



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13-31 October 2008

DECISION

Communication No. 1504/2006

Submitted by: José Patricio Cornejo Montecino (represented by
counsel, Eduardo Lavanderos)

Alleged victim: The author

State party: Chile

Date of communication: 2 August 2006 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the
State party on 31 October 2006 (not issued in document
form)

Date of adoption of decision: 30 October 2008

Subject matter: Protection of a detainee from assaults committed on him by
other inmates

* Made public by decision of the Human Rights Committee.

Procedural issue: Lack of substantiation

Substantive issue: Violation of the author's right to have his complaints investigated

Articles of the Covenant: 3; 6, paragraph 1; 9, paragraphs 1 and 3; 10, paragraph 2 (a); 14, paragraph 1; and 26

Articles of the Optional Protocol: 2

[ANNEX]

Annex

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Ninety-fourth session

concerning

Communication No. 1504/2006*

Submitted by: José Patricio Cornejo Montecino (represented by counsel,
Eduardo Lavanderos)

Alleged victim: The author

State party: Chile

Date of communication: 2 August 2006 (initial submission)

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

Meeting on 30 October 2008,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 2 August 2006, is José Patricio Cornejo Montecino, a Chilean citizen born in 1973. He claims to be the victim of violations by Chile of articles 3; 6, paragraph 1; 9, paragraphs 1 and 3; 10, paragraph 2 (a); 14, paragraph 1; and 26 of the Covenant. The author is represented by counsel. The Optional Protocol entered into force for the State party on 28 August 1992.

* The following members of the Committee participated in the consideration of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

The facts as submitted by the author

2.1 In 2005 the author was being held in pretrial detention ordered by the 26th Criminal Court of Santiago, having been charged with the murder of a drug dealer. He states that during his detention he was subjected to threats and attacks by other prisoners on a number of occasions, first in the South Santiago remand centre, where he was the victim of a failed murder attempt, and later in Colina II prison.¹ As a result of an assault committed on him in Colina II on 16 December 2005, he had to be interned in the prison hospital.² The author filed a complaint concerning these incidents with the 26th Criminal Court which sent a letter to the prison governor requesting, inter alia, that he consider transferring the author to Los Andes prison. Despite this, no protective measures were taken. He states further that on 5 December 2005 his lawyer informed the judge that an individual had offered a 500,000 peso reward for killing him in prison. The judge sent three letters to the prison governor, but despite this, no measures were taken to protect the author.

2.2 On 31 December 2005 he was again threatened and beaten by other prisoners in Colina II prison, causing serious injuries. As a result he was transferred for his own protection to a punishment cell in the same block, which, according to the author, did not provide any protection as he was still in the block in which he had been attacked.

2.3 In view of the above, the author filed an application for protection of constitutional guarantees with the Santiago Court of Appeal on 3 January 2006. On 30 January 2006 the court declared the appeal inadmissible on the grounds that the case lay outside the scope of this

¹ The following letters from the 26th Criminal Court are included in the file:

- A letter dated 13 July 2005 addressed to the South Santiago remand centre, requesting the latter to take appropriate security measures to protect the author, “and to consider a transfer to another prison in view of the serious assaults to which the prisoner has been subjected. We inform you that the accused requests a transfer to the Puente Alto remand centre or, failing that, Colina II prison”
- A letter dated 14 December 2005, addressed to the governor of Colina II prison, requesting the latter to “take appropriate security measures to protect the accused José Patricio Cornejo Montecinos, who says he has been assaulted and threatened with death by other inmates. Mr. Cornejo Montecinos, in a statement to this court, expressed the wish to be transferred from cell block 13, where he is currently being held, since this is a cell block for convicted prisoners”

² The file contains a report dated 16 January 2006 from the prison governor to the President of the Court of Appeal informing him of the incident and the author’s request for a transfer, first to cell block 8, which was not possible, and then to block 9. The report states that the transfer to cell block 9 was carried out on 3 January 2006, and that the prisoner had “remained there without any problem with his fellow inmates, and maintained his request for a transfer to Los Andes, Casablanca or Melipilla prison, regarding which a decision should be taken by the competent court”.

procedure. According to the court, the procedure of application for constitutional protection is intended to restore the rule of law when it has been disrupted by arbitrary or illegal acts or omissions that threaten, interfere with or deny the legitimate exercise of any of the guarantees explicitly referred to in article 20 of the Political Constitution of the Republic, without prejudice to other legal proceedings.

2.4 On 2 February 2006, the author filed an appeal with the same Court, which declared it inadmissible on 6 February 2006. The author filed proceedings for review of leave to appeal with the Supreme Court on 8 February 2006. Those proceedings were rejected on 24 May 2006.

