

**REPORT No. 95/10<sup>1</sup>**  
DECISION TO ARCHIVE  
CASE 11.757  
COLOMBIA  
July 15, 2010

**ALLEGED VICTIM:** Guillermo Villamizar Toledo

**PETITIONER:** Guillermo Villamizar Toledo

**ALLEGED VIOLATIONS:** Articles 1, 4, 5, 8, 17, and 25 of the American Convention on Human Rights

**DATE PROCESSING BEGAN:** December 26, 1996

**I. POSITION OF THE PETITIONER**

1. On December 26, 1996, the Inter-American Commission on Human Rights received a petition presented by Guillermo Villamizar Toledo (hereinafter "the petitioner"), a Colombian national. He said that he was working as captain of the ship MN/Poppy of U.S. registry, and in that capacity on April 17, 1984, was victim of a machinegun attack by personnel of the Colombian navy at the garrison on Cayo Roncador, near the Archipelago of San Andrés and Providencia, in the Republic of Colombia. He said that he received a bullet wound in the attack that caused a femoral fracture and was subjected to inhumane treatment in the manner in which he was taken to the hospital.

2. The petitioner said that he instituted administrative proceedings that were resolved in his favor on April 3, 1997, by the Administrative Tribunal of San Andrés, Providencia, and Santa Marta, which was nearly 13 years after the facts occurred. He argued that this constituted undue delay in resolution of remedies.

3. With the facts described, the petitioner alleged violation of the rights to life, humane treatment, a fair trial, protection of the family, and judicial protection in articles 4, 5, 8, 17, and 25 of the American Convention in connection with Article 1.1 of the same treaty.

**II. POSITION OF THE STATE**

4. The State requested that the petition be declared inadmissible because the alleged facts do not establish a violation of the American Convention. The State alleged that the petitioner, who had been an active member of the navy, knew security measures that the navy had implemented in the insular territory and the keys of the Archipelago of San Andrés and Providencia as a result of the tensions that arose from the territorial dispute with Nicaragua. It said that in view of these circumstances, the petitioner did not have the required authorization to transit near the keys of the Archipelago of San Andrés and Providencia.

5. The State said that the Administrative Tribunal of San Andrés and Providencia found the State liable for material and moral damages caused to the petitioner and his family members, as a result of the wounds sustained by the petitioner. As a result, the Tribunal ordered payment of 32,311,587.49 pesos for material damages and 500 grams of gold to the petitioner and each of his family members for moral damages. It said that the petitioner appealed this verdict to the Council of State and the case is in the office of the judge who will deliver the decision, which the State says demonstrates the lack of exhaustion of domestic remedies and that the petitioner is seeking to use the Commission as a fourth instance.

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<sup>1</sup> 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.

### **III. PROCESSING BY THE IACHR**

6. On December 26, 1996, the IACHR received the original petition and registered it as number 11.757. On January 15, 1997 the IACHR requested additional information from the petitioner on the domestic judicial proceedings, which was received on February 24, 1997. On March 20 and May 20, 1997, the Commission received communications from the petitioner with additional information. On June 13, 1997, the Commission transmitted the pertinent parts to the State, giving it a period of 90 days to submit observations in accordance with Article 34 of the Rules of Procedure then in force.

7. On November 4, 1997, the Commission reiterated its request for information to the State. On January 6, 1998, the Commission received the State's observations, which it forwarded to the petitioner for his observations. On March 23, 1998, the Commission received the petitioner's observations, which were transmitted to the State for its observations. On June 5, 1998, the State requested an extension of 30 days, which the IACHR granted.

8. On November 12, 1998, and March 23, 1999, the IACHR reiterated its request to the State for its observations. On June 18, 2009, the IACHR requested updated information from the petitioner within 30 days. On February 16, 2010, the IACHR sent a communication to the petitioner, requesting that updated information be submitted within one month on whether the grounds for the petition still exist, and stating that otherwise the Commission could proceed 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 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 petition archived.

10. This petition alleges violation of the rights to life, humane treatment, a fair trial, protection of the family, and judicial protection in articles 4, 5, 8, 17, and 25 of the American Convention in connection with Article 1.1 of the same treaty.

11. The petitioner's last communication was received in 1999; since then the IACHR has sent him communications with no response. The petitioner did not contact the Commission to report his new address or contact information. 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 5<sup>th</sup> 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.