

REPORT No. 33/11¹
DECISION TO ARCHIVE
PETITION 7,800
COLOMBIA
March 23, 2011

ALLEGED VICTIMS: Omayra Montoya Henao and Mauricio Trujillo Uribe

PETITIONERS: Lola Henao de Montoya and the Colombian Commission of Jurists

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

INITIAL PROCESSING: April 15, 1980

I. POSITION OF THE PETITIONERS

1. During the on-site observation conducted by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) in April 1980, a communication was received that claimed that agents of the Republic of Colombia (hereinafter “the Colombian State” or “Colombia”) were responsible for the arbitrary arrest, torture, and disappearance of Omayra Montoya Henao and the arbitrary arrest and torture of Mauricio Trujillo Uribe, allegedly perpetrated beginning on September 9, 1977, in the city of Barranquilla.

2. The petitioners stated that on September 9, 1977, Omayra Montoya Henao and Mauricio Trujillo Uribe were captured by F2 Secret Service agents in the city of Barranquilla, when the agents were intervening in the collection of ransom for a kidnapped industrialist. They claimed that the two were handcuffed and taken outside the city, where they were subjected to intense interrogation and a series of tortures and physical discomforts by F2 agents. They alleged that the two were separated immediately and that, since then, the whereabouts of Omayra Montoya have been unknown. The petitioners alleged that, months later, the remains of a person presumed to be Omayra Montoya were found in a mass grave.

3. They alleged that, unlike Mauricio Trujillo Uribe, Omayra Montoya was not made available to the authorities after her capture because she had been deformed by her torture, which constituted evidence against the F2 agents.

4. The petitioners stated that, because of the disappearance of Omayra Montoya, a disciplinary investigation of members of the Colombian Army was launched by the Office of the Colombian Attorney General. They indicate that, by a decision of November 4, 1982, only four members of the National Police, among the more than 20 who participated in the operation, were dismissed for actions “detrimental to the morale and reputation of the National Police.”

5. They indicated that the investigation by the 57th Military Examining Magistrate for Criminal Matters concluded with its archive on February 16, 1983, because the questioning had failed to relate any individual to the investigation.

6. In response to a request to the authorities for information on the investigations, on June 16, 1989, it was reported that in November 1988 the National Criminal Investigations Directorate had requested the Atlantic Sectional Criminal Investigations Office to study the possibility of reopening the

¹ In accordance with Article 17.2 of the Rules of Procedure of the Commission, Commission member Rodrigo Escobar Gil, a Colombian national, participated neither in the deliberations nor in this decision to set aside the case.

criminal investigation. They state that on January 10, 1989, the 16th Investigating Magistrate at Large for Criminal Matters of Barranquilla was appointed to begin the proceedings.

7. The petitioners alleged that the State was liable for the violation of the right to life, right to humane treatment, right to personal liberty, right to a fair trial, and right to judicial protection set forth in Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights.

II. POSITION OF THE STATE

8. In response to the petitioners' complaint, the State gave its view that the petition was inadmissible because the deadline for its admissibility under the American Convention on Human Rights had already elapsed. In that regard, it stated that, under Article 46.b of the American Convention, the Commission was to refrain from considering petitions lodged later than six months from the date on which the party alleging violation of his rights was notified of the final judgment under domestic jurisdiction.

9. It also argued that the events described in this petition took place in 1977, that is, before the American Convention entered into force for Colombia, and that the petition was submitted to the Commission in April 1980.

III. PROCESSING BY THE IACHR

10. The IACHR registered the case under no. 7,800 and, on April 15, 1981, proceeded to transmit a copy of the pertinent sections to the State. The State presented observations on October 19, 1981, which were transmitted to the petitioners for their observations. On November 20, 1989, the petitioners submitted additional information on the case. On August 4, 1997, the petitioners requested information on the processing of the case.

11. On February 1, 1999, the IACHR convened a hearing to be held during its 102nd period of sessions. On February 16, 1999, the State replied by arguing that in the archives of the Ministry of Foreign Affairs the Omayra Montoya case did not appear as a petition under consideration. On March 1, 1999, the petitioners submitted observations.

12. On July 13, 2001, the IACHR made itself available to the parties for the purpose of pursuing a friendly settlement. On August 14, 2001, the State requested an extension of 30 days. On September 7, 2001, the State requested an additional extension, which was granted by the IACHR. On October 9, 2001, the State, in a written motion that was transmitted to the petitioners for their observations on October 17, 2001, requested that the petition be ruled inadmissible.

13. On May 30, 2003, the IACHR repeated its request to the petitioners for their observations and requested updated information. On April 26, 2005, the State requested information from the IACHR on the request that the petition be ruled inadmissible.

14. On October 5, 2010, the IACHR repeated its request to the petitioners for their observations, a request originally issued on May 30, 2003, to determine whether grounds for the petition still existed, and informed them that if it did not receive such observations within one month it would set the petition aside. On October 8, 2010, the petitioners requested that the petition be archived because the relatives of Omayra Montoya had decided not to continue to pursue the matter.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

15. Both Article 48.1.b of the American Convention and Article 42 of the Rules of Procedure of the Commission provide that, in the processing of a petition, once the information has been received, or the deadline has passed and it has not been received, the IACHR is to verify whether the grounds for the petition or case exist, or continue to exist, and, if they do not, is to order the case to be archived.

16. As for withdrawal of a petition, Article 41 of the Rules of Procedure of the IACHR states that the petitioner may at any time withdraw his or her petition or case, to which effect he or she must notify the Commission in writing, and the Commission may archive the petition or case if it deems such action appropriate.

17. In this petition the petitioners alleged that the State was responsible for violations of rights enshrined in Articles 4, 5, 7, 8, and 25 of the American Convention. For its part, the State argued that the petition was inadmissible in that “the reasonable period of time for its admissibility had passed.”

18. In this case, since October 2001 the petitioners have not replied to the State’s observations, nor have they provided additional or updated information on their claims, despite repeated requests to that effect by the Commission.

19. In response to the request by the IACHR for information with which to determine whether grounds for the petition still existed, on October 8, 2010, the petitioners requested that the petition be archived.

20. In view of the withdrawal by the petitioners, the Commission, in keeping with Article 41 of the Rules of Procedure of the IACHR, with Article 48.1.b of the American Convention, and with Article 42 of the Rules of Procedure of the IACHR, has decided to archive this 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.