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HUMAN RIGHTS COMMITTEE

Fifty-second session

DECISIONS

Communication No. 460/1991

Submitted by: Terani Omar Simons

Alleged victim: The author

State party: Panama

Date of communication: 27 February 1991 (initial submission)

Documentation references:

Prior decisions

- Special Rapporteur's rule 91 decision, transmitted to the State party on 28 December 1992 (not issued in document form)

Date of present decision: 25 October 1994

[ANNEX]

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL
PROTOCOL

TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

- FIFTY-SECOND SESSION -

concerning

Communication No. 460/1991

Submitted by: Terani Omar Simons

Alleged victim: The author

State party: Panama

Date of communication: 27 February 1991 (initial submission)

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

Meeting on 25 October 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is Terani Omar Simons, a Panamanian citizen currently residing in El Dorado, Panama. He claims to be a victim of violations by Panama of his human rights without, however, invoking specific provisions of the International Covenant on Civil and Political Rights.

The facts as presented by the author:

2.1 Towards the end of 1981, the author was employed by a private insurance company, the Compania Fiduciaria y de Seguros S.A.. In December 1981, he was appointed Managing Director (Gerente General) of this company and at the same time became a major shareholder. The company managed, at the time, a large percentage of the insurance contracts administered by an official social security organism, the Caja de Seguro Social.

2.2 In October 1982, the author was accused of being an accomplice to illegal financial transactions concerning the Compania Fiduciaria and to have pursued personal interests in connection with the administration of a large public housing project (Programa colectivo de viviendas de la Caja de Seguro Social) run by the Caja de Seguro.

2.3 In a financial audit (vista fiscal) of 24 January 1983, the public prosecutor charged the author with abuse of authority. On 19 May 1983, Mr. Simons was also charged with the offence of bribing officials (delito de peculato culposo), to the detriment of the Caja de Seguro Social.

2.4 On 27 September 1983, the author requested a local tribunal (Segundo Tribunal Superior de Justicia) to strike the indictments from the court agenda. On 31 January

1985, the Criminal Chamber of the Second District Court of Panama (Juzgado Segundo del Circuito, Ramo penal) found him guilty as charged on both counts and sentenced him to fifteen months' imprisonment. The author appealed to the Segundo Tribunal Superior de Justicia on 27 March 1985, but the appeal was dismissed. On an unspecified date in 1987, another court (Juzgado II^a - Ramo penal) rejected the author's request for the provisional suspension of execution of the sentence (suspensión condicional de ejecución de la pena). In November 1990, the Segundo Tribunal de Justicia dismissed the author's (further) appeal and confirmed the decision of 1987. At the same time, it ordered the author's arrest ("... se dictó orden de arresto").

2.5 The author claims that the criminal proceedings against him were based on false evidence (pruebas falsas). He explains that, in May 1982, two cheques had been paid to the benefit of two former directors of the Caja de Seguro Social. The prosecution contended that these two cheques were paid by the insurance company managed by the author; the author however maintains that he never signed cheques during the time in question and contends that the cheques were signed by shareholders of two construction companies, Alveyco S. A. and Urbana de Expansión S.A., with whom he maintained no contacts. He therefore claims that he is a victim of a judicial error amounting to a denial of justice. The author further contends, without giving details, that as a result of the criminal proceedings, he suffered unlawful attacks on his honour and professional reputation, as well as substantial financial damages.

The complaint:

3. It transpires from the facts as described above that the author claims to be a victim of a violation of articles 14 and 17 of the Covenant.

Issues and proceedings before the Committee:

4.1 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.

4.2 On 28 December 1992, the communication was transmitted to the State party under rule 91 of the rules of procedure, requesting it to provide information and observations on the question of admissibility. No information was received from the State party within the imparted deadline. On 29 July 1994, the State party was advised that any information or observations should reach the Committee well in advance of the Committee's 52nd session; no submission has been received. The Committee expresses its regret at the State party's failure to cooperate and reaffirms that it is implicit in the Optional Protocol that a State party provide the Committee in good faith with all the information at its disposal. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated, for purposes of admissibility.

4.3 Concerning the author's contention that he was a victim of a denial of justice, the Committee notes that his complaint relates primarily to the evaluation of the evidence

in the case by the Panamanian tribunals. It recalls that it is in principle for the domestic courts of States parties to the Covenant to review the evidence in any particular case and for the appellate courts to review the evaluation of the evidence by the lower courts. It is not for the Committee to evaluate the evidence in a case, unless it can be ascertained that the court's decision was arbitrary or amounted to a denial of justice, or that the judge otherwise violated his obligation of independence and impartiality. After reviewing the material before it, the Committee cannot conclude that the proceedings against Mr. Simons suffered from such defects. Therefore, this claim is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

4.4 As to the claim under article 17, the Committee considers that the author has failed to substantiate, for purposes of admissibility, that the judicial proceedings against him and his conviction constituted an arbitrary or unlawful attack on his honour and reputation. In this respect, accordingly, the author has no claim within the meaning of article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) that this decision be communicated to the State party and to 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.