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| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 62/99; Case 11.540 |
| Title/Style of Cause: | Santos Mendivelso Coconubo v. Colombia |
| Doc. Type: | Report |
| Decided by: | Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume. Commissioner Alvaro Tirado Mejia, a Colombian national, did not participate in the discussion and decision of this Report, pursuant to Article 19(2)(a) of the Commission's Regulations. |
| Dated: | 13 April 1999 |
| Citation: | Mendivelso v. Colombia, Case 11.540, Inter-Am. C.H.R., Report No. 62/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999) |
| Represented by: | APPLICANT: the Corporacion Colectivo de Abogados "Jose Alvear Restrepo" |
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I. BACKGROUND

1. On September 15, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition lodged by the Corporación Colectivo de Abogados "José Alvear Restrepo" regarding the violation of the American Convention on Human Rights (hereinafter "the American Convention") by the Republic of Colombia (hereinafter "the State," "the Colombian State," or "Colombia") to the detriment of Santos Mendivelso Coconubo. The petition indicates that the alleged victim was deprived of his rights to life (Article 4), humane treatment (Article 5), and judicial protection (Articles 8 and 25) of the American Convention.

II. UNCONTESTED FACTS

2. Mr. Mendivelso, a teacher and trade union activist, was receiving constant death threats. These threats were allegedly made by paramilitary organizations and members of the Colombian Army in reprisal for Mr. Mendivelso's alleged links with an armed dissident group.

3. According to information provided by the petitioner and corroborated or not controverted by the State, on April 5, 1991, Santos Mendivelso Coconubo was shot and summarily executed by men dressed as peasants in the town of Turmequé, department of Boyacá. The assassination was perpetrated as Mr. Mendivelso was walking from his home to the school where he worked as a teacher. The assailants escaped in a red pickup truck.

4. On May 7, 1991, the criminal investigation was placed under the responsibility of Court 231 of Criminal Investigation. On June 27, 1994, a homicide investigation was initiated based on the testimony of Valentín Montañez González, a civilian informant of the Police, who confessed his complicity in the murder and identified the National Police agents who had planned and carried out the execution.[FN1]

[FN1] On July 26, 1994, Valentín Montañez remained in custody until he was formally indicted for homicide. On October 14, 1994, Mr. Valentín Montañez was indicted on homicide charges before the Seventh Criminal Court for the Circuit of Tunja in relation to the death of Mr. Mendivelso. On November 21, 1994, the Seventh Criminal Court accepted a plea bargain between the prosecutor and the accused, declared Mr. Valentín Montañez guilty of complicity in the murder of Mr. Mendivelso, and sentenced him to 64 months in prison.

5. On August 16, 1994, it was recommended that police agents Alfonso Enrique Velasco Torres, José Rafael Alvarez Urueta, Orlando Espitia and Eyery Flórez Bautista be placed under preventive detention. From September 1994 to January 1995, the Office of the Procurator General of the Nation (Procuraduría General de la Nación) proceeded to request that orders be issued for the preventive detention of agents Rafael Alfonso Arrunategui Santos and Pablo Antonio Soler Palacios.

6. On October 31, 1994, Brigadier General Carlos Pulido Barrantes, Inspector General of the National Police and Judge of First Instance in the military justice system, raised a jurisdictional conflict before the Office of the General Prosecutor (Fiscalía General de la Nación). On November 16, 1994, the Office of the General Prosecutor rejected the issue raised by the Inspector General and submitted the question to the Superior Council of the Judiciary.

7. On March 2, 1995, the Superior Council of the Judiciary assigned the case to the military justice system on the ground that the accused had allegedly committed the offense in the course of their duties as members of the police. As a result, the Inspector General of the National Police assumed jurisdiction over the case, and on April 29, 1996, terminated the proceedings and acquitted the following officers, non-commissioned officers, and agents of the SIJIN: Rafael Arrunategui Santos, Pablo Soler Palacios, Alfonso Velasco Torres, José Alvarez Urueta, Orlando Espitia, and Eyery Flórez Bautista. On July 19, 1996, the Supreme Military Tribunal confirmed the decision.

8. On November 22, 1995, the Office of the Delegate Procurator for the Judicial Police (Procuraduría Delegada para la Policía Judicial y Administrativa) opened a disciplinary investigation into the members of the National Police implicated in the assassination of the alleged victim. On February 9, 1996, Maj. Rafael Velasco Torres, Lt. Rafael Arrunategui Santos, Sergeants Orlando Espitia Fonseca and Rafael Alvarez Urueta, and agents Gustavo Amaya Ruiz, José Lagos Sierra, and Eyery Flórez Bautista, were charged by this Office. Nonetheless, on June 11, 1996, this disciplinary process was declared time-barred due to the delays in the processing, and on February 28, 1997, the case was ordered closed with prejudice.

9. On November 30, 1995, relatives of Mr. Mendivelso filed a suit for damages in the contentious-administrative jurisdiction. The suit was declared admissible on January 30, 1996. On March 12, 1997, the Administrative Tribunal for Boyacá initiated the investigative phase of the case, which is still pending.

III. PROCESSING BEFORE THE COMMISSION

10. On October 5, 1995, after examining the petition, the Commission opened case 11.540 and the pertinent parts of the complaint were forwarded to the State. In its response of February 28, 1996, the State provided information on the investigation of the case in the domestic jurisdiction. On April 29, 1996, the Commission received the petitioner's observations. After two extensions were granted--on August 7 and on October 7--on November 25, 1996, the State submitted information on the closing of the case by the Inspector General of the National Police, in his capacity as judge of first instance.[FN2] The State also presented information on the disciplinary proceedings that had been initiated.

[FN2] Judgment of Carlos Alberto Pulido Barrantes, Judge of First Instance, Bogotá, April 29, 1996. The Judge indicated in his judgment that the evidence presented against the accused "was neither unanimous nor consistent" and that any doubt should be resolved in favor of the accused.

11. On February 12, 1997, the Commission received the petitioner's observations. On February 17, 1997, the State provided information on the conclusion of the disciplinary proceedings. On April 25, 1997, the State provided additional documentation. On May 14, 1997, the complainants submitted their observations regarding the information submitted by the State.

12. On February 24, 1998, during the 98th session of the IACHR, the petitioners stated that in their view it would not be appropriate to pursue the friendly settlement process provided for in the Convention in this case. They requested the Commission to issue a decision on the merits according to Article 50 of the Treaty.

IV. POSITIONS OF THE PARTIES

13. The petitioner indicates that Mr. Santos Mendivelso Coconubo was deprived of his life, in violation of Article 4 of the American Convention. Petitioner further alleges violations of Articles 5, 8, and 25 of the Convention, all in conjunction with Article 1(1).

14. The State reported that the Office of the General Prosecutor of the Nation (Fiscalía General de la República) was carrying out investigations in which the agents of the National Police were involved as suspects, and that in 1995, the case was forwarded to the military criminal justice system. It further reported that any criminal investigation of members of the National Police should be performed by the military courts.

15. The petitioners reject the argument that the military criminal justice system has jurisdiction to examine cases of this kind. In their view, the military courts do not afford the

appropriate guarantees to try the perpetrators of the acts in question, nor are they in a position to provide reparation for the victim's next-of-kin.

16. On November 25, 1996, the State reported that the investigation of the military courts had been closed by the Inspector General of the National Police, in his capacity as judge of first instance. The decision indicates that the evidence presented against the accused "was neither unanimous nor conclusive" and that in case of doubt, it should be resolved in their favor.[FN3] On July 19, 1996, the Supreme Military Tribunal affirmed the judgment of the lower court, holding that the police informant, Valentín Montañez González, was not a credible witness and that there was no evidence whatsoever to corroborate his testimony.[FN4]

[FN3] Judgment of Carlos Alberto Pulido Barrantes, Judge of First Instance, Bogotá, April 29, 1996.

