

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Jose del Carmen Alvarez Blanco, Fermin Agresor Moreno, Victor Manuel Argel Hernandez, Genor Arrieta Lara, Cristobal Manuel Arroyo Blanco, Diomedes Barrera Orozco, Urias Barrera Orozco, Jose Encarnacion Barrera Orozco (minor), Ricardo Manuel Bohorquez Pastrana, Jorge Fermin Calle Hernandez, Jorge Arturo Castro Galindo, Ovidio Carmona Suarez, Genaro Benito Calderon Ramos, Juan Miguel Cruz Ruiz, Ariel Euclides Diaz Delgado, Camilo Antonio Durango Moreno, Juan Luis Escobar Duarte, Jose Leonel Escobar Duarte, Cesar Augusto Espinoza Pulgarin, Wilson Florez Fuentes, Andres Manuel Florez Altamira, Santiago Manuel Gonzales Lopez, Carmelo Guerra Pestana, Miguel Angel Gutierrez Arrieta, Lucio Miguel Hurzula Sotelo, Angel Benito Jimenez Julio, Manuel Angel Lopez Cuadrado, Jorge Martinez Pacheco, Mario Melo, Carlos Melo, Juan Mesa Serrano, Pedro Antonio Mercado Montes, Manuel de Jesus Montes Martinez (minor), Luis Carlos Perez Ricardo, Miguel Perez, Raul Antonio Perez Martinez, Benito Jose Perez Pedroza, Euclides Ricardo Perez, Andres Manuel Pedroza Jimenez, Jose Manuel Petro Hernandez, Luis Miguel Salgado Barrios, Celimo Urrutia Hurtado, and Eduardo Zapata v. Colombia

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Decided by: President: Juan E. Mendez;
First Vice-President: Marta Altolaquirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran de la Puente.

Dated: 9 October 2002
Citation: Alvarez Blanco v. Colombia, Petition 11.478, Inter-Am. C.H.R., Report No. 41/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by: APPLICANTS: the Asociacion de Familiares de Detenidos y Desaparecidos de Colombia, the Federaci3n Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos, and the Comision Colombiana de Juristas

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I. SUMMARY

1. On May 5, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by the Asociaci3n de Familiares de Detenidos y Desaparecidos de Colombia (ASFADDES), the Federaci3n Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos (FEDEFAM), and the Comisi3n Colombiana de Juristas (CCJ) (hereinafter “the petitioners”) in which they allege the

responsibility of state agents of the Republic of Colombia (hereinafter “the State” or “the Colombian State”) for the torture and disappearance of José del Carmen Álvarez Blanco, Fermín Agresor Moreno, Víctor Manuel Argel Hernández, Genor Arrieta Lara, Cristóbal Manuel Arroyo Blanco, Diomédes Barrera Orozco, Urías Barrera Orozco, José Encarnación Barrera Orozco (minor), Ricardo Manuel Bohórquez Pastrana, Jorge Fermín Calle Hernández, Jorge Arturo Castro Galindo, Ovidio Carmona Suárez, Genaro Benito Calderón Ramos, Juan Miguel Cruz Ruiz, Ariel Euclides Díaz Delgado, Camilo Antonio Durango Moreno, Juan Luis Escobar Duarte, José Leonel Escobar Duarte, César Augusto Espinoza Pulgarín, Wilson Flórez Fuentes, Andrés Manuel Flórez Altamira, Santiago Manuel Gonzáles López, Carmelo Guerra Pestana, Miguel Ángel Gutiérrez Arrieta, Lucio Miguel Hurzula Sotelo, Ángel Benito Jiménez Julio, Manuel Ángel López Cuadrado, Jorge Martínez Pacheco, Mario Melo, Carlos Melo, Juan Mesa Serrano, Pedro Antonio Mercado Montes, Manuel de Jesús Montes Martínez (minor), Luis Carlos Pérez Ricardo, Miguel Pérez, Raúl Antonio Pérez Martínez, Benito José Pérez Pedroza, Euclides Ricardo Pérez, Andrés Manuel Pedroza Jiménez, José Manuel Petro Hernández, Luis Miguel Salgado Barrios, Célimo Urrutia Hurtado, and Eduardo Zapata, in the context of a paramilitary incursion perpetrated on January 14, 1990, in the locality of Pueblo Bello, municipality of Turbo, department of Antioquia.

