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Session:	Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause:	Norberto Javier Restrepo v. Colombia
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; Second Vice-Chairman: Juan E. Mendez; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated:	5 October 2000
Citation:	Javier Restrepo v. Colombia, Case 11.726, Inter-Am. C.H.R., Report No. 84/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by:	APPLICANTS: Association of Relatives of the Disappeared, the Latin American Federation of Associations of Relatives of the Disappeared, the Colombian Commission of Jurists and the Center for Justice and International Law
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## I. SUMMARY

1. On February 19, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by the Association of Relatives of the Disappeared (ASFADDES), the Latin American Federation of Associations of Relatives of the Disappeared (FEDEFAM), the Colombian Commission of Jurists, and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) against the Republic of Colombia (hereinafter “the State”) in which it denounced that on June 2, 1992, members of the National Police detained Norberto Javier Restrepo (hereinafter “the victim”) in the municipality of Medellín, department of Antioquia, and that days later he was found dead with signs of torture.

2. The petitioners allege that the State is responsible for violations of the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection, set forth at Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter the “American Convention”) in conjunction with the general obligation to guarantee respect for the rights established in the Convention.

3. The State submitted information on the status of the domestic proceedings aimed at clarifying the facts, and argued that the petition should be declared inadmissible on grounds that the participation of state agents in the detention and death of the victim had not been shown. The petitioners argued that the judicial investigation still pending had not refuted the participation of

state agents in the facts alleged and asked the Commission to declare the case admissible under the exception to the prior exhaustion of domestic remedies requirement set forth in Article 46(2)(c) of the Convention.

4. Based on the analysis of the parties' positions, the Commission concluded that it is competent to examine the petitioner's claims and that the case is admissible under Articles 46 and 47 of the American Convention.

## II. PROCESSING BEFORE THE COMMISSION

5. On March 3, 1997, the Commission proceeded to open the case as Case N° 11.726 and transmitted the pertinent parts of the complaint to the State, giving it 90 days to submit information.

6. On July 25, 1997, the State submitted its answer, whose pertinent parts were transmitted to the petitioners. On November 3, 1997, the petitioners submitted additional information, which was timely remitted to the State with a term of 30 days to present observations. On August 17, 1998, the Commission reiterated its request to the State to provide information. On October 27, 1998, the State submitted its observations, which were duly transmitted to the petitioners.

7. On March 1, 1999, during the 102nd session, a hearing was held on the case attended by both parties. On March 23, 1999, a written copy of the arguments submitted by the petitioners during the hearing was transmitted to the State, which was given 30 days to submit its observations thereto. However, as of the date of approval of this Report the State has not done so.

## III. POSITIONS OF THE PARTIES

### A. Petitioner's position

8. The petitioners affirm that on June 2, 1992, Norberto Javier Restrepo left his home in the city of Medellín at 6:30 a.m.; no more was heard from him that day. The next day his mother, Lucila Restrepo Posada, received a brief call from her son in which he asked about his family members. On June 5, his mother received an anonymous telephone call in which she was told that her son had been disappeared.

9. The petitioners allege that on June 6, 1992, the victim's mother began the search for her son at police stations, at the F-2 (intelligence agency of the National Police), in hospitals, and through the media. On June 7, Norberto Restrepo communicated with his mother for the last time to tell her that he had been detained along the highway on the road to "Las Palmas." That same day Mrs. Restrepo Posada presented an oral report of her son's disappearance to the Procuraduría Departamental of Antioquia where, the next day, she was allegedly told that the National Police had undertaken an operation in Las Palmas. On June 10, 2000, the victim's mother presented a complaint to the Tenth Court of Criminal Investigation of Medellín.

10. On June 9, 1992, Norberto Restrepo's body was found along the highway that leads to the "El Cairo" cement factory in the municipality of Santa Bárbara. In the document certifying the official act of removal of the corpse, the municipal inspector indicated as cause of death "presumed suicide by bullet" even though no fire arms were found at the place and the victim was found with his hands on his head; it was ordered that the corpse be buried as a nameless person, without being identified.

11. On June 10, 1992, the "Center on the Disappeared" informed the victim's family members that a body was found with the characteristics of Norberto Restrepo in the municipality of Santa Bárbara. On June 11, the victim's father, José Marco Restrepo, went to Santa Bárbara and had the corpse exhumed and an autopsy performed. The autopsy revealed that the body had acid burns, particularly on the face, lacked the teeth in the lower jaw, had a fractured right hand, and two bullet wounds, and that death was caused by tissular anoxia and wounds inflicted by firearms.

