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Title/Style of Cause:	Carlos Manuel Prada Gonzalez and Evelio Antonio Bolano Castro v. Colombia
Doc. Type:	Decision
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commissioners: Claudio Grossman, Helio Bicudo, Henry Forde. Commissioner Alvaro Tirado Mejia, a Colombian national, did not participate of the discussion and decision of this Report, pursuant to Article 19(2)(a) of the Commission's Regulations.
Dated:	25 September 1998
Citation:	Prada Gonzalez v. Colombia, Case 11.710, Inter-Am. C.H.R., Report No. 84/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by:	APPLICANT: Alirio Uribe Munoz
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I. BACKGROUND OF THE CASE

1. On December 9, 1996, the Inter-American Commission on Human Rights (hereafter "the Commission") received a complaint submitted by Alirio Uribe Muñoz, President of the Corporación Colectivo de Abogados "José Alvear Restrepo". The petition alleged that the Republic of Colombia (hereafter "the State", "the Colombian State" or "Colombia") violated the rights to life (Article 4), personal integrity (Article 5), and judicial protection (Articles 1 and 25) enshrined in the American Convention on Human Rights (hereafter the "American Convention") of Carlos Manuel Prada González (also known as "Enrique Buendía") and Evelio Antonio Bolaño Castro (also known as "Ricardo González").

II. CONTEXT

2. On March 23, 1993 the State issued Decree No. 542 setting forth an initiative to facilitate dialogue with armed dissident groups and to enable their demobilization and reintegration into civil society. On April 1, 1993, the State initiated a dialogue with spokespersons or representatives of the group known as Corriente de Renovación Socialista (hereafter "CRS") with the purpose of reaching a number of agreements for the demobilization of this group and re-incorporation of its members into civil society in accordance with the government's peace policy. After various discussions between Ricardo Santamaría Salamanca and other officials of the government's Office for Peace, and representatives of the CRS, and with the assistance of

Mons. Nel Beltrán, bishop of Sincelejo, the parties reached preliminary agreements intended to facilitate the process of negotiation.

3. In the context of these preliminary agreements, there was apparent confusion between the Colombian government and the CRS as to the status of the town of Blanquicet, in the municipality of Turbo, department of Antioquia. Members of the CRS believed Blanquicet to be part of a "cease-fire zone" referred to as a zona de distensión, that would not be subject to military activity. The State considered that Blanquicet did not fall within a zona de distensión. In any event, the parties agreed that at least one of the CRS' spokespersons would be transported by the government to Urabá for the purpose of meeting with members of the CRS located in that area. This meeting was aimed at facilitating the subsequent transfer of the armed dissidents in Uraba to camps in Flor de Monte, municipality of Ovejas, Sucre, in order to formally start the peace negotiations and the process of reincorporation of the CRS members into the social and political life of the country.

4. Apparently, authorities of the Ministry of Defense and the Armed Forces were informed of the upcoming visit of armed dissidents to the area and the need to temporarily remove military presence in Blanquicet.

5. The petitioners allege that Ricardo Santamaría Salamanca delegated to Gonzalo de Francisco, one of his subordinates, the task of arranging the suspension of military activity in the area on September 20, 1993. On that date, the parties to the peace talks planned to transport the two CRS spokespersons to Blanquicet in a civilian helicopter.

III. FACTS ALLEGED IN THE COMPLAINT

6. The petition alleges that on Monday, September 20, 1993, Mr. Prada González and Mr. Bolaño Castro were transported by a helicopter, owned by a company called Helicol, to the town of Blanquicet. As a security measure, the two dissidents were accompanied by Mr. Ernesto Parada Malavar, a representative of the President's Office. When they arrived in Blanquicet, Mr. Prada González and Mr. Bolaño Castro were dressed in civilian clothing, and carried small arms (pistols or revolvers) for self-defense.

