

REPORT No. 34/11¹
DECISION TO ARCHIVE
CASE 11.539
COLOMBIA
March 23, 2011

ALLEGED VICTIMS: Néstor Álvaro Martínez Parrado, José Arquímedez Beltrán Bejarano and José Sarmiento Muñoz

PETITIONER: Comisión Intercongregacional de Justicia y Paz and the Comité Cívico por los Derechos Humanos of the Department of Meta

ALLEGED VIOLATIONS: Articles 4, 5, 7, 8, 10, 11, 22 and 25 of the American Convention on Human Rights

DATE PROCEEDINGS BEGAN: October 5, 1995

I. POSITION OF THE PETITIONERS

1. On September 5, 1995 the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition submitted by the Comisión Intercongregacional de Justicia y Paz and the Comité Cívico por los Derechos Humanos of the Department of Meta (hereinafter "the petitioners") alleging that agents of the Republic of Colombia (hereinafter "the Colombian State" or "Colombia") were responsible for the detention and subsequent disappearance of Néstor Álvaro Martínez Parrado, José Arquímedez Beltrán Bejarano and José Sarmiento Muñoz.

2. The petitioners reported that on the afternoon of February 11, 1993, the three persons in question were traveling from Villavicencio, Department of Meta, to the departmental police inspector's office of the municipio of El Calvario, in a public transit vehicle, a Carpati van, together with seven other passengers. At approximately 5 PM the three persons were detained at a post set up by the National Army and were held there for more than an hour during which time army personnel reviewed their identity documents.

3. According to the petitioners, soldiers assigned to the post called the Alban Battalion of Villavicencio and reported that they were holding Mr. Fidel Ortiz, a resident of the zone, who had been accused by the soldiers of collaborating with the guerrillas. They also reported that a Daihatsu van, red with white stripes, was parked in front of the post. After an hour had elapsed, army personnel allowed the persons to continue their journey, but after traveling a kilometer they were overtaken by the red Daihatsu, which blocked their way. Six heavily armed men then descended from the Daihatsu and took away the three men who were sitting in the rear portion of the van. Since that time there has been no news as to the whereabouts of the three men.

4. The petitioners report that, following these events, criminal complaints were filed and on that basis an investigation was opened in the Special Affairs Bureau of the Office of the Prosecutor General, with no results. As well, the military prosecution office known as the *Auditoría Auxiliar de Guerra* No. 14, based in the Carlos Alban Battalion of Villavicencio, conducted an investigation which terminated on March 18, 1993 with the decision not to pursue the case further because it did not involve any violation of criminal law.

5. In light of the foregoing, the petitioners consider that the State was responsible for violating the rights to life, humane treatment, personal liberty, a fair trial, compensation, privacy, freedom

¹ Pursuant to article 17.2 of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, a national of Colombia, did not participate in the discussion or the decision of the present case.

of movement and residence, and judicial protection enshrined in Articles 4, 5, 7, 8, 10, 11, 22 and 25 of the American Convention on Human Rights.

II. POSITION OF THE STATE

6. In response to the petitioners' complaint, the State argued that the petition was inadmissible because remedies available under domestic law had not been exhausted, as required by article 46.1 of the American Convention. Specifically, with respect to the alleged violation of articles 4, 5 and 7 of the American Convention, the State argued that the recourse of habeas corpus should have been pursued. As well, with respect to articles 8 and 25, the State insisted that it had at all times offered adequate and effective internal remedies.

7. The State provided an account of the criminal proceedings, which culminated on December 31, 2004 with a decision acquitting the defendants, a decision that was not appealed by any party. It also reported that relatives of the alleged victims did not constitute themselves as a civil party to the criminal proceedings. With respect to reparations, the State said there was no evidence that the relatives of the alleged victims had filed any claim before the administrative disputes jurisdiction.

III. PROCEEDINGS BEFORE THE COMMISSION

8. On September 5, 1995 the Commission received the initial petition, recording it under number 11.539, and on October 5, 1995, after an initial analysis, it transmitted a copy of the pertinent portions to the State for its observations.

9. The petitioners presented information on February 13, 1997, on March 18, 1997, on March 20, 1997, and on September 19, 1997, which was duly transmitted to the State. For its part, the State presented information on April 9, 1996, August 7, 1997, May 14, 1998, June 19, 2009, and July 30, 2009, which in turn was duly transmitted to the petitioners.

10. On April 6, 2009 the IACHR asked the State and the petitioners to update the information on the case. On June 19 and July 30, 2009 the State presented its response, which was transmitted to the petitioners for their observations, with no response. On August 11, 2010 the Commission sent a communication to the petitioners asking them to submit, within one month, updated information as to whether the grounds for the petition still existed, noting that otherwise the Commission could archive the case. No response was received.

IV. BASIS FOR THE DECISION TO ARCHIVE

11. Article 48.1 (b) of the American Convention on Human Rights and article 42 of the Commission's Rules of Procedure provide that at any time during the proceedings, the Commission may decide to archive the file if it determines, upon receipt of the information or the expiry of the time limit for receiving it, that the grounds for the petition or case do not exist or subsist.

12. In the present case the petitioners alleged the responsibility of the State for violation of the rights enshrined in Articles 4, 5, 7, 8, 10, 11, 22 and 25 of the American Convention on Human Rights. For its part, the State argued that the petition was inadmissible because domestic remedies had not been exhausted, and that responsibility for the alleged violations could not be attributed to State agents.

13. The Commission has received no information from the petitioners since September 1997. The petitioners failed to respond or to provide the information requested by the Commission in 2010. Under the circumstances, it is impossible to proceed with the analysis or to determine whether the grounds underlying the initial petition still exist. Consequently, pursuant to article 48.1 (b) of the American Convention and article 42 of the IACHR Rules of Procedure, the Commission decides to archive the present petition.

Done and signed in the city of Washington, D.C., on the 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.