2. The petitioners alleged that the State was responsible for violating the rights to life, humane treatment, and personal liberty enshrined in Articles 4, 5, and 7 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), as well as the judicial guarantees and protections provided for at Articles 8 and 25 of the Convention, to the detriment of the victims and their next-of-kin, and the generic obligation to respect and ensure the rights protected therein. As regards the admissibility of the claim, the petitioners alleged that the exceptions to the requirement to exhaust domestic remedies set out at Articles 46(2)(a) and 46(2)(c) of the Convention apply in the instant case. The State alleged that the participation of state agents in the incidents alleged had not been proven, and that the local courts had acted lawfully; accordingly, in its view, no right enshrined in the American Convention was violated.

3. After analyzing the parties’ positions, the Commission concluded that it is competent to take cognizance of the case brought by petitioners, and that the case is admissible, under Articles 46 and 47 of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

4. On February 12, 1990, the Commission received an urgent action reporting the disappearance of 43 peasant farmers in Pueblo Bello. On that same day, under procedural number 10.566, the IACHR approached the State to request information, under the Regulations in force until April 30, 2001. The State answered on May 10, 1990 and the response was forwarded to the complainants on June 26, 1990 with 30 days to present observations. On December 6, 1990, the IACHR received information from another source on the matter, which was sent to the State for observations. The State presented its response on August 16, 1991. The Commission sought to communicate with the original complainant by written communications dated June 9, 1993, and January 18, 1994, unsuccessfully. On January 3, 1997, the Commission requested up-to-date information on the matter from the State.

5. On May 5, 1997, the Commission received a petition filed by ASFADDES, FEDEFAM, and the CCJ, regarding the same facts, alleging violations of the American Convention, and it began a new procedure under number 11.748. On May 7, 1997, the Commission informed the Colombian State that it had opened case 11.748, and gave it 90 days to answer the petition. On May 20, 1997, the State communicated with the IACHR in order to refer to the procedure initiated under number 10.566; in response, on May 28, 1997, the Commission informed both parties that the facts that are the subject of this matter would be consolidated and processed under file 11.748. On June 12, 1997, the petitioners provided additional information, which was sent to the State for observations on June 24, 1997.

6. On February 24, 1998, during the 98th session, a hearing was held in which the petitioners submitted additional information. On March 3, 1998, the Commission informed both parties that it was placing itself at their disposal to seek a friendly settlement, and gave them 30 days to respond. The State sought an extension, which was granted on April 16, 1998. On March 31, 2000, the Commission informed the state that the Center for Justice and International Law had joined the proceeding as co-petitioner.

7. On October 10, 2000, during its 108th session, the Commission held a hearing with the participation of both parties. On November 3, 2000, the Commission forwarded the information presented by the petitioners in the hearing to the State and gave them 30 days to submit observations. The State submitted its observations on December 5, 2000.

III. THE PARTIES' POSITIONS

A. The petitioner's position

8. The petitioners allege that in the evening of January 14, 1990, approximately 60 armed men, wearing uniforms, arrived at the district of Pueblo Bello, municipality of Turbo, department of Antioquia, in two trucks and forced their way into several homes and an evangelical church in search of its inhabitants. The armed men took several persons and forced them to lie face down in the main plaza, after which they selected 43 peasant farmers, bound and gagged them, and took them; they were never again seen alive. Before leaving in the direction of San Pablo de Urabá, the armed men set three buildings ablaze and stated to the inhabitants of Pueblo Bello: "this is so you'll respect 'los Tangueros,'" presumably referring to the paramilitary group directed at that time by Fidel Castaño, from the farm known as "Las Tangas," situated on the banks of the Sinú river, in the department of Córdoba.

9. The information provided indicates that the paramilitary vehicles passed through two checkpoints guarded by the Vélez and Cónдор Battalions, without being detained or questioned. The petitioners allege that the 43 peasants forcibly taken were taken to the Santa Mónica farm in the department of Córdoba, where then-paramilitary leader Fidel Castaño was awaiting them. They state that the peasants were interrogated and brutally tortured there, their veins punctured, their eyes perforated, their ears sawed off, their genitalia mutilated. Finally they were executed, one by one.

10. On the issue of the responsibility of state agents, the petitioners allege first that the paramilitary offensive resulted from Army accusations against the peasants of Pueblo Bello. They allege that the members of the Army interpreted the passive attitude assumed by these peasants in response to an incident in which cattle was stolen from Fidel Castaño as a symbol of their alleged affiliation with the guerrillas. In addition, they allege that the authorities posted at the military bases and checkpoints at San Pedro de Urabá not only permitted the transit of the paramilitary vehicles, but also collaborated directly with the illegal armed group. According to the petitioners' allegations, once the incident was over, members of the community of Pueblo Bello went to the military bases to request information as to the whereabouts of the persons disappeared, and allegedly later became targets of acts of intimidation.

