

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 3/07; Petition 1145-04
Session: Hundred Twenty-Seventh Session (26 February – 9 March 2007)
Title/Style of Cause: Miryam Eugenia Rua Figueroa, Gustavo de Jesus Tobon Meneses, Barbara del Sol Palacios Rua, Manuela Palacios Rua and Valentina Tobon Rua v. Colombia
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Paulo Sergio Pinheiro, Freddy Gutierrez.
Dated: 27 February 2007
Citation: Rua Figueroa v. Colombia, Petition 1145-04, Inter-Am. C.H.R., Report No. 3/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANT: the Inter-disciplinary Group for Human Rights
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On October 27, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” received a petition lodged by the Inter-disciplinary Group for Human Rights (“the petitioners”) in which it was alleged that members of paramilitary groups, with the acquiescence and participation of agents of the Republic of Colombia (hereinafter “the State”, “the Colombian State” or “Colombia”), threatened and usurped the property of Miryam Rúa Figueroa and her family in Comuna 13 of the City of Medellín, Department of Antioquia, causing her forcible displacement in June 2002.

2. The petitioners allege that the State is responsible for the violation of the right to humane treatment, freedom of association, the rights of the child, movement and residence, private property, participation in government, a fair trial and judicial protection, established in the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) to the detriment of Mrs. Rúa Figueroa and her family. The state, for its part, asked the Commission to declare the case inadmissible on the grounds of non-compliance with the requirement of prior exhaustion of domestic remedies, envisaged in Article 46(1) of the American Convention. The petitioner, for its part, invoked the application of exceptions to the requirement of the prior exhaustion of domestic remedies envisaged in Article 46(2) of the American Convention.

3. Having examined the parties' positions and the admissibility requirements provided for in Articles 46 and 47 of the Convention, the Commission decided to declare the complaint admissible for the violation of Articles 5(1), 8(1), 16, 19, 21(1), 22, 22(2), 23 y 25 taken in relation to Article 1(1) of the Convention, to notify the parties, and to publish this decision.

II. PROCESSING IN THE COMMISSION

4. The IACHR registered the petition as No. P1145-04, and having carried out a preliminary analysis of its content, proceeded on November 23, 2004 to transmit a copy of the pertinent portions to the State, giving it a two month deadline in which to supply information in accordance with Article 30(2) of the Regulations. The State presented its observations by means of a note DDH.GOI/56107/2586, on November 1, 2006.

III. POSITION OF THE PARTIES

A. Position of the petitioners

5. The petitioners indicate that Comuna 13 of the city of Medellín is made up of 22 neighborhoods that house 130,000 families, the majority of which survive on incomes below the minimum wage. They indicate that these conditions encouraged the appearance of illegal types of organization, and this was why military operations against the local population became ever more frequent and aggressive.

6. The petition indicates that during 2002 various military operations were carried out in Comuna 13 in the city of Medellín. On May 21, 2002, the so-called "Operation Mariscal" took place, the first of various military intrusions that took place that year in the neighborhoods of the Comuna involving joint forces of the Army and Police. They indicate that nearly 1,000 troops from the Army, Police and the Administrative Department for Security (DAS) entered the community and used long-range weapons indiscriminately against the civilian population, arguing that that they were securing the area for a subsequent procedure by the Attorney's Office.[FN1] In June 2002, the so-called "Operation Potestad" was carried out jointly by members of the Fourth Army Brigade, the Police belonging to the Police Command of Antioquia, the DAS, the Air Force, the Technical Investigation Corps (CTI) and the Attorney General's Office.

[FN1] The petitioners point out that various attorneys (fiscales) had informed that the police force requested their authorization before the operation with a view to carrying out raids in order to implement orders of arrest. However, they denounced the fact that these orders had been issued some time earlier by different attorneys, and not with the purpose of destroying the armed organizations in the sector. The results of the operation were nine deaths (among them two children), 39 wounded and 34 persons arrested. They allege that the leaders of the community complained that what had happened amounted to the onset of a policy of war to remove the militias from these neighborhoods, enabling paramilitaries to take control. Original petition received by the IACHR on October 27, 2004, pages 5-6.