7. After leaving Mr. Prada González and Mr. Bolaño Castro in Blanquicet, Mr. Ernesto Prada, in accordance with an agreement between the State and the CRS, continued in the helicopter to the Colombian army's base in the municipality of Carepa. The helicopter refueled at the army base. Army Colonel Becerra and Major Clavijo, who were apparently the commanding officers of the base at the time, subsequently asserted that Mr. Ernesto Prada never informed them of the presence of the CRS representatives in the area, nor of the reason for their trip.

8. On Tuesday, September 21, Mr. Prada González and Mr. Bolaño Castro spoke at a meeting of the residents of Blanquicet and informed them that the town had been chosen as a coordination point for the transfer of CRS combatants to the town of Flor del Monte. Additionally, Mr. Prada González and Mr. Bolaño Castro assured the residents that they need not fear any fighting between the army and the CRS because the dissidents had reached agreements

with the government. According to the two CRS leaders, both the civilian government and the Colombian army were aware of the CRS presence in the area.

9. On Wednesday, September 22, at just before 5:00 p.m., twelve members of the CRS arrived in Blanquicet, entering from the north. At the same time, Mr. Prada González and Mr. Bolaño Castro, in the company of other dissidents, were having a soft drink at a place called Postobón. Postobón is located about five hundred meters from the spot where the group of twelve dissidents entered the community. About fifteen minutes later, three army trucks entered the town.

10. Mr. Prada González and Mr. Bolaño Castro became aware of the presence of the army when the soldiers entered the area. One of the army trucks stopped at the entrance to Blanquicet, and another crossed the town and stopped at the other end. Soldiers jumped out of each vehicle and began searching for Mr. Prada González and Mr. Bolaño Castro.

11. According to witnesses, Mr. Prada González and Mr. Bolaño Castro were dressed in civilian clothing and carrying their small arms at the time. Initially they attempted to speak with the soldiers entering the area. When the soldiers became aggressive, however, Mr. Prada González and Mr. Bolaño Castro tried to flee, running across the countryside towards the east. At that moment, the two CRS spokesmen were alone, separated from the other dissidents who had arrived in Blanquicet. They stopped about four hundred meters from the road, and Mr. Prada González removed his white shirt and began to wave it at government troops, screaming that he was one of the CRS' negotiators; one of those who was making peace.

12. According to the record before the Commission, at least two witnesses testified that they saw soldiers capture Mr. Prada González and Mr. Bolaños Castro before the two dissidents were killed.[FN1] According to the testimony of Luis Enrique Nisperuza, the two dissidents surrendered with their hands in the air to the army troops, who surrounded them. A soldier then killed Mr. Bolaño Castro by shooting him in the head at point-blank range. The soldiers forced Mr. Prada González to carry Mr. Bolaño Castro's body to the side of a road, where the troops killed Mr. Prada González.[FN2] During this episode, Mr. Nisperuza did not see any of the armed dissidents present in Blanquicet fire at the army troops.

[FN1] Deposition of Vianor Vásquez Cabrera, pages 803-804 of book 3 and pages 1305-1306 of book 4; Declaration of Luis Enrique Nisperuza, pages 801-802 of book 3; Delegate Procurator for the Armed Forces (Procuraduría Delegada para las Fuerzas Armadas), File 022-145.789, Resolution 439, 8 August 1994, p.8.

[FN2] Deposition of Luis Enrique Nisperuza, pages 801-802 of book 3.

13. At 7:30 p.m., the bodies of Mr. Prada González and Mr. Bolaño Castro were transported in one of the army trucks to the Police Inspection office in Blanquicet. The bodies remained there until the early hours of the following day. At 7:00 a.m. on September 23, a number of witnesses saw a soldier sitting in front of a typewriter belonging to the Police Inspector. Moreover, the witnesses reported that the Inspector said that he had to sign the document

testifying to the removal of the bodies, although the inspector had not actually moved the corpses.

