

HUMAN RIGHTS COMMITTEE

García v. Ecuador

Communication No. 319/1988

5 November 1991

CCPR/C/43/D/319/1988*/

VIEWS

Submitted by: Edgar A. Cañón García

Alleged victim: The author

State party: Ecuador

Date of communication: 4 July 1988

Date of the decision on admissibility: 18 October 1990

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

Meeting on 5 November 1991,

Having considered communication No. 319/1988, submitted to the Committee by Edgar A. Cañón García 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

The facts as submitted by the author:

1. The author of the communication (initial submission dated 4 July 1988 and subsequent

correspondence) is Edgar A. Cañón García, a Colombian citizen currently imprisoned on a drug-trafficking conviction at the penitentiary in Anthony (Texas/New Mexico), United States of America. He is represented by counsel.

2.1 The author lived in the United States of America for 13 years until 1982, when he returned to Bogotá, Colombia, where he resided until July 1987. On 22 July 1987, he travelled to Guayaquil, Ecuador, with his wife. At around 5 p.m. the same day, while walking with his wife in the reception area of the Oro Verde Hotel, they were surrounded by 10 armed men, reportedly Ecuadorian police officers acting on behalf of Interpol and the United States Drug Enforcement Agency (D.E.A.), who forced them into a vehicle waiting in front of the hotel. He adds that he asked an Ecuadorian police colonel whether the Ecuadorian police (Policía Nacional Ecuatoriana) had any information about him; he was told that the police merely executed an "order" coming from the Embassy of the United States. After a trip of approximately one hour, they arrived at what appeared to be a private residence, where Mr. Cañón was separated from his wife.

2.2 He claims to have been subjected to ill-treatment, which included the rubbing of salt water into his nasal passages. He spent the night handcuffed to a table and a chair, without being given as much as a glass of water. At approximately 8 a.m. the next morning, he was taken to the airport of Guayaquil, where two individuals, who had participated in his "abduction" the previous day, identified themselves as agents of the D.E.A. and informed him that he would be flown to the United States on the basis of an arrest warrant issued against him in 1982.

2.3 In this context, the author notes that agents of the D.E.A. had offered him, in the course of a covert operation in 1982, to carry out a drug-trafficking operation, which he had declined. He submits that he never committed a drug-related offence, and argues that the U.S. authorities decided not to follow the formal extradition procedures under the United States-Ecuador Extradition Treaty, since the possibility of obtaining an extradition order by an Ecuadorian judge would have been remote.

2.4 After it had been ascertained that Mr. Cañón spoke and understood English, the so-called "Miranda rights" (after a landmark decision of the United States Supreme Court requiring criminal suspects to be informed of their right to remain silent, to obtain the assistance of a lawyer during interrogation, and that statements made by them may be used against them in court) were read out to him, and he was informed that he was detained by order of the United States Government. The author asked for permission to consult with a lawyer or to speak with the Colombian Consul at Guayaquil, but his request allegedly was turned down; instead, he was immediately made to board a plane bound for the United States.

2.5 As to the requirement of exhaustion of domestic remedies, the author indicates that he was unable to bring his case before an Ecuadorian judge so as to be able to determine the legality of his expulsion from the country. He further indicates that any recourse to the Ecuadorian courts in his current situation would not be effective; in this context, he notes that he does not have the financial means to seize the Ecuadorian courts, nor the

benefit of legal assistance in Ecuador, which would enable him to start civil action and/or to seek criminal prosecution of those responsible for his alleged ill-treatment.

The complaint:

3. The author submits that the facts described above constitute a violation of articles 2, 5, paragraph 2, 7, 9, paragraph 1, 13 and 17 of the International Covenant on Civil and Political Rights. In particular, he contends that, in the light of the existence of a valid extradition treaty between the State party and the United States at the time of his apprehension, he should have been afforded the procedural safeguards provided for in said treaty.

The State party's information and observations:

4.1 The State party did not make any submission prior to the adoption of the Committee's decision declaring the communication admissible. On 11 July 1991, it informed the Committee as follows:

"The act in question occurred on 22 July 1987, before the present administration took office. Furthermore, the citizen in question has not submitted any kind of application or recourse to the competent national authorities.

Notwithstanding the foregoing, since it is the basic policy of the Ecuadorian Government to monitor the application of and respect for human rights, especially by the law enforcement authorities, a thorough and meticulous investigation of the act has been conducted which has led to the conclusion that there were indeed administrative and procedural irregularities in the expulsion of the Colombian citizen, a fact which the Government deplores and has undertaken to investigate in order to punish the persons responsible for this situation and to prevent the recurrence of similar cases in the country.

Moreover, it should be pointed out that, in compliance with clear legal provisions emanating from international agreements and national legislation, Ecuador is conducting a sustained and resolute struggle against drug trafficking which, on this occasion, regrettably caused police officers to act with a degree of severity that went beyond their instructions and responsibilities. In any event, acts such as this are certainly not consistent with the Government's policies and actions which are in fact directed towards assuring respect and observance of the human rights and fundamental freedoms of the individual, whether he is a national or a foreigner, while at the same time, ensuring public order and, in this specific case, meeting the Government's concern to maintain such an especially valuable asset as social peace and its obligation to combat drug trafficking with every legal means available to it in order to avoid situations which would be regrettable and which are occurring in a number of countries in the region and adjoining Ecuador.

The Government will communicate the relevant information on the measures taken to punish the persons responsible for this act."

4.2 The Committee welcomes the frank cooperation of the State party.

Issues and proceedings before the Committee:

5.1 On 18 October 1990, the Committee declared the communication admissible inasmuch as it appeared to raise issues under articles 7, 9 and 13, in conjunction with article 2, of the Covenant. With respect to the requirement of exhaustion of domestic remedies, the Committee found that, on the basis of the information before it, there were no domestic remedies that the author could have pursued. The Committee further observed that several of the author's allegations appeared to be directed against the authorities of the United States, and deemed the relevant parts of the communication inadmissible, since the United States had not ratified, or acceded to, the Covenant or the Optional Protocol. Inasmuch as the author's claim under article 17 of the Covenant was concerned, the Committee found that Mr. Cañón García had failed to sufficiently substantiate, for purposes of admissibility, his allegation.

5.2 As to the merits, the Human Rights Committee notes that the State party does not seek to refute the author's allegations, in so far as they relate to articles 7, 9 and 13 of the Covenant, and that it concedes that the author's removal from Ecuadorian jurisdiction suffered from irregularities.

6.1 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it reveal violations of articles 7, 9 and 13 of the Covenant.

6.2 In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take measures to remedy the violations suffered by Mr. Cañón García. In this connection, the Committee has taken note of the State party's assurance that it is investigating the author's claims and the circumstances leading to his expulsion from Ecuador, with a view to prosecuting those held responsible for the violations of his rights.

7. The Committee would appreciate receiving from the State party, within ninety days of the transmittal to it of this decision, all pertinent information on the results of all its investigations, as well as on measures taken to remedy the situation, and in order to prevent the repetition of such events in the future.

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

Footnotes

* Made public by decision of the Human Rights Committee.