

## HUMAN RIGHTS COMMITTEE

### Ortega v. Ecuador

Communication No 481/1991\*\*

8 April 1997

CCPR/C/59/D/481/1991\*

### VIEWS

*Submitted by: Jorge Villacrés Ortega [represented by Ha. E. Monge]*

*Victim: The author*

*State party: Ecuador*

*Date of communication: 4 November 1991 (initial submission)*

*Date of decision on admissibility: 16 March 1995*

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

Meeting on 8 April 1997,

Having concluded its consideration of communication No. 481/1991 submitted to the Human Rights Committee on behalf of Mr. Jorge Villacrés Ortega 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, his counsel and the State party,

Adopts the following:

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

1. The author of the communication is Jorge Villacrés Ortega, an Ecuadorian citizen, residing in Quito, Ecuador. At the time of submission of the communication he was imprisoned at the Círculo de Varones at Quito. He claims to be a victim of violations by Ecuador of articles 2, 7, 9 and 14 of

the International Covenant of Civil and Political Rights. He is represented by the Comisi n Ecu nica de Derechos Humanos (CEDHU), a non-governmental organization in Quito, Ecuador.

#### The facts as submitted by the author

2.1 The author is a carpenter by profession. He was detained on 19 October 1989 by police officers, who found less than one gram of cocaine in his pockets, and arrested him on suspicion of trafficking in cocaine. He was tried by the Tribunal Cuarto de Pichincha, found guilty as charged and sentenced, on 3 June 1991, to eight years' imprisonment. He appealed to the Supreme Court of Justice, which quashed the conviction and ordered him sent to a rehabilitation programme for drug addicts.

2.2 With regard to his arrest, the author states that he was taken to Interpol by agents of the SIC-P (security police), and that a representative of CEDHU visited him at the police station and saw the traces of beatings on his back, arm and stomach.

2.3 He admitted to possession of cocaine, which he claimed to have bought for his own consumption. The forensic tests carried out proved that he was an addict. Although the report from the office of the public prosecutor recommended that he be sent to a hospital for disintoxication treatment, this was ignored by the sentencing judge.

2.4 Counsel states that the author was tortured by prison personnel following an escape attempt by the author's cellmates, on 1 June 1990. The medical report<sup>1</sup> stated that "... he had a reddish inflammation on both eyelids due to the introduction of aji (peppers) and gas; tear and prickly conjunctivitis; multiple round black traces, on his abdomen and thorax, resulting from the application of electric discharges, bruises on his thigh and skin stripped off his leg ...".

2.5 With respect to the exhaustion of domestic remedies, the author, while in prison, filed a recurso de amparo. There is no further information concerning the status of that recourse.

#### The complaint

3.1 The author claims to be a victim of a violation of article 7 because he was subjected to torture and ill-treatment following his arrest. This was attested to by a member of CEDHU.

3.2 Although the author does not specifically invoke article 10 of the Covenant, the facts before the Committee concerning alleged ill-treatment while the author was imprisoned appear to raise issues under that article.

3.3 The author also claims to be a victim of a violation of article 9 because he was subjected to arbitrary arrest and detention, although he was not a drug trafficker, but only a consumer.

3.4 It is further submitted by the author that his trial was unfair, in violation of article 14 of the Covenant. In this respect, he contends that he was convicted despite the reports submitted by the public prosecutor's office recommending that he undergo drug rehabilitation treatment, in accordance with Ecuadorian law.

### The Committee's decision on admissibility

4. On 26 August 1992, the communication was transmitted to the State party, which was requested to submit to the Committee information and observations in respect of the question of admissibility of the communication. Despite two reminders, sent on 10 May 1993 and 9 December 1994, no submission had been received from the State party prior to the Committee's admissibility decision.

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 The Committee ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter had not been examined under another procedure of international investigation or settlement.

5.3 The Committee noted with concern the absence of cooperation from the State party, despite two reminders addressed to it. On the basis of the information before it, the Committee found that it was not precluded from considering the communication under article 5, paragraph 2(b), of the Optional Protocol.

