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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 72/05; Petition 546/04
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Juan Enenias Daza Carrillo v. Colombia
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated: 13 October 2005
Citation: Daza Carrillo v. Colombia, Petition 546/04, Inter-Am. C.H.R., Report No. 72/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: the Corporacion Colectivo de Abogados "Jose Alvear Restrepo"
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I. SUMMARY

1. On June 14, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “Inter-American Commission” or “IACHR”) received a petition lodged by the Corporación Colectivo de Abogados José Alvear Restrepo [Collective Lawyers’ Corporation José Alvear Restrepo] (hereinafter “the petitioners”) claiming the responsibility of the Republic of Colombia (hereinafter “the Colombian State” or “the State”) for the death of Juan Enenías Daza Carrillo, of the Kankuamo indigenous people in the Sierra Nevada of Santa Marta.

2. The petitioners contend that the State is responsible for the violation of the rights to life, due process guarantees, and to judicial protection protected by Articles 4, 8, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) to the detriment of Juan Enenías Daza Carrillo, in conjunction with the violation of the obligation to respect rights set forth in Article 1(1) of that Treaty. For its part, the State, abstained from presenting its observations in response to the Commission’s requests for information regarding the admissibility of this matter.

3. Based on the analysis of the available factual and legal arguments, the Commission analyzed compliance with the formal admissibility requirements set forth in Articles 46 and 47 of the American Convention, concluded that the petition was admissible, and decided to so notify the parties and publish its decision in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The IACHR began to process the petition on July 28, 2004, registering it as P546/04 and forwarding the relevant portions of the complaint to the State, with a period of two months to submit its observations and information relevant to the subject of that communication. On October 1, 2004, the State requested a 30-day extension “in order to submit its response to petition P-546-04.” On October 10, 2004, the Commission notified the parties that it had granted the 30-day extension requested by the State.

5. On November 9, 2004, the IACHR received another request for a 30-day extension by the State. On November 11, 2004, the Commission notified the parties that in light of the provisions set forth in Article 30(3) of its Rules of Procedure, providing that the Executive Secretariat “shall not grant extensions that exceed three months from the date of the first request for information sent to the State,” it was not possible to grant the requested extension. To date the State has not submitted the observations that the Commission requested on July 28, 2004.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. The petitioners claim that on February 6, 2004, Juan Enenías Daza Carrillo of the Kankuamo indigenous people was the victim of an extralegal execution carried out by the National Army of Colombia and presented to the media as “a militiaman killed in combat with the National Army.” In this regard, the petitioners claim that the “Vanguardia Liberal” newspaper published statements by the Commander of Operational Command No. 7 of the National Army to the effect that it was a case of an ELN militiaman killed in combat,” a casualty of a battle with the La Popa Battalion. The petitioners contend that no battles were reported in the area of Sierra Nevada on the date that Mr. Daza Carrillo died and that the extralegal execution was the result of acts of persecution, singling out, and stigmatization against the indigenous communities in the zone by government forces.

7. The death of Mr. Daza Carrillo occurred at a time when the precautionary measures issued by the IACHR on September 24, 2003 to protect the Kankuamo indigenous people were in effect.[FN1] The petitioners assert that Mr. Daza Carrillo, a beneficiary of those precautionary measures, was detained by the army and his lifeless body was later found in the Atanquez district in the Sierra Nevada of Santa Marta.

[FN1] “On September 24, 2003, the Commission granted precautionary measures on behalf of the Kankuamo indigenous people who live in the Sierra Nevada de Santa Marta. The information available indicates that in the first half of 2003, 44 Kankuamo were assassinated. On August 11, 2003, Andrés Ariza Mendiola was assassinated by the AUC in a paramilitary incursion on his farm; on August 18, 2003, Alcides Arias Maestre and Robinson Villazón were assassinated by the AUC in a paramilitary incursion in the district (corregimiento) of Los Haticos; and on August 29, 2003, the corpse of Ever de Jesús Montero was found with his face disfigured, dressed in camouflage, and presented to the media as a member of the Ejército de Liberación Nacional killed in combat with the Autodefensas Unidas de Colombia (AUC). In addition, there were

displacements of the indigenous population, as a result of the constant acts of violence against the community. In view of this situation, the IACHR asked the Colombian State to adopt the measures needed to safeguard the life and personal integrity of the members of the Kankuamo people, respecting their cultural identity and protecting the special relationship they have with their territory; to offer emergency attention to the victims of forced displacement; and to adopt the measures needed to investigate judicially the acts of violence and threats against the beneficiary community. On October 30, 2003, the IACHR issued a press release expressing its serious concern over the situation of the Kankuamo people. The Commission has continued to receive information about the situation of the persons protected.” See Annual Report of the IACHR 2003, Chapter III, para. 27. It should be noted that in view of ongoing acts of violence against the members of the Kankuamo indigenous people, the IACHR referred the matter to the jurisdiction of the Inter-American Court in accordance with Article 63(2) of the American Convention and, on July 5, 2004, the Court ordered the adoption of provisional measures for this indigenous people.

