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Title/Style of Cause:	James Zapata Valencia and Jose Heriberto Ramirez Llanos v. Colombia
Doc. Type:	Decision
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, of Colombian nationality, did not participate in the discussion and decision of this Report, pursuant to the provision of Article 19(2)(a) of the Commission's Regulations.
Dated:	27 September 1999
Citation:	Zapata Valencia v. Colombia, Case 10.916, Inter-Am. C.H.R., Report No. 100/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANT: the Colombian Commission of Jurists
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I. SUMMARY

1. On July 16, 1991, the Colombian Commission of Jurists (hereinafter "the petitioners") submitted a petition against the Republic of Colombia (hereinafter "the State" or "the Colombian State") alleging violations of Articles 7 and 8 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention") and subsequently of Articles 4, 5, and 25, to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos (hereinafter "the victims").

2. Petitioners alleged that the victims were detained and disappeared on March 22, 1988 by individuals who identified themselves as members of the F-2 intelligence group of the National Police. Later, they noted that the alleged victims re-appeared dead and with signs of torture, in violation of Articles 4 and 5 of the American Convention. Petitioners argue that the corresponding investigation, which has been ongoing for more than 10 years, has failed to be effective, and they argue that the Colombian State is in breach of its obligation to respect and guarantee the rights protected in the American Convention. The State alleges that domestic remedies have not been exhausted and that the case is therefore inadmissible. As for the considerations on the merits, it argues that it has not been judicially proven that State agents participated in the violations alleged.

3. Based on its analysis of the allegations of fact and law, the Commission concluded that it was competent to hear the claim and that the case meets the requirements established at Article

47 of the American Convention. In addition, it decided to defer its decision on the issue of compliance with the requirements of Article 46 until its decision on the alleged violations of Articles 8 and 25, along with the merits.

II. PROCESSING BEFORE THE COMMISSION

4. On July 23, 1991, the Commission opened Case N° 10916 and forwarded the pertinent parts of the petition to the State, giving it 90 days to submit information. The State submitted its answer on October 31, 1991. On January 21, 1992, the petitioners submitted the corresponding observations, whose pertinent parts were forwarded to the State.

5. On March 6, 1992, the State submitted new observations. The petitioners submitted additional information on July 13, 1993, and on June 16, 1994. The State submitted its observations by note of November 15, 1994. The petitioner submitted additional observations on February 3, November 23, and December 15, 1996.

6. On October 17, 1996, the Commission placed itself at the disposal of the parties to reach a friendly settlement. On November 19, the State requested an extension for submitting its answer, which was granted. By communication of December 15, the petitioners formulated a series of considerations on the measures which should, in their view, be adopted to make a friendly settlement possible.[FN1] On January 2, 1997, the State expressed that "for the time being, it would not appear viable to begin to pursue a friendly settlement, considering that the criminal investigation has yet to conclude." A commitment was made, however, to request that the record be forwarded to the human rights unit of the Office of the Public Prosecutor, "as a display of its determination to address impunity." [FN2] On January 15, 1997, it submitted further information that sets down in writing the interest of the Office of the Public Prosecutor (Fiscalía General) to "make an effort to reach a friendly settlement that would be translated into the assignment of the criminal investigation already under way in this case to the Human Rights Unit of the Office of the Public Prosecutor, which would be understood by the Commission ... as reflecting a positive attitude aimed at giving judicial impetus to the case." [FN3] The Commission called the parties to a hearing, which was held on March 6, 1997. On March 7, 1997, the Commission turned to the State to request that it adopt a series of measures to support the work of the Human Rights Unit of the Office of the Public Prosecutor in its investigation of this case, in the context of possibly initiating a friendly settlement process. [FN4]

[FN1] "(1) It should consider, as a necessary condition, acknowledgment of State responsibility; (2) adoption by the State of measures to guarantee fair compensation to the relatives of the two youths for the pain and suffering caused them by the disappearance and later execution; (3) measures to guarantee that impunity be overcome and that make it viable to prosecute and punish the perpetrators of the crimes committed against James Zapata and Heriberto Ramírez; (4) finally, that it consider including the creation of a mechanism to adequately monitor the measures adopted...." Communication from the petitioners of December 15, 1996.

[FN2] Note EE/DH/000062 from the Director General for Special Affairs (e) of January 2, 1997.

[FN3] Note EE/DH/001747 from the Director General for Special Affairs of January 15, 1997.

