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Title/Style of Cause: Jorge Antonio Barbosa Tarazona, Maria Emilce Tarazona de Barbosa and Yaneth Gomez Tarazona v. Colombia
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated: 30 October 2008
Citation: Barbosa Tarazona v. Colombia, Petition 401-05, Inter-Am. C.H.R., Report No. 83/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
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I. SUMMARY

1. On August 15, 2005, the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “IACHR”) received a petition claiming that the Republic of Colombia (hereinafter the “State” or the “Colombian state”) was responsible for the alleged forced disappearance of Jorge Antonio Barbosa Tarazona on October 13, 1992, in the Department of Magdalena, and for the unjustified delay of the legal authorities to investigate, prosecute and punish the individuals allegedly responsible for the offense.

2. The petitioners alleged that the Colombian state was responsible for violating rights recognized in articles 4 (right to life), 5 (right to personal integrity), 7 (right to personal liberty), 24 (equality under the law), 25 (judicial protection) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), and for violating the obligations established in article 1.1 (obligation to respect rights) and the violation of rights protected under the provisions of articles I, II, y III of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Jorge Antonio Barbosa Tarazona and his relatives.

3. In response to the petition, the State expressed its willingness to reach a friendly settlement. On September 22, 2006, the parties signed a friendly settlement agreement and requested the Commission to approve the agreement.

4. Under the provisions of article 49 of the American Convention and article 41.5 of the Rules of Procedure, the Commission approved a report summarizing the incidents reported by

the petitioner, the terms of the friendly settlement agreement reached by the parties and the progress made in complying with the terms. The IACHR also decided to publish the report.

II. PROCESSING BEFORE THE COMMISSION

5. On September 13, 2005, the IACHR began processing the petition registered with the number P401/05 and forwarded the relevant parts to the State, requesting that the State submit its observations within a period of two months as established in article 30.2 of the Rules of Procedure.

6. In communication dated May 25, 2006, the State expressed its interest in reaching a friendly settlement under the provisions of article 41 of the Rules of Procedure. On May 26, 2006, the IACHR forwarded the communication to the petitioner and requested the petitioner's observations. On June 8, 2006, the petitioner communicated its willingness to reach a friendly settlement on the matter and that communication was forwarded to the State for its observations. On July 12, 2006, the State informed the Commission that it had scheduled a meeting with the petitioner to be held on August 2, 2006. On October 18, 2006, the State submitted a report on the signing of a friendly settlement agreement on September 22, 2006, and the implementation of several reparation measures. The State also requested that the Commission approve the agreement.

7. On March 28, 2007, the State submitted a new report on the progress made in complying with the terms of the friendly settlement agreement reached by the parties and reiterated its request for approval of the agreement. The parties also submitted information on the progress made in complying with the terms of the agreement in a working meeting held on October 11, 2007, during the 130th Regular Session of the IACHR.

8. In communication dated April 16, 2008, the State submitted a third report on the progress made in complying with the terms of the friendly settlement agreement and repeated its request that the agreement be approved.

III. FACTS REPORTED BY THE PETITIONERS

9. The petitioners indicate that around 1989, 20-year-old Jorge Antonio Barbosa Tarazona did his military service in the Mechanized Battalion Cordoba, in Santa Marta, capital of the department of Magdalena. The complaint indicates that on December 13, 1990, Barbosa Tarazona was reprimanded and beaten by his superior and that when he strongly defended himself he was locked up in a cell for several days. Around the end of September 1992, having completed his military service, Barbosa Tarazona commented that members of the Army presumed that, because he had served in the military, he knew the location of guerrilla camps in the area but he claimed that he had no information about the guerrilla.[FN1]

[FN1] See testimony of María Emilce Tarazona de Barbosa (mother) Fourteenth Military Court of Criminal Proceedings (undated) (p 12-14 Document No. 10383 from the Regional Directorate of the Office of the Prosecutor of Barranquilla) "ASKED": Could the witness say if her son liked

to meet with subversive persons in the area (sic) of the rural property. "...15 days before his capture he [Barbosa Tarazona] according to what he told his uncle Cristo Barbosa that there was a Sergeant he knew, but he didn't tell him his name, who asked him to help him and to tell him where the guerrilla had their encampments, that he knew where they might be, and he answered him that he didn't know about that as it was indeed the case." Testimony of Cristo Humberto Barbosa Bayo (p.16 to 20) "that in the Ye de Santa Rosa Base, an Army Corporal who knew him told him that since he had worked with them he was going to be useful, that he had been up in the mountain and knew the guerrilla, that he knew where they had their camps and he told the corporal that he didn't know." Annexes to the petition dated August 15, 2005.