8. With regard to the criminal investigation undertaken to clarify the circumstances of Mr. Daza Carrillo’s death, the petitioners claim that the District Prosecutor [Dirección Seccional de Fiscalías] of Valledupar sent the case to Military Criminal Court of Instruction No. 90 by way of an official communication dated February 9, 2004. They claim that they contacted the Procuraduría General de la Nación, the Attorney General of the Nation, and the Ministry of Foreign Affairs to request a change of venue from the military criminal justice system to the regular courts, and have no concrete information regarding the outcome of that effort.

9. With regard to the admissibility of the petition, the petitioners claim that an exception to the rule of prior exhaustion of domestic remedies is applicable under Article 46(2)(b) of the American Convention. In the petitioners’ view, the military jurisdiction authorized to investigate the complaint is not the appropriate forum to investigate, prosecute, and punish violations of the human rights enshrined in the American Convention. They believe that the transfer to military jurisdiction of the case against the military men involved in the extralegal execution of the alleged victim suggests that the victim’s relatives have been denied access to the appropriate remedy to investigate, prosecute, and punish those responsible for committing the incident referred to in the complaint.

10. The petitioners claim that the State is responsible for the violation of the right to life of Juan Enenías Daza Carrillo, of the Kankuamo indigenous people, enshrined in Article 4(1) of the American Convention. They further claim that the State is responsible for the violation of Articles 8 and 25 of the American Convention since the state is obliged to respond *sua sponte* with measures to investigate, prosecute, and punish those responsible, and to establish mechanisms that ensure access to compensation. They reiterate that the transfer to military jurisdiction of a case against the military men involved in the incident described means that the victim’s relatives have been denied access to an appropriate remedy for the investigation, prosecution, and punishment of those responsible.

B. Position of the State

11. In the instant case, the State abstained from submitting its observations regarding the factual and legal claims put forth by the petitioners and their interpretation of the applicability of Articles 46 and 47 to this petition.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

12. Before proceeding to consider the requirements of competence and admissibility, the IACHR must call attention to the fact that the Republic of Colombia has abstained from submitting a response to the petitioners' claims. It has also abstained from lodging any objections concerning the admissibility of the instant petition. The IACHR recalls that the State contracted various international obligations when it ratified the American Convention on Human Rights. In particular, Article 48(1)(a) of the Convention stipulates that, upon receipt of a petition or communication, the Commission "shall request information from the government of the state indicated as being responsible for the alleged violations" and that "this information shall be submitted within a reasonable period" (...). Article 48(1)(e) stipulates that the Commission "may request the states concerned to furnish any pertinent information." These provisions require the State to provide the information requested by the IACHR in its examination of individual cases.[FN2]

[FN2] See IACHR, Report N° 129/01, Case N° 12.389, Jean Michel Richardson (Haiti), paras. 11 on, in Annual Report of the IACHR 2001; and Report N° 79/03, Petition 139/02 Admissibility, Guy André François (Haiti), Annual Report 2003.

13. The IACHR wishes to underscore the importance of responding to requests for information since it is the basis for the IACHR's decision on the petitions it receives. The Inter-American Court of Human Rights has stated that the cooperation of States Parties constitutes a fundamental obligation it has acquired in relation to the Inter-American system. The court has emphasized that

In contrast to domestic criminal law, in proceedings to determine human rights violations, the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation. [...] The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN3]

Moreover, the jurisprudence from the system points out that "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law." [FN4] As a result, the Commission reminds the State of its obligation to cooperate with the organs of the Inter-American human rights system so that it may fulfill its role to protect human rights.

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C, N°4, paras. 135 and 136. Inter-American Commission on Human Rights, Report N° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, para. 43.

[FN4] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C, N°4, para. 138. Inter-American Commission on Human Rights, Report N° 28/96, Case 11.297, Juan Hernández (Guatemala), October 16, 1996, para. 45.

A. Competence

14. The petitioners are entitled, in principle, under Article 44 of the American Convention to lodge petitions before the Commission. The petition indicates as the alleged victim a physical person with respect to whom the Colombian State has undertaken to respect and ensure the rights enshrined in the American Convention. Colombia has been a State Party to the American Convention since July 31, 1973, the date on which it deposited its ratification instrument. Therefore, the Commission is competent *ratione personae* to examine this petition.

