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HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10-28 July 2006

**DECISION**

**Communication No. 1120/2002**

| | |
|---|---|
| *Submitted by*: | Marco Antonio Arboleda Saldarriaga (represented by counsel, Luis Manuel Ramos Perdomo) |
| *Alleged victim*: | The author |
| *State party*: | Colombia |
| *Date of communication*: | 4 August 2002 (initial communication) |
| *References*: | Decision of the Special Rapporteur under article 97 of the rules of procedure, transmitted to the State party on 24 September 2002 (unpublished document) |
| *Date of adoption of decision*: | 25 July 2006 |

* Made public by decision of the Human Rights Committee.

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|---|---|
| *Subject matter*: | Complaint regarding identity of the person sought for extradition |
| *Procedural issues*: | Failure to substantiate claims |
| *Substantive issues*: | Detention in contravention of procedural legislation |
| *Articles of the Covenant*: | 9 and 14, paragraphs 1, 2 and 3 (a) |
| *Articles of the Optional Protocol*: | 2; 5, paragraph 2 (b) |

**[ANNEX]**

**Annex**

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

**Eighty-sixth session**

**concerning**

**Communication No. 1120/2002***

*Submitted by*: Marco Antonio Arboleda Saldarriaga (represented by counsel, Luis Manuel Ramos Perdomo)

*Alleged victim*: The author

*State party*: Colombia

*Date of communication*: 4 August 2002 (initial submission)

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

*Meeting* on … March 2006,

*Adopts* the following:

**Decision on admissibility**

1. The author of the communication, dated 4 August 2002, is Marco Antonio Arboleda Saldarriaga, a Colombian national, who claims to be the victim of a violation by Colombia of articles 9 and 14 of the Covenant. He is represented by counsel, Luis Manuel Ramos Perdomo.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari-Yrigoyen.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Rafael Rivas Posada did not participate in the adoption of the present decision.

**Factual background**

2.1 In October 1999, the United States applied to the Government of Colombia for the extradition of Luis Carlos Zuluaga Quiceno, a Colombian citizen. It supplied details including the name, identity card No., height, age, place and date of birth, and skin colour of the person whose extradition was applied for. The extradition document also included the person's photograph.

2.2 The author alleges that the police officers and officials of the Colombian Attorney-General's Office (*Fiscalia General*) who took part in the arrest procedure of 13 October 1999 seem to have mistaken the address where the arrest was to be made, and entered his home. The search warrant gives a different address from that of the author's home. It also gives inconsistent physical and biographical data, which the police officers used as an excuse to ask him to come with them voluntarily to the so-called GRUCE (Central Provincial Unit) police station, so that the necessary fingerprinting checks could be run to find out whether he was the person sought.

2.3 After the author's detention, the Attorney-General's Office suggested to the United States Embassy in Colombia that it apply for his extradition, suggesting that the person sought was named Marco Antonio Arboleda Saldarriaga, not Luis Carlos Zuluaga Quice. The Embassy then issued new notes verbales in which only the name of the person sought was changed, leaving unaltered all the other information needed for his positive identification, such as age, height, distinguishing features, and a photograph of the person actually wanted. Moreover, the same notes verbales stated that the Embassy would recommend the judicial authorities to modify the existing indictment. In other words, at that time there was not even a formal charge in the United States against the author, though he had already been unlawfully and arbitrarily deprived of his liberty for several days.

2.4 The author was notified in detention of the arrest warrant for extradition issued against Luis Carlos Zuluaga Quiceno, identity card No. 70.041.763, issued in Cocomá, and he was later notified of an additional explanatory arrest warrant, made out in the name of Marcos Arboleda Saldarriaga, identity card No. 3.347.039, from Medellín, which did not match the author either.

2.5 The author petitioned for his release on the grounds that his arrest was unlawful; his application was turned down by the Attorney-General in a decision dated 12 September 2001.

2.6 Since the age of 10, the author has had part of his right index finger and thumb missing, a feature not displayed by the person sought, who exists, as has been checked in the files of the National Registry, has all his fingers and bears no special distinguishing marks.

