

## HUMAN RIGHTS COMMITTEE

### Wolf v. Panama

Communication No. 289/1988

26 March 1992

### VIEWS

*Submitted by: Dieter Wolf*

*Alleged victim: The author*

*State party: Panama*

*Date of communication: 30 January 1988*

*Date of decision on admissibility: 27 July 1989*

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

Meeting on 26 March 1992,

Having concluded its consideration of communication No. 289/1988, submitted to the Human Rights Committee by Mr. Dieter Wolf under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its

### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Dieter Wolf, a German citizen who, at the time of his initial submission to the Committee, was detained at the Isla de Coiba penitentiary in Panama. In September 1988, he was released and allowed to leave the country; since July 1989, he has resided in Germany. By letter of 2 July 1990, he requested the Committee to proceed with the examination of his communication. The author claims that his human rights have been violated by the authorities

of Panama. Although he does not invoke violations of specific provisions of the International Covenant on Civil and Political Rights, it appears from the context of his submissions that he claims violations of articles 9, 10 and 14 of the Covenant.

#### Facts as submitted by the author

2.1 The author indicates that he was arrested on 14 January 1984 on charges of having issued a total of 12 uncovered cheques, for amounts ranging from US\$ 25 to \$3,000. He explains that under article 281 of the Panamanian Criminal Code, individuals who issue uncovered cheques are entitled to a “grace period” of 48 hours to settle their debts, so as to avoid arrest and detention. The author was not given this grace period but was instead immediately imprisoned at the Modelo prison. When he complained and invoked article 281 of the Criminal Code, he was transferred 300 kilometres away to the island of Coiba, which houses a penitentiary for inmates sentenced to hard labour. He claims that he has never been brought before a judge.

2.2 The author insists that when he was transferred to Coiba, no judgement against him had been delivered. Furthermore, although he had requested legal assistance, he was not given access to legal counsel. If legal counsel was ever assigned in his case, he never had any contact with him.

2.3 As to the judicial proceedings in his case, the author notes that 11 of the above-mentioned cases of alleged fraud were joined by the court of first instance (Juzgado Quinto). In September 1985, the judge sentenced him to three years and seven months of imprisonment on nine counts of cheque fraud, while acquitting him on two counts. The author submits that no public hearing took place, and that he was unable to attend court, since he was detained at Coiba prison.

2.4 The author himself prepared and filed the appeal against the conviction, but surmises that this was never seen by the Court of Appeal. He subsequently learned that the appeal had been dismissed on an unspecified date, although he was never able to see the written judgement. He then wrote to the court and requested the assignment of a legal aid representative, so as to be able to appeal to the Court of Cassation; he did not receive any reply.

2.5 With regard to the proceedings concerning a twelfth cheque, issued in the amount of \$169 to the order of a local supermarket, the author states that he was tried by the First Criminal Court (Juzgado Primero) of San Miguelito, although, under application Panamanian law, this case should also have been joined with the other ones. In respect of this case, the author explains that he received a notice of trial in October 1984, when detained at Coiba, without the text of the indictment. He was subsequently kept in the dark about the course of the proceedings and not called to appear before the judge. The Court passed judgement on 15 September 1988, four and a half years after his arrest.

2.6 In respect of both cases pending before the Juzgado Quinto and the Juzgado Primero of San Miguelito, the author posted bail on 14 March 1986 for a total of \$4,200. On an unspecified date in the spring of 1986, he was released on bail.

2.7 In August 1986, the author was rearrested and charged with issuing two more uncovered cheques. Bail was revoked, and the author returned to prison. The two new cases were assigned to

the Eighth Criminal Court (Juzgado Octavo) of Panama. The author submits that, as in the other cases, no oral and public hearing took place, that he was denied access to counsel, and that he was informed of the judgement against him in July or August 1988, when still detained at Coiba prison.

2.8 The author notes that he informed the Embassy of the Federal Republic of Germany of his arrest. During his brief detention at the Modelo prison, he was not allowed to speak without supervision with officials from the Embassy. After the Embassy lodged a formal protest with the Foreign Ministry of Panama, he was allegedly ill-treated and confined to a special cell, together with a mentally disturbed prisoner, who allegedly had killed several other inmates. In the same context, the author states that all his property was stolen in the prison, and that he was denied food for five days. Finally, he contends that officials of the German Embassy were denied the right to visit him at Coiba prison.

### Complaint

3.1 The author claims that, in each of the criminal cases against him, he was denied a fair and public hearing by a competent, independent and impartial tribunal, in that he was not heard personally and not served sufficiently motivated indictments. He further complains that, at all times, he was denied access to legal counsel and that he was never brought before a judge; he emphasizes that these elements constitute not only violations of the Covenant but also serious violations of Panamanian law.

