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Title/Style of Cause: Alcides Torres Arias v. Colombia
Doc. Type: Decision
Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Clare Kamau Roberts, Julio Prado Vallejo, Susana Villaran.
Dated: 20 February 2003
Citation: Torres Arias v. Colombia, Petition 597/2000, Inter-Am. C.H.R., Report No. 6/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANT: the Colombian Juridical Foundation
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I. SUMMARY

1. On November 21, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by the Colombian Juridical Foundation (hereinafter “the petitioners”) alleging the responsibility of agents of the Republic of Colombia (hereinafter “the State” or “the Colombian State”) in the enforced disappearance of Alcides Torres Arias, following his detention on the premises of the XVII Brigade of the National Army, located in Carepa, Department of Antioquia.

2. The petitioners alleged that the State was responsible for the violation of the following rights: right to life, to humane treatment, to personal liberty, to protection of the family, and to the judicial protection of Alcides Torres Arias, all of which are enshrined in Articles 4(1), 5, 7, 8, 17 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) against the victim and his relatives, as well as violation of the general obligation to respect and guarantee the rights protected in the Treaty, provided in Article 1(1) thereof. With regard to the admissibility of the complaint, the State alleged that all available domestic remedies had not been exhausted since the disciplinary investigation was still incomplete and the petitioners had not presented their complaint to the court of administrative litigation. The petitioners, for their part, alleged that they tried and exhausted the available domestic remedies in their efforts to determine the whereabouts of the victim.

3. After reviewing the positions of the parties, the Commission concluded that it was competent to hear the claim filed by the petitioners and that the case was admissible, in light of Articles 46 and 47 of the American Convention.

II. EXAMINATION BY THE COMMISSION

4. On May 9, 2001, the IACHR began consideration of the petition identified as Case 0597/2000, in accordance with the norms of its Rules of Procedure that entered into force on May 1, 2001, and transmitted the relevant parts of the complaint to the State, allowing a period of two months for the State to submit its comments. On July 9, 2001, the State of Colombia requested an extension of the period allowed for the State to submit its comments and the IACHR on July 10, 2001 granted an additional period of one month. On August 9, 2001, the State requested a new extension of the period allowed for it to submit comments on the initial petition. On August 15, 2001, the petitioners formally authorized the Center for Justice and International Law (CEJIL) to monitor the proceedings.

5. On October 31, 2001, the State submitted its comments, which were communicated to the petitioners on November 6, 2001, and a period of 30 days was allowed for their reply to be submitted. On January 28, 2002, the petitioners requested a hearing to present the testimony of three members of the family of Alcides Torres Arias. The IACHR scheduled the hearing for March 6, 2002, during its 114th session. The hearing had to be canceled, however, due to the refusal of the Government of the United States of America to grant visas to the witnesses to enable them to appear before the IACHR in the city of Washington, D.C. On February 15, 2002, the petitioners notified the IACHR of the murder of María del Carmen Flores, a member of the Colombian Juridical Foundation, who had recently been in contact with the relatives of the victim. On March 21, 2002, the State submitted information on the investigation of this murder, which was transmitted to the petitioners for their information on April 9, 2002.

6. On August 5, 2002, the petitioners made a request for precautionary measures to be taken on behalf of the members of the Colombian Juridical Foundation and the victim's relatives, together with a new request for hearings. On August 6, 2002, the IACHR allowed the request for precautionary measures and set a period of 15 days for the State to report on the measures it had taken. On November 1, the State of Colombia submitted information on the precautionary measures granted by the IACHR, which was communicated to the petitioners and a period of 30 days allowed for comments to be made thereon. These comments were received on December 23, 2002.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. The petitioners allege that on December 16, 1995, Alcides Torres Arias was detained by members of the XVII Brigade of the National Army, based at Carepa, while riding on a motorcycle along the La Arenera road, in the district of Currulao, municipality of Turbo, in the Department of Antioquia.[FN1] They state that on the following day he was brought before the then Regional Prosecutor, whose offices were situated on the premises of the XVII Brigade. On December 20, 1995, the Regional Prosecutor ordered his immediate release. However, the detainee was not notified of the order for his release. On the same day, his relatives went to visit him, but after waiting for several hours, they were informed that he had been released. The

petitioners allege that several witnesses, including Mr. Torres Arias' sisters, had seen Ricardo López Lora, alias "Robert" and known in the area for his affiliation with paramilitary groups, take him away from the building in a red jeep. They also state that Mr. Ramón Rodríguez, the father-in-law of Alcides Torres Arias, had seen him in the afternoon hours beaten and bloodied in a red jeep at the entrance of the Descanso Hotel, in Chigorodó.

[FN1] Original petition, received by the IACHR on November 21, 2000.

