

HUMAN RIGHTS COMMITTEE

Giry v. Dominican Republic

Communication No. 193/1985

20 July 1990

VIEWS

Submitted by: Pierre Giry

Alleged victim: The author

State party concerned: Dominican Republic

Date of communication: 23 August 1985

Date of decision on admissibility: 11 July 1988

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

Meeting on 20 July 1990,

Having concluded its consideration of communication No. 193/1985, submitted to the Committee by Pierre Giry 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 the following:

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

1. The author of the communication is Pierre Giry, a French citizen, formerly a resident of Saint-Barthélemy (Antilles), at present detained at a Federal penitentiary in the United States. He is represented by counsel.

The complaint

2. The author claims to be the victim of violations by the Government of the Dominican Republic of article 9, paragraphs 1 and 2, articles 12 and 13 in conjunction with articles 2 and 3 of the International Covenant on Civil and Political Rights. In particular, he contends that his detention of nearly three hours by the Dominican authorities violated article 9, because he was prevented from taking his intended flight to Saint-Barthélemy, thereby depriving him of his right to liberty of movement under article 12, and that he was subjected to an illegal expulsion contrary to article 13 of the Covenant, since he was deported by force without the benefit of any administrative or judicial procedures.

Background

3.1 According to the author, he arrived in the Dominican Republic on 2 February 1985, stayed there for two days and then, on 4 February, went to the airport to buy a ticket in order to leave the country on a flight to Saint-Barthélemy. Two agents in uniform, either belonging to the Dominican police or to the customs service, took him to the police office at the airport, where he was subjected to a thorough search. After two hours and forty minutes he was taken out by a back door leading directly to the runway and made to board an Eastern Airlines plane bound for Puerto Rico. Upon his arrival in Puerto Rico he was arrested and charged with conspiracy and attempt to smuggle drugs into the United States.

3.2 The author was tried before the United States District Court in San Juan, Puerto Rico and convicted of the offences of conspiracy to import cocaine into the United States, and of the use of a communication facility, the telephone, to commit the crime of conspiracy.

3.3 On 30 April 1986 he was sentenced to 28 years of imprisonment and fined \$250,000. He is serving his term of imprisonment at the Federal Correctional Institution at Ray Brook, New York.

3.4 With respect to the requirement of exhaustion of domestic remedies in the Dominican Republic, the author states that remedies could not be effectively used since he was expelled within three hours of his arrest.

The State party's observations

4.1 By note of 24 June 1988 the State party informed the Committee "that Mr. Pierre Giry was deported from the Dominican Republic to the United States of America on the basis of the extradition treaty existing between the two nations and by virtue of the internal law on extradition No. 489 of 22 October 1969". The State party further observed that "in response to this procedure Mr. Giry should have exhausted the remedies provided for under Dominican legislation before seizing the Committee with the case".

4.2 In a further submission dated 8 June 1990, the State Party contends that in respect of the alleged violation of article 9 of the Covenant, the provision is inapplicable to the particular circumstances of the case, since the Dominican authorities had no intention to arrest Mr. Giry and to detain him in Dominican territory; their intention was merely to expel him from Dominican territory. The brief period that he spent at the airport prior to the departure of the

flight for Puerto Rico could not be deemed to be a "detention" within the meaning of article 9. If it were to be considered as such, then the State party argues that it was neither arbitrary nor illegal, since Mr. Giry was internationally sought on charges of drug trafficking. His name had appeared on a list of the United States Drug Enforcement Agency, with which Dominican authorities co-operate in the spirit of international co-operation in the struggle against drug trafficking.

4.3 With respect to the alleged violation of article 13 of the Covenant, the State party contends that there is no violation and invokes that part of the provision that permits summary expulsions where compelling reasons of national security require. It is stated that Mr. Giry constituted a national security danger for the Dominican Republic, which, as any sovereign State, is entitled to take the necessary steps to protect national security, public order, and public health and morals.

4.4 The State party further argues that its actions must be understood in the context of the international efforts to apprehend persons involved in the illegal traffic of drugs, which must be seen as an international crime subject to universal jurisdiction.

Issues and proceedings before the Committee

5.1 When considering the communication at its thirty-third session, the Committee concluded, on the basis of the information before it, that the conditions for declaring the communication admissible had been met and that it raised issues under the Covenant that should be examined on the merits. The author had not submitted the matter for examination elsewhere and there were no effective remedies available in the Dominican Republic which the author could or should have pursued.