[FN4] The Commission specifically requested: (1) the designation of additional Public Ministry agents for cases being processed by the Human Rights Unit; (2) support for the security agencies; (3) the cooperation of the Office of the Procurator General of the Nation (Procuraduría General de la Nación) in evaluating the evidentiary elements that make it possible to clarify the facts and punish the persons responsible.

7. On August 4, 1997, the State forwarded the Commission a copy of the decision from the Council of State, Contentious-Administrative Chamber, Third Section, which declared that the action for damages brought by the relatives of Mr. James Zapata Valencia was time-barred. By note of October 7, 1997, during the 97th session, the petitioners requested that the Commission consider the attempt to reach a friendly settlement of the matter to have concluded, since the "criminal investigations [...] continue as initially alleged." [FN5] On April 23, 1999, at the request of the Commission, petitioners submitted additional information on the case, which was duly forwarded to the State for its observations.

[FN5] Petitioner alleged that only one of the Commission's recommendations had been adopted--support for the security agencies--and that there was no information on the effective designation of special agents from the Public Ministry. Communication from petitioner of October 7, 1997.

III. POSITIONS OF THE PARTIES

A. The position of the petitioners

8. As for the factual allegations, the petitioners argue that on March 22, 1988, the victims were detained while having lunch at the "La Basconia" restaurant in the city of Manizales, department of Caldas, where they were last seen alive. They allege that according to witness statements, the individuals who detained them identified themselves as members of the F-2 intelligence group of the National Police (hereinafter "F-2"). They point out that the alleged victims had been subject to acts of intimidation by members of the National Army and of the F-2 for having belonged to the M-19 guerrilla movement. Messrs. Zapata Valencia and Ramírez Llanos returned to civilian life in 1986, having availed themselves of the general pardon granted by the State in 1985.

9. On March 25, three days after this incident, the newspaper La Patria published a news item on the finding of two unidentified corpses at the "Taparca" farm, in the neighboring municipality of Palestina. The family members of James Zapata identified the victims based on the published photography, and took the initiative to prompt the investigation.[FN6] The petitioner note that later, National Police agents Néstor Martínez, Oscar Gutiérrez Giraldo, and Jorge Enrique García were implicated in the criminal case based on photo identification by one of the eyewitnesses. Nonetheless, immediately after the preliminary inquiry, and without taking any more evidence, the Public Order Judge of Medellín ordered that these police officers be released. Petitioners allege that for more than four years the investigation was under the Public

Order jurisdiction (known as “Regional Justice”), with no criminal charges filed, and without any result.

[FN6] The request and the response by the Administration are in the record before the Commission.

10. In October 1993, the Regional Prosecutor of Medellín requested that the investigation of the case be closed due to lack of evidence and merit. On September 5, 1994, however, the Regional Prosecutor of Medellín decided to re-open the preliminary inquiry stage. Petitioners allege that this decision brought the investigation back to square one, and that the evidence brought forward through the efforts of the victims' next-of-kin was given no consideration whatsoever. The petitioners allege that the fact that the State has decided to transfer the investigation to the Human Rights Unit as "an effort to address impunity" constitutes recognition of State responsibility for a violation of Article 25 of the American Convention.

11. As regards the disciplinary and contentious-administrative proceedings, they note that on August 9, 1993, the Office of the Procurator General of the Nation (Procuraduría General de la Nación) declared that the disciplinary proceeding was barred by statute of limitations, once the evidence on behalf of the agents investigated was presented, without any new evidence having been collected. On April 14, 1994, the Third Section, Administrative-Contentious Chamber, of the Council of State affirmed that the contentious-administrative claim brought by the relatives of James Zapata Valencia was time-barred.

12. In brief, the petitioners allege that on March 22, 1988, State agents perpetrated the forced disappearance and extrajudicial execution of Messrs. Zapata Valencia and Ramírez Llanos, in violation of Articles 4, 5, 7, and 8 of the American Convention. They also consider the delay and lack of effectiveness displayed in the investigation undertaken to amount to a violation of Article 25 of the American Convention.

13. As for the admissibility of this case, the petitioners allege that there has been an unjustified delay in furthering the investigation, which has precluded the effectiveness of domestic remedies as a means of clarifying the facts and trying those responsible. They argue that the exception to the exhaustion requirement provided for at Article 46(2)(c) of the American Convention is applicable to the case, given the time that has transpired as from the alleged violation of the right to life, without any formal charges being made. They note that even though the investigation was transferred to the Human Rights Unit in January 1997, it continues to be in its preliminary stage.

