

REPORT NO. 58-10¹
DECISION TO ARCHIVE
CASE 11.744
COLOMBIA
March 24, 2010

ALLEGED VICTIM: Father Ezio Guadalupe Roattino Bernardi

PETITIONERS: Comisión Intercongregacional de Justicia y Paz, renamed Comisión Intereclesial de Justicia y Paz (CIJP)

ALLEGED VIOLATIONS: Articles 1, 2, 4, 5, 8, 11, 12 and 25 of the American Convention on Human Rights (hereinafter "the Convention")

DATE OF INITIATION OF THE PROCEEDINGS: May 1, 1997

I. POSITION OF THE PETITIONERS:

1. The petitioners allege that in February 1997, Father Ezio Guadalupe Roattino Bernardi performed the funeral rights and provided a coffin for an insurgent killed in a confrontation between the FARC and the security forces, whose body remained unclaimed. They indicate that as a result, on March 5, 1997, the Police Chief of the department of Cauca sent a letter to the Archbishop of Popayán accusing Father Roattino of "collaboration and sponsoring the treacherous criminal terrorist attacks" committed by the FARC. They also indicate that the letter added an anonymous accusation that the priest was "in league with the outlaws and number one enemies of the Police", and intelligence reports confirming that "the cleric is a collaborator with the bandits and is responsible for obtaining sponsorship so that the insurgents can go to Italy to specialize in guerilla tactics [...]" and "that frequently, he shelters subversives in the rectory of the Municipality of Caldono."

2. They indicated that at the beginning of April 1997, Father Roattino was informed by someone with access to intelligence information from the Armed Forces that it had been decided that he should be killed in the week between April 6, and 12, 1997. He therefore had to leave Caldono. The petitioners alleged that the right to life of Father Roattino was violated even when his execution did not take place due to circumstances beyond the control of the perpetrators. They also alleged a violation of the right to personal integrity for being, at that time, under a secret death sentence - which also constitutes a violation of his right to honor and dignity. They also alleged that Father Roattino was denied the rights to due process and access to effective judicial procedures to protect him from persecution and the accusations, which breached his rights to honor and dignity.

3. The petitioners complained of an institutional policy situation incompatible with the American Convention due to the creation and support of paramilitary structures and irregular armies perpetrating crimes against humanity; a military jurisdiction enabling the impunity for these crimes, the corruption and arbitrariness of justice through the monetary compensation of witnesses and the anonymity of witnesses and judges; and the absence of political will on the part of the Executive to respect human rights.

4. With respect to the exhaustion of domestic remedies, the petitioners requested the application of the exception laid down in Article 37.2.a of the Commission's rules in force in 1997, on the ground that the State's domestic legislation failed to ensure due process for the protection of the rights allegedly violated. In this respect, they alleged that the violations complained of in the petition have not followed avenues that would receive domestic judicial treatment with the least hope of success.

¹ Pursuant to Article 17.2 of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the deliberation and decision of the present case.

5. The petitioners informed the Commission that on May 10, 1997, missionary José Javier Bedoya, a colleague of Father Roattino, was forced into a taxi, blindfolded and held for four days tied up in a seat without food or water, subjected to long interrogation and threatened with mutilation with a chainsaw. They indicated that the main message was that "Father Ezio should leave" and that he was released on May 23, 1997 to deliver the message. They indicated that this disappearance was denounced before the City Ombudsman and the Government Secretary of the department of Cauca.

6. They indicated that on May 24, 1997, a police lieutenant in civilian clothes turned up at the parish to offer Father Roattino security from the Chief of Police of Cauca, and to investigate the kidnapping of José Javier Bedoya, while the lieutenant's driver photographed the parish car.

7. They pointed out that on May 26, 1997, a Security Council was held to analyze the kidnapping of José Bedoya and Father Roattino's security situation. They indicated that the Father did not accept the Governor of Cauca's offer of security for not being in accordance with the gospels and his choice of peace.

8. They indicated that on May 27, 1997, José Bedoya was kidnapped a second time and was held captive until May 20, 1997. They alleged that this time he was tortured and that the message was: "this is Father Ezio's last warning: he should leave." They indicated that on May 31, 1997, the Father left Caldono a second time to save his life.

9. On July 1, 1997, the petitioners filed a request for precautionary measures to the Commission on behalf of Father Ezzio Roattino Bernardi. The measures were granted on July 7, 1997. The petitioners pointed out that on July 23, 1997, Father Roattino petitioned for information to the Chief of Police of Cauca on whether there were any charges against him at the Public Prosecutor's office. He also requested that the letter sent to the Archbishop of Popayán with intelligence statements and the accusations against him be withdrawn.

10. They indicate that on July 12, 1997, José Bedoya left Caldono for Bogota, with a warning from the Public Prosecutor's staff not to return to Cauca if he valued his life and that he should pass on the message to Father Roattino.

II. THE POSITION OF THE STATE

11. With regards to the precautionary measures, the State submitted a report on the Security Council, which took place on May 26, 2007, where the situation was discussed and the possibility that the authorities should withdraw what was said against Father Roattino. They also pointed out that Father Roattino had declined to accept State security and that the investigations into the threats against Father Roattino and the kidnapping of José Bedoya had been assigned to the appropriate Public Prosecutors.

