

HUMAN RIGHTS COMMITTEE

Solís v. Panama

Communication No. 436/1990

18 July 1994

CCPR/C/51/D/436/1990*

ADMISSIBILITY

Submitted by: Renato Pereira

Alleged victim: Manuel Solís Palma

State party: Panama

Date of communication: 20 October 1990 (initial submission)

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

Meeting on 18 July 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 Manuel Solís Palma, a Panamanian citizen born in 1917 and formerly the President of the Republic of Panama. He contends that at the time of submission of the complaint, Mr. Solís Palma was unable to submit the communication himself, as he was prosecuted by the current Government of Panama and hiding from its agents. It is submitted that Mr. Solís Palma is a victim of violations by Panama of articles 9 and 10 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 On 21 September 1990, the Third District Attorney of Panama City (Juzgado Tercero del

Circuito de Panamá) ordered the arrest and detention of Mr. Solís Palma, upon charges of having established and organised the so-called "Comité de Defensa de Panamá y de la Dignidad" (Committee for the Defence of Panama and of Dignity), a unit of elite soldiers which resisted the intervention of United States troops in Panama in December 1989.2.2 It is submitted that Mr. Solís Palma acted legitimately vis-à-vis the United States intervention. Article 306 of the Constitution of Panama indeed obliges all Panamanian citizens to defend the integrity of Panamanian territory and the sovereignty of the State.

2.3 As to the requirement of exhaustion of domestic remedies, Mr. Pereira notes that Mr. Solís Palma's representative in Panama submitted a request for bail to the examining magistrate handling the case; the request was dismissed. The author notes that the only other possibility of a remedy would be to file a request for **habeas corpus** in the Supreme Court of Panama; he contends that such a request would be futile given the political climate in Panama and the particular circumstances of Mr. Solís Palma's situation.

2.4 In further submissions made in 1992 and 1993, Mr. Pereira indicates that Mr. Solís Palma was able to leave the territory of Panama and secured political asylum in Venezuela; he is now residing in Caracas. He indicates that the trial for Mr. Solís Palma and a number of co-defendants was scheduled to start on 19 May 1993 before the Fourth District Judge of Panama (Juez Cuarto de lo Penal del Primero Circuito Judicial de Panamá), and that the indictment of Mr. Solís Palma had been changed to include not only crimes against the internal State order but also crimes against humanity. He objects to the qualification of the offences imputed to Mr. Solís Palma as "political crimes".

The complaint:

3. It is submitted that the facts as submitted reveal violations by Panama of articles 9, paragraph 1, and 10 of the Covenant, even though Mr. Solís Palma has not been arrested or detained.

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 against Mr. Solís Palma and three co-defendants began as scheduled on 19 May 1993. Mr. Solís Palma was tried **in absentia**; he was, however, represented by an attorney assigned to him **ex officio** by the judicial authorities of Panama. On 4 June 1993, the circuit court judge found Mr. Solís Palma and the three co-accused guilty on the count 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. All accused were acquitted on the count of crimes against humanity.

4.2 The court's decision was notified to all accused, in Mr. Solís Palma's case through publication of the sentence in the Official Gazette and a major daily newspaper. Although the representatives of Mr. Solís Palma's co-defendants initially appealed the sentence, they later withdrew the appeal. It appears that the representative for Mr. Solís Palma did not appeal.

4.3 The State party concludes that by February 1994, the cases have been filed, because the time spent in preventive detention by the accused (with the exception of Mr. Solís Palma) was set off against the prison term imposed upon them. They have been released and no charges against them are 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 The Committee has noted Mr. Pereira's claim that as a personal friend of Mr. Solís Palma, he acted in the latter's best interest by filing a claim on his behalf under the Optional Protocol, and that he should be deemed to have standing within the meaning of article 1 of the Protocol. It further observes that on two occasions, by letters of 21 February 1991 and 25 August 1992, Mr. Pereira was requested to provide a copy of a power of attorney duly signed by the alleged victim or a member of his family. He did not comply with this request, despite the fact that, by the summer of 1992, Mr. Solís Palma had been granted political asylum in Venezuela and therefore would have been in a position to authorize Mr. Pereira to represent him before the Committee.

5.3 In the light of the above and in the absence of a power of attorney or other documented proof that the author is authorized to act on behalf of Mr. Solís Palma, the Committee concludes that the author has no standing before the Committee, within the meaning of article 1 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

- (a) the communication is inadmissible under article 1 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.]

Footnotes

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