10. On October 13, 1992, Jorge Antonio Barbosa Tarazona got in a bus in Bellavista heading in the direction of Fundación, in the department of Magdalena. After traversing part of the route, the bus was stopped by members of the Mechanized Battalion Cordoba for the purpose of conducting a search. The soldiers forced the passengers to disembark. Jorge Antonio Barbosa Tarazona was separated from the rest of the passengers who were allowed to continue on their way. Several passengers in the bus observed the soldiers take Barbosa Tarazona to the rural property El Cairo where the aforementioned Army unit was stationed.

11. Testimony of witnesses, among them Army soldiers, identifies the officer who gave the order to detain Jorge Antonio Barbosa Tarazona during the search[FN2] and points out that, while being held in the military base, Jorge Antonio Barbosa Tarazona was tied, beaten, put in the bed of a pick-up truck, covered with a poncho and murdered some 30 kilometers from the place where he was detained.[FN3]

[FN2] Quote from the testimony of a former reservist who was at the base and who was a member of a squad stationed in that area, given on May 23, 1995. "That day we had assembled the troops, I can't remember what time it was, I was already conducting the search (sic) there were several colleagues behind me, the young man was already marked, we already had an idea of who he was, then the search began and I began searching and the person I had already searched stepped to the side, when I heard it was an order given back there, inside the base, that is where my Lieutenant Mantilla was, in the establishment they gave the order that the young man had to be detained, and yes, the young man was detained and he was taken with two others inside the base in the establishment, the troops went on in their normal way." Sentence issued on September 20, 1999, by the Administrative Court of Magdalena which cites testimony given before the Fourteenth Military Court of Criminal Proceedings, attached to the petition dated August 15, 2005.

[FN3] Sentence issued by the Administrative Court of Magdalena, on September 20, 1999. Quote from the testimony of a former reservist who was in the reserve and was a member of a squad stationed in that area, given on March 28, 1995, before the Examining Magistrate of the Fourteenth Military Court of Criminal Proceedings. "And so it goes that my corporal Oñate said that this young man was a member of the guerrilla, then he was reported to the Aracataca Base and so he was taken inside the base and beaten, then Major Cano came to get him and he was taken to the Aracataca Base, Major Cano was the Commander of the Aracataca Base, about three days later he was dead, When Lieutenant Mantilla arrived he gathered all the corporals

...then he was saying that he had been killed, I don't know if it was Lieutenant Mantilla, Major Cano... The civilian was apprehended around nine in the morning, I saw it because I was in the base (sic), sergeant Varela Cabrales grabbed him and they referred to him by the nickname Bocato, he brought him in and Corporal Oñate (sic) grabbed him and beat him and they covered his face, I didn't see his face but I know he was "mono", they covered his face with a poncho.. Major Cano sent a pick-up truck and they took him away, a white, Nissan pick-up truck, he sent a Sergeant and a Corporal, one was called Sergeant Quintero..... that same day that they got him out of the bus they took him like half-hour later, they tied him up, they covered him completely, around six o'clock in the evening they sent for Lieutenant MantillaYes, every one was there, the whole anti-guerrilla group, those who were not present were the ones who were back in the base,Corporal Oñate grabbed him with another soldier... they tied him with "pita" and threw him on the bed of the pick-up truck... they threw him out in the banana growing area and Lieutenant Mantilla had that newspaper and it said that he was a guerrilla member and Corporal Oñate and Corporal Camacho laughed... at two o'clock in the afternoon of the same day that he was detained, his mother and sister arrived crying and showed a very small photo of the young man when he was doing his military service here in Córdoba and I saw the photo but I could not say anything but I knew it was the same person they had brought down from the bus, I didn't say anything because Lieutenant Mantilla and all the Corporals told us not to say anything, because (sic) whoever talked would be made to "voltear," Sergeant Villalba told me that he had cleaned Lieutenant Mantilla's rifle and that he had only 9 bullets in the magazine, and that Lieutenant Mantilla had told him that he had killed that man...." Sentence issued by the Administrative Court of Magdalena on September 20, 1999. Quote from the testimony of a former reservist who was at the base and was a member of a squad stationed in that area, given on March 31, 1995, before the Examining Magistrate of the fourteenth Military Court. "ASKED: Tell the court if you heard why they said that the civilian was a guerrilla member. ANSWERED: Because he had taken part in the takeover of Bella Vista, Corporal Oñate said that. ASKED: Tell the court if Lieutenant Mantilla and Corporal Oñate gave the soldiers orders not to say anything in that regard.... Yes, they ordered us not to say anything (sic) nothing inside the base, outside, in other words, if someone came asking questions we should say that no one had been detained there, that order was given by Lieutenant Mantilla and Corporal Oñate Tell the court if you heard that a man who used to come (sic) water and refreshments in the base had been chased away from that location because he had seen when the civilian was taken away in the pick-up truck. ANSWERED: I saw that the next day, the water vendor was not there but I didn't know the reason why, He used to come every day but (sic) he never came back." Attached to the petition dated August 15, 2005.

