complaint

3. The facts as described above are said to constitute violations of articles 9 and 10 of the Covenant. In particular, the author affirms that although he has been detained since 19 April 1990 for an alleged offence under article 160 of the Panamanian Criminal Code, and although the factual and the legal situation is said to be clear, he had not been judged at first instance by the middle of 1993. This is said to amount to a violation of article 9, paragraph 3, of the Covenant. That the Panamanian judicial authorities have consistently refused him bail is said to constitute another violation of article 9, paragraph 3.

The State party's information and observations

4.1 In a submission dated 10 March 1993, the State party provides a chronology of events in the case. It notes that the author was a member of the G-2 and G-3 Directorates of the Estado Mayor of the old régime, which had the task of carrying out internal espionage and repression, and to whom countless violations of human rights had been attributed for the years 1987 to 1989. Although the author was officially known as head of the Panamanian side of the Joint Committee for the Implementation of the Panama Canal Treaties, it is no less true, according to the State party, that his name was also directly associated with reports of torture and cruel and inhuman treatment against civilian groups.

4.2 The State party notes that during the first few months of 1990, thousands of complaints were filed by Panamanian citizens against military and civilian officials of the old régime; among these were 20 complaints filed against the author by different individuals. These complaints were registered by the Department of Public Prosecutions, which ordered the author's preventive detention and then distributed the complaints among the competent tribunals.

4.3 The proceedings against the author are summarized as follows by the State party:

(a) District Judge No. 1 of the First Judicial District of Panama (Juzgado Primero de Circuito del Primer Circuito Judicial de Panama): four cases against the author are pending before this tribunal. Two complaints are based on alleged crimes against humanity, two others on "violations of fundamental rights" by the author, with a first hearing in one of them scheduled for 3 June 1993;

(b) Second Municipal court of the District of Panama (Juzgado Segundo Municipal del Distrito de Panama): two cases against the author are pending. One case was scheduled for a hearing on 30 August 1993, the other was only filed on 19 January 1993;

(c) District Judge No. 2 of the First Judicial District of Panama (Juzgado Segunda del Circuito de lo Penal del Primer Circuito Judicial de Panama): two cases against the author are pending;

(d) District Judge No. 3 of the First Judicial District of Panama (Juzgado Tercero de Circuito de lo Penal): one case is pending, in which the judge ordered the author's provisional release on 13

March 1991;

(e) District Judge No. 4 (Juzgado Cuarto de Circuito): one case is pending;

(f) District Judge No. 5 (Juzgado Quinto de Circuito de lo Penal del Primer Circuito Judicial): two cases against the author are pending;

(g) District Judge No. 7 (Juzgado Septimo de Circuito de lo Penal de Primer Circuito Judicial): one case was filed against the author, which, it appears, has temporarily been suspended;

(h) District Judge No. 8 (Juzgado Octavo de Circuito de lo Penal del Primer Circuito Judicial de Panama): two cases based on different charges were filed against the author. One case was temporarily suspended, the other continues and apparently is now being heard on appeal;

(i) Finally, one case against the author is pending before the District Judge No. 9 (Juzgado Noveno del Circuito de lo Penal del Primer Circuito Judicial).

4.4 The State party concludes that 17 cases against the author in which he has been indicted remain pending (“... se dictó auto de llamamiento a juicio ...”). So far, no oral proceedings in these cases have taken place. The State party justifies these delays with the author’s state of health, which do not justify his transfer from hospital to prison.

4.5 It is submitted that since March 1991, the various tribunals seized of the author’s case have met on several occasions to ascertain the author’s state of health and to investigate means of moving forward the criminal cases filed against him. The State party submits that no other accused has received as detailed attention as has the author, with a view to guaranteeing his rights both under Panamanian criminal procedure and under international conventions. The State party adds that for over 22 months, the author has been hospitalized in an expensive private clinic; it rejects as absurd counsel’s contention that it would be best for the author to transfer him to his residence, where medical supervision could continue. In this context, it submits that the only place where an individual with a state of health as delicate as the author’s can be treated is a specialized hospital. Finally, it affirms that the author’s heart problems and coronary insufficiencies can in no way be attributed to acts of the Panamanian judicial or prison authorities.