12. With respect to the arguments of the State, set forth below, as to the lack of a motive on the part of the official agents for detaining the victim, the petitioners allege that Mr. Restrepo was an active member of the political grouping known as the Unión Patriótica and that he was disappeared at the same time as another five persons who belonged to the same group, whose incinerated bodies had been found in the municipality of Caldas, between Medellín and Santa Bárbara, at about the same time. The petitioners consider that the victim's death occurred in the context of the massive and systematic assassination of members of the Patriotic Union and the State's tolerance of this campaign.[FN1]

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[FN1] See Report 5/97, Annual Report of the IACHR 1996, p. 103.  
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13. As for the investigations undertaken in the domestic jurisdiction, the petitioners allege that despite the time elapsed, the proceedings are still at the preliminary investigation stage, with no suspect. They call into question the removal of the corpse, which may have impeded the victim's identification, and the legality of the temporary assignment of the investigation to the departmental prosecutor of the Fifth Unit on Economic Property. They argue that the lack of an effective investigation is largely attributable to the negligence of the official investigation. In addition, they note that once the investigation was transferred to the Human Rights Unit of the Office of the Public Prosecutor, the prosecutor designated to investigate the case was assassinated just days after taking a series of investigative steps with the victim's mother.

14. The petitioners allege that the State is responsible for violating the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection, provided for in Articles 4, 5, 7, 8, and 25 of the American Convention in conjunction with the general obligation to ensure respect for those rights, set forth at Article 1(1) of the Convention.

15. With respect to the admissibility of the claim, the petitioners argued that the exception to the requirement of prior exhaustion of domestic remedies, provided for in Article 46(2)(c) of the Convention applies. They allege that the authorities have engaged in an unwarranted delay in

investigating the case, which has continued for more than eight years, without initiating the sumario.

B. The position of the State

16. In its first answer, the State provided information on the status of the proceedings in the domestic jurisdiction aimed at clarifying the kidnapping and death of the victim, without expressly calling into question compliance with the requirement to exhaust domestic remedies or the assertions contained in the petition on the delay and the ineffectiveness of the remedies pursued to clarify the case in the domestic jurisdiction.[FN2]

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[FN2] Note EE DH 937187 of the General Bureau for Special Matters of the Ministry of Foreign Affairs, July 22, 1997.  
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17. Specifically, it reported that on June 10, 1992, the investigation into the kidnapping of the victim began before the Court of Criminal Investigation of Medellín, and that later a parallel investigation was initiated into the victim's death in the municipality of Santa Bárbara. On June 20, 1994, the prosecutor assigned to the Office of the Departmental Prosecutor for the municipality of Santa Bárbara, handed down an interlocutory ruling pursuant to Article 118 of Law 23 of 1991, archiving the case. In addition, the State reported that the departmental prosecutor of the Fifth Unit on Economic Property ruled that the investigation begun in Medellín into the kidnapping and subsequent homicide of Mr. Restrepo be removed to the Second Unit on crimes against life, and that that investigation, which is at the preliminary investigative phase, is being pursued by the Tenth Prosecutor Delegate before the Criminal Judges of the Circuit, and that it had been impossible to identify the direct perpetrators and masterminds of this crime. Later, the investigation was moved to the Human Rights Unit of the Office of the Public Prosecutor.

18. With respect to the alleged involvement of the SIJIN, the intelligence division of the National Police, in the victim's disappearance the State, in its communication of October 27, 1998, alleged that this was mere speculation, with no evidentiary support whatsoever. In addition, it indicated that:

there is no evidence that the Colombian State, through any of its agents, has violated the American Convention on Human Rights, consequently the Government of Colombia ... asks that ... the Commission refrain from continuing the processing of this case, without prejudice to the duty to continue the investigations aimed at clarifying the alleged disappearance of Mr. Norberto Javier Restrepo.[FN3]

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[FN3] Note EE DH 056191 from the General Bureau for Special Matters of the Ministry of Foreign Affairs, October 27, 1998.  
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In the course of the hearing held during the 102nd session, representatives of the State clarified that the investigation of the case had been undertaken without any intent of ruling out the hypothesis of state participation in the victim's death. They indicated that there were no motives for his detention, and they questioned the petitioners' assertion concerning the victim's membership in the Unión Patriótica.