8. Consequently, the petitioners allege that Alcides Torres Arias was in the custody of the Office of the Attorney-General and that his disappearance was the result of the action or omission of the Attorney-General. They therefore consider that the State is responsible for the violation of his right to life, to physical integrity, to not be subjected to torture and inhuman treatment or to arbitrary detention, and to be brought before a court promptly. The petitioners allege, moreover, that his right to a family had been violated, since the family of Alcides Torres Arias had broken up following his disappearance. They further allege that the failure to investigate the acts that are the subject of this complaint violates the right of the victims' relatives to know the truth.

9. On the subject of the exhaustion of domestic remedies, they allege that Mrs. María Noemí Arias de Torres had immediately complained to the Office of the Public Prosecutor in Apartadó that her son had disappeared while in the custody of the State. She also lodged a complaint with the District Office of the Ombudsman in Apartadó and denounced the acts to the press.[FN2] Following these denunciations, the petitioners allege that the relatives of Alcides Torres Arias had been threatened with death by paramilitaries and members of the army. Subsequently, on July 24, 2000, they applied for a writ of habeas corpus on behalf of the disappeared person in the First Criminal Court of the Circuit of Apartadó. On July 28, 2000, that Court ruled that it was not possible to determine the whereabouts of Alcides Torres Arias.

[FN2] "El Colombiano" of Medellín, edition of January 7, 1996.

10. In the course of the proceeding, the petitioners informed the IACHR of the murder of the attorney María del Carmen Flores Jaimes, a member of the Colombian Juridical Foundation.[FN3] The death of Mrs. Flores Jaimes occurred on February 14, 2002, after a meeting with the victim's mother to prepare for the hearing scheduled to take place during the 114th session of the IACHR, which, as indicated above, had to be canceled. The Unit for Human Rights Defenders of the Commission's Executive Secretariat issued a press statement making public its condemnation of this murder. The petitioners also informed the Commission that two brothers of the victim had been murdered following the submission of the petition to the IACHR, although no specific information had been presented on these acts and their link to the disappearance of Alcides Torres Arias.

[FN3] Regarding the murder of María del Carmen Flores, a member of the petitioning organization, the State alleged that the vehicle in which Ms. Flores was traveling was intercepted at about 9.30 a.m. on February 14, 2002 by six armed men in civilian clothes, while traveling on the road to Guapá. The men forced the occupants out of the vehicle and then ordered them back into the vehicle. They, however, ordered Mrs. Flores to remain behind. The body of Mrs. Flores were found during the afternoon and responsibility for the investigations was assigned to the specialized section of the Office of the Attorney-General, but no steps were taken to remove the corpse. According to the Office of the Attorney General, an order was given for tests to be conducted and the investigation is still in its early stages.

B. Position of the State

11. The State alleges that Alcides Torres Arias, together with two other persons, was indeed detained by members of the XVII Brigade of the National Army on December 16, 1995, because of his alleged participation in subversive activities, kidnapping for extortion and other acts. It alleges that after the investigation had begun, the then Regional Prosecutor of Carepa had ordered his release on December 20, 1995. While there is no record that either the detainee or his relatives had been notified of the order of release, the State contends that there was evidence that he left the premises of the Brigade[FN4] and that it was learnt that he was taken in a jeep towards Currulao. The State alleges, moreover, that Mrs. Noemí Arias de Torres was informed at the time that her son had been released.

[FN4] Note EE. 39691 of the Ministry of Foreign Affairs of the Republic of Colombia, dated October 30, 2001. The State attached a copy of the custody records.

12. With respect to the criminal investigation that was launched following the complaints by the relatives of the victim to the Office of the Public Prosecutor and the Ombudsman, on January 29, 1996, the Regional Office of the Public Prosecutor in Chigorodó ordered the opening of a preliminary investigation to clarify the alleged abduction of Mr. Alcides Torres Arias. The investigative branch of the judicial police reported that it had requested the presence of the relatives or those close to the victim of the disappearance in order to be able to take sworn statements from them, but that this effort was unsuccessful. The report also alleged that the XVII Brigade had confirmed that Alcides Torres Arias had been in its custody from December 18 to 20, 1995. Based on the information provided by the Regional Office of the Public Prosecutor and a copy of the order of December 20, 1995, the Prosecutor hearing the case concluded that Alcides Torres Arias had been cleared in the investigation of subversive activities on the day that he was released. On July 30, 1999, the Office of the Public Prosecutor ordered the suspension of the investigation because of the lack of evidence. The State alleges that no new evidence had emerged to justify the reopening of the case. Nevertheless, the Department of International Affairs of the Office of the Public Prosecutor referred the proceeding to the Office of Oversight to determine whether disciplinary action should be taken against the prosecutor responsible for the case, in light of his decision to suspend the investigation of the case.