4.6 The State party concludes that the author has failed to exhaust available domestic remedies. It adds that all of the author’s procedural rights have been scrupulously observed, and that in all of the 17 cases pending against him, his lawyers have availed themselves of their procedural right to challenge the indictments. Delays in the proceedings are said to be attributable to the refusal of the author’s doctors to allow him to appear in court.

5.1 In his comments dated 14 June 1993, counsel submits that the very fact that the State party’s observations were formulated by the Presiding Judge of the Supreme Court of Panama himself (Magistrado Presidente de la Corte Suprema de Justicia) casts some doubts upon the independence and impartiality of the judicial system of Panama. Counsel notes that until his nomination, the Presiding Judge of the Supreme Court was Vice President of one of the political parties that are part of the current coalition government. Counsel further objects to the fact that the State party’s

information and observations seek to vilify him as the author's representative, as they contain references to criminal cases filed against himself, cases of which he claims to have no knowledge.

5.2 Counsel reiterates that the criminal prosecution of Mr. G. W. G. is part of a witch hunt against officers associated with the former régime: in spite of a "code of conduct" adopted by all political parties prior to the general elections scheduled for May 1994, over 60 civilian and military officers of the old régime remain in detention, and a considerable number of opposition politicians has been forced into exile.

5.3 Counsel notes that Mr. G. W. G. only headed the G-2 Directorate of the Chief of Staff for a very brief period of time, until his arrest on 3 October 1989. He adds that the indictments and denunciations against the author which had been attached to the State party's submission do not directly identify Mr. G. W. G. as the perpetrator of any wrongs; they are said to be so vague that they would not justify the author's continued detention.

5.4 It is submitted that the State party's submission in no way explains the excessive delay of the author's pre-trial detention. As to the requirement of exhaustion of domestic remedies, counsel notes that Mr. G. W. G.'s representatives in Panama unsuccessfully lodged all possible appeals, with a view to securing his release. The time spent by the domestic tribunals to determine the charges is said to be excessive and indicative of the inefficiency of the domestic judicial system, as well as of its bias vis-à-vis the author.

5.5 Finally counsel indicates that in April 1993, Mr. G. W. G. was authorized to leave the hospital, and that he currently remains under house arrest. He is said to undergo physical rehabilitation treatment and is under constant medical supervision.

Issues and proceedings before the Committee:

6.1 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.

6.2 In respect of the author's claim under article 10 of the Covenant, the Committee observes that the material before it does not reveal that Mr. G. W. G. complained about the harsh conditions of detention, the lack of recreational facilities and the absence of medical attention at the El Renacer penitentiary to the Panamanian judicial authorities. Accordingly, this part of the communication is inadmissible on the ground of non-exhaustion of domestic remedies, under article 5, paragraph 2(b), of the Optional Protocol.

6.3 Concerning the alleged violations of article 9, the Committee has noted the State party's contention that the delays encountered in bringing the author to trial before the various tribunals set to determine the charges against him is attributable to the author's precarious health and to his doctors' refusal to let him appear in court. On the other hand, it has remained uncontested that all attempts of the author's lawyers to secure Mr. G. W. G.'s release on bail, pending trial, have been unsuccessful. Furthermore, there is no indication that close to one year after Mr. G. W. G.'s discharge from hospital in April 1993 and placement under house arrest, any hearing of the charges

against him has taken place. The Committee observes that notwithstanding extraneous factors such as the author's health, a delay of close to four years between arrest and trial at first instance justifies the conclusion that the pursuit of domestic remedies in relation to issues associated with articles 9, paragraph 3, and 14, paragraph 3(c), has been "unreasonably prolonged" within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

6.4 The Committee observes that counsel has substantiated, for purposes of admissibility, his allegations that the author's continued detention without being brought promptly to trial is contrary to article 9, paragraph 3, and that his client has not been tried with a reasonable time, contrary to article 14, paragraph 3(c). These allegations should, accordingly, be considered on their merits.

6.5 Regarding counsel's claim that the nature of the State party's submission impairs its impartiality, the Committee notes that factual information was sought from a domestic court, which was in a position to provide this information. The Committee finds no reason to object to this practice of the State party.

7. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it appears to raise issues under articles 9, paragraph 3, and 14, paragraph 3(c) 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 recent 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 Secretary-General under rule 93, paragraph 3, of the Committee's rules of procedure, the author and his counsel, with the request that any comments that they may wish to submit thereon should reach the Human Rights Committee, in 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, to the author and to his counsel.

(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.