

REPORT No. 35/11¹
DECISION TO ARCHIVE
CASE 11.723
COLOMBIA
March 23, 2011

ALLEGED VICTIMS: Luis Miguel Vergara de León

PETITIONER: Corporación Colectivo de Abogados José Alvear Restrepo

ALLEGED VIOLATIONS: Articles 4, 5, 8 and 25 in relation to Article 1(1) of the American Convention on Human Rights

DATE OF INITIAL PROCESSING: February 7, 1997

I. POSITION OF THE PETITIONERS

1. On January 30, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition lodged by the Corporación Colectivo de Abogados (hereinafter “the petitioners”) claiming the responsibility of agents of the Republic of Colombia (hereinafter “the Colombian State” or “Colombia”) in the death of Luis Miguel Vergara de León.

2. The petitioners alleged that on April 2, 1996, at approximately 2:00 PM, Luis Miguel Vergara de León was driving in his vehicle a few blocks from his house, accompanied by his two-year-old son. At that moment, Luis Miguel Vergara de León’s vehicle was intercepted by two vehicles, a white pick-up truck and a dark Trooper from which a man emerged and fired several shots at him before fleeing, while the authorities took no action to stop him.

3. They claimed that at the time of his death, Luis Miguel Vergara de León was a deputy of the Departmental Assembly of Sucre. They indicated that he had received a death threat between June and July 1995, which also included threats against other people, and for that reason a Security Council meeting was held with high level military officials and the security forces in the office of the Governor of Sucre. They also pointed out that Luis Miguel Vergara had publicly disclosed the threats against his life at a public event in August 1995, and had also identified by name the possible perpetrators of those threats.

4. The petitioners claimed that Luis Miguel Vergara de León had repeatedly requested protection from city officials and at the various Security Council meetings to address the threats and the danger to his life, the authorities had even promised to provide security for him, although those promises never came to anything. The petitioners also contended that coincidentally, at the moment of the attack, there was no public security presence at all, nor was he given first aid.

5. They alleged that in light of these events, a criminal investigation was opened in the Regional Office of the Attorney General of Barranquilla [*Fiscalía Regional*] and is still in the pre-trial phase. Similarly, the Provincial Procurator’s Office [*Procuraduría Provincial*] of Sincelejo opened a disciplinary investigation which, according to the petitioners, was closed without producing any results. They also indicated that two claims for direct reparations had been filed.

6. Regarding the prior exhaustion of domestic remedies, the petitioners claim that the exception envisaged in Article 46(2)(c) of the American Convention relating to unwarranted delays in the criminal investigation at the domestic level is applicable.

¹ In accordance with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the debate or decision in the instant case.

7. In light of the foregoing, the petitioners claimed that the State was responsible for the violation of the rights to life, personal integrity, due process guarantees and judicial protection enshrined in Articles 4, 5, 8 and 25, in relation to Article 1(1) of the American Convention on Human Rights.

II. POSITION OF THE STATE

8. In response to the petitioners' claim, the State recounted the proceedings associated with the criminal investigation in progress at the domestic level. It also reported that the contentious administrative case has been awaiting a verdict before the Council of State since November 12, 2005. Finally the State reported that the Procurator General of the Nation has not opened any sort of investigation of members of the Public Force in relation to the facts of this case.

III. PROCESSING BEFORE THE IACHR

9. On January 30, 1997, the Commission received the initial petition, registered it as number 11.723 and, following a preliminary examination, forwarded a copy of the relevant portions to the State on February 7, 1997, for its observations.

10. The petitioners submitted information on October 14, 1997, December 20, 1999, June 7, 2002, and June 9, 2003, which were duly forwarded to the State. For its part, the State submitted information on April 24, 1997, May 14, 1997, June 24, 1997, September 11, 1998, March 14, 2000, and January 14, 2009, which were duly forwarded to the petitioners.

11. On October 7, 2008, the IACHR requested the State and the petitioners to submit updated information on the matter of reference. On January 14, 2009, the State submitted its response. On May 4, 2009, the Commission reiterated its request for information to the petitioners, with no response. On August 11, 2010, the Commission sent a note to the petitioners requesting them to submit, within a one month period, updated information on whether the grounds for the complaint subsisted, otherwise the Commission could proceed to archive the matter. It received no response.

IV. BASIS FOR THE DECISION TO ARCHIVE

12. Both Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights stipulate that when processing a petition, having received information or having elapsed the time period without receiving it, the IACHR shall verify whether the grounds for the petition or communication exist or subsist and if they do not exist or subsist, it shall order the file archived.

13. In the instant petition, the petitioners claimed the responsibility of the State for the violation of the rights enshrined in Articles 4, 5, 8 and 25 in relation to Article 1(1) of the American Convention on Human Rights. For its part, the State reported that it is pursuing a criminal prosecution and a contentious administrative proceeding.

14. The Commission has received no updated information from the petitioners since June 2003. The petitioners failed to respond or to provide the information requested by the IACHR in 2010. Under the circumstances, it is impossible to continue with the analysis or determine whether the grounds for the original petition subsist, and therefore, in accordance with Article 48(1)(b) of the American Convention and Article 42 of the IACHR Rules of Procedure, it decides to archive the instant 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.