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Title/Style of Cause:	Giacomo Turra v. Colombia
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice-President: Juan E. Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	10 October 2001
Citation:	Turra v. Colombia, Case 11.662, Inter-Am. C.H.R., Report No. 74/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by:	APPLICANT: Colombian Commission of Jurists
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I. SUMMARY

1. On August 21, 1996, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by the Colombian Commission of Jurists (hereinafter “the petitioners”) in which it is alleged that on September 3, 1995, Mr. Giacomo Turra, of Italian nationality, died while in the custody of agents of the National Police in the city of Cartagena, department of Bolívar, Republic of Colombia (hereinafter “the State” or “the Colombian State”).

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

3. The State, for its part, alleges that the judicial proceedings aimed at clarifying the death of Giacomo Turra are still pending. Accordingly, it requested that the Commission declare the petitioners’ claim inadmissible based on failure to exhaust domestic remedies, as required by Article 46(1)(a) of the American Convention. In response, the petitioners alleged that the claim submitted to the IACHR fits under the exceptions to the exhaustion requirement provided for at Article 46(2)(c) of the same treaty.

4. Based on the analysis of the parties' positions, the Commission concluded that it is competent to take cognizance of this claim, and that it is admissible in keeping with Articles 46 and 47 of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

5. On August 23, 1996, the Commission proceeded to process the claim as petition number 11.662, in keeping with the Commission's Regulations in force until April 30, 2001, and forwarded the pertinent parts of the complaint to the Colombian State, giving it 90 days to submit information.

6. On November 25, 1996, the State requested an extension, which was duly granted by the Commission. On January 10, 1997, the State submitted its answer, and the pertinent parts were forwarded to the petitioners for their observations. On March 21, 1997, the petitioners requested an extension, which was duly granted by the Commission. On April 18, 1997, the petitioners submitted additional information, which was forwarded to the State. On April 28, 1997, the Commission forwarded additional information on the case to the State. On January 27, 1998, the State asked the Commission to postpone a hearing on this matter scheduled for the 98th regular session of the IACHR. On January 30, 1998, the Commission communicated the postponement of that hearing until its subsequent regular session. On August 18, 1998, the Commission reiterated to the State its request for information of April 22, 1997.

7. On October 5, 1998, during its 100th regular session, the Commission held a hearing on the instant matter with the presence of both parties. On October 21, 1998, the Commission addressed the parties to formally place itself at their disposal to pursue a friendly settlement. On November 28, 1998, the State indicated that it was not appropriate to initiate the friendly settlement procedure because domestic remedies had not been exhausted as required by Article 46(1) of the American Convention. On October 1, 1999, during its 104th regular session, the Commission held a second hearing on the matter with the participation of both parties. During the hearing, the petitioners presented additional information, which was forwarded to the State for observations. On November 5, 1999, the State requested an extension, which was duly granted. On December 13, 1999, the State presented additional information. That information was forwarded to the petitioner. On March 20, 2000, the petitioners notified the IACHR that the Center for Justice and International Law (CEJIL) was joining the proceeding as co-petitioner. On June 28, 2000, the petitioners submitted additional information, which was forwarded to the State. On July 28, 2000, the State submitted its observations on the information submitted by the petitioners.

III. THE PARTIES' POSITIONS

A. The petitioners' position

8. The petitioners allege that on July 13, 1995, Italian citizen Giacomo Turra, 24 years of age, was detained by members of the National Police at a restaurant in the city of Cartagena, department of Bolívar. Mr. Turra had entered the establishment in an excited state and in search

of help. The petitioners note that the agents of the National Police who appeared at the place tied his feet and hands and forcefully placed him in a police car.

9. The petitioners' account indicates that, given the physical and emotional state of Giacomo Turra, at approximately 11:45 p.m. the police agents decided to stop at the Bocagrande Hospital, to seek medical assistance. Specifically, they are alleged to have asked the attending physician in charge of the emergency room, Dr. Amira Fernanda Osorio, to give the detainee a sedative. Dr. Osorio is said to have asked to perform a medical exam of the detainee, but the State agents allegedly refused, arguing that Mr. Turra had to be transferred to police facilities immediately. Immediately thereafter, the medical personnel allegedly applied the sedative in the police vehicle, after which it left and went to the Third Police Station of Bocagrande. Once there, the commander in charge at the time refused to receive Giacomo Turra, since he was unconscious, and at approximately 12:45 a.m. the agents had to take him back to the Hospital.

10. The petitioners allege that upon arrival at the Hospital, the victim showed no vital signs and had visible lesions all about the body. They note that the autopsy performed by Dr. Ana Magola Manga confirms that Giacomo Turra died from multiple blows and contusions.

11. The facts of this case were initially investigated by the 30th Departmental Prosecutor, of the Departmental Office of the Attorney General of Cartagena. On October 2, 1995, the 30th Departmental Prosecutor forwarded the investigation to the military criminal courts, on the basis that Giacomo Turra had had contact with members of the National Police prior to his death. Later, on October 4, 1995, the military criminal courts returned the investigation to the regular criminal courts. On October 5, 1995, a commission was formed to carry out the investigation, coordinated by the 6th Prosecutor of the Unit on Crimes against Life. On November 27, 1995, the investigation was sent to the Departmental Office of the Prosecutor of Bogotá. Nonetheless, on March 16, 1996, the Office of the Attorney General removed the case to the military criminal courts, to re-open the investigation into the police agents involved.

12. The 59th Judge of Military Criminal Investigation ordered the investigation re-opened, and by order of July 22, 1996, he ruled that no effort be made to detain the police agents implicated in the case. This decision was affirmed by the Superior Military Tribunal. On June 6, 1997, the case was forwarded to the Auditoría Verbal de Guerra, a military court for the department of Bolívar. On September 30, 1998, the court-martial (Consejo Verbal de Guerra) acquitted the National Police agents involved. This decision was appealed to the Superior Military Tribunal, which affirmed the decision of the court-martial. This decision was appealed, in turn, to the Supreme Court of Justice by a motion for cassation, which is now pending before that court.

13. On November 17, 1995, the Office of the Procurator General for the District of Cartagena decided to refrain from opening an investigation into the police agents investigated. Later, on April 17, 1998, the Office of the Delegate Procurator for the National Police (Procuraduría Delegada para la Policía Nacional) decided to overturn the previous decision and ordered the disciplinary investigation re-opened. On November 12, 1998, the Office of the Procurator

General for the District of Cartagena de Indias absolved the police agents implicated in the case of any liability.

14. It should be noted that the investigation of the facts by the disciplinary justice system and the military criminal justice system exonerated the police officers involved. The petitioners allege that the examination of the case by the military justice system violates the judicial protection provisions of the American Convention.

15. Based on these allegations, the petitioners ask the Commission to declare the State responsible for violating the rights to life, humane treatment, personal liberty, and access to justice, of Giacomo Turra, provided for at Articles 4, 8, and 25 of the American Convention, as well as the general obligation to respect and ensure the rights protected by the American Convention.

16. In relation to meeting the admissibility requirements established in the American Convention, the petitioners argue that this claim should be considered in light of the exception to the prior exhaustion requirement provided for at Article 46(2)(b) of that treaty, considering that the examination of the case by the military justice system, it is argued, impeded access to a judicial remedy adequate to clear up the facts surrounding the victim's death.

B. The State's position

17. The State argues that the claim presented by the petitioners does not constitute a violation of the rights enshrined in the American Convention and that therefore it should be declared inadmissible. It considers that the evidence collected in the proceedings before the domestic courts indicate that the police agents involved in the events around the death of Giacomo Turra lacked a motive to cause harm to the victim.[FN1] It notes that the administrative and judicial tools available under Colombia's domestic law will continue to be used to clarify the facts surrounding the victim's death, and the responsibility of its agents in the facts alleged depends on the determinations made by the judicial authorities.[FN2]

[FN1] Note EE/DH/055890 from the General Office for Special Matters of November 28, 1998.

[FN2] Note EE/DH/000981 from the General Office for Special Matters of January 10, 1997.

18. The State alleges that domestic remedies have not been exhausted, and that the exceptions to this requirement provided for at Article 46(2)(c) of the American Convention do not apply to the facts in the instant case. First, it considers that the victim's next-of-kin have participated in the proceedings before the military criminal court as a civilian party, and therefore have had access to a remedy adequate to cure the violation, in keeping with the guidelines established by the judgments of the Constitutional Court of Colombia.[FN3] Second, it asserts that there has not been any unwarranted delay in reaching a final decision, due to the complexity of the case, considering the criteria established by precedents in international human rights law. In addition, it considers that there has been a procedural dynamic, in the proceeding, that indicates that the courts have advanced effectively towards clarifying the facts.

[FN3] Note EE/DH/055890 from the General Office for Special Matters of November 28, 1998.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

19. The petitioners are authorized by Article 44 of the American Convention to present complaints to the IACHR. The petition notes that the alleged victim is an individual with respect to whom Colombia undertook to respect and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Colombia has been a state party to the American Convention since July 31, 1973, when the respective instrument of ratification was deposited. Therefore, the Commission is competent *ratione personae* to examine the petition.

