

REPORT No. 133/10
DECISION TO ARCHIVE
CASE 11.770
COLOMBIA¹
October 23, 2010

ALLEGED VICTIM: Edgar Amilkar Grimaldos Baron and Carlos Reyes Niño

PETITIONER: Fundación Comité de Solidaridad con los Presos Políticos

ALLEGED VIOLATIONS: Article 4 of the American Convention on Human Rights

DATE OF INITIATION OF THE PROCEEDINGS: July 14, 1997

I. POSITION OF THE PETITIONERS

1. On July 3, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition presented by the Fundación Comité de Solidaridad con los Presos Políticos (hereinafter "the petitioners") alleging the responsibility of the State of Colombia for the extrajudicial execution of Edgar Amilkar Grimaldos Baron and Carlos Reyes Niño by the National Army's 20th Brigade, as well as the lack of diligence in the investigation into the events and the punishment of the perpetrators.

2. The petitioners alleged that on March 28, 1995, at the entrance of a mall in the City of Bogotá, Edgar Amilkar Grimaldos Baron and Carlos Reyes Niño --allegedly members of the National Liberation Army (ELN)-- were killed by members of the National Army's 20th Brigade. They pointed out that the 29th Prosecutor of the Life Unit in Bogotá opened a criminal investigation and issued an order for preventative detention of one of the possible perpetrators of the crime.

3. They indicated that the National Army's tactical unit to which the accused belonged requested that the Superior Council of the Judiciary declare that the investigation into the events should be carried out by the criminal military courts. They indicated that on May 31, 1995, the Superior Council decided that the criminal military courts had jurisdiction over the investigation.

4. The petitioners considered that the criminal military courts failed to provide an adequate or effective remedy, and that therefore the exception to the rule on the exhaustion of domestic remedies established in Article 46.2.b of the American Convention was applicable to their claim. Finally, they alleged that the State was responsible for the violation of the right to life, provided for in Article 4 of the American Convention, to the prejudice of Edgar Amilkar Grimaldos Baron and Carlos Reyes Niño.

II. POSITION OF THE STATE

5. In response to the petitioners' claim, the State considered that the petition was inadmissible. It maintained that domestic remedies had not been exhausted, in accordance with Article 46.1 of the American Convention since there was a pending investigation before the Superior Military Court.

III. PROCESSING BEFORE THE IACHR

6. On July 3, 1997, the IACHR received the petition, which was registered under number 12.770. After undertaking a preliminary analysis, on July 14, 1997, the IACHR proceeded to send it to the

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not take part in either the deliberations or the decision in the present petition.

State, with a time limit of 90 days to present its observations. On October 1, 1997, the State presented its response, which was sent to the petitioners on October 2, 1997 for its observations.

7. On July 16, 1998, the IACHR reiterated its request for information from the petitioners. On April 17, 2009, the IACHR requested current information from the petitioners in order to determine whether the grounds for the petition still existed and informed them that should it not receive the information within one month, it would proceed to archive the petition. On May 18, 2009, the petitioners requested an extension to present additional information, which was granted by the IACHR on May 18, 2009. As at the date of the approval of this report, the petitioners have not presented their response.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

8. Both Article 48.1.b of the American Convention and Article 42 of the Commission's Rules provide that during the processing of a petition, after receiving information or once the time limit to receive information has elapsed, the IACHR shall verify whether the grounds for the petition or communication still exist, and if they do not exist or subsist it shall order the archiving of the case file.

9. In the present petition, the petitioners alleged the violation of the right enshrined in Article 4 of the American Convention. For its part, the State maintained that the petition was inadmissible given the existence of proceedings pending before the criminal military courts.

10. In the present proceedings, the petitioners did not supply observations in 1997 or respond to the repeated request in 1998. The petitioners also failed to respond to the request for current information made in April 2009 when they were informed that within one month the petition could be archived. In such circumstances, it is not possible to determine whether the grounds for the original petition still exist. Therefore, in conformity with Article 48.1.b of the Convention and Article 42 of the IACHR's Rules, the Commission decides to archive the petition.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of October, 2010.
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission.