



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
Eighty-first session
5 July -30 July 2004

DECISION

Communication No. 697/1996

<i>Submitted by:</i>	Alfonso Aponte Guzmán (not represented by counsel)
<i>Alleged victim:</i>	The author, his wife and his children
<i>State party:</i>	Colombia
<i>Date of communication:</i>	3 November 1995 (initial submission)
<i>Documentation references:</i>	Special Rapporteur's rule 91 decision, transmitted to the State party on 17 May 1996 (not issued in document form) CCPR/C/74/D/959/2000, decision on admissibility adopted on 18 March 1998
<i>Date of adoption of decision:</i>	5 July 2004

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

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

Eighty-first session

concerning

Communication No. 697/1996**

Submitted by: Alfonso Aponte Guzmán (not represented by counsel)

Alleged victim: The author, his wife and his children

State party: Colombia

Date of communication: 3 November 1995 (initial submission)

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

Meeting on 5 July 2004,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication dated 7 February 1996 is Alfonso Aponte Guzmán, a Colombian national resident in the United States of America. The author is also acting on behalf of his wife, Matilde Landazabal López, and his children, William Alfonso, Ricardo, Clara Milena and Víctor Adolfo Aponte Landazabal. He alleges violations of the International Covenant on Civil and Political Rights by Colombia. No articles are specifically invoked, but those at issue are articles 6, paragraph 1; 9, paragraph 1; 12; 17; and 23, paragraph 1, of the Covenant. The author is not represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The facts as submitted by the author

2.1 In 1993, the author was a witness in a trial in Ibagué, Colombia, in connection with an offence of extortion and kidnapping. He states that he had testified under special witness-protection legislation and that his identity should therefore not have been made public. However, on 2 November 1993, he received a telegram addressed to him at his home, from the coordinator of the Anti-Extortion and Kidnapping Unit of the Public Prosecutor's Office, containing a summons to give further evidence against the kidnap gang. He claims it was the Public Prosecutor's Office that revealed his identity, in violation of the special legislation on the protection of witnesses, thereby putting his and his family's lives at risk.

2.2 The author claims to have received anonymous threatening letters and telephone calls. The Office for the Protection of Victims and Witnesses gave him protection in Ibagué, providing judicial escorts from 6 September 1993 to 28 April 1994. It later assisted him in obtaining visas to enable him and his family to travel to the United States, which they did on 28 April 1994, leaving Bogotá for Miami.

2.3 The author claims that he and his family left Bogotá under the protection of the said legislation and with a commitment from the Colombian authorities to provide them with means of subsistence in the United States. He claims, however, that he received no financial support from the authorities for a long time, in spite of repeated requests, both through the Colombian Consulate in Miami and directly to the Prosecutor's Office.

2.4 The author claims that the authorities of his country denied him such assistance on the grounds that he had left Colombia voluntarily, and said that if he wished to avail himself of assistance under the special witness-protection legislation he would have to return to Colombia.

2.5 On 26 October 1995, the United States granted the author and his family asylum and issued the author with a work permit.

2.6 The author brought an action of protection for restitution of his rights and provision of protection. On 11 December 1996, his claim was rejected by the Administrative Tribunal of Cundinamarca.

2.7 Mr. Aponte appealed to the General Secretariat of the State Council, which revoked the Cundinamarca Administrative Tribunal judgement on 20 February 1997 and ruled instead that the author's rights should be protected; it ordered the Public Prosecutor's Office to provide full protection and social assistance to the Aponte Landazabal family, including back payment of expenses for their removal from the country and the costs of displacement and maintenance for as long as circumstances required. The Public Prosecutor's Office requested a review of this decision by the Constitutional Court.

The complaint

3.1 The author contends that the events described amount to violations of his rights under the Covenant, namely his rights to life, to security of person, and to family-life. He claims

that, as a result of the State party's failure to keep his identity as a witness secret, he received death threats that compelled him and his family to leave Colombia; and that in the United States he had no means of subsistence. He claims that the authorities, far from carrying out a diligent investigation into the incident, have done everything possible to cover it up and that no officials from the office that revealed his identity have been disciplined. Moreover, he claims that he has not received any compensation.

3.2 The author also claims a violation of the right to work, because on leaving Colombia he had to leave his business behind.

The State party's observations on admissibility

4.1 In its submission of 14 November 1996, the State party argues that the communication should be declared inadmissible, on the grounds that domestic remedies have not been exhausted.

4.2 The State party concedes that the author was the primary witness in an extortion and kidnapping case in his home town of Ibagué. However, it states that under resolution No. 0-663 of 1993, on the Programme to Protect and Assist Witnesses and Threatened Persons, the author should have been relocated within Colombia before being entitled to relocation outside the country. The author had refused internal relocation and consequently could not be relocated in the United States at the expense of the Colombian authorities. The State party further claims that it was Mr. Aponte's spontaneous decision to travel abroad, and that he only requested help in obtaining an entry visa for the United States and a ticket for himself. The State party claims that it never informed the United States Embassy in Bogotá that the author would be travelling at the request and expense of the Office for the Protection of Victims and Witnesses. It also states that, in a letter to the Public Prosecutor, the author expressed the hope that he would receive support from family members in Miami.

4.3 The State party denies that it failed to guarantee the Aponte family's life and security, since the document mentioning the author's identity was a purely internal one and thus did not put his life at risk. The State party contends that it is the author himself, with his series of complaints to national and international bodies, who has endangered his life by failing to exercise due caution.

4.4 In additional comments dated 8 November 1996, the State party reports that, by a decision of 19 December 1995, the Judicial Monitoring Division found that there had been no negligence on the part of the then Head of the Office for the Protection of Victims and Witnesses in the Public Prosecutor's Office, since there was no evidence that any outside party had knowledge of the telegram addressed to the author, and that the telegram did not, therefore, constitute a threat to the Aponte family. It adds that, according to the documents submitted, the author had by that time already received threats, and it was for that reason he was seeking the protection of the Office.

4.5 In its comments dated 15 October 1997, the State party informs the Committee that the State Council had ordered that the author and his family should be paid maintenance in the United States, as well as travel expenses. It points out that it has requested the Constitutional Court to review the case and that domestic remedies have consequently not been exhausted.

The author's comments on admissibility

5. On 10 October 1997, the author informed the Committee that, on 26 February 1997, the State Council had revoked the 11 December 1996 judgement of the Administrative Tribunal of Cundinamarca, denying him financial assistance. He claims that he brought an action for implementation of the judgement, but that, when it was not implemented, the Administrative Tribunal of Cundinamarca ordered the Public Prosecutor's Office, on 17 July 1997, to comply with the order. Furthermore, 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 inform him of the procedure to be followed in the future.

Committee's decision on admissibility

6.1 The Committee considered the admissibility of the communication on 18 March 1998.

6.2 The Committee took note of the State party's request that the communication should be declared inadmissible for failure to exhaust domestic remedies. It also noted, with respect to the allegation concerning the right to life, that the author brought several actions to clarify who was responsible for the divulcation of his identity which, he claims, forced him to flee the country. It considered that, in the circumstances, it must be concluded that Mr. Aponte had diligently pursued remedies aimed at establishing and clarifying his situation. More than three years after the events giving rise to the communication, those responsible for the incident had not been identified or disciplined. The Committee concluded that, in the circumstances, domestic remedies had been "unreasonably prolonged" within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

6.3 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 considered that they had been sufficiently substantiated for purposes of admissibility and that they should accordingly be considered on their merits.

The State party's observations on the merits and the author's reply

7.1 In a written submission dated 4 November 1998, the State party maintains that the Public Prosecutor's Office ordered the author to be paid the sum of US\$ 4,000 per month, in compliance with the instructions of the State Council of 26 February 1997. It further states that the amount had been determined on a unilateral and subjective basis, since the author had never allowed the question to be studied.