20. The Commission is competent *ratione loci* to take cognizance of the petition, as it alleges violations of rights protected in the American Convention that would have taken place in the territory of a state party. The IACHR is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in effect for the State on the date when it is alleged that the facts stated in the petition took place. Finally, the Commission is competent *ratione materiae*, because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies and the time period for submitting the petition

21. The State alleges that the petitioners' claim should be declared inadmissible considering that the final decision on the case is still pending. The petitioners, for their part, argue that the investigation of the case by the military criminal courts has deprived the victim's next-of-kin of access to an adequate remedy. Accordingly, they invoke the exception provided for at Article 46(2)(c) of the American Convention.

22. Article 46(1) of the American Convention establishes, as an admissibility requirement for petitions, that domestic remedies first be exhausted. Nonetheless, Article 46(2) provides that this requirement 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.

In this connection, the Inter-American Court has established that the petitioners need only exhaust remedies that are “adequate” for readdressing the violation alleged, meaning that these remedies must be suitable to address an infringement of a legal right.[FN4]

[FN4] I/A Court H.R., Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 63.

23. The Commission observes that, as appears from the record, the case regarding the death of Giacomo Turra was initially taken up by the 30th Prosecutor (Fiscalía 30) of the Specialized Unit on Crimes against Life, and that on October 2, 1995, it was removed to the military criminal courts. On October 4, 1995, the 59th Judge of Military Criminal Investigation returned the process to the Office of the Attorney General (Fiscalía), as it considered that there was no evidence linking members of the State security forces to the victim’s death. Upon assuming jurisdiction once again, the Office of the Attorney General formed a special commission to investigate the case, and on March 16, 1996, returned the investigation to the military criminal courts. On taking up the investigation anew, the 59th Judge of Military Criminal Investigation ruled that the police agents accused should not be detained;[FN5] they were ultimately acquitted by a court-martial. The acquittal was affirmed by the Superior Military Tribunal. It should be noted that in the case underlying the claim that is the subject of this decision on admissibility, the military justice system has been used to investigate the death, in custody, of Giacomo Turra, and to judge the members of the police accused of responsibility.

[FN5] Note EE/DH N° 055890 of the General Office for Special Matters of November 28, 1998.

24. The Commission has referred on several occasions to the unsuitability of military courts as a forum for examining alleged violations of human rights committed by members of the armed forces or National Police.[FN6] In addition, the Inter-American Court has noted that military justice is only an adequate forum for trying members of the military for crimes or misdemeanors which by their very nature infringe legal interests particular to the military order.[FN7] For the purposes of the admissibility of this claim, the Commission considers that the victim’s next-of-kin have been deprived of access to a judicial remedy that is adequate for investigating, prosecuting, and punishing the persons responsible for the victim’s death, within the meaning of the exception provided for at Article 46(2)(b) of the Convention. Accordingly, the requirements established at Article 46(1)(a) and (b) of the American Convention are not applicable in this case.

[FN6] Report N° 84/98, Annual Report of the IACHR 1998, Volume I, para. 41. “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.”

[FN7] I/A Court H.R., Case of Durand and Ugarte, Judgment of August 16, 2000, para. 117.

25. The Commission has noted on previous occasions that invoking exceptions to the rule of prior exhaustion of domestic remedies provided for in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), by its nature and purpose, has autonomous content with respect to the substantive provisions of the Convention. Therefore, the determination of whether the exceptions to the prior exhaustion rule that are set forth therein are applicable to the instant case should be made prior to and separate from the analysis of the merits, since it depends on a different standard of appreciation than that used to determine whether there has been a violation of Articles 8 or 25 of the Convention. It should be clarified that the causes and effects that have impeded the exhaustion of domestic remedies in this case will be analyzed, as pertinent, in the Report adopted by the IACHR on the merits of the dispute, so as to find whether they effectively constitute violations of the American Convention.

b. Duplication of procedures and res judicata

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

c. Characterization of the facts alleged

27. The Commission considers that the arguments on the alleged violation of the right to humane treatment, personal liberty, life, and judicial protection, formulated by petitioners, could tend to establish a violation of the rights guaranteed at Articles 4, 5, 7, 8, and 25, in relation to Article 1(1) of the Convention.

V. CONCLUSIONS

28. The Commission concludes that it is competent to examine the claim submitted by the petitioners regarding the alleged violation of Articles 4, 5, 7, 8, and 25, in conjunction with Article 1(1) of the Convention, and that the case is admissible as per the requirements established in Articles 46 and 47 of the American Convention.

29. Based on the foregoing arguments of fact and of law, and without prejudging on the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible in relation to the alleged violation of Articles 4, 5, 7, 8, 25, and 1(1) of the American Convention.
2. To notify the Colombian State and petitioners of this decision.

3. To initiate the merits phase.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 10, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.