[FN4] Judgment of Judge Imelda Triviño de Torres, 5.269-129167-913, Bogotá, July 19, 1996.

17. In this case, the State has limited itself to providing information on the procedure before the military courts. Beyond the submission of information regarding the course of the proceedings before the military justice system, the State has not stated its position with respect to the substantive issues raised in this case.

V. ADMISSIBILITY

18. The Commission has prima facie jurisdiction to examine the instant case. The conduct alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention had already entered into force for the Colombian State.[FN5] The Commission will thus move on to analyze whether the requirements established in Articles 46 and 47 of the Convention have been met.

[FN5] Colombia ratified the American Convention on Human Rights on July 31, 1973.

A. Exhaustion of domestic remedies

19. The State has not raised objections regarding the exhaustion of domestic remedies in this case. Therefore, the requirement established at Article 46(1)(a) of the Convention has been satisfied.

20. The petitioner argues that domestic remedies have been ineffective, and that the examination of the case by the domestic courts fits under the exception set forth in Article 46(2) of the Convention. It maintains that in this case the State did not provide adequate judicial protection nor did it ensure access to justice for the victim's next-of-kin, as provided for in Articles 8 and 25 of the American Convention.

21. The Commission considers that in this case the requirement of exhaustion of domestic remedies is closely linked to the merits. Therefore, the issue of the existence of adequate remedies and their effectiveness will be analyzed *infra* together with the merits of the case.

22. In this respect, it should be recalled that the Inter-American Court of Human Rights ("the Court" or "the Inter-American Court") has noted that:

when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.[FN6]

[FN6] I/A Court HR, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 91.

B. Compliance with the time limit established in Article 46(1)(b) of the American Convention

23. The Commission considers that compliance with the requirement regarding the submission of the petition within six months from the notification of the final decision of the domestic courts is linked to the availability of adequate and affective domestic remedies to prosecute those responsible for the death of the alleged victim. Therefore, the determination as to whether the period established in Article 46(1)(b) of the American Convention applies in this case must be deferred. In any event, the State has not called into question the timeliness of the submission of the petition.

C. Duplication of procedures

24. The Commission understands that the subject matter of this petition is not pending before any other procedure for international settlement, nor does it reproduce a petition already examined by this or any other international body. Therefore, the requirements established at Articles 46(1)(c) and 47(d) are also satisfied.

D. Grounds of the petition

25. The Commission considers that petitioner has presented a colorable claim of violation under the American Convention. As the petition is not manifestly groundless or ill founded, the Commission considers the requirements of Article 47(b) and (c) to have been satisfied.

E. Preliminary conclusions on the admissibility of the case

26. The Commission considers that it has jurisdiction to examine this case, and that the case is, in principle, admissible pursuant to the requirements established in Articles 46 and 47 of the

American Convention, subject to the determination as to whether the domestic remedies have been adequate and effective.

VI. ANALYSIS ON THE MERITS

A. The right to life

27. The information and evidence provided by the petitioner indicate that members of the National Police planned and carried out the extrajudicial execution of Mr. Mendivelso Coconubo in Turmequé, Boyacá, on April 5, 1991. The evidence indicates that the motive of the execution was the alleged link between the victim and the Ejército de Liberación Nacional (ELN National Liberation Army). This conclusion is based on the testimony of a police informant, Valentín Montañez González, who confessed his participation in the crime, as well as the testimony of other witnesses who corroborated the informant's statement. That testimony is compatible with other elements that appear in the record of the processing of the case before the Commission.

28. In the course of the processing of the case before the Commission, the State did not challenge the allegations or evidence presented by the petitioner.

