

## HUMAN RIGHTS COMMITTEE

### A. A. G. v. Colombia

Communication No. 697/1996

18 March 1998

CCPR/C/62/D/697/1996\*

### ADMISSIBILITY

*Submitted by:* A. A. G. (name deleted)

*Alleged victim:* The author

*State party:* Colombia

*Date of communication:* 3 November 1995

*Documentation references:* List: CCPR/C/CL/R.63/Add.2; Prior decision - Special Rapporteur's rule 91 decision, transmitted to the State party on 17 May 1996. (Not issued in document form)

*Date of present decision:* 18 March 1998

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

#### **Decision on admissibility**

1. The author of the communication is A. A. G., a Colombian citizen, residing in Florida with his extended family. He claims that they are victims of violations by Colombia of the International Covenant on Civil and Political Rights. No articles are specifically invoked, but it would appear that articles 6 paragraph 1; 9 paragraph 1; 12; 17, and 23 paragraph 1, of the Covenant are at issue.

#### The facts as submitted by the author

2.1 The author states that on 28 April 1994, at 06:15 am, he and his family were forced to leave Bogota, Colombia for the United States. The author had been a witness in a trial where he had been testifying under terms of a special legislation for Protection of Witnesses. Thus, his identity as a

witness should have been concealed from the public. However, his identity was revealed by the Public Prosecutor's Office 1/, in violation of said legislation, thereby allegedly placing the author's life and that of his family at risk.

2.2 The author claims that he and his family left Bogota under the protection of the said legislation and with a commitment, from the Colombian authorities, to provide means of subsistence for him and his family in the United States. He claims that he has received no economic support from the authorities in spite of repeated requests to this end, both through the Colombian Consulate in Miami and through direct requests to the Prosecutor's Office. He has sent letters to various authorities in Colombia, including the Ombudsman (Procuraduria para la Defensa de los Derechos Humanos), the President of the Republic, etc.

2.3 The author notes that the replies he has received state that he chose to leave Colombia voluntarily and if he wishes to qualify for assistance under the Protection of Witnesses Act, he must return to Colombia. He claims that the replies are simply a cover up by the authorities, who failed in their obligation to keep his identity secret.

2.4 The author states that the authorities, far from carrying out a diligent investigation into the incident, have done everything possible to cover it up. No officers from the office that revealed his identity have been disciplined.

### The complaint

3. The author contends that the events described entail violations of his rights under the Covenant, namely his rights to life, to security of person, and to family life. The author also invokes the right to work, because he has had to leave behind his business.

### The State party's observations and the author's reply

4.1 By submission of 14 November 1996, the State party argues that the communication should be declared inadmissible, for non exhaustion of domestic remedies.

4.2 The State party concedes that the author was the primary witness in an extortion and kidnapping case in his home town of Ibague. However, it states that under Resolution No. 0-663 of 1993 Programme for the Protection of Witness, the author had to accept the terms of the Protection Programme, requiring internal relocation within Colombia, before being eligible for relocation out of the country. The State party affirms that the author refused the internal relocation and consequently could not be relocated to the United States at the expense of the Colombian authorities. It further affirms that it was the author's spontaneous decision to travel abroad, that he only requested help in obtaining entry visas for the United States and a ticket for himself. It affirms that it never informed the USA embassy in Bogota that the author would be travelling at the request and expense of the Prosecutors Office (Oficina de Proteccion de Asistencia a victimas y testigos). It further informs the Committee that it has documents (Acta de Compromiso) 2/ whereby the author only accepted protection from the authorities from the town of Ibague, as well as help in obtaining entry visas to the USA and a ticket for himself. A further letter from the author to the Public Prosecutor (Fiscal General) in which he requests tickets for himself and his family and expresses

the hope that he will receive support from his family members in the United States, is said to support the State party's contention that the author did not expect his expenses to be borne by the Protection Programme.

4.3 With respect to the allegation that the State party failed to guarantee the author's safety and life by divulging his identity, it is contended that the document where the author's identity was divulged is only an internal one, consequently, there was no risk to his life. The State party contends that it is the author himself with his series of complaints to national and international organisms who has put his own life at risk, by failing to exercise due caution. The internal investigation further showed that revealing the author's identity out him at no risk anyway, as he had already been threatened by the time his identity was divulged. Accordingly, the State party states that the investigation was closed.

5. By letter of 10 October 1997, the author informs the Committee that the State Council (Consejo de Estado) on 26 February 1997 revoked the judgement of 11 December 1996 issued by the Administrative Tribunal of Cundinamarca (Tribunal de lo Contencioso Administrativo de Cundinamarca, Sección Primera) denying him financial assistance. The State Council (Consejo de Estado) ordered he be paid maintenance in the United States as well as travel expenses. He initiated actions for the implementation of the judgement. On 11 June 1997, the Public Prosecutor's Office (Procuraduría Delegada para la Vigilancia Judicial) informed him that instructions to that effect had been issued. However, on 17 July 1997, the Administrative Tribunal (Tribunal de lo Contencioso Administrativo de Cundinamarca, Sección Primera) had to order the Public Prosecutors Office to pay him. On 22 July 1997, the Office of the Programme of Protection and Assistance contacted him through the Colombian Consulate in Miami, to transfer the first payment and informed him of the procedure to be followed for the next payments and requested a meeting with him. The author reiterates that he was not received the maintenance accorded him by the Courts.

6. In a further submission, dated 15 October 1997, the State party informs the Committee of the above and points out that it has requested the Constitutional Court to review the case, since the judgment did not, in the Prosecutor's Office opinion, expressly indicate which fundamental rights had been violated. Consequently, it contends that domestic remedies have not been exhausted. Furthermore it claims that the author has failed to inform the State party, through the Colombian Consulate in Miami, of where he wishes to be paid, making it is impossible for it to comply with the decision of the State Council (Consejo de Estado). It is contended that the author sent this information to his lawyer in Bogota who according to the State party had failed to furnish it.

#### Issues and proceedings before the Committee

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules or procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has taken note of the State party's request that the communication be declared inadmissible for failure to exhaust domestic remedies.

7.3 With respect to the author's allegation that his right to life has been violated the Committee

notes that he has initiated several actions in order to clarify the responsibilities in respect of the divulgation of his identity, which allegedly forced him to flee the country. The Committee considers that in the circumstances of the case, it must be concluded that the author has diligently pursued remedies aimed at identifying and clarifying his situation. More than three years after the events at the basis of the present communication, those responsible for the incident have not been identified, nor disciplined. The Committee concludes that in the circumstances, domestic remedies have been “unreasonably prolonged” within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

7.4 With respect to the author’s allegations, under articles 6, paragraph 1; 9 paragraph 1; 12; 17 and 23, paragraph 1, of the Covenant, the Committee considers that they have been sufficiently substantiated, for purposes of admissibility; they should accordingly be considered on their merits.

8. The Committee therefore decides:

(a) that the communication is admissible;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which she may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the author.

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\*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ The author received a telegramme with his full name and the details of the trial in which he was a witness.

2/ The State party has not submitted copy of the supporting documents.