

HUMAN RIGHTS COMMITTEE

E. M. v. Colombia

Communication No. 214/1986

21 March 1991

CCPR/C/41/D/214/1986*

ADMISSIBILITY

Submitted by: M. M. (victim's brother)

Alleged victim: E. M. (deceased)

State party concerned: Colombia

Documentation resources: Prior decisions - CCPR/C/WG/29/D/214/1986 (Working Group rule 91 decision, dated 9 December 1986)

Date of present decision: 21 March 1991

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 in admissibility.

Decision on Admissibility

1. The author of the communication (initial submission dated 4 November 1986 and subsequent correspondence) is M. M., a Colombian citizen residing in the United Kingdom of Great Britain and Northern Ireland. He submits the communication on behalf of his deceased brother, E. M., who was killed on 9 October 1986 at Cali, Colombia, at the age of 29 years. The author claims that articles 6, 7 and 9 of the Covenant have been violated.

Background

2.1 The author states that his brother had been an engineering student at the National University of Manizales in Colombia when he went into exile in the United Kingdom in 1978, where he obtained political asylum. He was a founding member of the Colombian Committee of Human Rights (an organization based in London), and chairman since 1983 of the Latin American Advisory Committee (an organization in London) and a member of the Comité de Solidaridad con los Presos

Políticos (an organization in Colombia). As an active trade-unionist and shop steward of the Transport and General Workers' Union (in London), he became President of the Latin American Workers Association in London.

2.2 In December 1985, E. M. returned to Colombia and participated in the investigatory work of the International Commission of Observers to Colombia, which was composed of nine persons from England, Switzerland, Austria and Brazil. ^{1/} He remained in Cali, Colombia, carrying out investigations on the human rights situation there, and was due back in England on 10 October 1986. He disappeared in the afternoon of 9 October 1986, having left his family's home in order to go shopping. When he failed to return, his family contacted the hospitals, police stations and army barracks. His body was found on 10 October 1986 dumped by the roadside on the outskirts of Cali. He had been shot three times in the head and face, hands and legs reportedly showed evidence of torture. It is alleged that he was kidnapped and then tortured and murdered by members of the Third Brigade of the Colombian Army, or by a paramilitary death squad. When his body was brought to the family home from the funeral parlour, his family was allegedly subjected to intimidation and they were reportedly watched by paramilitary squadrons on the evening of 10 October 1986.

Complaint and relief sought

3. The author claims that the Government of Colombia has ultimate responsibility for the death of his brother, whose right to life under article 6, right not to be subjected to torture under article 7 and right to security of person under article 9 of the Covenant were violated. He asks that the Government carry out a full investigation into the disappearance and subsequent murder of his brother and that the culprits be arrested and prosecuted.

State party's observations

4. In 1988, the State party asserted that domestic remedies had not been exhausted, since judicial investigations were then still pending before the Juzgado 11 de Instrucción Criminal in Cali. The last information from the State party on this matter is the report on the status of the investigations, dated 10 November 1987.

Exhaustion of domestic remedies

5. With respect to the exhaustion of domestic remedies, the author states that on 14 October 1986 the family requested the Colombian Attorney General's Office (Procuraduría General de Colombia) to investigate the assassination of Mr. E. M. The author alleges, however, that there are no effective remedies for the crime of assassination and that, in the region of Cali alone, there are at present 6,800 unsolved cases of political assassination assigned to 8 judges for investigation. Moreover, the author alleges that although, according to the investigators of the Colombian Attorney General's Office, "there are suspects who are linked to the security forces of the State", thus far no one has been made responsible or dismissed, let alone prosecuted. Precisely, because of the alleged participation of members of the Colombian armed forces in the assassination, the author does not believe that an objective investigation is possible.

Admissibility considerations

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 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 or settlement.

6.3 The Committee has noted the State party's observations concerning the status of the investigations into the murder of E. M. It further notes that the last information received dates from November 1987. In the circumstances of the case, the Committee considers that a delay of over three years in the investigations appears to be "unreasonably prolonged" within the meaning of article 5, paragraph (2) (b), of the Optional Protocol, and concludes that it is not precluded from examining the communications. Nor has the State party demonstrated that an effective remedy exists.

6.4 The Committee considers that the communication should be examined on the merits as it raises issues under articles 6, 7 and 9 of the Covenant.

7. The Committee therefore decides:

(a) That the communication is admissible;

(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 this 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, to the author with the request that any comments that he 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 and to the author.

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

1/ From the enclosures it is not clear by whom this international commission was established, who its members were, and whether it has published a report in its findings.