2.7 The Public Prosecutor's Office (*Ministerio Público*) handed down an opinion unfavourable to extradition, as the requirement of complete identification was not satisfied, the requisite proof not having been produced. However, the Criminal Chamber of the Supreme Court considered that the applicant country had explained that the correct name of the person sought for extradition was Marco Antonio Arboleda Saldarriaga, and that the indictment by the Florida Southern District Court was aimed at him, though it had given a false name used by that individual. In short, the Supreme Court ruled in favour of extradition.

2.8 The author points out that the entire identity clarification procedure took place after his illegal detention, and that from the outset the applicant State provided a photograph of the person whose extradition it was seeking which did not remotely correspond to his own distinguishing or physical features. He contends that he was not the person whose extradition was being sought and that, starting with the errors that had led to his wrongful detention, a whole web of conspiracy was woven to cover up these irregularities, and the relief he sought was systematically rejected, along with any recognition of his rights and guarantees.

2.9 The author states that there was conclusive proof of his identity. For example, the 10-print record of his fingers in the files of the National Civil Registry in the name of Luis Carlos Zuluaga Quiceno, identity card No. 70.041.763, is not the same as that of Marco Antonio Arboleda Saldarriaga.

2.10 The Government of Colombia upheld the arguments put forward by the Supreme Court and, in Decision No. 70 dated 27 May 2002, authorized the extradition of the author, identity card No. 3.347.939. The author lodged an appeal for reconsideration against that decision with the Ministry of Justice on 7 June 2002, but it was unsuccessful.

2.11 The author states that he has exhausted all the remedies available to him under the extradition procedure. In addition, he filed an application for legal protection (constitutional *amparo*), which was rejected on 23 September 2002.

**The complaint**

3. The author alleges that the facts described are a breach of articles 9 and 14, paragraphs 1, 2 and 3 (a), of the Covenant. He reports in particular that he was arrested without an arrest warrant being issued by a competent authority. Moreover, the note verbale that the arrest was based on did not meet the provisions of the Code of Criminal Procedure, as he was not identified in it either in part or in full. He also states that during the court hearings phase of the extradition proceedings before the Supreme Court, his right to a defence and due process was breached because of a refusal to produce the evidence requested by both the defence and the Public Prosecutor with the aim of fully meeting the procedural requirement to make a full identity check of the person sought.

**State party's submissions on admissibility and author's comments**

4.1 In its submissions of 27 November 2002, the State party points out that in note verbale No. 1066, dated 7 October 1999, the United States requested the provisional detention of Luis Carlos Zuluaga Quinceno, with a view to his extradition, to answer federal narcotics and related charges in court. Colombia's Attorney-General, in a decision of 11 October 1999, issued an arrest warrant initially in the name of Luis Carlos Zuluaga Quince. Subsequently, in a decision dated 13 October 1999, he amended the arrest warrant since the true identity of the person sought was Marcos Antonio Arboleda Saldarriaga, identity card No. 3347039. On 13 October 1999, the criminal investigation police detained Marco Antonio Arboleda Saldarriaga, identity card No. 337939 from Medellín.

4.2 The author petitioned for immediate release in view of the wrongful nature of the arrest but his application was turned down by the Colombian Attorney-General by decision dated 12 September 2001. In that decision the Attorney-General states that the person whose arrest had been originally requested by the United States was Mr. Marco Antonio Arboleda Saldarriaga, although the decision of 13 October 1999 refers to identity card No. 3347039 from Medellín. He also notes that the Supreme Court, in an order dated 22 May 2001, would not hear the petition to produce evidence requested by the defence counsel, on the grounds that it had not been submitted at the right time and turned down the offer to produce evidence made by the Public Prosecutor on the grounds that the matter of the identity of the person sought was clear.

4.3 In an order dated 30 April 2002, the Court found in favour of the author's extradition. The Court declared that its finding that the author was the person sought for extradition had been clearly demonstrated. It ruled that the petitioning State had not only clarified and sought the extradition of the individual bearing the name of Marco Antonio Arboleda Saldarriaga and his identity card, but also emphasized that it was one and the same individual who was using an alias. Under the laws of the applicant State, a later alternative indictment supersedes any earlier ones. The Court stated: "The valid alternative indictment was issued against the two names in question, Zuluaga Quiceno and Arboleda Saldarriaga, which, it has been specified, apply to one and the same person, and though, in the notes verbales formulating the extradition request, reference was to the latter, and though his identity card No. was 3.347.939, there is no doubt that the extradition of Mr. Arboleda Saldarriaga has been requested in due form, and the identity is that of the detainee, as can be seen from the various documents endorsed by him - the instructions to his defence lawyer, the briefs addressed to the Chamber - and from the copy of the identity card provided."