The complaint

3. The author claims that the facts described constitute a violation of articles 3; 6, paragraph 1; 9, paragraphs 1 and 3; 10, paragraph 2 (a); 14, paragraph 1; and 26 of the Covenant. He states that the offences committed against him were not investigated by the prosecutor's office or the courts with which he had filed complaints, that is the 26th Criminal Court and the Santiago Court of Appeal. Neither had any measure been taken to protect the author in prison.

The State party's observations

4.1 In its observations of 19 June 2007 the State party informs the Committee that the author was interned in the South Santiago pretrial detention centre on 15 June 2005 on a murder charge. On 25 July 2005 he was transferred to Colina II prison as a protective measure, having received death threats from inmates of the former facility, as he stated in his intake interview, for having murdered a drug dealer in Pudahuel municipality. After completing the required procedures in the classification office of Colina II prison, he was placed in isolation blocks 13 and 12 in order to ensure his safety. On 16 December 2005 he appeared at the door to block 13, his clothes bloodied, stating that he had been attacked by other prisoners. He was given first aid in the prison infirmary and transferred to the Colina emergency medical unit, where he was diagnosed with a "penetrating abdominal injury". He was transferred from there to the prison hospital, where he stayed until he was discharged and returned to Colina II on 19 December 2005.

4.2 In view of the gravity of the incident, and in accordance with article 175 of the Code of Criminal Procedure, the governor of Colina II prison reported the incident to the local prosecutor's office of Colina, first by telephone and subsequently in incident report No. 126 dated 16 December 2005.

4.3 On 20 December 2005, the author was reclassified and placed in block 12, where prisoners are held for their personal protection. However, he was thrown out of that block by the other prisoners on 1 January 2006. He was therefore transferred to isolation wing 16, where he remained until 3 January 2006, when he was again reclassified and placed in cell block 9 for inmates classified as low-level offenders.

4.4 On 25 January 2006 he was transferred to Los Andes prison on the order of the 26th Criminal Court of Santiago. The Security Department of the national prison service, however, proposed that the author be kept in Colina II, since he was classified as a high-level offender, was a multiple recidivist, and had received a large number of reprimands and sanctions for breaches of prison rules, including attacks on inmates and threats to staff. In view of his record,

his transfer to Los Andes represented a custody risk, given the overcrowded conditions in that facility. The prison service suggested that he be transferred to Valparaiso prison complex, since it met the necessary security requirements to hold this type of prisoner.

4.5 In his intake interview in Los Andes he stated that he “received death threats in other facilities and that there is a price on his head, since he killed a dealer and abducted his daughter in a drug snatch”. During his stay in that facility he received a large number of reprimands and sanctions for breaches of prison rules.

4.6 According to a statement by the author on 3 January 2007, on that date he was in good health, did not have any problems with other inmates and was attending a furniture-making workshop. According to a medical report dated 12 January 2007, he was in excellent health and was not suffering any after-effects of his injuries.

4.7 The State party asserts that since the author’s internment in the prison system he has been constantly provided with all the necessary measures to protect his life and physical integrity and has received appropriate medical assistance; there had been no violation of his rights. It states further that there is no record of his having been a victim of a murder attempt during his detention.

The author’s comments

5.1 On 3 January 2008 the author replied to the State party’s observations. He points out that when he was threatened with death no protective measures were taken, and that he was held with convicted prisoners even though he was awaiting trial. The death threats and murder attempts to which he was subjected were never investigated, despite the fact that he reported these offences.

5.2 The author again points out that the remedies he sought were unsuccessful and that when he filed an application for protection he requested a hearing from the Court of Appeal, but that the court did not grant his request.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As it is obliged to do pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The issue before the Committee is whether the author’s rights under the Covenant were violated in that the threats and attacks to which he was allegedly subjected were not investigated, and no protective measures were taken to prevent their recurrence. The Committee observes that the governor of Colina II prison informed the local public prosecutor’s office of Colina of the incidents that occurred on 16 December 2005. However, the author does not provide any information on action taken on that report by the public prosecutor’s office, or on any applications he made while in prison to have the various incidents effectively investigated. The author only informed the Committee that an application for protection was filed and processed.

From the documents in the file, including the decisions of the Court of Appeal, the Committee concludes that the application for protection was not the appropriate remedy for investigating the offences allegedly committed against the author.

6.4 Concerning the author's claim that he was not provided with protective measures to prevent assaults from other prisoners, the Committee observes that the author was transferred several times to ensure his protection. On 25 July 2005 he was transferred from the South Santiago detention centre to Colina II prison, where he stayed in blocks 13, 12, 16 and 9, each time being moved in order to ensure his protection, until he was finally transferred to Los Andes prison. The author has not said that other measures should have been taken to guarantee his safety.

6.5 In view of the foregoing, the Committee considers that the author has not substantiated his claims sufficiently for purposes of admissibility and considers that the communication is inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the Spanish 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.]