5.2 On 11 July 1988 the Committee declared the communication admissible and invited the State party to make its written submission on the merits of the case, in accordance with article 4, paragraph 2, of the Optional Protocol, not later than by 26 February 1989. The State party was further requested to forward to the Committee the text of Law No. 489 on extradition, a copy of the decision to extradite Mr. Giry as well as the text of the relevant laws and regulations governing the expulsion of aliens. Under cover of a note dated 5 October 1989, the State party forwarded a copy of law No. 489. By telefax dated 10 July 1990, the State party asked for an extension of time to furnish other documentation. The Committee understands this request as pertaining to the State party's stated intention of furnishing the records of the United States District Court in Puerto Rico in the court case against the author. It deems it unnecessary, however, to have access to such court records for the consideration of the issues before it.

5.3 The Committee has considered the present communication in the light of all the information provided by the parties. It observes that although the communication concerns an individual suspected of involvement in serious crimes, and later convicted of having perpetrated the very same offences, his rights under the Covenant must be respected.

5.4 The Committee has noted that the author has invoked a number of provisions of the

Covenant, which he alleges to have been violated in his case. The Committee observes, however, that the facts as placed before it, basically raise issues under article 13 of the Covenant. It will limit itself to those issues.

5.5 The State party initially submitted that the author was deported from Dominican territory on the basis of an extradition treaty between the Dominican Republic and the United States of America. The State party has also referred to the action as expulsion. Regardless of whether the action against the author is termed extradition or expulsion, the Committee confirms, as it has done in its general comments on the provision in question, a/ that "expulsion" in the context of article 13 must be understood broadly and observes that extradition comes within the scope of the article, which provides:

"An alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

The Committee notes that, while the State party has specifically invoked the exception based on reasons of national security for the decision to force him to board a plane destined for the jurisdiction of the United States of America, it was the author's very intention to leave the Dominican Republic at his own volition for another destination- In spite of several invitations to do so, the State party has not furnished the text of the decision to remove the author from Dominican territory or shown that the decision to do so was reached "in accordance with law" as required under article 13 of the Covenant. Furthermore, it is evident that the author was not afforded an opportunity, in the circumstances of the extradition, to submit the reasons against his expulsion or to have his case reviewed by the competent authority. While finding a violation of the provisions of article 13 in the specific circumstances of Mr. Giry's case, the Committee stresses that States are fully entitled vigorously to protect their territory against the menace of drug dealing by entering into extradition treaties with other States. But practice under such treaties must comply with article 13 of the Covenant, as indeed would have been the case, had the relevant Dominican law been applied in the present case.

6. 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 as presented disclose violations of article 13 of the International Covenant on Civil and Political Rights and that the State party has an obligation to ensure that similar violations do not occur in the future.

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

Notes

a/ "[Article 13] is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise". (Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40), annex VI, para. 9.)

* The text of an individual opinion submitted by Miss Christine Chanet and Messrs. Francisco Aguilar Urbina, Nisuke Ando and Bertil Wennergren is appended.

APPENDIX

Individual opinion: submitted by Miss Christine Chanet and Messrs. Francisco Aguilar Urbina, Nisuke Ando and Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the views of the Committee on communication No. 193/1985 *Giry v. Dominican Republic*

[Original: French]

In the view of the four signatories of this separate opinion, the communication should be considered in relation to articles 9 and 12 of the Covenant and not to article 13.

It appears from the information available to the Committee at the time when it took its decision that the arrest of Mr. Giry after he had been in the territory of the Dominican Republic for two days, his detention at the airport and his forcible transfer to the aeroplane of a foreign State to which he was handed Over forthwith and against his will should be regarded as an act of violence.

This concept of administrative law is defined as a decision not capable of being related to an act falling within the competence of the administration.

In the present case, the Dominican Republic was not able to produce or refer to any administrative act ordering the expulsion or extradition of Mr. Giry before or after his arrest at the airport.

Had there been an administrative act, even an irregular one, this might have been a case of expulsion falling within the scope of article 13.

In the absence of such an act, identifiable, inter alia, by its date, by the authority taking the decision and by its nature, it appears to the signatories that the arrest of Mr. Giry and his enforced boarding of an Eastern Airlines flight when he wished to travel to Saint-Barth61emy constitute unlawful and arbitrary arrest within the meaning of article 9, paragraph 1, of the Covenant.

Furthermore, since the arbitrary arrest involved not only depriving the author of his liberty but also, and more particularly, preventing him from travelling to another country of his choice and since he was obliged, against his will, to take a flight other than the one which he would have taken, the arrest in question also constitutes, in our opinion, a violation of

article 12 of the Covenant.

Christine CHANET
Francisco AGUILAR URBINA
Nisuke ANDO
Bertil WENNERGREN