7. The petitioners point out that Miryam Eugenia Rúa Figueroa, President of the Communal Action Committee (JAC) – Barrio Nuevo, was informed by a neighbor from Barrio Nuevo - La Loma that her name was on a list of persons that the paramilitaries intended to assassinate. Consequently, on July 26, 2002, she fled the neighborhood along with her daughters, minors of age, Bárbara Sol Palacios Rúa, Ursula Manuela Palacios Rúa and Valentina Estefanía Tobón Rúa, to the municipality of Bello.[FN2]

[FN2] The family of Miryam Rúa is composed of her three daughters and her partner, Gustavo de Jesús Tobón Meneses. All of them were forced to abandon their normal place of residence. Original petition received by the IACHR on October 27, 2004, page 4.

8. They allege that, on June 27, 2002, paramilitaries violently attacked throughout the district. Informed by her neighbors, Mrs. Rúa discovered that her house had been occupied since it was known to be the house of the president of Communal Action. The petitioners allege that that the house was progressively destroyed and that the furniture it contained was looted.

9. On July 10, 2002, the Municipal System for Disaster Prevention and Assistance (SIMPAD) certified that Mrs. Rúa and her family had been victims of dispossession of their home due to armed confrontations between the paramilitaries (autodefensas) and the militias.[FN3] The petitioners consider that therefore the rights of Mrs. Rúa and her family to free movement, residence and private property have been violated. They affirm that Mrs. Rúa and her family were displaced from that time onwards and that they have been unable to return to the neighborhood because of the complex security situation in the area.[FN4] Similarly, they allege that due to the arbitrary looting of their home and their displacement, the mental health and morale of Mrs. Rúa and her family were gravely impaired.

[FN3] File No 289, certified on July 10, 2002. Annex to the original petition received by the IACHR on October 27, 2004.

[FN4] The petitioners point out that it was known that various persons who had returned to the neighborhood had been disappeared or found dead in different places around the city of Medellín, and that this prevented the indefinite return of Mrs. Rúa to her neighborhood.

10. They point out that, at the time of these events, Miryam Rúa Figueroa was a community leader and that as a consequence of her forcible displacement she was prevented from taking an active part in the JAC. They allege that she had to be replaced in the position she held by the vice-president of the Committee, and could no longer continue working for the community. For this reason, they allege, her rights of association were infringed.

11. Similarly, they add that as an active member of the JAC[FN5], Mrs. Rúa, unlike other citizens, exercised fully her right to participate actively in the political affairs that affected the community.[FN6] In this way, they consider that Miryam Rúa was prevented from exercising her

political rights, in spite of being popularly elected president of the JAC, and thereby prevented from fulfilling the term for which she had been elected.

[FN5] Art. 8 of Law 745 (2002) and its regulations, Decree 2350 (2003), define the JAC [Junta de Acción Comunal – Communal Action Committee] as a non-profit, solidarity-based civic, social, and community social-management organization, which has legal personality and its own assets and is formed voluntarily by the residents of a place who join forces and resources to achieve integral and sustainable development, based on the exercise of participatory democracy in community-development management.

[FN6] The certificate of legal recognition (personería jurídica) and the authorities of the JAC Barrio Nuevo issued by the Secretary of Community Development of the Municipality of Medellín, in which it confirms that as of February 19, 2002, Miryam Eugenia Rúa Figueroa exercised the position of president.

12. At the same time, they allege that the circumstances surrounding Mrs. Rúa and her family's displacement from their permanent place of residence had an adverse effect on the emotional development of her daughters, who had had seen their rights affected under the dispositions of Article 19 of the Convention.

