

Communication No. 859/1999, Jiménez Vaca v. Colombia
(Views adopted on 25 March 2002, seventy-fourth session)*

Submitted by: Mr. Luis Asdrúbal Jiménez Vaca

Alleged victim: The author

State party: Colombia

Date of communication: 4 December 1998 (initial communication)

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

Meeting on 25 March 2002,

Having concluded its consideration of Communication No. 859/1999 submitted to the Human Rights Committee by Mr. Luis Asdrúbal Jiménez Vaca 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 the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mr. Luis Asdrúbal Jiménez Vaca, a Colombian citizen living in exile since 1988 and currently resident in the United Kingdom, where he was granted refugee status in 1989. He claims that he is the victim of the violation by Colombia of article 2, paragraph 3; article 6, paragraph 1; article 9, paragraph 1; article 12, paragraphs 1 and 4; article 17, paragraph 1; article 19; article 22, paragraph 1; and article 25 of the International Covenant on Civil and Political Rights.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

The facts as submitted by the author

2.1 Mr. Jiménez Vaca was a practising trial lawyer in the city of Medellín and in the region of Urabá, based for his work in the municipality of Turbo. He was the legal adviser in the region to several trade unions and people's and peasants' organizations, including the Sindicato de Trabajadores Agropecuarios de Antioquía ("Sintagro" - Antioquía agricultural and livestock workers union) and the Sindicato de Embarcadores y Braceros de Turbo ("Sindebras" - Turbo loaders and seasonal workers union).

2.2 From 1980 onwards, the author was a member of the various commissions set up by the Government to find a solution to the social and labour conflicts and the violence in the region, including the Tripartite Commission, the Special Commission for Urabá, the Commission on Permanent Guarantees in Urabá and the High-Level Commission. The author was also a member of the national and regional executive of the Frente Popular opposition political party until his exile in 1988.

2.3 In 1980, because of his professional activities on behalf of the unions, the author began to be summoned, harassed and temporarily detained by the Voltígeros military battalion. The arbitrary detention of workers became common practice, as did the presence of soldiers at union meetings, and prior authorization from the military commander was required for union activities.

2.4 On 15 December 1981, at a Sintagro meeting in Turbo municipality, a military patrol detained the participants, including the author, questioned them and photographed them. Some of them were taken to the Voltígeros battalion quarters, where they were tortured in various ways. The author was released after three hours of detention on condition that he should report to the chief of military intelligence in five days' time. When he did so, the author was interrogated and urged to "collaborate" with the military authorities in order to "avoid problems in the future".

2.5 Between 1984 and 1985, the author advised Sintagro in the negotiation of over 150 collective agreements it signed with the banana companies. During the negotiations, soldiers, police officers and secret agents kept the author and his residence and office under constant surveillance. The author received death threats and was harassed with phone calls and written messages telling him to leave the area and asking where he would like to die, with a warning that the authorities knew where his family lived.

2.6 As a result, the author submitted a criminal complaint regarding the death threats to the second circuit court in Turbo. The court notified the Antioquía Administrative Court on 22 October 1990 that the proceedings for extortion practised on the Sindebras board of directors, in which the author was registered as an aggrieved party, had been transmitted. The author claims that he never learned of the outcome of these proceedings. The author also claims to have no knowledge of the outcome of the investigations regarding the criminal complaint he had filed with the regional procurator's office in Turbo in mid-1984.

2.7 In September 1984, the author lodged a complaint for death threats with the regional office of the administrative security department in Turbo, but was never informed of the outcome of the investigation.

2.8 On 26 August 1985, pamphlets were delivered under the doors of a number of houses, asking "Are you a member of Sintagro? Doesn't it bother you to belong to a group of hired assassins and murderers of the people, drug bandits led by Argemiro Correa, Asdrúbal Jiménez and Fabio Villa?" A few days later, another pamphlet was circulated, in which the author was

warned to avoid certain areas if he did not want to follow his colleagues to the cemetery. Some time afterwards one of the author's brothers disappeared and another was murdered.

2.9 In December 1985, the author, together with other Sintagro leaders, reported the Voltígeros battalion's intervention in labour conflicts to the Procurator-General and called for an investigation of the soldiers involved in the harassment and threats. The author was never informed of the outcome.

2.10 In October 1986, the author lodged a complaint with the Foro por el Derecho a la Vida (Forum for the Right to Life), with the assistance of several authorities, including the Procurator-General and the National Director of Pre-Trial Proceedings.

2.11 At the beginning of 1987, as a result of the wave of violence against workers and the population, the Government set up a high-level commission, of which the author was a member alongside civil, military and security authorities. When the Commission met in February 1987, the author lodged complaints for the death threats and harassment to which he was being subjected. After he had worked with the Commission, the author was forced to leave Urabá and take refuge in Medellín for safety.

2.12 On 6 September 1987, the author again asked the authorities for protection as he was receiving death threats more frequently since becoming involved in the High-Level Commission. He then received a number of visits from unknown men, and this led him to close the Medellín office for good in November 1987 and move to Bogotá. He was subsequently urged to leave the country.

2.13 On 4 April 1988, as the author was travelling with Sonia Roldán in a taxi from the airport to Medellín, two men dressed in civilian clothes and riding a bicycle fired pistol shots at the taxi, hitting the author twice. The men fled after the attack thinking that the author was dead. After five days in hospital, the author was transferred for security reasons to another hospital. He stayed there until he was well enough to travel to the United Kingdom, where he requested asylum on 20 May 1988. He was granted refugee status on 4 January 1989. This assault left the author with, inter alia, permanent damage to his motor and gastrointestinal systems and impaired circulation in one leg.

2.14 On 9 February 1990, the author submitted, by proxy, a claim for damages to the administrative court on the grounds that the authorities had failed to protect his life and to ensure his right to practise as a lawyer, but this claim was dismissed on 8 July 1999.ⁱ Criminal Court No. 28 in Medellín officially undertook the criminal investigation into the attempt on the author's life, but the author knows nothing of the outcome.

2.15 While in exile, the author corresponded regularly with his daughter and other persons. This correspondence was constantly intercepted and checked.

The complaint

3.1 The author maintains that the State party was under a legal obligation to investigate the attempt on his life as a matter of course. Under article 33 of the Colombian Code of Criminal Procedure (Decree No. 050 of 1987) in force at the time, the approximate total duration of the preliminary investigation, the pre-trial proceedings and the trial should be 240 days. The author points out that over 10 years after the assault the outcome of the investigations is still not known.

3.2 The author claims to be the victim of a violation of article 2, paragraph 3, of the Covenant, as the State party does not provide the victims of human rights violations with sufficient guarantees for remedies to be considered effective. He maintains that the investigations that the State party ought to have undertaken as a matter of course into the attempt on his life never produced any results. He explains that in his case, owing to his urgent departure from the country and the risk that hiring a lawyer to defend him would have entailed, he has been prevented from personally taking an active part in the investigation. He also claims to have granted power of attorney to a lawyer to file a claim for damages with the Antioquía Administrative Court. This claim was never resolved. The author therefore considers that not only were the domestic remedies excessively delayed but also that no effective remedy existed, as the various official departments have denied that the records, communications, complaints and requests ever existed.

3.3 With regard to the violation of article 6, paragraph 1, the author maintains that the attack on him, which left him fighting for his life and was facilitated by the conduct of the Colombian authorities in that they took no action to prevent it, is in itself a violation of the right to life and that no one can be deprived of life arbitrarily.

3.4 The author asserts that article 9, paragraph 1, of the Covenant has been violated because the State party was under an obligation to take the necessary steps to ensure his personal safety and never did so, despite being aware of the numerous instances of harassment and provocation and the death threats the author was receiving, some from the military and police authorities themselves. In this respect, the author maintains that the State party has failed to comply with article 9, paragraph 1, as in the case of William Eduardo Delgado Páez v. Colombia (Communication No. 195/1985, Views adopted on 12 July 1990).

3.5 Likewise, the author considers that his right to freedom of movement within Colombian territory and to choose his residence has been breached, in violation of article 12, paragraph 1, of the Covenant, in that he was prevented from residing and practising as a lawyer in the place of his choosing, so that his right to reside and practise his profession in his country was not ensured and he was forced into exile. As to article 12, paragraph 4, the author maintains that although there is no express ban by the Colombian authorities on his entering the country, he is denied this right as he constitutes a military objective.

3.6 Furthermore, the author claims that the correspondence between himself and his daughter and between himself and others has been checked by the Colombian national police on various occasions, in violation of article 17, paragraph 1, of the Covenant.

3.7 The author maintains that the people who made the attempt on his life did so to punish him for his political and social views, in violation of the provisions of article 19 of the Covenant.

3.8 Lastly, it is alleged that article 22, paragraph 1, and article 25 were violated on account of the author's commitment to defending the right to freedom of association and workers' rights and because he was an activist in the Frente Popular political party, for which he carried out various activities of a social and democratic nature.

Information and observations from the State party and comments by the author on admissibility

4.1 In its observations of 21 September 1999, the State party refers to articles 1 and 2 of the Optional Protocol relating to the requirements for the admissibility of a communication and

maintains that Mr. Luis Asdrúbal Jiménez Vaca has not exhausted domestic remedies, since he filed a claim for damages with the Antioquía Administrative Court. The court passed judgement at first instance on 8 July 1999 dismissing his claims, and a decision on the appeal lodged in August 1999 is currently pending.

4.2 With regard to article 17, paragraph 1, the State party guarantees the constitutional right to the inviolability of a person's correspondence, pointing out that any illegal act must be reported so that it can be investigated. To this end, the national police have been urged to conduct an investigation with a view to determining the facts.

4.3 In his comments of 16 November 1999, the author replies that the claims by the State party that domestic remedies have not been exhausted, in which reference is made to the appeal pending before the Council of State as court of appeal, are unfounded and points out that, according to the jurisprudence of the Human Rights Committee, domestic judicial remedies must not only be available but also effective.ⁱⁱ The author also maintains that, according to the State party, the administrative courts are not part of the judicial branch. He argues that the administrative court issued a decision nine years and five months after the event because his communication to the Committee had put the court under pressure, and that domestic remedies can be considered to have been exhausted if the proceedings are excessively prolonged.

4.4 In its additional observations of 26 October 1999, the State party explains to the Human Rights Committee that, according to information from the Office of the Ombudsman and after reviewing the archives of the National Office for Examination and Processing of Complaints, no complaint was found relating to the events described by the author. Moreover, the Office of the Procurator-General is on record as stating that neither the Armed Forces Division, the Human Rights Division, the Antioquía Departmental Division nor the National Special Investigations Department carried out any disciplinary investigation into members of the national army for the alleged harassment, provocation or attempted murder of, or threats against, the author.

4.5 In addition, the State party explains that Major Oscar Vírguez Vírguez in the Military Examining Court filed a suit against the author for the offence of calumny and misrepresentation. The grounds for the complaint were the accusations made to the media by the author and by

Aníbal Palacio Tamayo concerning alleged threats against the author and Argemiro Miranda. The Armed Forces Division responded to the accusations by investigating Major Vírquez's conduct, and found the accusations baseless.

4.6 In his additional comments of 5 August 2000, the author claims that the Office of the Ombudsman was created after the events at the heart of the complaint, with the adoption of the 1991 Constitution when he was already in exile. He maintains that his complaints, identifying the fourth and tenth army brigades as possibly being responsible for the harassment and death threats to which he was subjected, were detailed and known to the authorities. Despite being aware of what had happened, the authorities never took any action. On the contrary, the only investigation undertaken was ended, which prevented any light from being shed on the events. Furthermore, neither the content of the complaints nor the seriousness of the risks were assessed, and there was no attempt to identify the instigators or perpetrators.

4.7 The author claims that the only reason Major Vírquez lodged the complaint of calumny and misrepresentation was to obstruct the course of the investigations, which might have compromised military institutions, and to hold up the investigation ordered into them. He was never summoned to appear before any judicial authority to confirm the facts. According to the author, the military criminal courts did not have jurisdiction to investigate him for the offences mentioned as he himself maintained no relationship with the Colombian military forces.

4.8 Lastly, the author again states that domestic judicial remedies must not only be available but also effective.

Information and observations from the State party and comments by the author on the merits

5.1 In its observations of 21 September 1999, the State party explains, with reference to the alleged violation of article 2, paragraph 3, that it can be difficult in certain circumstances to investigate actions that may infringe rights of the person. In addition, the fact that the final outcome of the criminal investigation is not known does not necessarily imply that the State party has done anything wrong, since the complexity of the matter and the activities of the person concerned need to be taken into account. Furthermore, according to the State party, the report submitted by the second criminal circuit court in Turbo points out that the case heard dealt with extortion practised on the Sindebras board of directors, not attempted murder. Moreover, the report concludes that while the extortion was reportedly practised on the Sindebras board of directors, with Mr. Jiménez registered as an aggrieved party, this does not mean that the extortion was directed specifically against him. While the author may be right to claim that the State party has a formal obligation to investigate certain offences, including attempts on a person's life, the criminal complaint referred to by the author is unrelated to the alleged attack on him.

5.2 The State party disputes the author's claim that he did not hire a lawyer after leaving the country because of the risks involved in doing so. The author was still able to lodge a complaint with the administrative court, though not in order to complain about the proceedings relating to the attack on him. The State party also refutes the argument that it has failed in its duty to

provide an “effective remedy”, since, in the case heard in the Antioquía Administrative Court, papers supplied by the chief of police in Urabá had been produced that showed there had been no request in 1986, 1987 or 1988 to provide the author with personal protection. Statements to that effect were also made by the chief of the Antioquía police force, the head of the intelligence service of the judicial police (SIJIN) in Antioquía, the Director-General of the Police and the Armed Forces Division.

5.3 With regard to the alleged violation of article 6, paragraph 1, the State party points out that, as far as can be inferred from the events described in the claim, the author holds it responsible for failing to protect his life and even refers to its direct participation, through anonymous State agents, in committing the act. For the State to be held responsible for a failure of security, the victim must have requested protection from the authorities in respect of a potential danger and the authorities must have refused or failed to provide protection or provided inadequate protection. According to the State party, generic requests in the form of public complaints are not an effective way to call on the authorities to provide an individual with effective protection. While the State party would not seek to evade its constitutional responsibility for providing protection, it should be pointed out that each individual case must be dealt with on its own merits.

5.4 Lastly, the State party has set up new protection programmes. In the particular case of union leaders, there is now a protection programme for witnesses and threatened persons. Provisions under this programme include an information centre, technical assistance, preventive action, emergency help, the purchase of communication systems, the purchase of vehicles, individual protection and protection for the offices of non-governmental and trade union organizations. Moreover, if the author should decide to return to the country, he would enjoy all the safeguards provided by the authorities and the protection merited in his particular case.

5.5 According to the State party, with regard to article 12, paragraphs 1 and 4, article 19, article 22, paragraph 1, and article 25, the violations of the fundamental rights of various social sectors have a knock-on effect on other fundamental human rights such as freedom of thought, the right to own property, freedom of association, freedom to choose a residence and the right to liberty of movement. However, it cannot be claimed that the State is responsible for matters arising indirectly out of violent acts affecting a number of fundamental rights. Acts of violence are usually directed indiscriminately at members of society regardless of their economic or social position. In many cases, the deciding factor has tended to be linked to circumstances such as a person’s place of residence or daily activities. Nevertheless, given that acts of violence are not primarily aimed at violating those or other rights, action to counteract the effects of a violent situation should be directed against the main underlying problem, the internal armed conflict.

5.6 For the reasons given above, the State party disagrees with the argument put forward by the author, since his version of events does not present any specific situations showing that State agents were responsible for the alleged violation of his fundamental rights.

5.7 In his comments of 16 November 1999, the author replies to the State party’s claims on the merits, emphasizing that there is indeed enough evidence in the communication to infer that the State party is responsible for the violation of the Covenant.

5.8 The author maintains that he brought the death threats made against him to the attention of the second criminal circuit court in Turbo, as was acknowledged by the State party and recorded in the proceedings of the administrative court. The purpose of this complaint was to expedite legal proceedings so that those making the threats would be investigated and the author provided with the necessary protection. While the death threats (extortion) may not be in the

same category as the later attempted murder, there is a relationship of cause and effect in that the authorities, with full knowledge of the facts, did nothing to prevent or stop the attempt. The author also maintains that once the attempt on his life had been reported, the State had a duty under article 33 of the Code of Criminal Procedure to open an inquiry as a matter of course.

5.9 Moreover, the denials by the police chiefs and the Armed Forces Division could be part of the general strategy of favouring impunity and rendering an effective remedy inoperative.

5.10 Lastly, with regard to the protection programme for witnesses and threatened persons referred to by the State party, the author is of the view that to safeguard citizens' lives and security, something more than promises is required.

5.11 In its additional observations of 30 August 2001, the State party explains that, despite frequent threats against him, the author did not follow up the outcome of his complaints; nor did he follow the recommendations of the second criminal circuit court of Turbo, nor did he consider approaching other national bodies.

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 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the requirement that domestic remedies must have been exhausted, the Committee notes that the State party disputes the communication's contention that they have been exhausted. However, the Committee observes that the threats against the author on various occasions prior to the attempt on his life were reported to the second criminal circuit court of Turbo and to the regional procurator's office in that municipality and that the outcome of the investigations is as yet unknown. The Committee also notes that the State party does not deny the existence of the complaints filed either with the second criminal circuit court of Turbo or with the regional procurator's office, but merely states that no investigation has been initiated. The Committee further notes that the State party merely indicates that other domestic remedies exist, but without specifying which nor before which authorities appeals should be lodged. In this connection, the Committee again points out that domestic judicial remedies must not only be available but also effective. The Committee considers that it has not been shown that domestic judicial remedies have been effective.

6.4 With regard to the proceedings before the administrative court concerning the claim for damages, the Committee doubts whether a claim for damages before the administrative court constitutes the only possible remedy for a person experiencing this type of violation. The Committee further notes that in this case implementation of domestic remedies has been unduly prolonged, the administrative court having taken nine years to reach a decision at first instance.

6.5 With regard to the author's claims that article 17, paragraph 1, has been violated, the Committee considers that the author did not raise this issue in domestic courts prior to submitting it to the Committee. Consequently, this part of the communication is inadmissible in accordance with the provisions of article 5, paragraph 2 (b), of the Optional Protocol.

6.6 Consequently, the Committee declares the rest of the communication to be admissible and proceeds to a consideration of the merits in the light of the information made available to it by the parties, in accordance with the provisions of article 5, paragraph 1, of the Optional Protocol.

Consideration of the merits

7.1 The author claims that article 9, paragraph 1, of the Covenant has been violated, insofar as the State party was obligated, in view of the death threats that had been made against him, to take the necessary measures to ensure his personal safety and did not do so. The Committee recalls its jurisprudenceⁱⁱⁱ regarding article 9, paragraph 1, and reiterates that the Covenant also protects the right to security of persons not deprived of their liberty. An interpretation of article 9 which would allow a State party to ignore known threats to the lives of persons under its jurisdiction solely on the grounds that those persons are not imprisoned or detained would render the guarantees of the Covenant totally ineffective.

7.2 In the case in question, Mr. Jiménez Vaca had an objective need for the State to take steps to ensure his safety, given the threats made against him. The Committee takes note of the State party's observations, set out in paragraph 5.1, but notes that the State party does not refer to the complaint which the author claims to have filed with the regional procurator's office in Turbo or before the regional office of the administrative security department of Turbo, nor does it offer any argument to show that the so-called "extortion" did not begin as a result of the complaint concerning death threats which the author filed with the Turbo second criminal circuit court. The Committee must also consider the fact that the State party does not deny the author's allegations that there was no reply to his request that the threats should be investigated and his protection guaranteed. The attempt on the author's life subsequent to the threats confirms that the State party did not take, or was unable to take, adequate measures to guarantee Mr. Asdrúbal Jiménez's right to security of person as provided for in article 9, paragraph 1.

7.3 With regard to the author's claim that article 6, paragraph 1, was violated insofar as the very fact that an attempt was made on his life is a violation of the right to life and the right not to be arbitrarily deprived of life, the Committee points out that article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction. In the case in question, the State party has not denied the

author's claims that the threats and harassment which led to an attempt on his life were carried out by agents of the State, nor has it investigated who was responsible. In the light of the circumstances of the case, the Committee considers that there has been a violation of article 6, paragraph 1, of the Covenant.

7.4 With regard to the author's claims that paragraphs 1 and 4 of article 12 have been violated, the Committee notes the observations of the State party whereby the State cannot be held responsible for the loss of other rights which may be indirectly affected as a result of violent acts. Nevertheless, considering the Committee's view that the right to security of person (art. 9, para. 1) was violated and that there were no effective domestic remedies allowing the author to return from involuntary exile in safety, the Committee concludes that the State party has not ensured to the author his right to remain in, return to and reside in his own country. Paragraphs 1 and 4 of article 12 of the Covenant were therefore violated. This violation necessarily has a negative impact on the author's enjoyment of the other rights ensured under the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of article 6, paragraph 1, article 9, paragraph 1, and article 12, paragraphs 1 and 4.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Luis Asdrúbal Jiménez Vaca with an effective remedy, including compensation, and to take appropriate measures to protect his security of person and his life so as to allow him to return to the country. The Committee urges the State party to carry out an independent inquiry into the attempt on his life and to expedite the criminal proceedings against those responsible for it. The State party is also under an obligation to try to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's views. In addition, the State party is requested to publish the Committee's Views.

[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 present report.]

Notes

ⁱ As is apparent from the decision of the Antioquía Administrative Court of 8 July 1999, in his claim the author alleges that his right to freedom and security was violated as a result of the threats to which he was subjected and because of which he himself requested protection, and on account of the attack he later suffered.

ⁱⁱ Communication No. 612/1995, José Vicente and Amado Villafañe Chapparro, Dioselina Torres Crespo, Hermes Enrique Torres Solis and Vicencio Chaparro Izquierdo v. Colombia, Views adopted on 19 August 1997.

ⁱⁱⁱ Communication No. 195/1985, William Eduardo Delgado Páez v. Colombia, Views adopted on 12 July 1990.