

REPORT No. 93/10
DECISION TO ARCHIVE¹
CASE 10.870
COLOMBIA
July 15, 2010

ALLEGED VICTIM: José Arenas Marín *et al.*

PETITIONERS: Comisión Ejecutiva de la Coordinadora Nacional de Derechos Humanos Damnificados y Refugiados en Colombia [Executive Commission of the National Coordinating Body for Human Rights, Victims and Refugees of Colombia] (CONADHEGS)

ALLEGED VIOLATIONS: Common Article 3 of the four Geneva Conventions

DATE PROCESSING BEGAN: April 18, 1991

I. POSITION OF THE PETITIONERS:

1. On April 30, 1991, the IACHR began processing a public complaint (urgent action) issued by CONADEGHS on April 18, 1991, which alleged the following facts.

2. On March 12, 1991, members of the Luciano D'Luyer Battalion detained the *cóteros* (persons who load and unload trucks) José Arenas Marín, José del Carme Rincón, José María Payares, and Gilberto Uribe González near El Zarzal bridge, Barrancabermeja, on the main highway that connects Bucaramanga and the oil port.

3. Witnesses said they saw two of the *cóteros* when the army had them lying in the highway among the semi trucks, because the *cóteros* raised their heads when the witnesses went by, making it possible to identify them.

4. Witnesses said that days before the *cóteros* were detained; they had been threatened by the troops, who told them “we don’t want to see you around here anymore because you are guerrilla informers.”

5. On March 14, 1991, the radio and the Bucaramanga newspaper “La Vanguardia” said that the military report of March 12, 1991, indicated that four subversives of the Camilista Union of the National Liberation Army (UC-ELN) were killed as a result of a clash with guerrillas.

6. Next of kin of the alleged victims identified the bodies on March 13, 1991, in the Barrancabermeja morgue, “finding two of them in their underwear, another with pants that were not his, and another completely nude,” and with signs of having been massacred with machetes, which could also be seen in the photographs of the corpses.

7. They added that some clothes of the *cóteros* were found near the site where they were detained, and others were found in the cemetery where the autopsies were performed. They said that they do not know the source of the military uniforms and guerrilla armbands that the *cóteros* were wearing, according to the armed forces.

¹ As provided in Article 17.2 of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the deliberation or decision of this case.

8. CONADHEGS' public complaint called on the President of Colombia to order the Brigade commanders to apply Common Article 3 of the four Geneva Conventions to guarantee the rights of the non-combatants and to compensate their next of kin immediately. The public complaint also urged human rights organizations to express their solidarity and demand that the government halt the war.

II. POSITION OF THE STATE

9. The State reported that the investigation of the deaths of the four persons was being conducted by Criminal Court 15 of the City of Barrancabermeja. It said that the forensic report of the four bodies did not mention the alleged machete blows denounced by the petitioners. It said that the investigation was transferred to Military Court 24 and that one of the prosecutors detailed by the Public Prosecutor's Office in Barrancabermeja was designated to oversee and take part in the investigation. It added that the National Attorney General's Office started a preliminary investigation and conducted a series of procedures. The State therefore considered that the remedies of domestic jurisdiction had been invoked and were ongoing; hence it asked the Commission not to admit the petition.

10. In August 1991 the State reported that the autopsy findings of the bodies of the alleged victims described the wounds sustained, but did not indicate that they were the alleged machete blows.

11. The State reported that the delegated prosecutor for the armed forces of the National Attorney General's Office opened a disciplinary investigation under file No. 022-111540, and that on December 12, 1996, a writ of proscription of disciplinary action was issued, so the case was archived.

III. PROCESSING BY THE IACHR

12. On April 30, 1991, the Commission transmitted the relevant parts of the petition to the State with a deadline of 90 days to submit its observations. The State sent its response on July 26, 1991, which was forwarded to CONADHEGS on August 2, 1991, for its observations.

13. The State submitted additional information on August 20, 1991, which was forwarded to CONADHEGS on September 5, 1991, and supplemented, with the pertinent parts on September 18, 1991, for its observations.

14. On June 9, 1993, and January 18, 1994, the Commission reiterated its request for observations to CONADHEGS within 60 days. On January 3, 1997, the Commission requested the State all reports on this case. The State sent its reply on May 28, 1997, which was forwarded to CONADHEGS on May 29, 1997.

15. On July 15, 1998, the Commission asked the State to submit all reports on the case. Since then there has been no activity in processing this petition.

IV. BASIS FOR THE DECISION TO ARCHIVE

16. Both Article 48.1.b of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the IACHR stipulate that during the proceedings of a petition, after the information has been received, or after the period established has elapsed and the information has not been received, the IACHR shall ascertain whether the grounds for the petition or communication still exist. If they do not, it shall order the record to be closed.

17. Article 46.1 of the American Convention and articles 27 and 28 of the Commission's Rules of Procedure establish the requirements for consideration of petitions. Even the possibility for the Commission to initiate the processing of a petition *motu proprio*, is subjected to that rule as established in Article 24 of its Rules of Procedure.

18. Since the Commission started processing the petition it requested information from CONADHEGS on five occasions, without receiving a reply to any of its communications, and

CONADHEGS made no further contact with the IACHR. Under these circumstances, it is not possible to determine whether the grounds for the initial petition still exist, so in accordance with Article 48.1.b of the Convention and Article 42 of the IACHR Rules of Procedure, the Commission decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 15th day of the month of July, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Luz Patricia Mejía Guerrero, members of the Commission).