13. With respect to the exhaustion of domestic remedies, the petitioners indicate that Mrs. Rúa denounced the violation to which she had been subjected to the Human Rights Office of the Departmental Attorney and denounced the looting of her house and displacement to the Sectional Attorney of Medellín. The Assistant Attorney of the 70th Sectional Office initiated an investigation before the Criminal Circuit Judges of Medellín into the displacement and the looting of Mrs. Rúa's home under File 585,996. The petitioners indicate that during 2004 the case was provisionally suspended.[FN7] They point out that the Special Prosecutor did not initiate any investigation and that the complaint was simply referred to Social Solidarity Network (Red Social de Solidaridad).[FN8] On this point, they indicate that from the date the events occurred to the present time, the criminal investigation has produced no results whatsoever, and for this reason they allege the violation by the State of the right to a fair trial and to judicial protection as well as the application for exception from the requirement of prior exhaustion of domestic remedies in Article 46.2 on the grounds of unwarranted delay.

[FN7] Original petition received by the IACHR on October 27, 2004, page 7.

[FN8] The petitioners indicate that, by note No. 19907, dated October 25, 2002, the Social Solidarity Network turned down Mrs. Rúa's request for humanitarian assistance, as it did not meet the requirements established by law. Article 15 of law 418, of 1997, extended by Law 548, of 1999, stipulates that: "for the purposes of this law, victims are any persons in the civilian population who suffer from damage in their lives, serious deterioration of their personal safety and/or property, as a result of acts that may arise in the context of internal armed conflict, including, among terrorist attacks, combat, assaults, and massacres, among others." Communication RSS-AGM-19907 from the Social Solidarity Network, dated October 25, 2002. Annex to the original complaint received by the IACHR on October 27, 2004.

14. They point out that, two years after the facts of the case took place, Mrs. Miryam Eugenia Rúa Figueroa continued to be displaced owing to the danger posed in returning to her community. She is unable to use or freely enjoy her home and the State has not provided a housing subsidy to make good her needs. In this regard, they allege that the Colombian State has failed to comply with its role of protecting its citizens by denying the humanitarian assistance to which Mrs. Rúa and her family were entitled to under the law.

15. In view of the above, the petitioners request that the State be declared responsible for the violations of the rights to humane treatment, freedom of association, private property, movement and residence, fair trial, judicial protection, participation in government and the prohibition against the suspension of political rights established in the IACDH to the detriment of Miryam Eugenia Rúa Figueroa, as well as the violations of the rights established under Articles 5, 8, 21, 22, 25 of the Convention to the detriment of Gustavo de Jesús Tobón Meneses, Bárbara del Sol Palacios Rúa, Manuela Palacios Rúa and Valentina Tobón Rúa; and under Article 19 of the same instrument to the detriment of her daughters who are minors of age.

B. Position of the State

16. The State considers that its officials are not responsible for the alleged violations and that it is fulfilling its duty to investigate the facts of the matter and it has adopted measures to prevent the human rights of the inhabitants of Comuna 13 being violated, fulfilling its duties to provide protection and guarantees.[FN9] In this regard, it emphasizes that the situation of Comuna 13 has been complex and that, in spite of the efforts made by the State to restore normality and recover its unfettered authority, this has not been easy, adding that the crimes that impact most on the area are homicide,[FN10] terrorism, kidnapping, extortion and the looting of property. It was for these circumstances that police operations were intensified so as to restore order in the Comuna 13 through special operations that were carried out in strict compliance with its duty to offer security and provide protection.

[FN9] Note DDH.GOI/56107/2586 submitted by the State, received November 1, 2006 by the IACHR.

[FN10] Between January and mid-2002, 437 homicides were registered in Comuna 13. Written observation by the State DDH.GOI/60162/2802 received by the IACHR on December 12, 2006.

17. The State alleges that the petitioners' complaint does not meet the requirement of prior exhaustion, therefore it should be declared inadmissible. The State points out that the 70th Sectional Attorney's Office of the Unity of Law 30, in Medellín is pushing ahead under File No.585996 its investigation into the crime of forcible displacement of Miryam Eugenia Rúa Figueroa, which is at a preliminary stage, in the submission of evidence that may help clarify the facts and identify the authors of these supposed crimes. It tells how the evidence submitted includes the order given to the CTI to verify the information supplied by the affected party, the request to locate proceedings relating to other complaints lodged, the obtaining of the records of

those accused and careful checking of Mrs. Rúa's testimony, among others. Similarly, it shows that the Assistant Prosecutor for Human Right sent copies to the person responsible for discipline with a view to, if he considered it pertinent, opening an investigation. As regards the crime of intimidation, the State points out that its investigation is highly complex owing to the anonymity with which the delinquents involved operate, and since the supposed victim found out by way of rumor it is difficult to establish the evidence that would lead to the identification of those responsible.

18. The State alleges that the exception on account of unwarranted delay is not applicable on the basis that the criteria for the reasonableness of the deadline relate to the complexity of the case, the procedural activity of the interested party, and the proceedings of the judicial authorities. It adds that the judicial authorities have diligently pushed ahead with the proceedings, and that the judicial proceedings have been coherent, consequent, measured and appropriate to the investigation.

19. In view of the above, the State considers that application should not proceed for any of the exceptions contemplated in Article 46(2) and requests the IACHR that the petition be declared inadmissible.

IV. ANALYSIS OF COMPETENCE Y ADMISSIBILITY

A. Competence

20. The petitioner is in entitled, in principle, under Article 44 of the American Convention to lodge petitions before the Commission. The petition names as presumed victims individual persons towards whom the Colombian State is committed to respecting and ensuring the rights enshrined in the American Convention. As 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. Therefore the Commission has the competence *ratione personae* to examine the petition.

21. Similarly, the Commission has the competence *ratione loci* to consider the petition since it alleges violations of rights protected by the American Convention that took place within the territory of Colombia, state party to the said treaty. The Commission has competence *ratione temporis* inasmuch that the obligations to respect and ensure the rights protected by the American Convention were already in force for the State at the time that the facts alleged in the petition are said to have occurred. Finally, the Commission has competence *ratione materiae* because the petition alleges violations to human rights protected by the American Convention.

B. Admissibility requisites

1. Exhaustion of domestic remedies and the deadline for lodging the petition

22. Article 46(1)(a) of the American Convention stipulates the prior exhaustion of available remedies in the domestic jurisdiction in accordance with the generally recognized principles of

international law, as a requirement for the admission of complaints about alleged violation of the American Convention.

23. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies should not be 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 the violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, and
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

The Inter-American Court has established that when the State alleges the lack of exhaustion of domestic remedies on the part of the petitioner, it has the burden of proof in showing that the remedies that have not been exhausted are “adequate” to deal with the alleged violation, or in other words the workings of those remedies within the domestic legal system are capable of addressing an infringement of a legal right.[FN11]

[FN11] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, paragraph 64.

24. In this case, the State alleges that the petition does not satisfy the requirement of prior exhaustion of remedies in domestic law provided for in Article 46(1)(a) of the American Convention since there are criminal proceedings pending on the material facts of the complaint.[FN12] For their part, the petitioners allege that the exceptions to prior exhaustion of domestic remedies provided for under Article 46(2)(c) are applicable to the case due to the delay and inefficiency of the criminal investigation at the national level.

[FN12] Written brief by the State DDH.GOI/60162/2802 received by the IACHR on December 12, 2006.

25. The Commission notes that since more than four years have lapsed since the material facts of the complaint took place, the investigation into the crime of forcible displacement initiated by the Public Prosecutor’s office was still at a preliminary stage, and that those responsible have not been identified.[FN13] In this regard, the Commission observes that as a general rule a criminal investigation should be conducted promptly in order to protect the interests of the victims, to preserve evidence, and indeed safeguard the rights of anyone who in the remit of the investigation might be considered suspect. As the Inter-American Court has pointed out, although all criminal investigations should comply with a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead to international proceedings in support of the victims being held up or delayed so as to become

ineffective.[FN14] On the other hand, the information submitted by the State does not specify whether investigations have been initiated into the alleged occupation and destruction of property.

[FN13] Written brief by the State DDH.GOI/60162/2802 received by the IACHR on December 12, 2006, pages 3-4.

[FN14] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 93..

26. Therefore, in view of the characteristics of this case and the time elapsed since the material facts of the petition, the Commission considers that the exceptions provided for under Article 46(2)(c) of the American Convention are applicable in view of the delay in carrying out domestic judicial proceedings. For this reason, it is not necessary to meet the requirement provided for the exhaustion of domestic remedies.

