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Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.
Dated: 15 October 2007
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I. SUMMARY

1. On April 8, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by Heroína Galeano Arango and Rocío Galeano Arango (hereinafter “the petitioners”) alleging the responsibility of agents of the Republic of Colombia (hereinafter “the State,” “the Colombian State,” or “Colombia”) for the forced disappearance of their brother Isaac Galeano Arango after his disappearance, on December 7, 2000, by detectives of the judicial police agency Section of Judicial Police and Investigation (SIJIN) at the Las Margaritas farm, located in the village of Quebrada Negra, municipality of Calarcá, department of Quindío.

2. The petitioners argue that the State is responsible for violating the rights enshrined in the American Convention on Human Rights (“the American Convention”) and the Inter-American Convention on Forced Disappearance (hereinafter “Convention on Forced Disappearance”) to the detriment of the victim and his next-of-kin. The State argues that the petitioners’ claims are inadmissible in view of their failure to first exhaust domestic remedies, as required by Article 46(1)(a) of the American Convention.

3. After analyzing the parties’ positions and whether the admissibility requirements set forth at Articles 46 and 47 of the American Convention have been met, the Commission decided to find the petition admissible, for the purpose of examining the alleged violation of Articles 3, 4(1), 5(1), 5(2), 7, 8(1), and 25, in conjunction with Article 1(1), of the American Convention and article 1 (b) of the Convention on Forced Disappearance of Persons, in application of the *iura novit curia* principle. In addition, it decided to notify the parties of its report and order its publication.

II. PROCESSING BEFORE THE COMMISSION

4. The IACHR recorded the petition under number P400-05 and on April 6, 2006, proceeded to transmit a copy of the pertinent parts to the State, which was given two months to submit information, in keeping with Article 30(2) of the Rules of Procedure. On June 1, 2006, the State requested a 30-day extension to present its observations, which it was given. The term lapsed without the State submitting its observations. On December 18, 2006, the IACHR reiterated its request for information to the State. Finally, the State submitted its observations on April 30, 2007.[FN1]

[FN1] Note DDH.GOI/21072/1022 from the Ministry of Foreign Relations of Colombia, of April 26, 2007.

III. THE PARTIES' POSITIONS

A. The petitioners' position

5. The petitioners allege that on December 7, 2000, peasant farmer Isaac Galeano Arango (42) was on his way to the Las Margaritas farm, located in the village of Quebrada Negra, in the municipality of Calarcá, department of Quindío, accompanied by a boy from the town, in search of some money. They indicate that on December 8, 2000, this boy informed them that Mr. Galeano Arango had been detained by detectives from the SIJIN of the Quindío Police, without an arrest warrant.[FN2] The petitioners allege that there are witnesses to the detention[FN3] and that Isaac Galeano Arango was taken in a white car in which he was bound and shirtless.[FN4]

[FN2] Original petition received at the IACHR on April 7, 2005, and its attachment "Unified statement of Heroína Galeano Arango, Rocío Galeano Arango" of March 5, 2001 Q. 1198-4 before the Regional Office of the Human Rights Ombudsperson for Quindío.

[FN3] From the petitioners' arguments it appears that the caretaker of the Las Margaritas farm, Edgar Restrepo, was present when Mr. Galeano Arango was detained. "Unified statement of Heroína Galeano Arango, Rocío Galeano Arango" of March 5, 2001 Q. 1198-4 before the Regional Office of the Human Rights Ombudsperson for Quindío, attached to the original petition received at the IACHR on April 7, 2005.

[FN4] From the petitioners' allegations it appears that Mr. Jhon Jairo Castaño Ocampo had seen Isaac Galeano Arango, shirtless and bound in a white car in the proximity of the Las Margaritas farm. The name of the witness is set forth in the Ruling issued September 15, 2004, attached to the original petition received at the IACHR on April 7, 2005. The petitioners also allege that witnesses Gabriela Arévalo Hernández and Jimmy Alexander Bolívar saw Mr. Galeano Arango in a car. "Unified statement of Heroína Galeano Arango, Rocío Galeano Arango" of March 5, 2001 Q. 1198-4 before the Regional Office of the Human Rights Ombudsperson for Quindío, attached to the original petition received at the IACHR on April 7, 2005.

6. The petitioners note that they went to the Quindío Police in search of information, but that there it was denied that the detention had taken place. They state that subsequently, they searched for Mr. Galeano Arango in the municipalities of the region, and even in the morgues, without any results.

