

REPORT No. 137/10
DECISION TO ARCHIVE
CASE 11.596
COLOMBIA¹
November 23, 2010

ALLEGED VICTIM: Luis Gabriel Caldas León

PETITIONER: National Interreligious Service Board for Conscientious Objectors (NISBCO), Center for Justice and International Law (CEJIL) and Conscientious Objectors' Group against Compulsory Military Service.

ALLEGED VIOLATIONS: Articles 1.1, 8, 11, and 25 of the American Convention on Human Rights

DATE OF INITIATION OF PROCEEDINGS: March 21, 1996

I. POSITION OF THE PETITIONER

1. On December 4, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition presented by NISBCO, CEJIL, and the Conscientious Objectors' Group against Compulsory Military Service (hereinafter "the petitioners") alleging the responsibility of the Republic of Colombia for the arbitrary imposition of sentence of a criminal nature on Luis Gabriel Caldas León over his refusal to comply with compulsory military service due to his moral convictions.

2. The petitioners alleged that Luis Caldas was called to perform his compulsory military service after completing his baccalaureate studies in 1993. They maintained that the alleged victim made it clear in written and oral communications that, due to his moral beliefs, he was a pacifist and therefore refused to perform the said service. They stated that due to his constant refusal, an investigation was started against him before the military criminal courts for the crime of desertion and that on March 27, 1995, he was sentenced by the Superior Military Court to six months' prison confinement.

3. The petitioners pointed out that on March 11, 1994, the alleged victim lodged an *acción de tutela* before the Superior Court of Bogotá requesting that he be permitted to perform social services as an alternative to military service, which was rejected on March 15, 1994. In addition, they stressed that Luis Caldas lodged a petition to perform an alternative service to the National Recruitment Center on July 23, 1994, which was not answered.

4. The petitioners considered that the domestic remedies were not adequate or effective, and alleged the application of the exception to the exhaustion of domestic remedies established in Article 46.2.b of the American Convention. Finally, they alleged that the State was responsible for the violation of the right to freedom of conscience and religion, and to judicial protections and guarantees, contemplated in the American Convention, to the prejudice of Luis Gabriel Caldas León.

II. POSITION OF THE STATE

5. In response to the petitioners' claim, the State considered that the petition was inadmissible for two reasons. In the first place, it maintained that the facts of the petition did not form 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 case.

basis of a violation of the provisions of the American Convention. In this regard, it alleged that the Convention does not prohibit compulsory military service; but expressly permits it in Article 6.3.b. In the second place, it stressed that the situation alleged was resolved by the domestic courts. Therefore it considered that the Commission could not act as a fourth instance tribunal, given that the judicial decisions were not arbitrary and were according to due process rights.

6. In this sense, the State considered that it was impossible to attribute international responsibility to it and that it had not been established that a violation of the American Convention had taken place, as required by Article 47.b.

III. PROCEEDINGS BEFORE THE IACHR

7. On December 4, 1995, the IACHR received the petition, which was registered under No. 11.596. After undertaking a preliminary analysis, on March 21, 1996, the IACHR proceeded to send it to the State for its observations. On August 13, 1996, the State presented its response, which was sent to the petitioners for their observations. On May 5, 1997, the petitioners presented their response, which was sent to the State for its observations.

8. On August 27, 1997, the State presented its response, which was transmitted, to the petitioners for their observations. On November 7, 1997, the State presented additional information, which was sent to the petitioners for the observations. On February 13, 1998, the petitioners requested that friendly settlement proceedings be started. This information was sent to the State for its observations. The State presented its response on July 30, 1998 requesting that the IACHR continue with the petition proceedings. This information was sent to the petitioners on September 8, 1998 for their observations. On May 9, 2007, the State presented additional information, which was sent to the petitioners for their observations.

9. On April 9, 2009, the IACHR requested updated information from the petitioners to determine whether the reasons for the petition still existed and informed them that if it did not receive the information within one month it would proceed to archive the petition. On July 1, 2009, the petitioners requested an extension to present additional information, which was granted by the IACHR on July 6, 2009. The petitioners did not present their response.

IV. BASIS OF THE DECISION TO ARCHIVE

10. 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.

11. The present petition alleged a violation of the rights enshrined in Articles 8, 12, and 25 of the American Convention in relation to Article 1.1. For its part, the State maintained that the petition was inadmissible since it did not contain colorable claims on possible violations of the American Convention.

12. In the present proceedings, the IACHR has not received information from the petitioners since 1998. The petitioners failed to reply to the IACHR's request for information made in April 2009 informing them that within one month their petition could be archived. In such circumstances, it is not possible to determine whether the grounds supporting the initial petition still exist, so that in conformity with Article 48.1.b of the Convention, as well as 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.