12. Members of his family went to the 5th Mechanized Battalion Cordoba to try to find the whereabouts of Mister Barbosa Tarazona. Not receiving any answer whatsoever, Mrs. Emilce Tarazona, mother of Mr. Barbosa, reported the incidents to the Office of the Public Defender of the city of Fundacion and to the Fourteenth Military Court of Criminal Proceedings, where the investigation lingered for five years. By decree dated March 27, 1998, the Fourteenth Military Court of Criminal Proceedings referred the case to the ordinary courts because it "did not have jurisdiction to resolve the matter" due to the fact that "it concerned prohibited behavior and/or crimes against humanity"[FN4]. At the time the petition was filed there was no information available as to the outcome of the proceedings in the ordinary justice system.

[FN4] Decree dated March 27, 1998, Examining Magistrate of the Fourteenth Military Court. Attached to petition dated August 15, 2005.

13. In 1994, when the preliminary actions of the Fourteenth Military Court of Criminal Proceedings had not yet produced results, the family of Jorge Barbosa Tarazona filed a claim for direct reparation against the Colombian state in the Contentious-Administrative Court of Magdalena. After 5 years of proceedings, on September 20, 1999, the court handed down a sentence ordering the State to pay reparation because it had been confirmed that agents of the State were responsible for the disappearance of Mr. Barbosa Tarazona. The decision in the second instance was appealed by the family and, since July 2000, it is still awaiting resolution. The petitioner claims that the absence of reparation has caused grave damage to the family of Barbosa Tarazona because he was their only source of financial support. Specifically, his wife was forced to abandon the home where they lived and turn to domestic work which affected the way their daughter was brought up. For her part, the mother of the victim had to leave the coffee farm her son managed.

14. In light of the lack of information on the whereabouts of Jorge Antonio Barbosa Tarazona, in 1995 his family began the process of death in absentia in the Juvenile and Family Court of Fundación. A sentence dated January 28, 1999, ordered that the death be recorded in the Civil Registry of the City of Fundación.

15. The petition claims that the Colombian state is responsible for violating rights recognized in articles 4 (right to life), 5 (right to personal integrity), 7 (right to personal liberty), 24 (equality under the law), 25 (judicial protection) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), together with the violation of the obligations established in article 1.1 (obligation to respect rights) and the rights protected by articles I, II, y III of the Inter-American Convention on Forced Disappearance of Persons, in prejudice of Jorge Antonio Barbosa Tarazona and his relatives.

IV. FRIENDLY SETTLEMENT

16. On September 22, 2006, with the military high command in attendance, the Vice Minister of Defense, speaking for the Colombian State, admitted the State’s responsibility in the disappearance of Jorge Antonio Barbosa Tarazona and apologized to his family in these words:

The Colombian State profoundly regrets the disappearance of Jorge Antonio Barbosa Tarazona under these circumstances and acknowledges before you, his family, its responsibility for the incidents described and apologizes to his mother, his wife, his sisters, his father and to his brother, for having caused you the profound pain of losing a son, a husband, a father and a brother. The State hopes that this act will help the family of Jorge Antonio Barbosa endure the void and the pain caused by this tragic loss and pledges to take the necessary actions to prevent acts like this from ever happening again.