19. The representatives of the State recognized the existence of anomalies in the official act of removal of the victim's corpse. Nonetheless, they asserted that those anomalies had been cured in the autopsy performed afterwards.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence

20. The Commission is competent *prima facie* to examine the petition in question. The facts alleged in the petition occurred when the obligation to respect and ensure the rights established in the Convention was already in force for the Colombian State.[FN4] The Commission thus proceeds to analyze whether this case meets the requirements established in Articles 46 and 47 of the American Convention.

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[FN4] Colombia ratified the American Convention on Human Rights on July 31, 1973.

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##### B. Admissibility Requirements

###### a. Exhaustion of domestic remedies and time for submitting the petition

21. The Commission notes that the State has not made any express objection on grounds of failure to exhaust domestic remedies, even though it provided information about the status of the domestic proceedings. The petitioners, for their part, argue that the judicial investigation aimed at clarifying the detention and death of the victim, and judging and punishing the persons responsible has been drawn out for an unreasonable time and has proven ineffective, and they ask that the case be declared admissible under the exception provided for in Article 46(2)(c) of the American Convention.

22. Article 46(2) provides that the requirement of prior exhaustion of domestic remedies is not applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. As appears from the information provided by both parties, on June 10, 1992, the investigation was begun in the Court of Criminal Investigation of Medellín into the victim's kidnapping. After the appearance of the victim's body in the municipality of Santa Bárbara, the departmental prosecutor (Fiscal Seccional) initiated a parallel investigation, which was archived on June 20, 1994. For his part, the departmental prosecutor for the Fifth Unit on Economic Property ruled to remit the investigation begun in Medellín into the kidnapping and later homicide of Mr. Restrepo to the Second Unit on Crimes against Life, where it was still in the preliminary investigative stage eight years after the facts.

24. The Commission considers that, as a general rule, a criminal investigation should be undertaken promptly to protect the interests of the victims, to preserve the evidence, and even to safeguard the rights of all persons who may be considered suspects in the context of the investigation. As the Inter-American Court has indicated, while every criminal investigation should meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead to a situation in which international action on behalf of victims comes to a halt or is rendered ineffective.<sup>[FN5]</sup> In addition, the Commission notes that in this case, the State did not expressly and timely allege failure to meet the requirement of Article 46(1) as a grounds of inadmissibility.

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[FN5] I/A Court HR, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, para. 93.  
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25. Therefore, given the characteristics of this case, the Commission considers that the exception provided for in Article 46(2)(c) of the American Convention applies to the claim referring to the alleged violation of the rights to life, humane treatment, personal liberty and judicial protection of Norberto Javier Restrepo, and consequently that the requirements set forth in the American Convention regarding exhaustion of domestic remedies do not apply, nor, consequently, the six-month period for submitting the petition.

b. Duplication of procedures and *res judicata*

26. It does not appear from the record that the subject matter of the petition is pending before another international procedure for settlement, nor that it reproduces a petition already examined by this or any other international body. Accordingly, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

c. Characterization of the facts alleged

27. The Commission considers that the petitioners' allegations with respect to the alleged violation of the rights to life, humane treatment, personal liberty, and judicial protection of Norberto Javier Restrepo could constitute a violation of the rights guaranteed in Articles 4, 5, 7, 8, and 25 of the Convention, in conjunction with Article 1(1). Since these aspects of the claim are clearly not without foundation or out of order, the Commission considers that the requirements set forth in Articles 47(b) and (c) of the American Convention to be met.

## V. CONCLUSIONS

28. The Commission considers that it is competent to examine the claim submitted by the petitioners, and that the case is, in principle, admissible, in keeping with the requirements set forth in Articles 46(1)(c) and 47 of the American Convention.

29. 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 admissible the petitioners' claim as to the alleged violations of Articles 4, 5, 7, 8, 25, and 1(1), to the detriment of Norberto Javier Restrepo.
2. To give notice of this decision to the Colombian State and to the petitioner.
3. To continue to analyze the merits.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., October 5, 2000. (Signed:) Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan E. Méndez, Second Vice-Chairman; Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo, Commissioners.