15. Likewise, the Commission is competent *ratione loci* to take up this petition insofar as it claims violations of rights protected in the American Convention that allegedly occurred under the jurisdiction of the State. The Commission is competent *ratione temporis* to examine this complaint insofar as the obligation to respect and ensure the rights protected in the American Convention was in effect for the State on the date on which the facts contained in the petition were alleged to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition denounces possible violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

16. Article 46(1)(a) of the American Convention provides that “admission by the Commission of a petition or communication lodged (...) shall be subject to the following requirements: that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” The Inter-American Court has declared that it is a mechanism through which “the rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding [...]”[FN5]. It has also indicated that invocation of this rule may be waived, either expressly or tacitly, by the State having the right to invoke it, as the Court has recognized on past occasions.[FN6] In any event, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, otherwise, a tacit waiver of the argument on the part of the State may be presumed.[FN7] The Court has elucidated that “an early stage of the proceedings” must be understood as “the admissibility stage of the proceeding before the Commission, in other words, before any consideration of the merits [...]”.[FN8]

[FN5] Inter-Am. Ct. HR, Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C No. 4, para. 61.

[FN6] Inter-Am. Ct. HR, In the Matter of Viviana Gallardo et al, Decision of November 13, 1981, No. G 101/81. Ser. A, para. 26.

[FN7] Inter-Am. Ct. HR, Herrera Ulloa Case. Judgment of July 2, 2004. Ser. C No. 107, para. 81; Inter-Am. Ct. HR, Mayagna (Sumo) Indigenous Community of Awas Tigni Case. Preliminary Objections. Judgment of February 1, 2000. Ser. C No. 66, para. 53; Inter-Am. Ct. HR, Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Ser. C No. 25, para. 40; and Castillo Páez Case. Preliminary Objections. Judgment of January 30, 1996. Ser. C No. 24, para. 40; Inter-Am. Ct. HR, Velásquez Rodríguez Case, Judgment on Preliminary Objections, June 26, 1987, Ser.C No. 1, para. 88.

[FN8] Inter-Am. Ct. HR, Herrera Ulloa Case. Judgment of July 2, 2004. Ser. C No. 107, para. 81.

17. In the case under study, the State abstained from submitting observations in response to the petitioners' claims concerning the applicability of the exceptions to the exhaustion of domestic remedies in the instant case. Therefore, it is appropriate to conclude that the State has tacitly waived its right to lodge an objection of failure to exhaust domestic remedies in this complaint. The Commission, therefore, concludes that the requirement set forth in Article 46(1) of the American Convention has been met.

2. Time frame for presentation

18. The IACHR has established that the Colombian State tacitly waived its right to lodge an objection based on the failure to exhaust domestic remedies in this complaint in particular, and therefore the requirement set forth in Article 46(1)(b) of the American Convention is not applicable. However, the conventional requirements on exhaustion of domestic remedies and lodging of the petition within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment signaling the exhaustion of domestic remedies in accordance with Article 46(1)(b) of the Convention, are independent. In such cases, the IACHR must determine whether the petition was lodged within a reasonable period.

19. In the instant case, the petition was lodged on June 14, 2004. Consequently, the Commission considers that the petition was lodged within a reasonable period and declares that his admissibility requirement has been met.

3. Duplication of procedures and international res judicata

20. There is nothing in the file to indicate that the subject of the petition is pending before any other procedure for international settlement or that it duplicates a petition already examined by this or any other international body. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

21. In the Commission's view, the petitioners' claims of violations of the right to life—with the precautionary measures granted by the IACHR in force—to due process guarantees and to effective judicial protection tend to establish violations of the rights enshrined in Articles 4, 8, and 25, in relation to Article 1(1) of the American Convention. There is no evident lack of grounds or substance in these aspects of the complaint and the Commission therefore considers that the requirements set forth in Article 47(b) and (c) of the American Convention have been met.

V. CONCLUSIONS

22. The Commission concludes that it is competent to take up the complaint lodged by the petitioners regarding the alleged violation of Articles 4, 8, and 25 in conjunction with Article 1(1) of the American Convention and that they are admissible in accordance with the requirements set forth in Articles 46 and 47 of the American Convention.

23. Based on the arguments of fact and law explained herein and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible in relation to Articles 4, 8, 25, and 1(1) of the American Convention.
2. To notify the State and the petitioners of this decision.
3. To initiate the proceedings on the merits of the matter.
4. To 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 Washington, D.C., on the 13th day of the month of October of 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez, Commissioners.