The family was also given a memorial plaque and a letter of sympathy[FN5].

[FN5] Communication from the State dated November 3, 2006, which includes as attachments a copy of the text of the inscription on the Memorial Plaque, copy of the contents of the Letter of Sympathy, copy of the text of the statement made by authorities in the Act of Recognition of International Responsibility, a disc with photographs of the Act of Recognition of Responsibility, a video of the ceremony.

17. Afterwards, the State, the family of Mr. Barbosa Tarazona and their representative signed a friendly settlement agreement that reads as follows:

FRIENDLY SETTLEMENT AGREEMENT - PETITION 401-05 – JORGE BARBOSA TARAZONA

In the city of Barranquilla (Atlántico), on September 22, 2006, at the headquarters of the Second Army Brigade, the Republic of Colombia, represented by Dr. Clara Inés Vargas Silva, Director of the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, duly authorized by the Permanent Intersectoral Commission on Human Rights and International Humanitarian Law, and Mrs. María Emilce Tarazona de Barbosa, Mrs. Yaneth Gómez Tarazona, standing for the Valle Restrepo, representing the family of Jorge Antonio Barbosa Tarazona and petitioner, agreed to sign the following Friendly Settlement Agreement relating to Petition CIDH 401/05, pending before the Inter-American Commission on Human Rights on the following terms:

1. ON THE MATTER OF REPARATIONS:

Pecuniary Reparations:

1.1.1 Once this friendly settlement agreement is approved by the Inter-American Commission on Human Rights, the State agrees to submit to the Council of State a conciliation proposal of up to one hundred percent (100%) of the sentence handed down by the Contentious Administrative Court of Santa Marta, for moral damages suffered by the relatives of Jorge Antonio Barbosa Tarazona; at the same time, the State will recognize the material damages caused by the death of Jorge Antonio Barbosa Tarazona based on the current legal minimum salary.

1.1.2 The State agrees to enforce Law 288 of 1996, for the purpose of providing reparation to the mother, wife and daughter for the following damages: non-material damages caused to Jorge Antonio Barbosa Tarazona, for the suffering endured from the time of his detention until the time he was legally declared dead in absentia and for any expenses incurred by the aforementioned relatives in the search for his remains as long as they provide records of the expenses.

1.2 Non-pecuniary reparations r measures of satisfaction:

1.2.1 At the time of the signing of the Friendly Settlement Agreement scheduled for September 22, 2006, in the city of Barranquilla, with the victim's family in attendance, the State, represented by officials of the Ministry of National Defense and of the Army, will apologize for the incidents that led to the death of Jorge Antonio Barbosa Tarazona; likewise, a plaque in memory of Jorge Antonio Barbosa Tarazona and a letter of sympathy signed by an official of the Ministry of National Defense will be presented to the family.

1.2.2 The State agrees to monitor the medical and psychological health of the mother, the wife and the daughter of Jorge Antonio Barbosa Tarazona, and will provide them whatever treatment is deemed necessary.

1.2.3 The State agrees to include this case in the education program of the Army under "lessons learned."

2. ON MATTERS OF JUSTICE:

Within the framework of responsibility for due diligence in carrying out investigations, the State will strengthen and advance efforts and special actions to identify the individuals responsible for the disappearance and later death of Jorge Antonio Barbosa Tarazona. At the same time, it will use all its technical and scientific tools and knowledge in the effort to locate the victim's remains. When the remains are found and identified, the State will turn them over to the family as soon as possible in order that he may be honored according to their beliefs.

3. MONITORING COMPLIANCE WITH THE TERMS OF THIS AGREEMENT

The parties agree to keep the Honorable Inter-American Commission on Human Rights informed on the progress made and the results achieved.

V. COMPLIANCE WITH THE AGREEMENT REACHED BY THE PARTIES

18. On March 28, 2007, the State informed the IACHR that the appeal filed by the plaintiffs with the Contentious Administrative Court was legally resolved in the Council of State on October 12, 2006, and that, consequently, by Resolution No. 0062 of January 9, 2007, issued by the Ministry of National Defense, the State ordered that the family of the victim receive \$377,781.470.99 (millions) Colombian pesos in compensation.

19. The State also indicated that the Ministry of Social Protection had the information necessary to initiate the psychological evaluation of the mother, the wife and the daughter of Jorge Antonio Barbosa. The State also indicated that the Office of Education and Doctrine of the National Army included the case of Antonio Barbosa Tarazona in the educational program of the Army under "Lessons Learned" and that it was disseminated throughout the institution, to the educational schools (Cadet School and Non-Commissioned Officers School) and to the training schools.

20. With respect to a judicial explanation for the disappearance, the State informed that the Office of the Prosecutor General of Colombia heard testimony from the mother and from one of

the sisters of Jorge Antonio Barbosa and took DNA samples from the mother for the purpose of comparing them with skeletal remains that may resemble the physical characteristics of the victim.

21. On October 11, 2007, in a working meeting held within the framework of the 130th Regular Session of the IACHR, the parties informed the Commission that, to date, the search for the remains of Jorge Antonio Barbosa had not produced any positive results. It was also confirmed at the meeting that the family had received the sum of \$377,781.470.99 (millions) Colombian pesos with an additional sum still pending. .

22. With regard to the prosecution of the individuals responsible, the State informed that an Army Corporal had been convicted as a participant in the disappearance and that he had been given an anticipated sentence of 86 months in prison and a fine of 100 minimum salaries. The State also indicated that there has been an arrest warrant in effect for Lieutenant Mario Mantilla since May 18, 2007.

23. On April 17, 2008, the State informed that on March 14, 2008, the Trial Judge of the Special Circuit of Santa Marta sentenced Army soldier Víctor Mauricio Oñate to 15 years in prison for the offense of forced disappearance of persons. The State also indicated that there is another person under investigation and that the process is in the evidence gathering stage.

VI. CONCLUSIONS

24. The objective of the procedure set forth in articles 48 (1) (f) and 49 of the American Convention is to “reach a friendly settlement of the matter based on the respect for human rights recognized in the Convention.” The willingness to carry out this process demonstrates the good faith of the State to comply with the purpose and objectives of the American Convention based on the principle of *pacta sunt servanda*, whereby the States must fulfill in good faith treaty obligations. The friendly settlement procedure contemplated in the American Convention provides the opportunity to resolve individual cases in a non-contentious manner and, in cases in other countries; it has demonstrated that it can offer an important avenue for resolution that is available to both parties.

25. In light of the information provided by the parties with regard to the facts in the case, the agreements reached and the progress made in complying with the same and the commitments made in terms of follow-up, the IACHR approves the Friendly Settlement Agreement reached in petition P 401-05 on the disappearance of Jorge Antonio Barbosa Tarazona. The Commission values the efforts made by the Republic of Colombia and by the family of Jorge Antonio Barbosa Tarazona to reach a friendly settlement in this matter and to continue to move forward in fulfilling it.

26. The IACHR also bears in mind the principles set forth by the Inter-American Court of Human Rights with regard to the obligation of the State to investigate violations of human rights^[FN6], and points out that, in order to accomplish that, it must “effectively search for the truth” and that the search must encompass all legal means available and that it must be aimed at determining the truth and investigating, pursuing, apprehending, prosecuting and punishing all

individuals intellectually and materially responsible for the actions, especially when government agents are or may be involved”[FN7].

[FN6] I/A Court H. R., Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006. Series C No. 140, paragraphs 142 and 143.

[FN7] Ob. Cit paragraphs 142 y 143.

27. In that sense, the IACHR will do special follow-up of the efforts to comply with the commitments made to shed light on the facts, to recover the victim’s remains and to prosecute and punish those responsible.

VII. DECIDES

28. Based on the preceding considerations and on the procedure established in articles 48 (1) (f) and 49 of the American Convention, the Commission decides:

1. To approve the Friendly Settlement Agreement signed by the parties on September 22, 2006.
2. To continue to monitor and supervise each and every one of the clauses of the friendly agreement.
3. To publish this report and to include in its annual report 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 30th day of October, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.