14. Members of the army delivered the bodies to the hospital in Chigorodó later that morning. One of the bodies was shirtless, but a white shirt was presented with the bodies. The shirt had mud on it, but was not bloodstained. Forensic specialists subsequently concluded that both men died as a result of gunshot wounds that did not occur during combat.[FN3]

[FN3] Report of Institute of Legal Medicine, Bogotá Section, Attorney General's Office, Criminology Division, Office of Special Investigation, pages 214-249, book 4, (Delegate Procurator for the Armed Forces, File 022-145.789, Resolution 439, 8 August 1994, p.9).

IV. COMPETENCE

15. The Commission has prima facie jurisdiction to examine the complaint, because it relates to alleged violations of the American Convention. The alleged violations took place when the obligation to respect and guarantee the rights established in that Convention was fully in force for the Colombian State.

V. ADMISSIBILITY

A. Exhaustion of Domestic Remedies

16. According to Article 46 of the Convention, before the Commission can admit a petition for its review, all internal domestic legal remedies must first be exhausted. The Commission will not impose this prerequisite when the victims of the alleged human rights violation, or their legal heirs, have been denied access to domestic legal remedies, or have been impeded in their efforts to exhaust these internal measures.[FN4] Thus, in this matter, for the purpose of admissibility, the Commission must determine whether the victims exhausted domestic legal remedies, and if not, whether the exception to the exhaustion requirement should apply.

[FN4] American Convention on Human Rights, Article 46(2)(b).

17. The analysis of the record of the case reveals that the State has never expressly contested the question of admissibility in its observations. The State's failure to make a timely objection to the admissibility of the complaint in this matter may be construed by the Commission as a tacit waiver of the American Convention's requirement of exhaustion of domestic legal remedies.[FN5] Nevertheless, the Commission's rulings on the admissibility of the cases brought before it are intended to provide greater security and legal certainty, besides focusing the attention of the parties on the central issues at stake.[FN6] Bearing such considerations in mind, without prejudging the merits, the Commission will examine the extent to which the present

complaint fulfills the admissibility requirements of the American Convention and its Rules of Procedure.

[FN5] I/A Court HR, Godínez Cruz Case, Preliminary Objections, Judgment of 26 June 1987, paras. 91-92.

[FN6] See, *inter alia*, Report No. 4/97 and Report No.5/97, Colombia, Annual Report of the IACHR 1996 OEA/Ser.L/V/II.95, Doc.

1. Military Criminal Process

18. On September 23, 1993, the Tenth Military Auditor (Auditor Auxiliar de Guerra), located in Carepa, Antioquia and attached to the Colombian army's Seventeenth Brigade, began a preliminary investigation into the deaths of Mr. Prada González and Mr. Bolaño Castro.

19. On January 3, 1994, the Military Judge No. 2, in Carepa, Antioquia took charge of the preliminary investigation.

20. On January 18, 1994, the military Judge charged with the investigation formally placed a number of soldiers under investigation: Captain Néstor Vargas Morales for the crime of cover-up, Lieutenant José Miguel Velandia, Sargeant Luis García, Corporals José Herrera, Wilder Calambas Pechene, José Manuel Arana Rojas, Ciro Antonio Duarte Sandoval and José Joaquín Herrera Suárez, and enlisted-men Albeiro Fernando Jiménez, Edgar Tovar Florez, Carlos Martínez Rojas, Jorge Restrepo Díaz, Ever López Arrieta, Misael Oyola de los Reyes, Santiago Hoyos Sierra, Jaime de Jesús Acevedo Franco, Carlos Jaramillo Rico, Argemiro Arroyo Varilla and Manuel Chiquillo Caraballo for the crime of homicide.

21. On January 19, 1994, the petitioners, represented by Luis Guillermo Pérez Casas, requested the military court's permission to join the same proceeding in order to contribute to the investigation and establish the responsibility of the members of the Colombian army.

22. On January 28, 1994, the military Judge charged with the investigation declined to file formal charges against the above-named soldiers. The Judge also declined to file formal charges against three other low-ranking officers and fourteen enlisted men implicated in this case.