29. Article 4 of the American Convention provides, *inter alia*:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

30. The Commission has established that Police agents executed Santos Mendivelso Coconubo on April 5, 1991. There are no indicia in this case that the victim was killed in circumstances that would have justified the conduct of the State agents. The State has not made any such argument, nor is this suggested in the record in this case.

31. Therefore, based on the foregoing considerations of fact and law, and the evidence in the record, the Commission concludes that on April 5, 1991, State agents arbitrarily deprived Mr. Mendivelso Coconubo of his life, in violation of the right provided for in Article 4 of the American Convention.

B. The right to humane treatment

32. Petitioner alleges a violation, in this case, of the right to humane treatment, enshrined at Article 5 of the American Convention. Article 5 provides, at paragraphs (1) and (2):

Every person has the right to have his physical, mental, and moral integrity respected.

No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

33. Beyond the statement of the alleged violation of this provision, the Commission has not found in the record any elements of fact or law that uphold the conclusion that Mr. Mendivelso was tortured or subjected to cruel, inhumane, or degrading treatment prior to his death. Therefore, no violation of Article 5 of the American Convention is found.

C. Right to judicial protection

34. The petitioner alleges that the right to judicial protection, as provided for in Articles 8 and 25 of the American Convention, has been violated in this case. Article 25 provides:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
 - b. to develop the possibilities of judicial remedy;
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

Article 25 sets forth the general obligation of the State to provide all persons under its jurisdiction with an effective judicial remedy in the face of a violation of their fundamental rights, and in so doing incorporates the principles of the efficacy of procedural instruments or mechanisms. As the Court has indicated:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[FN7]

[FN7] Id.

35. In those cases in which the violation of a protected right results in the commission of a criminal offense under domestic law, the victims or their next-of-kin have the right to have an ordinary criminal court determine the identity of the perpetrators, prosecute them, and impose the respective sanctions.[FN8] There is no doubt but that these cases require a criminal process including an investigation and criminal sanctions, as well as the possibility of bringing a civil action for compensation. The relatives of Mendivelso Coconubo had no access to any such remedy.

[FN8] Report N° 28/92, Argentina, Annual Report of the IACHR 1992-1993, OEA/Ser.L/V/II.83, Doc. 14, paragraphs 32, 50; Report No. 10/95, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7 rev., paragraphs 42-48.

36. In this case, however, the criminal proceeding begun in the domestic forum did not advance at a reasonable pace to trial and punishment of the persons responsible for the assassination of Mr. Mendivelso. In 1994, a civilian informant, Valentín Montañez González, who had taken part in the assassination of Mr. Mendivelso, was declared guilty and sentenced to more than five years imprisonment for his participation in the crime. Nonetheless, in early 1995 the Superior Council of the Judiciary removed the case against the members of the National Police to the military courts.

37. Given its nature and structure, the military criminal justice system does not meet the requirements of independence and impartiality established at Article 8 of the American Convention on Human Rights. The Commission has, on prior occasions, stated its position on the suitability of the military courts for hearing cases that involve violations of human rights, for example:

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 that right to be exercised. Moreover, their rulings have frequently been biased and have failed to punish members of the security forces whose involvement in very serious human rights violations has been established.[FN9]

[FN9] Second Report on the Situation of Human Rights in Colombia (1993), p. 245.

38. In addition, the Constitutional Court of Colombia has established that:

In order for the military criminal justice system to have jurisdiction over an offense there must be, from the outset, a clear link between the offense and the activities that properly pertain to military service. In other words, the punishable act should constitute an excess or an abuse of power that takes place in the context of an activity directly linked to a legitimate function of the armed forces. The nexus between the criminal act and the activity linked to military service is broken when the offense is extremely grave, as is the case of crimes against humanity. In such circumstances, the case must be remitted to the civilian justice system.[FN10]

[FN10] Constitutional Court, Judgment C-358 of August 5, 1997.

39. The summary execution of a person suspected of maintaining links with a dissident armed organization cannot be considered a legitimate function of the Colombian National Police.