7. From the petition it appears that in July 2003 Heroína Galeano Arango gave a statement to the Office of the Human Rights Ombudsperson in Armenia, Quindío, in which she said that she received a phone call from a man who said he belonged to the SIJIN and who told her to look for Mr. Galeano Arango “on the right-hand side of the cemetery, buried anonymously with another person in Sevilla, that he was dead because they had tortured him, killed him, and burned him. He told us not to stir up the wasp’s nest because the family could be in danger, that we should leave things as they were.”[FN5]

[FN5] It also appears that the petitioners went to the Sevilla cemetery and verified that there they had found the remains of two unidentified persons as of the date of the disappearance of Isaac Galeano Arango, whose body had been officially removed presumably at the El Popal bridge, which was said to have been confirmed by the community. Heroína Galeano Arango states for the record that the call was understood by the family as a threat. Statement by citizen Heroína Galeano Arango, Office of the Human Rights Ombudsperson, Armenia 15-7-03 Q.851-4.

8. The petitioners allege that the forced disappearance was perpetrated by agents of the SIJIN and consequently they consider that the State is responsible for the violation of the rights to life, humane treatment, judicial protection, and the prohibition on forced disappearance, to the detriment of Isaac Galeano Arango. They consider that they have a right to know the truth about the forced disappearance of Isaac Galeano Arango; to justice, by establishing the responsibility of the perpetrators of the disappearance; and to reparations.

9. Regarding exhaustion of domestic remedies, the petitioners indicate that they sought advice from the Office of the Human Rights Ombudsperson (Defensoría del Pueblo) in Armenia, Quindío, which on March 5, 2001, lodged the report on the of the disappearance of Isaac Galeano Arango, and ordered that the mechanisms for searching for persons be set in motion; to date there have been no results.[FN6] In addition, they indicate that the Office of the Human Rights Ombudsperson reported information to the SIJIN of Quindío and to the Office of the Procurator General of the Nation. The petitioners note that the same case was reported in the form of a complaint lodged with the Quindío section of the Office of the Attorney General by referral of the Office of the Human Rights Ombudsperson.[FN7]

[FN6] Original petition received at the IACHR on April 7, 2005, and its attachment Formato para Búsqueda de Desaparecido (Form for the Search of a Disappeared Person) for Isaac Galeano Arango of March 5, 2001.

[FN7] Original petition received at the IACHR on April 7, 2005.

10. In addition, they indicate that the case was reported at the initiative of an interested party, to the Technical Investigations Corps (hereinafter “CTI,” Cuerpo Técnico de Investigación) as case number No. 29696 for the crime of unaggravated kidnapping (secuestro simple), whose investigation was assigned to the Office of the Attorney General for Anti-Extortion and Anti-Kidnapping (Fiscalía Antiextorsión y Secuestro Delegada) before Criminal Judges of the Armenia Circuit. That investigation, they note, was subsequently assumed by the Office of the 14th Prosecutor for Economic Assets (Fiscalía 14 de patrimonio económico), which archived the investigation by a resolution to halt the investigation (resolución inhibitoria) of September 26, 2001, as it was allegedly not possible to identify the persons responsible.[FN8]

[FN8] Original petition received at the IACHR on April 7, 2005 and its annex Official Note No. DSF-00902 from the Departmental Office of the Office of the Attorney General, August 18, 2002.

11. In addition, the petitioners initiated a disciplinary proceeding into the forced disappearance of Isaac Galeano Arango against officers of the SIJIN (National Police) of Quindío, before the Office of the Procurator Delegate for Human Rights (Procuraduría Delegada para la Defensa de los Derechos Humanos).[FN9] By the ruling in the first instance[FN10] this authority ordered that the following members of the National Police be found liable for disciplinary breaches, on finding them responsible, as co-perpetrators of the forced disappearance of Isaac Galeano Arango: Maj. Hugo Javier Agudelo Sanabria, Lt. Oscar Javier García García, SC Diago Hernández Londoño, and 1st Sgt. Pedro José Barreto Pedreros, and accordingly, that they be sanctioned by removal from the force.[FN11] They indicate that on December 2, 2004, that ruling was overturned on appeal by the Disciplinary Chamber of the Office of the Procurator General, absolving the agents of disciplinary liability.[FN12]

[FN9] Case No. 008-6370-01 against Maj. Hugo Javier Agudelo Sanabria, Lt. Oscar Javier García García, SC Diago Hernández Londoño, 1st Sgt. Pedro José Barreto Pedreros, and 2nd Sgt. Rodibelson Díaz Hernández. Original petition received at the IACHR on April 7, 2005.