B. The position of the State

14. The State argues that domestic remedies have yet to be exhausted. The State reported that in March 1992 the Public Order Court of Medellín ordered the formal criminal proceeding be initiated and called on five of the persons allegedly involved to come forward, yet they failed to do so. Consequently, arrest warrants were issued for them. In addition, it was reported that on

September 5, 1994, the Regional Office of the Public Prosecutor for Medellín issued a ruling limiting the investigation, benefiting defendants Néstor Martínez, Oscar Gutiérrez, and Jorge García, since the statements by the eyewitnesses led to the conclusion that these persons were not involved. The State argues that the individuals identified by the persons who participated in the photo identification were different from those alleged to be responsible. In January 1997, the investigation was transferred to the Human Rights Unit of the Office of the General Prosecutor of the Nation, and the Delegate Procurator for the Public Ministry (Procuraduría Delegada para el Ministerio Público) ordered that special agency 4831 be constituted to clarify the case.

15. As regards the alleged violation of the right to life, the State argues that it has not been shown in any domestic court that its agents have participated in the alleged disappearance.[FN7] In its opinion, the fact that the persons who allegedly detained Zapata Valencia and Ramírez Llanos claimed to be members of the F-2 does not necessarily mean that they were police officers. It notes that this is a strategy commonly used by criminal bands for the purpose of preventing their victims from putting up resistance.[FN8]

[FN7] Communication of October 31, 1991, from the Director General of Public Affairs of the Ministry of Foreign Relations, Republic of Colombia.

[FN8] Ibidem.

IV. ANALYSIS ON JURISDICTION AND ADMISSIBILITY

A. Jurisdiction of the Commission

16. The Commission has jurisdiction to examine the petition under study. The facts alleged took place under the jurisdiction of the State when the obligation to respect and ensure the rights established in the Convention were already in force for the Colombian State.[FN9] The Commission will now analyze whether the requirements set forth in Articles 46 and 47 of the American Convention have been met.

[FN9] Colombia ratified the American Convention on Human Rights on July 31, 1973.

B. Requirements for the admissibility of a petition

a. Exhaustion of domestic remedies and timeliness

17. The State alleged that the case is inadmissible because domestic remedies have yet to be exhausted, specifically the criminal process. Petitioners argue that domestic remedies have been ineffective and that the examination of the case by the domestic courts falls within the exception provided for at Article 46(2)(c) of the Convention. In their view the State has failed to provide adequate judicial protection, or to ensure access to justice for the next-of-kin of the victims, within a reasonable time, as required by Articles 8 and 25 of the Convention.

18. The Commission considers that in this case the requirement of exhaustion of domestic remedies is closely linked to the merits. In this respect, the Inter-American Court of Human Rights (hereinafter "the 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.[FN10]

[FN10] I/A Court HR, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 91.

19. Given the characteristics of the issues under study, the Commission has decided to defer its decision as to whether the exception provided for in Article 46(2)(c) is applicable to the present case until its pronouncement on the merits, particularly with respect to the judicial protection afforded by the State in this case.

20. As regards the requirement related to the deadline for submitting the claim, the Commission considers that it is linked to the exhaustion of domestic remedies. Therefore, the determination as to whether the deadline established in Article 46(1)(b) of the American Convention applies in this case must also be deferred.

b. Duplication of proceedings and res judicata

21. The Commission understands that the subject of the petition is not pending before another international proceeding for settlement, nor is it the same or substantially the same as a petition already examined by this or another international body. Therefore, the requirements established in Articles 46(1)(c) and 47(d) are also met.

c. Characterization of the facts alleged

22. The Commission considers that the allegations of the petitioners refer to facts which, if proven, would constitute a colorable claim of violation of the rights protected in Articles 4, 5, 7, 8 and 25 of the American Convention. As the petition is not manifestly groundless or out of order, the Commission considers the requirements established in Articles 47(b) and (c) to have been met.

V. CONCLUSION

23. The Commission concludes that it has jurisdiction to hear this case, and that it is admissible, pursuant to Article 47 of the Convention. In addition, it decides to defer its decision

on the issue of whether the requirements of Article 46 are met until it issues its opinion on the alleged violations of Articles 8 and 25, along with the merits.

24. Based on the arguments of fact and law set forth above, and without pre-judging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible.
2. To send this Report to the Colombian State and to the petitioner.
3. To continue with the analysis of the merits.
4. To place itself at the disposal of the parties, once again, with a view to reaching a friendly settlement based on respect for the rights protected in the American Convention, and to invite them to make a statement on this possibility, and
5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., September 27, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Jean Joseph Exumé, and Carlos Ayala Corao, Commissioners.