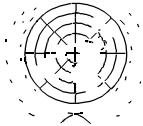


UNITED

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International Covenant on Civil and Political Rights

Distr.
RESTRICTED */

CCPR/C/52/D/438/1990
25 October 1994

Original : ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-second session

DECISIONS

Communication No. 438/1990

Submitted by : Renato Pereira
Alleged victim : Enrique Thompson
State party : Panama
Date of communication : 20 December 1990 (initial submission)
Documentation references : Prior decisions - Special Rapporteur's rule
91
the
form)
Date of present decision : 21 October 1994

decision, transmitted to
State party on
17 December 1992
(not issued in document

[ANNEX]

GE . 94-

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. 438/1990

Submitted by : Renato Pereira

Alleged victim : Enrique Thompson

State party : Panama

Date of communication : 20 December 1990 (initial submission)

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

Meeting on 21 October 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is Renato Pereira, a Panamanian attorney residing in Paris at the time of submission of the communication. He acts on behalf of Mr. Enrique Thompson, a Panamanian citizen and architect by profession, who was detained at the Modelo Prison in Panama City at the time of submission of the communication. It is submitted that Mr. Thompson is a victim of violations by Panama of articles 9, paragraphs 1 and 2, and 15, paragraph 1, of the International Covenant on Civil and Political Rights. Mr. Pereira encloses a power of attorney from Mr. Thompson's wife.

The facts as submitted by the author :

2.1 Mr. Thompson was a leading member of the Panamanian "Batallones de la Dignidad", according to Mr. Pereira an elite unit which resisted the intervention of United States forces in Panama in December 1989 ("Operation Just Cause"). His active resistance was corroborated by U.S. Colonel D.T., who was in charge of United States Air Force operations during the intervention. On 10 January 1990, Mr. Thompson was, according to his representative, taken prisoner by the U.S. forces and interned in the "Nuevo Emperador" camp.

2.2 When, on 31 January 1990, President George Bush declared the end of hostilities with Panama, most prisoners of war were released. Mr. Thompson, however, was transferred to the Modelo Prison in Panama, where he continued to be held. He was indicted on charges of having committed certain offences against the (territorial) integrity and the internal order of the Republic of Panama.

2.3 The author contends that Mr. Thompson acted legitimately vis-à-vis the United States intervention. Article 306 of the Panamanian Constitution indeed obliges all Panamanian citizens to defend the integrity of Panamanian territory and the sovereignty of the State.

2.4 The author states, without giving any further details, that all available domestic remedies have been exhausted in the case of Mr. Thompson.

2.5 In further submissions made in the course of 1992 and 1993, Mr. Pereira observed, again without giving any further details, that the Supreme Court of Panama itself had admitted that the acts attributed to Mr. Thompson and his co-defendants did not constitute criminal offences but that, notwithstanding this statement, his client continued to be detained at Modelo Prison. In early 1993, he indicated that the trial of Mr. Thompson and his co-defendants was scheduled to start on 19 May 1993 before the Circuit Court Judge No.4 of Panama City (Juez Cuarto de lo Penal del Primero Circuito Judicial de Panamá), and that the indictment of Mr. Thompson had been changed to include not only offences against the internal order of the State, but also crimes against humanity. He objects to the qualification of the offences imputed to Mr. Thompson as "political offences".

The complaint :

3.1 The author submits that Mr. Thompson is a victim of violations of articles 9, paragraphs 1 and 2, and 15, paragraph 1, of the Covenant. He contends that Mr. Thompson's detention is arbitrary because he allegedly did not commit any punishable offences, and that he was not informed of the reasons for his detention nor of his indictment. Article 15 is said to have been violated because none of the acts imputed to Mr. Thompson were criminal offences at the time of their commission.

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 of Mr. Thompson and three co-defendants began as scheduled on 19 May 1993. Mr. Thompson was represented throughout the trial by a legal representative of his choice. On 4 June 1993, the Circuit Court Judge found Mr. Thompson and his co-defendants guilty of offences against the internal order of the State and sentenced them to forty-four months and ten days of imprisonment; they were further prohibited from running for public office for the same period of time, to run from the day the prison term had been purged. All of the accused were acquitted of the charge of crimes against humanity.

4.2 The court's decision was notified to Mr. Thompson and to his representative. Although his lawyer initially appealed the sentence, he subsequently withdrew the appeal.

4.3 The State party concludes that as of February 1994, the case had been filed, as the time spent in preventive detention by Mr. Thompson had been set off against the prison term imposed upon him. He has therefore been released, and no further charges against him remain 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 As to the claims under articles 9, paragraphs 1 and 2, the Committee begins by noting that the author links the alleged arbitrariness of Mr. Thompson's arrest and detention to his presumed innocence. Nothing in the file, however, indicates that Mr. Thompson was not held on specific charges (see paragraph 2.2 above), pending the determination of his innocence or guilt by a court of law, and that he was not properly indicted. But, in any event, the Committee notes that Mr. Thompson's counsel, while initially appealing the sentence of 4 June 1993 against his client, later withdrew the appeal, where these issues could have been dealt with. For the purpose of article 5, paragraph 2(b), of the Optional Protocol, an applicant must make use of all judicial or administrative avenues that offer him a reasonable prospect of success. This Mr. Thompson's counsel has failed to do, and available domestic remedies accordingly have not been exhausted in the case.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 5, paragraph 2(b), 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.]

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