3.2 It is further submitted that the judicial proceedings in the case were unreasonably prolonged: in particular, the Juzgado Primero of San Miguelito only rendered its judgement in respect of the allegedly uncovered cheque of \$169 in September 1988, over four and a half years after Mr. Wolf's arrest.

3.3 As to the conditions of detention, the author complains about ill-treatment in the Modelo prison (see para. 2.8 above). He adds that he had to perform forced labour at Coiba prison although no sentence had been pronounced against him. In the latter context, he claims, in general terms, that inmates on Coiba are physically abused, beaten, tied to trees, denied food and obliged to buy some of their food from the prison commander, who is said to confiscate 40 per cent of the food sent from Panama City and then sell it to the inmates.

### State party's information and observations

4.1 The State party contends, in submissions made both before and after the Committee's decision on admissibility, that the communication is inadmissible on the ground of non-exhaustion of domestic remedies and observes that criminal proceedings were still pending against him. It explains that "Panama's legal system provides effective remedies under its criminal law against [for example] the committal decision taken pursuant to articles 2426 to 2428 of the Panamanian Code of Criminal Procedure. The applicant faces a number of criminal charges in connection with which no judgement has yet been given; the normal procedure is being followed. He may, however, appeal to a higher court against the committal decision, in addition to resorting to all the remedies specified under criminal law".

4.2 As to the facts of the case, the State party notes that on 16 September 1985, the author was sentenced to three years' and seven months' imprisonment for 11 counts of cheque fraud. a/ Had he served the full term, he would have been released on 8 January 1988. He was, however, released on parole by Executive Decision of 24 November 1986, signed jointly by the President of Panama and the Minister of the Interior and Justice; he was free after that date, until he was rearrested for further offences. b/

4.3 Concerning the further judicial proceedings against Mr. Wolf, the State party explains that on 15 September 1988 the Juzgado Primero of San Miguelito found the author guilty of signing an uncovered cheque to the order of a supermarket, and sentenced him to two years' and 10 months' imprisonment and an additional 87-day fine at the rate of 2.5 balboas a day. At the same time, the Juzgado Octavo continued to investigate one further charge of fraud against the Compañía Xerox de Panamá, and another one of forgery to the detriment of Apartotel Tower House Suites. Mr. Wolf was sentenced to three years' imprisonment on the first charge; he appealed, and the case was transferred to the Second High Court of Justice (Segundo Tribunal Superior de Justicia), which ordered the Juzgado Quinto to join the indictments and pronounce a single sentence. In the second case, oral proceedings had been scheduled but could not proceed, because the accused had left Panamanian territory.

4.4 The State party affirms that the author's claims are without any foundation (reclamación carente de todo fundamento), that the judicial proceedings against Mr. Wolf were conducted in full respect of the requirements laid down under Panamanian law, and that the author was not only represented, but that his representatives used the legal recourses available to them, in the best interest of their client. The State party adds that if some of the judicial decisions could not be notified to the author, this was probably because he had left the national territory. The State party does not, however, provide further details about the course of the judicial proceedings, nor about the author's legal representation or the identity of his representatives.

#### 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 At its thirty-sixth session, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, the Committee noted the State party's contention that the author had failed to avail himself of effective remedies but observed that it had not, at that point in time, denied that the author had no access to legal counsel, nor indicated how he could have resorted to further local remedies in the absence of such assistance. In the circumstances, the Committee concluded that the requirements of article 5, paragraph 2(b), of the Optional Protocol had been met.

5.3 On 27 July 1989, the Committee declared the communication admissible and asked the State party to forward copies of the indictments against the author and of any relevant court orders and decisions. None were received.

5.4 The Committee has noted the State party's submission of 6 December 1989, made after the decision on admissibility, in which it again argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, and that the author had had legal representation. The Committee takes the opportunity to expand on its admissibility findings.

5.5 The State party submits, in general terms, that judicial proceedings against the author remain pending, and that the latter was assigned legal counsel. It is implicit in rule 91 of the Committee's rules of procedure and article 4, paragraph 2, of the Optional Protocol, that a State party to the Covenant should make available to the Committee all the information at its disposal; this includes, at the stage of the determination of the admissibility of a communication, the provision of sufficiently detailed information about remedies pursued by, as well as remedies still available, to the author. The State party has not forwarded such information. It has confined itself to the observation that the author's representatives availed themselves of the legal remedies open to the author, in his best interest. Thus, there is no reason to revise the Committee's decision on admissibility.