23. On the same date, the military Judge charged with the investigation rejected the petitioners' request to join the proceeding, explaining that inclusion of the victims in the matter was not appropriate in the system of Military Criminal Justice.

24. On July 15, 1994, the Judge invalidated the proceedings up to that date, again refusing to charge the accused soldiers on the ground that they had not received proper counsel but had been defended by military officers.

25. On November 15, 1994, the court charged Captain Néstor Vargas Morales with the crime of cover-up, Lieutenant José Miguel Velandia, Sargeant Luis García, Corporal José Herrera, and

Privates José Jiménez, Edgar Tovar Florez, Carlos Martínez Rojas and Jorge Restrepo Díaz with homicide. The court ordered that the defendants be held in preventive detention.

26. On June 21, 1995, the Superior Military Tribunal issued a decision on the appeal filed by the accused. This Tribunal revoked the order of preventive detention issued by the lower Military Court, and ordered the immediate and unconditional release of the defendants.

27. On October 18, 1996, Major General Iván Ramírez Quintero, the Commander of the First Division of the Colombian army, and Judge of the First Instance, closed the proceedings against all of the accused.

28. On July 24, 1997, the Superior Military Tribunal partially revoked the lower court's order. The higher court upheld the closure of proceedings against Corporals Wilder Calambas Pechene, José Arana Rojas, Ciro Duarte Sandoval and José Herrera Suárez and enlisted-men Ever López Arrieta, Misael Oyola de los Reyes, Santiago Hoyos Sierra, Jaime Acevedo Franco, Carlos Jaramillo Rico, Argemiro Arroyo Varilla and Manuel Chiquillo Caraballo.

29. At the same time, the Superior Military Tribunal ordered that criminal proceedings continue against Captain Néstor Vargas Morales, Lieutenant José Velandia Mora and Sergeant Luis García for the crime of cover-up, and against the enlisted-men, Albeiro Fernando Jiménez, Edgar Tovar Florez, Carlos Martínez Rojas and Jorge Restrepo Díaz for homicide in excess of self-defense.

30. On August 8, 1997, the case was returned to the Commander of the First Army Division, Judge of the First Instance.

31. On February 3, 1998, the petitioners, citing the jurisprudence of Colombia's Constitutional Court, requested permission from the Judge of the First Instance to join the proceedings. On February 6, 1998, the Judge of the First Instance granted this request.

32. On February 17, 1998, the petitioners requested that the Judge of the First Instance declare himself incompetent to continue the criminal investigation. The request was based on a Constitutional Court's decision issued on August 5, 1997, which excluded from military jurisdiction crimes of extreme gravity committed by members of the Armed Forces and the National Police. On February 18, 1998, the Judge of the First Instance rejected the claim on the ground that the deaths of Mr. Prada González and Mr. Bolaño had occurred in combat during a military operation and therefore were inextricably linked to military service.[FN7]

[FN7] Decision of Brigadier General Victor Julio Alvarez Vargas, Commander of First Division and Judge of the First Instance, February 18, 1998, Santa Marta (Magdalena). Following this decision, on March 2, 1998, the Chairman and Vice Chairman of the Inter-American Commission sent a letter to the State that this case be transferred to the ordinary jurisdiction as soon as possible. The State has not responded to this letter.

33. After a military trial held from April 1 – 6, 1998, in Santa Marta, Magdalena, the members of the Court Martial unanimously found all of the defendants "not guilty" of the crimes charged.

2. Disciplinary Proceedings

34. On December 10, 1993, the Delegate Procurator for the Armed Forces opened a disciplinary investigation against Captain Néstor Vargas Morales, Lieutenant José Velandia Mora, Sargeant Luis García, and enlisted men José Herrera Suárez, Juan Manuel Arana Rojas, Wilder Calambas Pechene and Ciro Duarte Sandoval for the homicides of Mr. Prada González and Mr. Bolaño Castro.

35. On August 8, 1994, the Delegate Procurator for the Armed Forces issued disciplinary sanctions against the accused, including their expulsion from military service, for violating the rights to life and peace.

36. On May 18, 1995, the Delegate Procurator for the Armed Forces confirmed the previous decision.

3. Contentious-Administrative Proceedings

37. On January 25, 1995, the legal heirs of the victims presented a claim before the Contentious-Administrative Tribunal in Antioquia for damages resulting from the deaths of Mr. Prada González and Mr. Bolaño Castro. The Tribunal admitted this claim on August 31, 1995.

38. On April 16, 1996, the Contentious-Administrative Tribunal opened the procedural phase for the production of evidence. In November 1996, the victims' legal heirs requested the joinder of the two cases. The decision concerning such joinder is still pending.

4. Analysis on Admissibility

39. Article 46(1)(a) of the American Convention specifies that admission of a petition requires that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." Those remedies which must be exhausted are those which are suitable to address the alleged infringement of a legal right.[FN8]

[FN8] See I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 64.

40. In a case such as this one, when the alleged violation of a right may properly be characterized as a criminal offense, the victims or their legal heirs have the right to a judicial investigation and a decision by an ordinary criminal court determining, when possible, responsibility for the crimes committed and punishing those responsible.[FN9] Thus, the appropriate remedy is a criminal proceeding including a criminal investigation and sanctions, as well as the possibility of monetary compensation to the survivors of the victim.

[FN9] IACHR, Report No. 28/92, Argentina, Annual Report of the IACHR 1992-1993, OEA/Ser.L/V/II.83, Doc. 14, paras. 32 and 50; IACHR Report No. 10/95, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, paras. 42-48.

41. Article 46(2)(b) of the American Convention provides the Commission with the discretion to excuse the prerequisite of exhaustion of domestic remedies when the victim or victims have been impeded in their efforts to access internal legal remedies. With respect to adequacy of military courts to redress human rights violations the Commission has expressed that:

The military tribunals do not guarantee that the right to a fair trial will be observed since they do not have the independence that is a condition sine qua non for this right to be exercised. Moreover, their rulings have frequently been biased and have failed to punish members of the security forces whose serious involvement in serious human rights violations has been established.[FN10]

[FN10] IACHR Second Report on the Situation of Human Rights in Colombia OAS, Doc Ser.L/V/II.84, DOC. 39 Rev., October 14, 1993.

42. Additionally, a recent decision of Colombia's Constitutional Court restricts the jurisdiction of military courts over human rights violations to a narrow range of cases:

In order for a crime to fall under the competence of the criminal military justice system, there must be a clear link from the start between the crime and activities of military service. That is, the punishable act must arise as an excess or an abuse of power occurring in the scope of an activity directly linked to a proper function of the armed forces.[FN11] (emphasis added)

[FN11] Decision C-358 of the Constitutional Court, August 5, 1997.

43. Without prejudging the merits of this case, it could be argued that the killings of Mr. Prada González and Mr. Bolaño Castro occurred as an excess or abuse of power while members of the Colombian army were capturing them. The same Constitutional Court opinion, however, establishes one more limitation on military jurisdiction, which applies to the case at hand:

The link between the criminal act and the activity related to military service is broken when the crime is extremely grave, such as with crimes against humanity. In these circumstances, the case should be remitted to the civilian justice system.[FN12] (emphasis added)

[FN12] Idem.

44. Thus, without prejudging the merits, the Commission concludes that the criminal process instituted before military justice system has not provided the victims or their legal heirs with access to an effective remedy. Therefore, for the purpose of admissibility, the Commission deems that the requirement of exhaustion of domestic remedies mandated by Article 46(1) of the American Convention must be excused.

45. The Commission notes that in addition to the criminal investigation, a disciplinary proceeding and a contentious administrative proceeding were initiated in relation to the deaths of Mr. Prada González and Mr. Bolaño Castro. The Commission considers that neither of those jurisdictions have, or could have, provided a suitable remedy for the violations alleged in this case, and thus, need not have been exhausted.