5.4 With respect to the author's complaint that he had been subjected to torture and ill-treatment in violation of articles 7 and 10 of the Covenant, as attested to by a member of CEDHU, the Committee found that the facts as submitted by the author were substantiated, for purposes of admissibility.

5.5 The Committee found that, for purposes of admissibility, the arrest of the author on possession of cocaine was not arbitrary. Nor had the author submitted sufficient evidence to substantiate, for purposes of admissibility, a claim of a violation of article 14 of the Covenant.

6. On 16 March 1995, the Human Rights Committee decided that the communication was admissible. The author should be requested to provide medical reports in respect of the allegations of ill-treatment he had suffered.

### Observations by the State party about the merits of the case and comments thereon by the author

7.1 In two submissions on the merits of the communication, dated 18 October 1995 and 23 May 1996, the State party states that Jorge Oswaldo Villacrés Ortega has been arrested 22 times on a variety of offences, including the 1989 detention for possession of cocaine.

7.2 With regard to the allegations of torture and ill-treatment made by the author (see paragraphs 2.2 and 2.4 above), the State party forwards the results of a police investigation, dated 1 April 1996 and signed by two police officials of the Pichincha District, indicating that no medical report or other evidence of torture or ill-treatment of Mr. Villacrés has been found. Reference is made to allegations by the defence counsel of Mr. Villacrés to the effect that a medical report did exist. The police inspectors allegedly were unable to obtain a copy of the report from the CEDHU office at Quito.

8.1 By a submission of 31 May 1996, CEDHU confirms that Mr. Villacrés was detained on 19 October 1989 and released on 17 January 1992. With respect to the alleged ill-treatment during detention, CEDHU states that it does not have the medical report requested by the Committee in paragraph 6(c) of the admissibility decision. CEDHU contends that the report is probably filed with the record of the Villacrés case before the Ecuadorian Supreme Court.

8.2 On 12 October 1996, CEDHU submitted a copy of the medical report, dated 9 June 1990 and certified before a magistrate (Juez Primero de lo Penal de Procuraduría), stating that the injuries suffered were consistent with those produced by irritating substances and by the application of electrodes.

### Examination on the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 With regard to the author's allegations of ill-treatment (see paragraphs 2.2 and 2.4 above), two issues arise: in respect of the first, i.e., the ill-treatment the author suffered at the hands of the police following his arrest, the Committee considers that this claim has not been substantiated. As to the second issue, i.e., the ill-treatment the author suffered after an escape attempt by his cellmates, the Committee has noted the State party's claim that it was unable to trace the author's medical reports, although the copy in the case file reveals that this report was certified in the presence of a magistrate. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated by the medical reports submitted by counsel, in particular that of 9 June 1990, where it is confirmed that the author showed signs of ill-treatment. In the Committee's view, the treatment suffered by the author after the escape attempt of his cellmates amounts to cruel and inhuman treatment, in violation of article 7 and article 10, paragraph 1, of the Covenant.

10. 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 article 7 and article 10, paragraph 1, of the Covenant.

11. Pursuant to article 2, paragraph 3(a), of the Covenant, the author is entitled to an effective remedy, entailing compensation for the ill-treatment suffered. The Committee reaffirms the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person. The State party is under an obligation to ensure that similar events do not occur in the future.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation is established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views.

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\* Pursuant to rule 85 of the rules of procedure, Committee member Julio Prado Vallejo did not take part in the approval of the Committee's views.

\*\* Participants: MM. Nisuke Ando, Prafullachandra N. Bhagwati et Thomas Buergenthal, Mme Christine Chanut, M. Omran El Shafei, Mmes Elizabeth Evatt, Pilar Gaitan de Pombo, MM. Eckart Klein et David Kretzmer, Mmes Cecilia Medina Quiroga, Laure Moghaizel, MM. Fausto Pocar, Martin Scheinin, Danilo Türk et Maxwell Yalden.

[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 annual report to the General Assembly.]