4.4 The Court also noted that for cases of unlawful detention the law possessed machinery such as habeas corpus and the use of petitions against wrongful arrest, remedies which must be employed when relevant.

4.5 The Government upheld the arguments of the Court and authorized extradition. In the associated decision, it stated the following: "From the foregoing it may be concluded that the wanted citizen's identity has been amply discussed by the body issuing the arrest warrant and in the Supreme Court. (…) If the person sought and his lawyer continue to disagree, contending that nine different identities have been ascribed to him and that the individual sought must be given the benefit of the doubt where doubt exists, then the situation implies an examination of criminal responsibility, and that is not a matter for extradition proceedings but for the trial to be held abroad."

4.6 By Executive Decision No. 96, dated 1 August 2002, the Government of Colombia ruled on the author's application for reconsideration, confirming the decision in its entirety and thereby exhausting administrative remedies. That decision states:

> "In the ruling challenged, it was considered that the identity of the citizen sought had been thoroughly discussed by the body issuing the arrest warrant and by the Supreme Court, the competent authority for examining compliance with a requirement of this sort. (…)

"The defence counsel's view when he makes assertions about the legality of the proceeding, expressing the view that there has been a violation of basic rights to due process, to defence and to equality, is not pertinent (…) because this is a matter outside the competence of the Government of Colombia. (…) In the same way, the defence counsel's comparisons with other rulings by the Court regarding complete identity cannot be sustained.

"The Government of Colombia does not consider it relevant to discuss the nine identities that the defence counsel argues have been ascribed to his client, for the documents in the file show that the man detained is the individual whose extradition has been formally sought. That an attempt is being made to show that the man detained has no connection to the trial taking place in the United States is another matter; in that case, the question of responsibility must be raised before the courts in the applicant country, as was stated in the administrative ruling under challenge, inasmuch as extradition is not a criminal proceeding in which the responsibility of the person sought can be assessed.

"It is also wrong to claim to be ignorant of the opposite opinion submitted by the Public Prosecutor, first because that opinion was stated before the Criminal Chamber of the Supreme Court, which had ruled on the matter, in a decision endorsed by the Government of Colombia, and second because the opinion referred to is not binding."

4.7 On 23 September 2002, the Civil Appeals Chamber of the Supreme Court rejected an application for *amparo* made by the author, who claimed he had not been identified as the person sought for extradition. The Chamber asserted that the issue had been amply clarified by the Criminal Appeals Chamber and the ruling in favour of extradition did not appear arbitrary, capricious, in conflict with the law, or a violation of the rights referred to, which was reason enough to reject the application for *amparo*. The Chamber recalled that the decision permitting extradition had been unsuccessfully appealed against. As it was an administrative matter, an appeal ought to have been lodged through the judicial review system, so as to establish whether or not there had been a breach of fundamental rights or an infringement of procedural safeguards. No such appeal had been made, and the application for *amparo* was thus inadmissible.

4.8 The State party argues that the present communication is inadmissible. From the decisions handed down during the extradition proceedings it may be inferred that the author is the person whose extradition was formally requested by the United States Government. Moreover, the nature of the extradition procedure does not admit of any review of matters implying an estimation of the criminal responsibility of the person sought. If he claims he is not the man who has violated the laws of the applicant country, that must be settled during the criminal proceedings held abroad.

4.9 The extradition procedure allowed under Colombian law provides judicial defence mechanisms for guaranteeing the fundamental rights of the citizen sought. From the start of the procedure, the author was assisted by counsel who exercised his right to a defence, exploiting all the remedies provided for under the law.

4.10 The State party applied the laws in force with complete respect, not only for the relevant domestic and international standards but for all legal safeguards as well, so that there are no grounds for claiming a violation of the Covenant. It would seem that an effort is being made to utilize the Committee as a fourth level of review for domestic decisions that have gone against the author's claims.

4.11 The author appealed against the administrative ruling allowing his extradition. That ruling was confirmed in Executive Decision No. 96 dated 1 August 2002, it being understood that administrative remedies were thereby exhausted. This is why judicial review provides another method of starting a procedure to make sure the law is complied with - another reason for ruling the communication inadmissible, inasmuch as domestic remedies have not been exhausted.