7.2 With regard to the alleged breach of confidentiality in respect of the author's identity, which supposedly placed his life in danger, the State party reports that a disciplinary enquiry was conducted against the official named by Mr. Aponte, and definitively closed by the Judicial Monitoring Division on 13 February 1996. According to the State party, the author has since submitted various applications and appeals, but that these were inadmissible since the case had been closed and no substantive aspects of the dispute remained to be addressed.

7.3 The State party reports that the persons against whom the author testified and whom he identified as having allegedly threatened him were found not guilty; the author's assistance was therefore unproductive, and the State party believes no threats were made. Furthermore, those who were found guilty were not the people whom the author identified.

7.4 The State party considers that Mr. Aponte may have been making use of the initial situation (alleged threats) to remain in the United States, and that he hopes for a favourable decision so that the United States authorities will extend his visa. It also recalls that it has suggested that the author return, and has offered to place him in the witness-protection programme in that event.

7.5 On 1 October 1999, the State party forwarded to the Committee a copy of the protection ruling handed down by the Administrative Tribunal of Cundinamarca. On 10 May 1999, the Tribunal found that the circumstances that had warranted the payment of financial support to the author had changed: hence the decision of the Public Prosecutor's Office to discontinue payment was quite legal. The Division of the Tribunal that handed down the ruling found no proof that Mr. Aponte's life continued to be in danger; the Public Prosecutor's Office was thus unable to extend assistance and maintenance under the protection programme indefinitely. According to the Tribunal, the State Council ruling protecting the author's rights had clearly established that financial assistance should be provided only as long as circumstances required, and that, if those circumstances ceased to exist, the decision of the Public Prosecutor's Office to discontinue payments could therefore not be considered non-compliance.

7.6 The State party argues that the enquiry ordered by the Public Prosecutor's Office found that, during the time the author was being guarded by members of the Technical Investigation Unit (CTI), no real threats were made against his or his family's lives, and that in any case the author refused to allow his telephone to be monitored.

7.7 In a written submission of 2 August 1999, the author informed the Committee that he had received from the Public Prosecutor's Office the sum of US\$ 4,000 per month over a seven-month period between September 1997 and April 1998; the payments had then ceased after seven months. He therefore brought an action for non-compliance against the Public Prosecutor's Office, in order to compel the Office to implement the maintenance order issued by the State Council. He also requested that the maintenance should be paid retroactively and that he should receive compensation for damages and harm for the "judicial error" of the Public Prosecutor's Office in failing to keep a witness' identity

secret. In a submission dated 24 March 2003, the author reports that his claims were rejected by the Administrative Tribunal of Cundinamarca on 12 December 2002.

7.8 The author claims that he has been obliged to undergo psychiatric treatment as a result of the violations of his rights.

Issues and proceedings before the Committee

8.1 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 for in article 5, paragraph 1, of the Optional Protocol.

8.2 Although the admissibility of the communication has already been considered, Rule 93.5 of the Committee's Rules of Procedure allows for a review of the Committee's admissibility decision upon consideration of the merits. The Committee thus takes note of the State party's argument that the official identified by Mr. Aponte was the subject of a disciplinary enquiry that was definitively closed by the Judicial Monitoring Division on 13 February 1996. The Committee notes that, on 10 May 1999, the Administrative Tribunal of Cundinamarca found that the decision of the Public Prosecutor's Office to discontinue payments to the author could not be considered non-compliance since there was no evidence that the Aponte family were at continuing risk. It was this that led the Public Prosecutor's Office to discontinue support and maintenance under the protection and assistance programme. The Committee notes that the author adduces no evidence to the contrary. It also notes that Mr. Aponte was not prevented from working in the United States. Since it was those points that gave rise to the author's complaints, and given that they are no longer valid, the Committee finds the author's communication is insufficiently substantiated for purposes of admissibility under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the author and, for information purposes, to the State party.

[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.]
