

REPORT No. 132/10¹
DECISION TO ARCHIVE
CASE 11.524
COLOMBIA
October 23, 2010

ALLEGED VICTIM: José Severo Rubiano Cruz

PETITIONER: Corporación Colectivo de Abogados - José Alvear Restrepo

ALLEGED VIOLATIONS: Articles 4, 5, 19 and 25 of the American Convention on Human Rights

DATE OF INITIATION OF THE PROCEEDINGS: August 25, 1995

I. POSITION OF THE PETITIONERS

1. On August 10, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition presented by the Corporación Colectivo de Abogados José Alvear Restrepo (hereinafter "the petitioners") alleging the responsibility of agents of the Republic of Colombia (hereinafter "the State", "the State of Colombia" or "Colombia") for the extrajudicial execution of teenager José Severo Rubiano Cruz (aged 17), allegedly committed on December 27, 1993, in the El Pacayal neighborhood of the La Mesa Municipality, Department of Cundinamarca, Colombia.

2. The petitioners stated that on December 27, 1993, José Severo Rubiano Cruz was asleep at his farmstead together with his father Severo Rubiano Moya. They stated that on hearing strange noises, both opened the front door and out of the darkness, an Army patrol attached to the 10th Motorcycle Brigade shot a hail of bullets at them, causing the teenager's death.

3. They indicated that in view of these events, a military criminal investigation was begun, and then sent to the Auxiliary War Auditor No.25 in Bogotá, who decided to close it. They alleged that on May 15, 1995, the Military Court upheld the decision to close the proceedings. They alleged that with this decision, José Severo Rubiano Cruz's death remains in impunity.

4. In addition, they pointed out that a disciplinary investigation was initiated into the events before the Procurator's Office for Armed Forces, which was archived in November 1995. In light of the foregoing, the petitioners alleged that the domestic mechanisms have proved to be ineffective and that the State is responsible for the violations of Articles 4, 5, 19 and 25 of the American Convention.

II. POSITION OF THE STATE

5. In response to the petitioners' claim, the State alleged that it had been diligent in the processing of the case at the domestic level in the disciplinary and criminal military courts. It alleged that the domestic remedies were exhausted with the decision by the Superior Military Court upholding the closing of the investigation and the archiving of the disciplinary enquiry due to a lack of evidence. The State also argued that the proceedings in this case did not amount to any violation of the procedural rights of the petitioners. It also alleged that an unfavorable outcome does not constitute a violation of the American Convention and that "the Commission's role is limited to determining the incompatibility of the effects of the competent tribunals' interpretation of domestic law with the American Convention."² It considered therefore, that the petitioners' claims were inadmissible since the IACHR could not act as an international fourth instance tribunal.

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 case.

² Note DDHH.GOI No. 24060/1232 of the Colombia Foreign Relations Ministry of May 11, 2009.

III. PROCESSING BEFORE THE COMMISSION

6. The IACHR registered the petition under No. 11.524, and on August 25, 1995, proceeded to send a copy of the relevant sections to the State for its observations. On January 4, 1996, the State presented its response, which was sent to the petitioners for their observations. On February 20, 1996, the petitioners submitted their response, which was sent to the State for its observations.

7. On April 1, 1996, the petitioners submitted additional information, which was sent to the State for its attention. On May 13, 1996, the State requested an extension of 45 days to present its response, which was granted by the IACHR on May 14, 1996. On October 3, 1996, the State requested a second extension to present its response, which was granted by the IACHR on October 7, 1996.

8. On November 29, 1996, the State presented its response, which was sent to the petitioners for their observations. On February 24, and March 21, 1997, the State presented additional information, which was sent to the petitioners. On August 22, 1997, the petitioners presented their response, which was sent to the State for its observations.

9. On August 18, 1998, the IACHR reiterated its request to the State for information. The State sent its response on November 9, 1998, which was sent to the petitioners. On July 13, 2001, the IACHR placed itself at the disposal to the parties with a view to reaching a friendly settlement in accordance to Article 48.1.f of the American Convention.

10. On August 15, 2001, the State requested an extension to respond to the Commission's offer regarding a possible friendly settlement, which was granted by the IACHR on August 16, 2001. On September 6, 2001, the State requested a second extension to present its response, which was granted by the IACHR on September 18, 2001. On October 16, 2001, the State replied that it did not agree with the possibility of a friendly settlement. On April 13, 2009, the Commission requested current information from the parties by virtue of Article 30.5 of its Rules in force up until December 30, 2009. On May 12, 2009, the State presented its observations. On June 22, 2010, the petitioners sent a communication to the IACHR stating that at present they had no contact with the victims of the petition.

IV. BASIS OF THE DECISION TO ARCHIVE

11. 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 period established to receive information has elapsed, the IACHR shall ascertain 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.

12. The petitioners maintained that the State was responsible for the violation of Articles 4, 5, 19 and 25 of the American Convention to the prejudice of the alleged victim and his immediate family, as well as the obligation to respect and guarantee the rights protected in the said instrument, set out in its Article 1.1. For its part, the State alleged that the domestic remedies were adequate and effective, and that the petition was inadmissible given that the IACHR could not act as a fourth instance tribunal.

13. The Commission has not had up-to-date information from the petitioners for thirteen years. The petitioners were not in a position to respond to the request for current information made by the IACHR in 2009. In such circumstances, it is not possible to determine whether the grounds supporting the initial petition still exist, so that in accordance with Article 48.1.b of the American Convention, as well as Article 42 of the IACHR's Rules, it decides to archive the present 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.