

**REPORT No. 125/11<sup>1</sup>**  
**DECISION TO ARCHIVE**  
**CASE 11.747**  
**COLOMBIA**  
October 19, 2011

**ALLEGED VICTIMS:** Jairo Colmenares Araque and Fernando Ávila Barreto

**PETITIONERS:** Corporación Colectivo de Abogados José Alvear Restrepo

**VIOLATIONS ALLEGED:** Articles 4, 8, 24, and 25 in connection with Article 1(1) of the American Convention on Human Rights.

**DATE OF THE START OF THE PROCEEDING:** May 6, 1997

**I. POSITION OF THE PETITIONERS**

1. On May 5, 1997, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission" or "the IACHR") received a petition presented by the Corporación Colectivo de Abogados José Alvear Restrepo (hereinafter "the petitioners") alleging that agents of the Republic of Colombia (hereinafter "the Colombian State" or "Colombia") were responsible for the deaths of Jairo Colmenares Araque and Fernando Ávila Barreto.

2. The petitioners allege that on January 31, 1996, students Jairo Colmenares Araque and Fernando Ávila Barreto went to the Zigurat Brick Factory to the south of the city of Bogotá. That establishment's owner reported the presence of the youths to the police - according to his version, they intended to extort him. They allege that in response to the complaint, an operation was launched in which agents of the police and an agent of the Department of Administrative Security (hereinafter "DAS") participated. They proceeded to kill the two youths instead of capturing them and putting them at the disposal of the competent authorities.

3. They allege that due to these facts, an investigation was launched in Office of the Public Prosecutor 312 of the Immediate Reaction Unit. The investigation was later remitted to the Regional Office of the Public Prosecutor Bogota, which declared itself without jurisdiction on finding that the acts had been committed by members of the Colombian Armed Forces supposedly as service actions. In light of this, they indicate that the case file was remitted to Court 90 of the Military Criminal Investigation Court, which issued an order to the benefit of those being investigated to cease the proceeding. On July 7, 1997, the Superior Military Tribunal ratified the ruling of Court 90. Likewise, the petitioners alleged that on November 28, 1996, the Second District Office of the Public Prosecutor ordered a disciplinary investigation opened against the police and DAS agents who participated in the operation.

4. Finally, they asked the Commission to declare the State responsible for the violation of the rights to life, judicial guarantees, equal protection, and judicial protection protected by articles 4, 8, 24, and 25 in concordance with Article 1(1) of the American Convention on Human Rights.

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<sup>1</sup> Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the deliberations nor in the decision in this case, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

## **II. POSITION OF THE STATE**

5. The State argued that the petitioners intend for the Commission to act as a court of appeal. The State argues that the initial steps taken in the investigation were handled by Office of the Public Prosecutor 312 of the Immediate Reaction Unit of the Office of the Attorney General of the Nation. Based on those steps, on June 20, 1996, the Regional Office of the Public Prosecutor of the Prior Investigation Unit of Bogota ordered the investigation be remitted to the military criminal courts. On April 25, 1997, Office of the Public Prosecutor 23 delegated before the Criminal Judges of the Circuit, registered under the Second Life Unit of the General Office of the Attorney General of the Nation, began the investigation into a detective of the DAS who have participated in the operation. That investigation culminated on December 23, 1998, with an order of dismissal based on the argument that the accused had acted in strict exercise of his legal duty and right to defense.

6. With regard to the investigation in the military courts, the State indicates that it culminated on June 18, 1997, with a ruling from the second instance of the Supreme Military Tribunal upholding the order to the benefit of those being investigated to cease the preceding. With regard to the disciplinary proceedings, the State indicates that three proceedings were launched against the agents who participated in the operation, one culminating in the cessation of the preceding, another with acquittal, and the third with the case file on the action being definitively closed. Likewise, the State indicated that on January 19, 1998, the relatives of the alleged victims submitted a demand for direct redress, which was denied on November 23, 2000, by the Adversarial Administrative Tribunal of Cundinamarca. It indicates that the ruling was appealed by the complainants, however the remedy was not granted on the grounds that it is a single instance proceeding due to the amount sought. It indicates that on April 18, 2005, a court order was issued to close the file on the proceeding. Finally, the State asked the Commission to declare the petition inadmissible.

## **III. PROCEEDING BEFORE THE IACHR**

7. On May 5, 1997, the Commission received the initial petition, registered under number 11.747, and after carrying out a preliminary analysis, on May 6, 1997, forwarded a copy of the pertinent parts to the State for its comments. On August 28, 1997, the State asked for a deadline extension, which was granted by the Commission. On September 17, 1997, the State submitted its response, which was forwarded to the petitioners for their comments. On January 6, 1998, the petitioners submitted their comments, which were forwarded to the State for its comments. On March 30, 1998, the State submitted its comments, which were forwarded to the petitioners for their comments.

8. On April 3, 2009, the IACHR asked the State and the petitioners for updated information on the matter at hand. On May 6, 2009, the State asked for a deadline extension, which was granted by the IACHR. On June 11, 2009, the State submitted updated information and on July 30, 2009, it submitted the annexes to that communication. On October 14, 2010, the Commission sent communication to the petitioners asking them to submit updated information within a time period of one month on whether the basis for the claim persists; otherwise, the Commission could move to archive the petition. On December 6, 2010, the petitioners submitted a brief reporting that they did not have contact with the relatives of the alleged victims and therefore were not in a position to offer more information and comments.

## **IV. BASIS FOR THE DECISION TO CLOSE THE FILE**

9. 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 establish that, as part of the processing of a petition, after information has been received or the period established for submitting information has elapsed, the IACHR shall verify whether the grounds for the petition or communication still exist. Should it find that they do not, it shall order the archive of the case file.

10. In this petition, the petitioners allege that the State is responsible for the death of Jairo Colmenares Araque and Fernando Avila Barreto. For its part, the State argued that the petitioners intend

for the Commission to act as a court of appeal considering that the criminal investigation and the disciplinary and adversarial administrative proceedings have resulted final rulings.

11. The Commission has not received updated information from the petitioners since January 6, 1998. The petitioners were not in a position to provide the information requested by the IACHR in 2009. Under these circumstances, is not possible to move forward with analysis or determine whether the basis for the initial petition persists, for which reason pursuant to Article 48(1)(b) of the American Convention, as well as Article 42 of the Rules of Procedure of the IACHR, it is decided to archive the petition.

Done and signed in the city of Washington, D.C., on the 19th day of October 2011. (Signed): José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commissioners.