12. Faced with Father Roattino's refusal to accept a security arrangement, the State requested guidance from the Commission regarding the course of action to be followed. The State also reported that on March 18, 1998, the Police of the Tolima department sent to the Indigenous Regional Council of Cauca, the Archdiocese of Popayán, "The Liberal" newspaper and the Chief of Police of the Cauca department a report indicating that the priest Roattino was neither a sympathizer nor a collaborator with insurgent groups and that the chiefs of the police stations in the municipalities where the priest preaches should aid in his work and avoid bothering him. It indicated that, in response, Father Roattino expressed his willingness to send a note to the Commission asking for the case to be closed.

13. On July 1, 2005, the State requested that the precautionary measures be archived in view of the fact that the beneficiary "declined to be involved in the various protection programs, especially offered by the General Public Prosecutor of the Nation", and that "the Police official that had made the accusations giving rise to the precautionary measures decree [...] has publically withdrawn his

statements." The State also said it was relevant that eight years had passed "without news in the present matter."²

14. On April 17, 2008, the State filed a request for the matter to be archived on the grounds that the reasons at the heart of the petition no longer subsist. The State submitted that since the facts relevant to the petition had occurred, the alleged victim had not complained of new threats and turned down the offers of protection while the protective measures were in force. It also considered that since the IACHR had archived the precautionary measures, it had recognized that the reasons at the root of the precautionary measures no longer existed, which coincided entirely with the facts at the origin of the petition.

15. The State stressed that after Lieutenant Gutiérrez Aranguren had circulated the letter retracting his statements, Father Roattino sent a letter of thanks to the National Police. In this regard, the State indicated that the alleged victim had failed to invoke remedies before the local courts seeking other reparations than the letter retracting the statements and that he had failed to become a party in the criminal proceedings or to claim damages alleging the liability of the State before the contentious administrative courts. In this sense, the State considers that the said letter satisfied the right to reparations and constitutes a measure of satisfaction and a guarantee that the facts will not be repeated.

16. From the above, the State requested the IACHR to archive the petition in accordance with Article 48.1.b of the American Convention.

III. PROCEEDINGS BEFORE THE IACHR

17. On May 1, 1997, the Commission sent the relevant parts of the petition to the State with a time limit of 90 days to submit observations. The State failed to submit observations on the petition.

18. On July 9, 1997, the IACHR issued precautionary measures in favor of Ezio Roattino Bernardi. On July 18, 1997, the State responded to the requests for information that accompanied the precautionary measures by making submissions on November 5, 1997, January 15, 1998, April 16, 1998 and May 21, 1998, which were duly sent to the petitioners. The last communication with regard to the precautionary measures was received by the Commission on August 20, 1998, which was sent to the petitioners for observations on September 10, 1998. No reply was received. On October 24, 2006, the Commission lifted the precautionary measures in favor of Ezio Roattino Bernardi.

19. On April 17, 2008, the State requested the archiving of the case. On September 1, 2009, a communication was sent to the petitioners requesting current information to determine whether the grounds for the petition still existed and informing them that in case of not receiving a reply within a month, the Commission would proceed to archive the petition. On March 24, 2010 the petitioners requested the archiving of the petition.

IV. BASIS FOR THE DECISION TO ARCHIVE

20. Both Article 48.b of the American Convention on Human Rights as well as Article 42 of the Rules of the Inter-American Commission on Human Rights, establish that, during the processing of a petition once information is received or when the established time limit has expired without information being received, the IACHR will verify whether the grounds for the petition or communication are present or still exist and where they do not, it shall order the archiving of the case file.

21. In the present petition, it is argued that a violation of Articles 4, 5, 11, 8, and 25 of the American Convention has occurred as a consequence of the alleged threats directed against Ezio Roattino Bernardi. For its part, the State maintains that the petitioners have not exhausted domestic remedies, that reparations have been provided for the alleged violations and that their non-recurrence has been guaranteed, and thus it requests that the petition be archived.

² Communication No. DDH 35015 of the Ministry of Foreign Affairs of Julio 1, 2005.

22. Since the initiation of the processing of the petition and the granting of precautionary measures, the petitioners' and State's communications received by the IACHR have in the main referred to the precautionary measures proceedings. The petitioners have not expanded or updated the information on their claims. The State has failed to respond to the petition and has only referred to the precautionary measure.

23. The IACHR requested information from the petitioners pursuant to the provisions of 30.6 of the Rules that were in force up to December 30, 2009, in order to determine whether the grounds for the petition still existed. In reply, the petitioners requested the archiving of the petition.

24. In view of the request to archive the petition presented by the petitioners, the Commission has decided to archive the present petition, in accordance with Article 48.1 subparagraph b of the American Convention, as well as Article 42 of the Rules of Procedure currently in force.

Done and signed in the city of Washington, D.C., on the 24th day of the month of March 2010. (Signed: Felipe González, President; Dinah Shelton, Second Vice-president; María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission).