

B. Communication No. 287/1988, O.H.C. v. Colombia (decision of 1 November 1991, adopted at the forty-third session)

Submitted by: O.H.C. (name deleted)

Alleged victims: The author and his brother

State party: Colombia

Date of communication: 18 February 1988 (date of initial letter)

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

Meeting on 1 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 18 February 1988) is O.H.C., a Colombian citizen born in 1954 in Medellin, Colombia, and currently residing in London. He submits the communication on his own behalf and that of his brother, J.O.C., who is unable to himself submit a complaint. It is submitted that both are victims of violations by Colombia of articles 6, 7, 17 and 19 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author was a student and union activist in Colombia prior to his departure for the United Kingdom of Great Britain and Northern Ireland, where he requested refugee status on 2 September 1988. Until September 1987, he had served as vice-president of the National Association of Civil Servants in the National University (Vice Presidente Nacional de la Asociación de Empleados Públicos de la Universidad Nacional). He claims that in 1987 and 1988, he and his brother were repeatedly threatened by paramilitary groups in Medellín, such as the group "Amor por Medellín". Several of his and his brother's friends, all of whom were, like the author, engaged in some form of union activities, were assassinated in the course of 1987.

2.2 On 5 September 1987, on the occasion of the eleventh National Congress of the National Federation of Civil Servants, the author's apartment was ransacked by armed men in uniform, allegedly members of a paramilitary group whom the author suspects to have had links with the Colombian armed forces; subsequently, he received death threats by telephone both at his home and office.

2.3 On 5 February 1988, the author's brother disappeared. Two days later, he was found in a paddock, unconscious and suffering from a cerebral concussion, with signs of having been subjected to torture. He was admitted to a hospital in Antioquía where he was treated, but he never recovered. The author states that his brother has remained mute and semiparalysed as a result of the

torture he was subjected to, and that even special therapy has not improved his state. The author suspects that the paramilitary group to which the incident was attributed was backed by the regular armed forces.

2.4 In the latter context, the author contends that the Colombian armed forces regularly practice torture, are engaged in killings and disappearances, and cooperate with, or at the very least tolerate, the activities of paramilitary groups. He points to the report issued by the United Nations Working Group on Enforced or Involuntary Disappearances after its visit to Colombia in the autumn of 1988, which stated that there was indirect proof of armed forces involvement in many of the disappearances occurring in Colombia.

2.5 With respect to his own case, the author indicates that a Sergeant Major from the army, one D.T., told him that his participation in various demonstrations had been noted by the army's intelligence service and aroused considerable suspicion, and that the "army had it in for him" ("estaba muy quemado con el ejército"). In the first half of 1987, an agent of the special security police was uncovered in a union meeting at the University of Antioquia, in which the author participated. All these events, as well as the ill-treatment of his brother, allegedly were designed to induce the author to withdraw from his union activities.

2.6 As to the requirement of exhaustion of domestic remedies, the author made several complaints to the Colombian Attorney-General's Office, to the Police Department in Medellín and to several examining magistrates in Bogotá. They promised to investigate his and his brother's cases, but no conclusive result has transpired. In particular, the author filed a complaint with the examining magistrate No. 21 in Bogotá, who had been instructed to investigate matters related to interference with union activities in the National University of Colombia. In spite of regular reminders, he did not receive a reply; no one has been indicted, as those responsible for his brother's situation and for the threats against his life have not been identified. The author concludes that the Colombian judicial system is virtually inoperative, as he contends was conceded even by a Colombian Federal Prosecutor, and that, accordingly, he should be deemed to have complied with the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

Complaint

3. It is submitted that the facts described above constitute violations of articles 6, 7, 17 and 19 of the International Covenant on Civil and Political Rights.

State party's information and observations

4.1 The State party submits that the communication is inadmissible on the ground of non-compliance with article 5, paragraph 2 (b), of the Optional Protocol, since the author failed to avail himself of available remedies.

4.2 In this context, it indicates that it has instructed the Office of the Prosecutor-General and the National Office of Criminal Investigations in Bogotá to inquire into the author's allegations. As soon as these investigations are concluded, they will be brought to the Committee's attention.

4.3 The State party points to several inconsistencies in the author's presentation of the facts. For instance, he states that his brother was found in a paddock on 7 February 1988, whereas the medical history of J.O.C. submitted by the author indicates that he was admitted to the hospital of Antioquia on 31 January 1988. Secondly, the State party submits that the author has failed to substantiate any violation of his or his brother's right to life. Finally, it contends that there is no evidence in the material submitted by the author that, either directly or indirectly, would implicate the armed forces of Colombia and thus establish the responsibility of the State party. In the State party's opinion, it remains entirely possible that J.O.C. has been the victim of a common crime.

Issues and proceedings before the Committee

5.1 Before considering any claims 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.

5.2 The Committee has noted the State party's contention that the author has failed to exhaust available domestic remedies, as well as the author's reply that such remedies would not be effective.

5.3 As to the alleged violations of article 19, the Committee finds that the author has failed to sufficiently substantiate, for purposes of admissibility, his claim; nor has he adduced any documentary evidence in support of his contention.

5.4 As to the author's other allegations, the Committee notes that judicial investigations into the events complained of are pending. While it is certain that these investigations have encountered a number of difficulties, the Committee observes that these difficulties are attributable primarily to the fact that no direct involvement of the State party's regular armed forces has been, or can at present be, proven. While fully understanding the circumstances which led the author to submit his communication under the Optional Protocol, the Committee cannot conclude on the basis of the information before it that domestic remedies in Colombia would be a priori ineffective and that difficulties in the judicial process would absolve the author from exhausting domestic remedies.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision be communicated to the State party and to the author of the communication.

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