5. In his reply of 9 February 2003, the author alleges that no ruling could be made for him to be extradited: multiple identities, 11 in all (sic), distinguishing marks and physical features were being put forward to identify the person sought, but none of them matched or resembled those of Marco Antonio Arboleda Saldarriaga. To back his claim, the author lists all the supposed distinguishing features that provided grounds for extraditing Marco Antonio Arboleda Saldarriaga. His name is given in different documents as variously: Luis Carlos Zuluaga Quiceno, Marcos Arboleda Saldarriaga, Marcos Antonio Arboleda Saldarriaga, Marco Antonio Arboleda Saldarriaga, Mario Antonio Arboleda Saldarriaga, and Raúl Vélez, as well as the individual portrayed in a photograph from the file submitted by the applicant State.

**State party's observations on the merits**

6.1 In a document dated 21 March 2003, the State party noted that the author had been detained under "Operation Millennium", a joint operation by the Colombian authorities and the Government of the United States, to fight gangs of drug traffickers. This operation was carried out on 13 October 1999 in Bogotá, Cali and Medellín, and other countries such as Mexico and the United States.

6.2 The Government of the United States requested the arrest and extradition of 30 Colombian citizens involved in trafficking; the arrests were ordered by the Colombian Attorney-General's Office. Counsel for the author was actively involved from the start of the extradition proceedings. He made the following applications for relief: an appeal for reconsideration of the order of the Criminal Appeals Chamber of the Supreme Court dated 22 May 2001, which had rejected his petition to produce evidence; an appeal for reconsideration of the decision of 27 May 2002 permitting his extradition; and three applications for *amparo* protection from violation of his right to due process, laid before the 60th Bogotá Municipal Criminal Court and 41st Criminal Circuit Court, before the Civil Appeals Chamber of the Supreme Court, and before the Jurisdictional Disciplinary Chamber of the District Judiciary Council of Cundinamarca, respectively. The author also petitioned the Attorney-General of Colombia for his release, which was denied by decision of 12 September 2001 on the grounds, inter alia, that the person sought for extradition was fully identified.

6.3 The State party repeats the statements of the Supreme Court as to the identity of the author and the corrections made by the applicant State, and its conclusion that there was no doubt about the identity of the citizen sought for extradition. It had been shown that Marco Antonio Arboleda Saldarriaga, named in the formal extradition request, was the person arrested and ultimately handed over to the authorities of the applicant country.

**Issues and proceedings before the Committee**

7.1 Pursuant to rule 93 of its rules of procedure, before considering a claim contained in a complaint, the Human Rights Committee must decide whether it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, under article 5, paragraph 2 (a), that the same matter has not already been submitted under another procedure of international investigation or settlement.

7.3 The author alleges that he was detained in contravention of article 9 of the Covenant, in that the documentation it was based on did not meet the requirements of law as to the identity of the person detained. He also alleges that, contrary to article 14 of the Covenant, the Supreme Court did not respect his right to due process in the proceedings that led to a ruling being made to extradite him, as he was not allowed to produce evidence in proof of his identity. The Committee observes that the author's complaints were considered by the competent authorities through the various appeals he had made. The Committee points out in this context its repeated jurisprudence that in principle it is the task of States parties to evaluate the facts and evidence unless their evaluation has been plainly arbitrary or constitutes a denial of justice.[1] The Committee considers that the author has failed, for the purpose of admissibility, to show that the conduct of the courts of the State party amounted to arbitrariness or a denial of justice, and therefore declares the author's claims inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible under article 2 of the Optional Protocol;

(b) This decision should be transmitted to the author and to the State party.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

**Note**

[1] See, among others, communications Nos. 811/1998, *Mulai v. Guyana*; 867/1999, *Smartt v. Guyana*; 917/2000, *Arutyunyan v. Uzbekistan*; 927/2000, *Svetik v. Belarus*; 1006/2001, *Martínez Muñoz v. Spain*; 1084/2002, *Bochaton v. France*; 1138/2002, *Arenz v. Germany*; 1167/2003, *Ramil Rayos v. Philippines*; and 1399/2005, *Cuartero Casado v. Spain.*

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