13. With regard to admissibility of the case, the State alleges that the complaint does not meet the requirement for available domestic remedies to have been previously exhausted. It states, firstly, that the disciplinary investigation into the disappearance of Alcides Torres Arias was opened on January 13, 1996 and that the investigation was in its preliminary phase. It contends that, since it was a case of enforced disappearance, the deadline for prescription did not apply. Secondly, it states that the petitioners should have gone before the Administrative Litigation Court to claim the compensation requested in their complaint to the IACHR. It argues that a case like the present one should be governed by direct compensation, since the petitioners could still institute proceedings at the domestic level within two years of the declaration of the death of the person alleged to have disappeared or of such time as the remains are found, and since they had not exhausted all domestic remedies before moving to an international forum. However, the State recognizes that “insofar as there are some elements of proof that give rise to certain concerns on the part of the Government regarding the events that occurred in this case, particularly with respect to the release of the alleged victim and the responsibility, if any, of the State in those events, the Government is prepared to carefully investigate all the relevant aspects, with the support of the petitioners, in order to define its position in the matter”.[FN5]

[FN5] Note EE. 39691 of the Ministry of Foreign Affairs of the Republic of Colombia, dated October 30, 2001. The State attached a copy of the custody record.

IV. REVIEW OF COMPETENCE AND ADMISSIBILITY

A. Competence

14. The petitioners are in principle entitled under Article 44 of the American Convention to present complaints to the IACHR. The petition names as the alleged victims individuals whose rights under the American Convention the Colombian State has pledged to respect and guarantee. With regard to the State, the Commission notes that Colombia has been a State Party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification. The Commission is therefore competent *ratione personae* to hear the petition.

15. The Commission is competent *ratione loci* to hear the petition, insofar as the petition alleges violations of rights protected in the American Convention that took place within the territory of a State Party to the Convention. The IACHR is competent *ratione temporis* insofar as the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date on which the acts referred to in the petition are alleged to have occurred. Lastly, the Commission is competent *ratione materiae*, because the petition denounces violations of human rights protected by the American Convention.

B. Criteria for admissibility

1. Exhaustion of domestic remedies

16. The petitioners allege that the relatives of the victim had recourse to available judicial remedies in their efforts to determine the whereabouts of the victim, including an application to the First Criminal Court of the Circuit of Apartadó for a writ of habeas corpus. The State, for its part, alleges that the relatives of the victim must bring an action for direct compensation in the Court for Administrative Litigation.

17. The Commission considers that, in light of the characteristics of this case, the relatives of the victim have had recourse to and exhausted all available remedies in their efforts to legally determine the whereabouts of Alcides Torres Arias. Article 46(1)(a) of the Convention states that, in order for a petition to be admitted, “the remedies under domestic law (must) have been pursued and exhausted in accordance with generally recognized principles of international law”. The Inter-American Court has interpreted this to mean that only those remedies appropriate to the violations alleged to have been committed must have been exhausted. According to the jurisprudence of the organs of the inter-American system, habeas corpus is the appropriate remedy for determining the whereabouts of a person who has disappeared.[FN6] In the present case, on July 24, 2002, the relatives of the victims filed a writ of habeas corpus, which was unsuccessful as a means of determining the whereabouts of the victim.

[FN6] Inter-American Court of Human Rights, case of Caballero Delgado y Santana. Preliminary objections, judgment of January 21, 1994, paragraph 64.

18. In light of the results of the remedy pursued and of the approaches by the victim’s relatives to the authorities, it may be concluded that the requirement for the previous exhaustion of domestic remedies, provided for in Article 46(1) of the American Convention, has been satisfied.

2. Time-frame for filing of complaint

19. Article 46(1)(b) of the Convention provides that the petition must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. The present petition was lodged on November 21, 2000, within a period of six months from the date of the decision of the First Criminal Court of the Apartadó Circuit, issued on July 28, 2000, which ruled on the writ of habeas corpus that was filed with a view to determining the whereabouts of Alcides Torres Arias. This requirement must therefore be considered as having been satisfied.

3. Duplication of proceedings and res judicata

20. The record does not show that the subject of the petition is pending in another international forum or that it duplicates a petition already heard by this or any other international organ. The requirements set out in Articles 46(1)(c) and 47(d) of the Convention should therefore be considered as having been fulfilled.

4. Characterization of the acts alleged

21. The Commission considers that the allegations of the petitioners concerning the alleged violation of the right to life, humane treatment, personal liberty, protection of the family and to the judicial protection due to the victim and his relatives, may be construed as a violation of the rights guaranteed in Articles 4, 5, 7, 8, 17 and 25, with respect to Article 1(1) of the American Convention.

V. CONCLUSIONS

22. The Commission concludes that the case is admissible and that it is competent to hear the petition lodged by the petitioners concerning the alleged violation of Articles 4, 5, 7, 8, 17 and 25, in accordance with Article 1(1) of the Convention and in conformity with the requirements set out in Articles 46 and 47 of the American Convention.

23. Based on the arguments of fact and of law set out above and without prejudice to the substance of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the case under consideration admissible under Articles 4, 5, 7, 8, 17 and 25 of the American Convention.
2. To notify the State and the petitioner of this decision.
3. To take up consideration of the substance of the petition.
4. Publish this decision and include it in the Annual Report to be submitted 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., on the 20 day of the month of February 2003. (Signed): Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Robert K. Goldman, Clare Kamau Roberts, Julio Prado Vallejo and Susana Villarán, Commissioners.