Therefore, the mere fact that a military court has assumed jurisdiction impedes access to the judicial protection enshrined in Articles 8 and 25.

40. In addition to the military criminal investigation, the facts in this case were examined in parallel proceedings in the disciplinary and contentious-administrative jurisdictions. Those jurisdictions, however, do not provide adequate means for judging the violations alleged.

41. On June 11, 1996, the Delegate Procurator for the Judicial Police decided that the disciplinary action against the police officers involved had prescribed due to delays in the proceedings, and on February 28, 1997, decreed the case "closed with prejudice." The State did not argue the possibility that this proceeding might be reopened, thus it should be considered exhausted.

42. In addition to the fact that it proved ineffective in this case, a proceeding of this sort does not constitute an adequate remedy to establish responsibility for the violent death of a person by the police. A case such as this requires the imposition of a criminal sanction, and not the mere determination of a disciplinary sanction.

43. As for the contentious-administrative proceeding--which is still pending--the Commission has established in similar cases that such a proceeding is exclusively a mechanism for supervising the administrative activity of the State, aimed at obtaining compensation for any damages caused by the abuse of authority.[FN11] In general, this proceeding is not an adequate mechanism for making reparation in cases of human rights violations, thus it need not be exhausted in a case such as this. So long as no determination is reached with respect to the violation of fundamental rights, mere compensation for damages does not constitute an adequate remedy.

[FN11] Report 15/95, Colombia, Annual Report of the IACHR 1995, para. 71.

44. In the comparative law of the OAS member States, including Colombian law, the decision to try individuals on criminal charges generally includes or precedes the decision on reparation for the victims or next-of-kin who participate in the proceedings as a civil party. Therefore, the criminal process, which would constitute the appropriate remedy in cases such as this, offers the possibility of obtaining monetary compensation, in addition to seeking justice through trial and punishment of the persons responsible. One cannot demand that petitioners exhaust a remedy whose sole purpose is to provide compensation when there is another type of process which, in addition to offering the possibility of obtaining compensation, entails the investigation and sanctions that the law requires in a case such as this.

45. In terms of the effectiveness of the remedies to which the victim's next-of-kin had access, it should be noted that on April 29, 1996, the Military Judge of First Instance halted the criminal proceedings against the police agents implicated in the death of Mr. Mendivelso. The Supreme Military Tribunal affirmed the judgment of the Judge of First Instance on July 19, 1996.

46. The lack of an effective remedy vis-à-vis a violation of the rights recognized by the Convention is in itself a violation. In this regards, it should be emphasized that for this remedy to exist it is not sufficient that it be provided for in the Constitution or by statute, or that it enjoy formal recognition; rather, it must be effective in establishing whether there has been a violation of human rights and in offering reparation. The Inter-American Court of Human Rights has established that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

...

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[FN12]

[FN12] I/A Court HR, Velásquez Rodríguez Case, Judgment of July 29, 1988, paras. 174 and 176.

47. The inefficacy of the proceedings in this case is revealed by the fact that two military courts decided to conclude the criminal proceedings against the members of the Colombian National Police accused of the summary execution of Mr. Mendivelso. Consequently, neither the victim nor his legal heirs enjoyed an effective judicial remedy in the terms of Article 25 of the American Convention.

48. Consequently, the Commission concludes that the military justice system has not provided the victim or the victim's next-of-kin access to an adequate and effective remedy, nor to reparation for the harm suffered. Article 46(2) of the Convention provides that the requirement of exhaustion of domestic remedies can be waived whenever the petitioner or victim has been deprived of access to adequate and effective means of remedying the violation of the Convention. Therefore, as regards the pending issues of admissibility, the Commission concludes that the requirement of Article 46(1)(a), pursuant to which it is necessary "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law," is not applicable in this case. Consequently, the time requirement of Article 46(1)(b) of the American Convention is also inapplicable.

VII. CONSIDERATIONS ON THE STATE'S OBSERVATIONS REGARDING THE ARTICLE 50 REPORT

49. The Commission examined this case during its 100th session, and on September 29, 1998, adopted Report No. 50/98, pursuant to Article 50 of the Convention. In its Report, the

Commission concluded that the State was responsible for the violation of the right to life (Article 4) and the right to judicial protection (Articles 8 and 25), in conjunction with the obligation to guarantee the rights protected in the Convention, as established in Article 1(1), to the detriment of Mr. Mendivelso Coconubo. In addition, it recommended that the State: "(1) adopt the necessary measures for the regular justice system to undertake a serious, impartial, and effective investigation in order to try and punish the persons responsible for the events detailed in this report; (2) adopt the necessary measures to make reparation to the victim's next-of-kin for the violations found, including the payment of fair compensation; (3) adopt the necessary measures so that in the future the persons responsible for conduct similar to that examined in this report may be judged by the regular justice system, following the doctrine developed by the Constitutional Court of Colombia and by this Commission." On November 10, 1998, the Commission forwarded the report to the State, and granted the State three months to submit information on the implementation of the recommendations set forth therein. The State submitted its observations to the Report on February 15, 1999.

50. The State made several points regarding material discrepancies that appear in Report No. 50/98, of which the Commission has taken due note, and which have been incorporated, as pertinent, in this Report.

51. The State also made several comments on the grounds for the Commission's decision. It questioned, among other things, the declaration of admissibility of this case based on the determination that the victim's next-of-kin were deprived of access to adequate and effective remedies in the domestic forum to cure the violations alleged. The State held that its domestic legislation includes a set of mechanisms for protection that should be considered by the Commission as a whole for the purposes of the exhaustion of domestic remedies.

52. The Commission must note that it would, moreover, be inappropriate to re-examine its determination regarding admissibility at this stage of the procedure without documentation that substantial errors have been made, or unless facts are shown to exist which, had they been taken into account, would have substantially modified the decision on admissibility. The Commission has clearly expressed the grounds for its conclusion that the investigation into the facts and the judgment of the persons responsible by the military courts deprived the victim's next-of-kin of access to justice in the terms called for by the American Convention.

53. The State considers that the breadth with which the Commission has applied the rules on exhaustion of domestic remedies leaves it "in a relatively defenseless position" given that its domestic legislation assigns independence to the disciplinary and administrative oversight bodies. In this regard, the Commission should remind the Colombian State that the principles and standards in force under international law establish that those States that have assumed obligations by virtue of having ratified a treaty may not invoke their domestic legislation to excuse non-compliance with the treaty. The Commission has been mandated to determine whether the provisions of the American Convention are duly respected and guaranteed by the States parties. While the process of making this determination is subject to admissibility requirements such as the prior exhaustion of domestic remedies, the Commission should not neglect its obligation to determine whether there have been violations of the fundamental rights enshrined in the American Convention, as it has been shown that the remedies offered in the

domestic jurisdiction have not worked or are not working in accordance with the standards set forth in the treaty, with regard to access to justice. This is especially so when the State has refrained from expressly objecting to the Commission's jurisdiction to analyze the particular case.

54. The State has called into question the recommendation that a serious, impartial, and effective investigation of the facts be undertaken in order to judge and punish the persons responsible. It considers that once the military criminal and disciplinary proceedings have concluded, initiating new proceedings on the same facts would be tantamount to disregarding final judicial and disciplinary decisions, and the consequent violation of the principles of *res judicata* and *non bis in idem* enshrined in the Colombian Constitution and the American Convention.