46. A disciplinary proceeding, even one such as in this case, which resulted in disciplinary sanctions, simply is an insufficient remedy in a case involving the violent death of a person allegedly at the hands of State agents. Such a case should terminate in the criminal sanction, whenever possible, of the persons responsible for the crimes allegedly committed. The disciplinary sanction of those responsible, by itself, could not adequately repair the rights violated.

47. Regarding the contentious-administrative process, still pending, the Commission has concluded in other cases relating to Colombia that such jurisdiction is "intended only as a means of supervision of the State's administrative activity and to obtain compensation for damages caused by abuse of authority." [FN13] A contentious-administrative process does not constitute, in general, an adequate "means of redress of human rights violations" and thus need not be exhausted in a case such as this one. [FN14] Monetary compensation for damages inflicted, absent any determination as to wrongdoing, is not an adequate or appropriate remedy in this case.

[FN13] IACHR, Report No. 15/95, Colombia, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7 rev., para 71.

[FN14] Idem.

48. In addition, the Commission notes that in many member States of the OAS, including Colombia, a decision to convict in a criminal proceeding generally includes or precedes an order to pay compensation to those victims or family members who participated in the proceedings as civil parties. Thus, the criminal proceeding, which would constitute the appropriate remedy in cases such as this one, provides for the possibility of obtaining monetary compensation in addition to criminal sanction. The petitioners should not be required to seek exhaustion of the contentious-administrative remedy, which can provide only monetary compensation, when another remedy exists which serves to provide monetary compensation as well as the criminal investigation and sanction demanded in such a case. When the criminal proceeding does not

redress the human rights violation, including the right to compensation, the victims should not have to exhaust another remedy in order to obtain that compensation. Therefore, for the purposes of Article 46 of the Convention, the fact that the contentious-administrative process is still pending should not affect the admissibility of the case.

B. Duplication of procedures

49. The Commission considers that it appears from the record of the case that the matter is not pending before another international organ for settlement. Accordingly, this case satisfies the requirement of Article 46(1)(c) of the American Convention.

C. Grounds for inadmissibility according to Article 47

50. Article 47(b) of the American Convention establishes that the Commission should consider inadmissible any petition if it does not state facts that tend to establish a violation of the rights guaranteed in the Convention.

51. In this case, the petitioners have submitted a number of arguments that in principle tend to characterize a colorable claim regarding the possible violations of Articles 1(1), 4, 5 and 25 of the American Convention. The Commission considers that the requirements established in Article 47(b) have been satisfied.

IV. FRIENDLY SETTLEMENT

52. On March 3, 1998, the Commission placed itself at the disposal of the parties with a view to initiating a procedure for friendly settlement, and set a time limit of thirty days for them to state their positions. On April 7, 1998, the petitioners responded that they would agree to participate in a friendly settlement procedure, but only if the State first accepted its responsibility in this matter and takes measures to ensure that these kinds of incidents are not repeated. The petitioners also requested the creation of a committee to follow the progress of the friendly settlement process and the reparations due for the human rights violations that allegedly occurred. To date, the State has not replied to the Commission's offer of facilitating a friendly settlement in this case.

V. CONCLUSIONS

53. On the basis of these factual and legal considerations, the Commission concludes that the present case fulfills the requirements for admissibility as set forth in Articles 46 and 47 of the American Convention.

54. Based on the above considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible.
2. To transmit this report to the petitioners and to the Colombian State.
3. To continue its analysis of the merits of the case.
4. To reiterate its interest in placing itself at the disposal of the parties to reach a friendly settlement in accordance with the proceeding contemplated in the American Convention and the Regulations of the Commission.
5. To publish this report and to include it in the Annual Report of the Commission to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights in the City of Washington D.C., on the 25th day of the month of September, 1998. (Signed): Carlos Ayala, Chairman; Robert K. Goldman, First Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Claudio Grossman, Helio Bicudo and Henry Forde.