[FN10] Ruling issued September 15, 2004 attached to the original petition received at the IACHR on April 7, 2005.

[FN11] Ruling in the first instance of the Office of the Procurator General of the Nation, of September 15, 2004, attached to the original petition received at the IACHR on April 7, 2005.

[FN12] Ruling of December 2, 2004 of the Disciplinary Chamber of the Office of the Procurator General of the Nation, attached to the original petition received at the IACHR on April 7, 2005.

12. The petitioners allege that the disappearance remains in impunity, and that it is a continuing crime and imprescribable so long as the perpetrators continue to conceal the fate and whereabouts of the disappeared person.

B. The State’s position

13. In response to the petitioners' claim, the State does not make reference to the facts alleged, and argues that the petition is inadmissible. It states that available domestic remedies have not been exhausted, as required by Article 46(1)(a) and other articles of the American Convention.

14. Specifically, it considers that in this case, the admissibility of the petition is subject to the prior exhaustion of the habeas corpus remedy in the Colombian legal system. In this regard, and given that from the petition it does not appear that the petitioners have pursued and exhausted the remedy of habeas corpus, the State asks the IACHR to find the petition inadmissible.[FN13]

[FN13] Note DDH.GOI/21072/1022 from the Ministry of Foreign Relations of Colombia, of April 26, 2007.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

15. The petitioners are authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition notes as the alleged victim an individual person with respect to whom the Colombian State has undertaken 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 it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

16. In addition, the Commission is competent *ratione loci* to take cognizance of the petition, insofar as petitioners allege violations of rights protected in the American Convention said to have taken place in the territory of Colombia, a state party to that treaty.

17. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date on which the facts are alleged to have occurred. In principle, the Commission is not competent *ratione temporis* with respect to the rights protected in the Convention on Forced Disappearance insofar as that treaty, which entered into force for Colombia on December 4, 2005, was not in force for the Colombian State as of the date on which the facts are alleged to have taken place. Without prejudice to this, the IACHR is competent to examine claims with respect to the obligation set forth in Article I(b) of the Convention on Forced Disappearance, considering the continuing nature of the failure to clear up the facts of the crime of forced disappearance.

18. Finally, the Commission is competent *ratione materiae*, because the petition sets forth possible violations of human rights protected by the American Convention and the Convention on Forced Disappearance.

B. Admissibility requirements

1. Exhaustion of domestic remedies

19. Article 46(1)(a) of the American Convention requires the prior exhaustion of the remedies available in the domestic jurisdiction in keeping with generally recognized principles of international law, as a requirement for admitting claims regarding the alleged violation of the American Convention. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies does 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 failure to exhaust domestic remedies, it bears the burden of showing that the domestic remedies not exhausted are “suitable” to cure the violation alleged, i.e. that the operation of those remedies is suitable for protecting the legal situation that has been infringed.[FN14]

[FN14] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 64.

20. In the instant case, the State alleges that the petition does not satisfy the requirement of prior exhaustion of domestic remedies, provided for at Article 46(1)(a) of the American Convention, given that the petitioners had not exhausted the habeas corpus remedy, indicating that it is a suitable remedy for cases of forced disappearance in the case-law of the Inter-American Court. From the petitioners’ arguments it appears that the petitioners lodged the complaint reporting the forced disappearance of Mr. Isaac Galeano Arango with the Quindío regional Office of the Human Rights Ombudsperson, and before the Office of the Attorney General in Armenia, yet the persons responsible have not been identified.

21. First, one should clarify which domestic remedies must be exhausted in the instant case. The Inter-American Court has stated that only those remedies adequate or suitable for curing the violations allegedly committed need be exhausted. Adequate legal remedies are

those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN15]

[FN15] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 63.

22. In view of the parties' positions and the circumstance of the instant case, the IACHR considers it is also relevant to determine the purpose of the complaint filed. The Commission considers that the purpose of this complaint is to establish the possible responsibility of state agents in relation to the failure to clear up the facts as to the whereabouts of Isaac Galeano Arango, after his alleged detention and the absence of any judicial determination as to individual responsibilities. In this respect, the Commission observes that seven years after the forced disappearance of Isaac Galeano Arango, his whereabouts are still unknown, and the perpetrators of the facts alleged have not been brought to justice.