27. The invocation of the exceptions to the rule of exhaustion of domestic remedies provided for under Article 46(2)(c) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as guarantees in the access to justice. However, Article 46(2), by its nature and purpose, is a norm whose content is autonomous vis-à-vis the substantive norms of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies is applicable to the case in question should be carried out prior to and apart from the analysis of the merits, since it depends on a standard of appraisal different to that used to determine the possible violation of Articles 8 and 25 of the Convention. It is necessary to make it clear that the causes and consequences that impeded the exhaustion of domestic remedies will be analyzed in the report that the Commission adopts on the merits of the case, in order to determine whether they constitute violations of the American Convention.

2. Timeliness in lodging the petition

28. The American Convention establishes that for a petition to be admissible for the Commission, it is required that it be lodged within six months from the date on which the alleged victim has been notified of the definitive judgment. In the complaint under analysis, the IACHR has ruled the application of exceptions to the exhaustion of domestic remedies in Article 46(2)(c) of the American Convention. In this regard, Article 32 of the Regulations of the Commission establishes that in cases where exceptions to the prior exhaustion of domestic remedies are applicable, the petition should be lodged within a reasonable period of time in the view of the Commission. Therefore, the Commission should consider the date on which the alleged violation of rights took place and the circumstances of each case.

29. In this case, the petition was lodged on October 27, 2004, and the material facts of the complaint are said to have taken place as of June 2002. So, taking into account the context and characteristics of this case, as well as the fact that the investigation is still pending, the

Commission considers that the petition was lodged within a reasonable period of time and that the requirement for admissibility with respect to the timeliness of its being lodged is satisfied.

3. Duplication of procedure and cosa juzgada

30. It does not appear from the record that the subject matter of the petition is pending before any other international proceeding, nor that it reproduces a petition already examined by this or any other international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the facts alleged

31. The Commission considers that the allegations of the petitioner with respect to the alleged violation of the right to humane treatment, fair trial, freedom of association, movement and residence, private property, and judicial protection may constitute violations of rights protected by Articles 5(1), 8(1), 16, 19, 21(1), 21(2), 22(1), and 25, taken in relation to Article 1(1) of the American Convention, in the light of the State's obligation to respect rights, and the actions and omissions of its agents with respect to actions committed by third parties. There is no evidence that the complaint submitted is groundless or out of order, consequently the Commission considers that the requirements of Article 47(b) and (c) of the American Convention are satisfied. Also, given the allegations of the petitioner with respect to the rights affected to Mrs. Rúa's daughters because of the internal displacement the Commission considers that the claim for the violation of article 19 meets the requirements of the Convention.

32. With regard to the petitioners' arguments regarding the alleged violation of Maria Eugenia Rúa Figueroa's political rights under Article 23 of the American Convention, the Commission considers that that aspect of the complaint is not sufficiently grounded in the facts of the complaint, given the nature of the association to which she belonged.[FN15]

[FN15] Under Article 8 of Law 745 (2002) and its regulations, Decree 2350 (2003), the Communal Action Committee is a non-profit, solidarity-based civic, social, and community social-management organization. It has legal personality and its own assets and is formed voluntarily by the residents of a place who join forces and resources to achieve integral and sustainable development, based on the exercise of participatory democracy in community-development management.

V. CONCLUSIONS

33. The Commission concludes that it is competent to examine the complaints lodged by the petitioner with respect to the alleged violation of Articles 5(1), 8(1), 16, 19, 21(1), 21(2), 22(1) and 25 taken in relation to Article 1(1) of the American Convention, and that these are admissible, in accordance with Articles 46 and 47 of the American Convention.

34. Based on the foregoing arguments of fact and law, and without prejudicing the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible with respect to Articles 5(1), 8, 16, 19, 21, 22, 23 and 25, taken in relation to Article 1(1) of the American Convention.
2. To notify this decision to the Colombian State and to the petitioner.
3. To continue with the analysis of the merits of the case.
4. To publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 27th day of the month of February, 2007. (Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Freddy Gutiérrez, Commissioners.