

REPORT No. 96/10¹
DECISION TO ARCHIVE
CASE 12.334
X²
COLOMBIA
July 15, 2010

ALLEGED VICTIM: X

PETITIONER: Humanidad Vigente - Corporación Jurídica [Active Humanity-
Legal Corporation]

ALLEGED VIOLATIONS: Articles 1.1, 5, 8, and 19 of the American Convention on Human
Rights

DATE PROCESSING BEGAN: May 14, 1999

I. POSITION OF THE PETITIONER

1. On June 21, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition presented by Humanidad Vigente - Corporación Jurídica (hereinafter “the petitioners”), which alleged the responsibility of the State of Colombia for the rape of X, 12 years old, allegedly committed on January 9, 1997, by members of the army in the municipality of de San Pablo, Bolívar Department.

2. The petitioners said that on January 9, 1977, nine soldiers from the army's Fifth Brigade entered the “Los Alpes” farm in the rural area of the municipality of de San Pablo, Bolívar Department. They said that three of the soldiers took X from the house to a remote location where, after interrogating her, they raped her and threatened to kill her if she dared to report what happened.

3. The petitioners said that on January 20, 1997, X's father, Telesforo Leal Angarita, filed a complaint regarding the facts described with the provincial prosecutor's office in the city of Barrancabermeja, which opened a disciplinary proceeding. They said that the investigation yielded no results and no responsible party was punished.

4. The petitioners added that based on the complaint filed, the designated prosecutor for the Moral Criminal Chamber of the Circuit Court of the municipality of Simití, Bolívar Department, started a criminal investigation of the facts described. They said that on June 24, 1998, the National Attorney General's Office suspended the criminal investigation, but it was reopened on March 16, 1999. Nevertheless, the petitioners say the investigations remained in the evidentiary phase and no responsible party was identified.

5. They considered that in light of the unwarranted delay in the investigations, the exception to exhaustion of domestic remedies applies. Finally, they argued that the State was responsible for the violation of the rights to humane treatment, a fair trial, and rights of the child established in the American Convention, to the detriment of X.

II. POSITION OF THE STATE

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 on this petition.

² As expressly requested by the petitioners the name of the alleged victim remains under reserve.

6. In response to the petitioners' complaint, the State considered the petition inadmissible. It said that there were appropriate domestic resources to investigate, judge, and punish these facts, which had not been exhausted.

7. In this regard, the State said that a criminal investigation had been launched, but it was suspended for lack of sufficient evidence to determine the circumstances and the persons responsible for the facts described. It said, however, that sufficient evidence was gathered subsequently to permit reopening of the investigation, and it is being diligently pursued. Therefore, it considers there was no unwarranted delay.

8. The State added that a disciplinary investigation, underway in the provincial prosecutor's office of the city of Barrancabermeja, has taken many steps to clarify the circumstances of the facts denounced in order to determine the responsible parties. In addition, it said that the petitioners had failed to file any case in the administrative court system.

III. PROCESSING BY THE IACHR

9. On September 8, 1999, the IACHR received the petition, which was registered with number 12.334. On October 13, 2000, the petitioners presented additional information. After making a preliminary analysis of the petition, the IACHR transmitted it to the State on October 31, 2000, giving it 90 days to present its observations.

10. On January 31, 2001, the State sent its reply, which was forwarded to the petitioners for their observations. On November 19, 2001, August 21, 2002, and August 7, 2003, the IACHR reiterated its request for information from the petitioners. On April 13, 2009, the IACHR sent a communication to the petitioners requesting updated information to determine whether the grounds for the petition still exist, saying that if it did not receive it within one month the petition could be archived.

11. On May 12, 2009, the petitioners requested an extension to present their observations, which the IACHR granted on May 18, 2009. On June 17, 2009, the petitioners sent a communication to the IACHR stating that because they had lost contact with the alleged victim and her family members, they were not able to continue with the processing without their direct authorization. Therefore, they requested that the petition be archived.

IV. BASIS FOR THE DECISION TO ARCHIVE

12. 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, the Commission shall order the record to be closed.

13. On the subject of withdrawal, Article 41 of the IACHR's Rules of Procedure states that the petitioner may at any time desist from his or her petition or case, to which effect he or she must so notify it in writing to the Commission, which may archive the petition or case if it deems it appropriate.

14. This petition alleges the violation of rights established in articles 1.1, 5, 8, and 19 of the American Convention. The State argues that it is inadmissible for lack of exhaustion of domestic remedies.

15. In the processing of this petition since October 2000 the petitioners have not responded to the State's observations or expanded or updated the information on the complaint, despite repeated requests from the Commission in 2001, 2002, and 2003.

16. The IACHR, as provided in Article 30.6 of its Rules of Procedure in force until December 30, 2009, requested information from the petitioners in order to determine whether the grounds for the petition still exist. In reply, the petitioners requested that the petition be archived.

17. In view of the petitioners' request to archive the petition, the Commission decides to do so in accordance with Article 48.1.b of the American Convention and Article 42 of the Rules of Procedure of the IACHR.

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.