11. The petitioners allege that in April 1990, 24 bodies were exhumed from the Las Tangas farm, six of which were identified[FN1] as peasant farmers from Pueblo Bello. All the other victims presumably remained disappeared. They allege that even though there are indicia suggesting the location of the other corpses, the steps needed to perform new exhumations had not been taken.

[FN1] The bodies found apparently belonged to Andrés Manuel Pedroza, Juan Luis Escobar Duarte, Leonel Escobar Duarte, Ovidio Carmona Suárez, Ricardo Bohórquez, and Jorge David Martínez.

12. As for the investigation by the judicial authorities, the petitioners allege that the activity of the Public Order jurisdiction in Medellín and of the Office of the Regional Prosecutor (Fiscalía Regional Delegada) did not lead to the total clarification of the facts nor to punishment of the persons responsible. They argue that even though the criminal liability of 13 persons was verified, as set out in the bases of the judgment handed down May 26, 1997, by the Regional Court (Juzgado Regional) of Medellín, only one of them was found guilty (José Aníbal Rodríguez Urquijo) and three were imprisoned (José Aníbal Rodríguez Urquijo, Héctor de Jesús Narváez, and Pedro Hernán Ozaga Pantoja). They allege that the participation of other persons accused of being involved was not looked into, and that the steps needed to recover the victims' corpses were not taken. Seven years after the facts, the liability of several civilians for the death of six of the victims was established, but the violations committed to the detriment of the rest continue in impunity, and their bodies disappeared. Several of the accused were tried in absentia and were never arrested. The petitioners also allege that the trials held in the military criminal courts violate the principles of impartiality and independence safeguarded by the American Convention.

13. The petitioners allege, therefore, that the Colombian State is responsible for violations of Articles 4, 5, 7, 8, and 25 of the American Convention. They argue that the State should make reparation for these violations by punishing the persons responsible, locating the remains of the victims and identifying them, and paying compensation to the next-of-kin.

14. With respect to the admissibility of the claim, they argue that in this case, the admissibility requirement set forth at Article 46(1) of the American Convention does not apply,

by application of the exceptions to the requirement of prior exhaustion of domestic remedies, provided for at Articles 46(2)(a) and 46(2)(c). They allege that the State has been tardy in establishing the death of 37 of the victims before the Colombian ordinary justice system. Moreover, they allege that the remedy used to clarify the responsibility of the Army members allegedly involved in the fact—the military criminal justice system—is not adequate in the terms of Article 46(2)(a) of the American Convention.

B. The State's position

15. As regards the alleged participation of state agents in the facts that are the subject matter of this case, the State argues that the members of the Army allegedly involved were acquitted by decisions handed down in the regular courts, the military criminal courts, and the disciplinary regime. The State is of the view that these decisions are reasoned and conclude that there was no link between the state agents and the acts committed by the paramilitary groups. They allege that the petitioners' assertions are based on evidence produced before the local courts that has been taken out of context.[FN2]

[FN2] Communication from the Ministry of Foreign Affairs of the Republic of Colombia, December 5, 2000.

16. The State alleges that the internal judicial mechanisms aimed at clarifying the facts and judging the persons responsible have worked and that they continue in the effort to locate the bodies of the other victims.[FN3] Concretely, it presents information on the proceeding in which the Office of Regional Prosecutors in Medellín handed down an indictment of 13 civilians on November 10, 1995. In the same act, it was decided to investigate three others accused of forming armed groups, which was later confirmed by the Office of the Prosecutor before the Tribunal Nacional. The State notes that in March and April 1995, exhumation work was done in which some of the victims were located and identified.[FN4] On May 26, 1997, the Regional Court of Medellín found Fidel Castaño Gil and nine other persons guilty and sentenced them to 12 to 30 years in prison, and the payment of fines for the crimes of multiple homicide, conspiracy, kidnapping, illegal possession of arms for exclusive use of the official forces, and violation of Decree 1194 of 1997. The verdict was appealed and on December 30, 1997, the Tribunal Nacional nullified the proceeding with respect to those victims from Pueblo Bello whose remains had not been found. The State indicates that this judgment modified the penalties and ordered an investigation into co-conspirators not included in the original indictment.[FN5] It alleges that Mr. José Rodríguez Urquijo accepted the charges of kidnapping for extortion, aggravated homicide, and formation of paramilitary groups in this trial, and was sentenced to 22 years in prison after pleading guilty. The case was referred to the Supreme Court of Justice on a motion for cassation.