23. The precedents established by the Commission indicate that whenever a crime is committed that is subject to prosecution at the initiative of the authorities, the State has the obligation to promote and give impetus to the criminal proceeding until its final consequences[FN16], and that in those cases, this is a suitable way to clarify the facts, prosecute the persons responsible, and establish the corresponding criminal sanctions, in addition to making possible forms of monetary reparation. The Commission considers that the facts alleged by the petitioners in the instant case involve the alleged violation of fundamental non-derogable rights, such as the rights to life and humane treatment, that translate in the domestic legislation as crimes subject to prosecution at the initiative of the authorities, and that therefore, such a criminal prosecution, driven by the State itself, should be considered for the purposes of determining the admissibility of the claim.

[FN16] Report N° 53/97, Case 11,218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paras. 96 and 97. See also Report N° 55/97, para. 392. Report N° 62/00, Case 11,727, Hernando Osorio Correa, Annual Report of the IACHR 2000, para. 24.

24. The IACHR notes that as it is almost seven years after the facts that are the subject matter of the petition, without the whereabouts of Mr. Galeano Arango having been determined, and without the persons responsible for his disappearance having been brought to justice, there is an unwarranted delay in the terms of Article 46(2)(c) of the American Convention, and, therefore, the petitioners should be excused from exhausting domestic remedies before having recourse to the inter-American system in search of protection.

25. Invoking the exceptions to the prior exhaustion rule provided for at Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined in it, such as the guarantees of access to justice. Nonetheless, Article 46(2), given its nature and purpose, is a norm with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, the determination as to whether exceptions to the prior exhaustion rule are applicable to the case in question should be made prior to and separate from the analysis

of the merits, as it depends on a different standard of appreciation than that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects hindering the exhaustion of domestic remedies will be analyzed in the report the Commission adopts on the merits of the controversy, so as to verify whether there have been violations of the American Convention.

2. Time period for submitting the petition

26. The American Convention establishes that for a petition to be admissible by the Commission, it must be submitted within six months from the time the alleged victim has been notified of the final decision. In the claim under analysis, the IACHR has determined that the exceptions to the prior exhaustion rule provided for at Article 46(2)(c) of the American Convention apply. In this respect, Article 32 of the Commission's Rules of Procedure provides that the petition should be submitted in a time which, in the view of the Commission, is reasonable. To this end, the Commission should consider the date on which the alleged violation of the rights took place, and the circumstances of each case.

27. In the instant case, the petition was received on April 7, 2005; the alleged forced disappearance is said to have taken place on December 7, 2000; and its effects in terms of the alleged failure of the administration of justice to produce any results continue to this day. Therefore, in view of the context and characteristics of the instant case, as well as the fact that the whereabouts of Mr. Isaac Galeano Arango have yet to be determined, the Commission considers that the petition was filed in a reasonable time, and that the admissibility requirement concerning time of presentation has been satisfied.

3. Duplication of procedures

28. It does not appear from the record that the subject matter of the petition is pending before any other international procedure, or that it reproduces another petition already examined by this or any other international body. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention should be considered satisfied.

4. Characterization of the facts alleged

29. Given the elements of fact and law presented by the parties and the nature of the matter presented to it, the IACHR finds that in the present case the petitioners' allegations relating to the alleged violation of the rights to life, humane treatment, personal liberty, judicial protection, and a fair trial tend to establish violations of the rights protected at Articles 3, 4(1), 5(1), 5(2), 7, 8(1), and 25 in conjunction with Article 1(1) of the American Convention.

30. In addition, the facts could characterize violations of Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, given the continuing nature of the failure to clarify the crime of forced disappearance. As it is not apparent that these aspects of the claim are groundless or out of order, the Commission considers that the requirements established at Articles 47(b) and (c) of the American Convention have been satisfied.

V. CONCLUSIONS

31. The Commission concludes that it is competent to examine the claims presented by the petitioner alleging the violation of Articles 3, 4(1), 5(1), 5(2), 7, 8(1), and 25, in conjunction with Article 1(1), of the American Convention, and Article I(b) of the Convention on Forced Disappearance of Persons, and that they are admissible, in keeping with the requirements established in Articles 46 and 47 of the American Convention.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the present case admissible in relation to Articles 3, 4(1), 5(1), 5(2), 7, 8(1) and 25, in conjunction with Article 1(1), of the American Convention, and Article I(b) of the Convention on Forced Disappearance.
2. To notify the Colombian State and the petitioner of this decision.
3. To continue with the analysis of the merits.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15th day of the month of October, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.