55. The Commission should reiterate that as determined in Report 50/98, the State agents accused of perpetrating the assassination of Mr. Coconubo were acquitted in a proceeding that did not have impartial and independent judges. The judgments against the evidence handed down by the military courts cannot be considered to make reparation for the grave violations committed. The State has not met its obligation to ensure access to an effective remedy pursuant to the standards of Article 25 and the guarantees of impartiality of Article 8 of the American Convention, and, therefore, it must do what it can to cure this situation, which has caused it to incur international responsibility. In any event, the Commission should note that while the principle of legality is enshrined in the American Convention, its provisions should not be invoked so as to suppress the enjoyment or exercise of other rights also recognized in the American Convention,[FN13] in this case, access to justice.

[FN13] See Article 29(a) of the American Convention.

56. As regards the reparations due, the State expressed that, as indicated in Report 50/98, the contentious-administrative proceeding brought in 1995 for the purpose of determining the liability of the State and the compensation due is still ongoing, in the court of first instance. The Commission notes that the holding of this proceeding in line with domestic legislation does not stand in the way of the State making compensation to the victims' next-of-kin pursuant to the determination of responsibility by the Commission in its Report. Indeed, the State has put in place the legal mechanisms to do so.

57. The State added, in this respect, that the very publication of the Report adopted by the Commission "represents a form of moral reparation." The Commission appreciates the value that the State attributes to its pronouncements. Nonetheless, the possible publication of the Report in the case under study does not relieve the State of its obligation to make reparation for the damage caused, pursuant to the Convention, by payment of compensation, as well as the adoption of other measures to satisfy the victims' next-of-kin for the loss they have suffered.

58. As regards implementation of the recommendation to adopt the measures needed to ensure that in the future the persons responsible for conduct similar to that examined here be

tried in the regular courts, the State indicated that since Judgment C-358 of August 1997, the Constitutional Court has proceeded to transfer a large number of cases to the regular courts. It also point to the study by the Colombian Congress of a draft reform to the military criminal justice system that incorporates the guidelines and standards expressed by the Court in its judgment. The Commission hopes that, if adopted, this legislative initiative will be in line with the standards established in the American Convention regarding access to justice and due process. In terms of the removal of cases to the regular jurisdiction, the Commission expresses its hope that the Council of the Judiciary will fully implement the criteria of that judgment of the Constitutional Court.

VIII. CONCLUSIONS

59. The Commission, based on the foregoing considerations of fact and law, and in light of the observations made to Report 50/98, ratifies its conclusions that the State is responsible for the violation of the right to life (Article 4) and the right to judicial protection (Articles 8 and 25), in conjunction with the obligation to guarantee the rights protected in the Convention, as provided by Article 1(1), to the detriment of Mr. Mendivelso Coconubo.

IX. RECOMMENDATIONS

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE COLOMBIAN STATE:

1. That it adopt the necessary measures for the regular justice system to carry out a serious, impartial, and effective investigation for the purpose of judging and punishing those responsible for the acts set forth in this report.
2. That it adopt the measures needed to make reparation to the victim's next-of-kin for the violations found, including the payment of fair compensation.
3. That it adopt the necessary measures so that in the future the persons responsible for similar conduct to that examined in this report be judged by the regular courts, pursuant to the doctrine developed by the Constitutional Court of Colombia and by this Commission.

X. PUBLICATION

60. The Commission transmitted the report adopted pursuant to Article 51 of the American Convention to the State and to the petitioner on February 25, 1999, and gave the State one month to submit information on the measures adopted to comply with the Commission's recommendations. The State failed to present a response within the time limit.

61. Pursuant to the foregoing considerations, and in conformity with Article 51(3) of the American Convention and Article 48 of its Regulations, the Commission decides to reiterate the conclusions and recommendations of paragraph 59, to make this Report public, and to include it in its Annual Report to the General Assembly of the OAS. The Commission, pursuant to its

mandate, shall continue evaluating the measures taken by the Colombian State with respect to the recommendations at issue, until they have been fully implemented.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington D.C., on the 13 day of the month of April 1999. (Signed): Robert K. Goldman, Chairman; Helio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Jean Joseph Exume and Carlos Ayala Corao.