6.1 Concerning the substance of Mr. Wolf's allegations, the Committee notes that the State party has confined itself to statements of a general nature, by categorically dismissing the author's claims as baseless and asserting that the judicial procedures in the case complied with the requirements of Panamanian law. Consistent with the considerations detailed in paragraph 5.5 above, article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to furnish the Committee with sufficient detail about the measures, if any, taken to remedy the situation. The summary dismissal of the allegations, as in the present case, does not meet the requirements of article 4, paragraph 2. At the same time, the Committee notes that it is incumbent upon the author of a complaint to substantiate his allegations properly.

6.2 While the author has not specifically invoked article 9 of the Covenant, the Committee considers that some of his claims raise issues under this provision. Although he has claimed that he should have been granted a "grace period" of 48 hours to settle his debts before he could be arrested, the Committee lacks sufficient information to the effect that his arrest and detention were arbitrary and not based on grounds established by law. On the other hand, the author has claimed and the State party has not denied that he was never brought before a judge after his arrest, and that he never spoke with any lawyer, whether counsel of his own choice or public defender, during his detention. In the circumstances, the Committee concludes that article 9, paragraph 3, was violated because the author was not brought promptly before a judge or other judicial officer authorized by law to exercise judicial power.

6.3 The author has complained that he had no access to counsel. The State party explains, however, that he had legal representation, without clarifying whether such representation was provided by State-appointed counsel, nor contesting the author's allegation that he never actually saw a lawyer. In the circumstances, the Committee concludes that the requirement laid down in article 14, paragraph 3(b), that an accused person have adequate time and facilities to communicate with counsel of his own choosing has been violated.

6.4 With respect to the author's right, under article 14, paragraph 3(c), to be tried without

unreasonable delay, the Committee cannot conclude that the proceedings before the Juzgado Octavo of Panama suffered from undue delays. Similarly, in respect of the proceedings before the Juzgado Primero of San Miguelito, it observes that investigations into allegations of fraud may be complex and that the author has not shown that the facts did not necessitate prolonged proceedings.

6.5 The author claims that the State party has violated his right to be tried in his presence, protected by article 14, paragraph 3(d). The Committee notes that the State party has denied this allegation but failed to adduce any evidence to the contrary, such as a copy of the trial transcript, and finds that this provision has been violated.

6.6 The author claims that he was denied a fair trial; the State party has denied this allegation by generally affirming that the proceedings against Mr. Wolf complied with domestic procedural guarantees. It has not, however, contested the allegation that the author was not heard in any of the cases pending against him, nor that he was never served a properly motivated indictment. The Committee recalls that the concept of a “fair trial” within the meaning of article 14, paragraph 1, must be interpreted as requiring a number of conditions, such as equality of arms and respect for the principle of adversary proceedings. *c/* These requirements are not respected where, as in the present case, the accused is denied the opportunity personally to attend the proceedings, or where he is unable properly to instruct his legal representative. In particular, the principle of equality of arms is not respected where the accused is not served a properly motivated indictment. In the circumstances of the case, the Committee concludes that the author’s right under article 14, paragraph 1, was not respected.

6.7 The Committee finally notes that the State party has not addressed the author’s claim of ill-treatment during his detention. In the Committee’s opinion, the physical ill-treatment to which the author was subjected and the denial of food for five days, while not amounting to a violation of article 7 of the Covenant, did violate the author’s right, under article 10, paragraph 1, to be treated with respect for the inherent dignity of his person.

6.8 Finally, the Committee notes that the author was detained for a period of over a year at the penitentiary of Coiba, which according to the author’s uncontested claim is a prison for convicted offenders, while he was unconvicted and awaiting trial. This, in the Committee’s opinion, amounts to a violation of the author’s right, under article 10, paragraph 2, to be segregated from convicted persons and to be subjected to separate treatment appropriate to his status as an un-convicted person. On the other hand, while the author has claimed to have been subjected to forced labour while awaiting his sentence, the Committee considers that this allegation has not been sufficiently substantiated as to raise issues under article 8, paragraph 3(a), of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 9, paragraph 3, 10, paragraphs 1 and 2, and 14, paragraphs 1 and 3(b) and (d), of the Covenant.

8. The Committee is of the view that Mr. Dieter Wolf is entitled to a remedy. The State party is under an obligation to ensure that similar violations do not occur in the future.

9. The Committee would appreciate receiving information, within 90 days, from the State party in respect of measures adopted pursuant to the Committee's views.

[Done in English, French, and Spanish, the English text being the original version.]

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a/ The author claims to have been convicted on nine counts and acquitted on two (para. 2.3).

b/ According to the author, however, he was released on bail in the spring of 1986 and rearrested in August 1986 (paras. 2.6 and 2.7). In his comments of 8 February 1989, the author claims not to know anything about the purported presidential pardon of November 1986, a time subsequent to his second arrest.

c/ See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex 10, sect. E, communication No. 207/1986 (Moraël v. France), views adopted on 28 July 1989, para. 9.3.