[FN3] Id.

[FN4] Id.

[FN5] The Commission learned that on March 8, 2001, the Chamber of Criminal Cassation of the Supreme Court of Justice decided not to set aside the ruling challenged by Pedro Hernán Ozaga Pantoja, Judgment of the Chamber of Criminal Cassation of the Supreme Court of Justice of the Republic of Colombia, March 8, 2001.

17. As regards the trial of Army members for their alleged participation in the facts that are the subject matter of the instant case, the State refers to four decisions of the military criminal courts. First, on January 21, 1992, two resolutions of acquittal were handed down. On September 11, 1995, the General Command of the Colombian Armed Forces issued a writ of prohibition in which it ruled that there were not sufficient grounds to formally open a criminal investigation. Finally, on April 14, 1998, the National Army stated its position and argued that associating the Armed Forces with the facts is based merely on assumptions and generic accusations, not any concrete evidence. Therefore, it concludes that given the results of the judicial and disciplinary investigations, liability is attributable exclusively to the paramilitary group, and not to members of the Army.[FN6]

[FN6] Communication from the Ministry of Foreign Affairs of the Republic of Colombia, December 5, 2000.

18. The State also reports that on November 27, 1991, the Office of the Delegate Procurator for Human Rights decided to archive two disciplinary proceedings against two Army officers, and to open another investigation into the possible participation of other state agents. On March 10, 1999, charges were filed against an Army lieutenant, but on July 31, 2000, the Office of the Delegate Procurator for Human Rights handed down a ruling absolving the accused of liability.[FN7]

[FN7] Id.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

19. The petitioners are authorized by Article 44 of the American Convention to submit complaints to the IACHR. The petition identifies as the alleged victims individual persons with respect to whom Colombia undertook to respect and ensure the rights enshrined in the American Convention. As regards 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. Accordingly, the Commission is competent *ratione personae* to examine the petition.

20. The Commission is competent *ratione loci* to take cognizance of the petition insofar as it alleges violations of rights protected in the American Convention in the territory of a State party

to that treaty. The IACHR is competent *ratione temporis* since the obligation to respect and ensure the rights protected in the American Convention was already in force for the State at the time when the incidents are alleged to have occurred. 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 time period for submitting the petition

21. Article 46(1) of the American Convention establishes prior exhaustion of domestic remedies in the internal jurisdiction of a state as a requirement for a claim to be admissible. In the instant matter, the petitioners allege that the trial of the state agents allegedly involved before the military courts has deprived the victims and their next-of-kin of access to an adequate and effective remedy. In addition, they allege that there has been an unwarranted delay in clarifying the facts, locating the remains of 37 of the victims, and determining the liability of all the civilians involved. Accordingly, they argue that on this occasion the admissibility requirement at Article 46(1) of the Convention does not apply, by application of the exceptions to the requirement of prior exhaustion of domestic remedies set forth in Article 46(2)(a) and (c). The State, for its part, submitted information on the results obtained by the military and ordinary jurisdictions and on the investigations still pending.

22. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies does not apply 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.

As the Inter-American Court has established, whenever a state alleges that the petitioner has failed to exhaust domestic remedies, it has the burden of showing that the remedies that have not been exhausted are “adequate” to address the infringement alleged, i.e. that these remedies operate suitably within the domestic legal system to protect the legal interests that were violated.[FN8]

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

23. The Commission will address the situation of prior exhaustion in the instant matter first with respect to the cases in the military criminal courts, and second with respect to the prospects for the cases before the ordinary courts and the investigations pending.

24. The Commission has repeatedly indicated that the military courts are not an appropriate forum and therefore do not provide an adequate remedy for investigating, trying, or punishing human rights violations enshrined in the American Convention, and allegedly committed by members of the official forces, or with their collaboration or acquiescence.[FN9] In addition, the Inter-American Court has confirmed that the military criminal justice system is adequate solely for trying members of the military for crimes or offenses which by their very nature are detrimental to legal interests particular to military order.[FN10] Trial before the military courts of members of the Army allegedly involved in the massacre, by act or omission, is not an adequate remedy for determining their responsibility in the serious violations alleged, in the terms of Article 46(1) of the American Convention.

[FN9] IACHR, Third Report on the Human Rights Situation in Colombia (1999), p. 175; Second Report on the Situation of Human Rights in Colombia (1993), p. 246; Report on the Situation of Human Rights in Brazil (1997), pp. 40-42.

[FN10] I/A Court H.R., Durand and Ugarte Case, Judgment of August 16, 2000, para. 117.

25. As regards the activity of the ordinary courts, the information provided by both parties indicates that on May 26, 1997, the Regional Court of Medellín, in a first instance proceeding, convicted paramilitary leader Castaño Gil and nine other persons, imposing prison sentences ranging from 12 to 30 years, and ordering that they pay fines for the crimes of multiple homicide, conspiracy, kidnapping, illegal possession of arms that are for exclusive use of the official forces, and violation of decree 1194 of 1997. It should be clarified that more than five years after that verdict, only three of the ten convicted (José Aníbal Rodríguez Urquijo, Héctor de Jesús Narváez, and Pedro Hernán Ozaga Pantoja) are imprisoned. The other arrest warrants have yet to be executed.

26. On December 30, 1997, the Tribunal Nacional decreed the nullity of the proceedings with respect to those victims from Pueblo Bello whose remains had not been found, and ordered that the other participants not included in the original indictment be investigated. This investigation remains open, 12 years after the facts. As a general rule, a criminal investigation should be performed promptly to protect the interests of the victims, to preserve the evidence, and even to safeguard the rights of any person who, in the context of the investigation, is considered a suspect. The failure to pursue investigations into several of the participants in the facts of this case, together with the failure to execute the arrest warrant for the paramilitary leader and other persons convicted in absentia, are expressions of delay and of the scant prospects for this remedy to be effective for the purposes of the requirement set out at Article 46(2) of the American Convention.[FN11] As the Inter-American Court has noted, while every criminal investigation must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies must not lead to a halt or delay that would render international action on behalf of the victims ineffective.[FN12]

[FN11] See Admissibility Report N° 57/00, IACHR Annual Report 2000, para. 44.

[FN12] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 93.

27. Therefore, given the characteristics of this case, the Commission considers that the exceptions provided for at Article 46(2)(a) and (c) of the American Convention apply, accordingly, the requirement to exhaust domestic remedies does not apply. Nor does the six-months requirement at Article 46(1)(b) of the Convention, as the petition was presented within the reasonable time referred to in Article 32(2) of its Rules of Procedure for cases in which there has been no firm decision prior to lodging the petition.

28. All that remains to be noted is that invoking the exceptions to the prior exhaustion requirement of Article 46(2) of the Convention is closely linked to the determination of the possible violation of certain rights set forth therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), by its nature and purpose, is a rule that stands autonomously from the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies provided for at Article 46(2) are applicable to the case in question should be done prior to and separate from the analysis of the merits, since it depends on a different standard of appreciation from that used to determine violations of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have impeded the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the Report the Commission adopts on the merits of the dispute, to determine whether indeed violations of the American Convention have taken place.

2. Duplication of procedures and *res judicata*

29. It does not appear from the file that the subject matter of the petition is pending before any other procedure for international settlement, or that it is substantially the same as a petition already examined by this or any other international body. Therefore, the requirements set forth at Articles 46(1)(c) and 47(d) of the Convention have been met.

3. Characterization of the facts alleged

30. The Commission considers that the petitioners' allegations of violations of the right to life, the right to humane treatment, and the right to personal liberty, as well as the rights to a fair trial and to judicial protections, in the matter addressed herein, tend to establish violations of the rights of the victims and their next-of-kin, enshrined in Articles 1(1), 4, 5, 7, 8, and 25 of the American Convention. From the information provided by the parties, it appears that two of the victims, Manuel de Jesús Montes Martínez and José Encarnación Barrera Orozco, were minors; therefore, when deciding on the merits of the case, the IACHR shall determine whether it is appropriate to examine the international obligations of the State with respect to Article 19 of the American Convention.

V. CONCLUSIONS

31. The Commission concludes that it is competent to examine the claim presented by the petitioners on the alleged violation of the right to life, humane treatment, and personal liberty of the 43 peasant farmers from Pueblo Bello, and on the judicial protection due to the victims and their next-of-kin.

32. In light of the arguments of fact and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible, with respect to Articles 1(1), 4, 5, 7, 8, and 25 of the American Convention.
2. To notify the State and petitioner of this decision.
3. To initiate the proceedings on the merits.
4. To publish this decision and include it in the Annual Report, to be presented 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 9, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; and Commissioners Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán de la Puente.