

REPORT No. 53/10¹
DECISION TO ARCHIVE
PETITION 12.283
COLOMBIA
March 18, 2010

ALLEGED VICTIMS: Lauterio Ballén Jiménez

PETITIONER: Asociación para la Promoción Social Alternativa “Minga”

ALLEGED VIOLATIONS: Articles 1.1, 4, 5, 8, and 25 of the American Convention on Human Rights

DATE PROCESSING BEGAN: May 30, 2000

I. POSITION OF THE PETITIONER

1. On November 29, 1998, the Inter-American Commission on Human Rights received a petition lodged by the Asociación para la Promoción Social Alternativa “Minga” (Association for Alternative Community Development “Minga”) (hereinafter “the petitioner”) alleging the responsibility of State agents in the death of Lauterio Ballén Jiménez, on September 23, 1996 in the rural area of the Municipality of Icononzo, in the Department of Tolima.

2. By way of background information, the petitioners state that on September 23, 1996, during a counterinsurgency operation in the rural area of the Municipality of Icononzo, members of the Furia company of the National Army’s Mobile Brigade No. 1 flew in helicopters to the higher part of the El Mesón de Guatimbol district and fired on the whole district from those helicopters, while infantry units occupied the area on the ground.

3. The petitioners allege that Lauterio Ballén Jiménez, José Mauricio Cubillos Rodríguez and Rigoberto González Rivera had been doing farmwork and that when they heard gunshots they had taken refuge in a home in which they were later captured by a soldier in the National Army. They claim that after their capture, Lauterio Ballén Jiménez, José Mauricio Cubillos Rodríguez and Rigoberto González Rivera were taken to the counterinsurgency command post, where a soldier posted on the side of the road had begun shooting at them, wounding Lauterio Ballén Jiménez. They allege that Lauterio Ballén had been treated by the male nurse of the military unit, after which the unit commander had ordered that he be driven in a private vehicle to the health post in Pandi, in the Department of Cundinamarca. They say the commander had also ordered that Rigoberto González Rivera accompany the wounded man. According to the petitioners, the alleged victim had received first aid at the health post and had then been remitted to the hospital in the Municipality of Fusagasugá, in the Department of Cundinamarca.

4. The petitioners allege that on the way to the hospital the vehicle transporting Lauterio Ballén had been stopped at two police checkpoints, and that at the second the commander of the patrol in charge of the police post had confiscated the referral for Lauterio Ballén, as he regarded him as a member of outlawed armed groups, and ordered that the wounded man be taken to the Tenth Brigade in Tolimaida in the Department of Cundinamarca. The petitioners allege that on the way, when they reached the Municipality of Melgar, in the Department of Tolima, the civilians and the soldier transporting Lauterio Ballén took him to the hospital. After he had received medical care, the doctor ordered that he be transferred to the Girardot hospital in the Department of Cundinamarca, where he died.

¹ In accordance with Article 17.2 of the Rules of Procedure of the Commission, Commission member Rodrigo Escobar Gil, a Colombian national, did not participate in the deliberation or decision of the present case.

5. The petitioners allege that Rigoberto González was released by the National Army's 10th Brigade. However, according to them, Mauricio Cubillo Rodríguez had been placed at the disposal of the Bogotá Region Public Prosecutor's Office for investigation of the charge that he was an insurgent. They state that the Prosecutor's Office subsequently ordered the release of Mauricio Cubillo Rodríguez for lack of evidence against him and had authenticated copies made with a view to conducting criminal and disciplinary investigations of the security forces personnel involved in the operation. Finally, the petitioners allege that the National Army reported that Lauterio Ballén had belonged to an outlawed armed group and had died in combat with regular army troops.

6. The petitioners claim that an inquiry was opened into the death of Lauterio Ballén in the military court system, as well as a disciplinary investigation. However, no decision had been issued in either because of the authorities' procrastination. The petitioners state that a complaint had been filed with the authorities responsible for reviewing the final decisions of administrative bodies and courts that had culminated in a partial settlement with the Ministry of Defense.

II. POSITION OF THE STATE

7. The State contends that with reference to the facts of this claim proceedings are under way in the military criminal justice system, in accordance with the corresponding rules of procedure, along with a disciplinary inquiry, which is at the preliminary stages of investigation. It argues that the fact that those proceedings have not yet led to a determination of those responsible does not mean that the State is not fulfilling its obligation to investigate. Finally, the State maintains that there are no grounds yet for the intervention of international bodies of a necessarily subordinate nature, particularly since internal proceedings are under way in order to throw light on what happened and punish those responsible.

III. PROCESSING BY THE IACHR

8. On November 29, 1998, the IACHR received the initial petition, registered it as number 12.283 and, after its preliminary analysis thereof, proceeded on May 30, 2000 to transmit a copy of the pertinent parts to the State, giving it 90 days to furnish information in accordance with Article 34.3 of the Rules of Procedure in effect. The State submitted its observations on August 31, 2000² which was transmitted to the petitioner for its observations. On August 8, 2003, the petitioners were once again asked to furnish information. On April 3, 2009, a communication was sent to the petitioner, requesting updated information to ascertain whether the grounds for the petition subsisted and indicating that, if the information was not received within a one-month period, steps could be taken to archive the petition.

IV. BASIS FOR THE DECISION TO ARCHIVE

9. Both Article 48.1 (b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that in the processing of a petition once the observations have been received or the period established has elapsed with no observations received, the IACHR shall ascertain whether the grounds for the petition or communication exist or subsist, and if they do not it shall order the case archived.

10. This petition claims violation of the rights protected under Articles 4, 5, 8, and 25 of the American Convention, in accordance with Article 1.1 of the American Convention, for failure to investigate and punish those responsible for the death of Lauterio Ballén Jiménez. For its part, the State argues that investigations are under way in the military justice system and at the disciplinary level. However, the Commission has not received information or arguments from the petitioners in response.

² Note EE 1849 of the Office of the Director General of Special Affairs in the Ministry for Foreign Affairs of the Republic of Colombia, dated August 31, 2000.

11. Once processing of the petition had begun, the Commission requested information from the petitioners on three occasions, without receiving a reply to any of those requests. Under such circumstances, it is impossible to ascertain whether the grounds for the initial petition subsist. Consequently, in accordance with Article 48.1 (b) of the Convention and Article 42 of the Rules of Procedure of the IACHR, the Commission decides to archive the present petition.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March, 2010.
(Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-president; Dinah Shelton, Second Vice-president; María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission).