

REPORT No. 96/13¹
DECISION TO ARCHIVE
INTER-STATE CASE 12.779
ECUADOR - COLOMBIA
November 4, 2013

ALLEGED VICTIMS: Franklin Guillermo Aisalla Molina and family

PETITIONING STATE: State of Ecuador

STATE PETITIONED: State of Colombia

VIOLATIONS DECLARED

ADMISSIBLE: Articles 1.1, 4, 5, 8 and 25 of the American Convention on Human Rights

DATE PROCEEDINGS BEGAN: June 11, 2009

I. POSITION OF THE STATE OF ECUADOR

1. The State of Ecuador maintained that on March 1, 2008, the armed forces of Colombia bombarded a camp of the “Revolutionary Armed Forces of Colombia” (hereinafter “FARC”) located in Angostura in the town of Lago Agrio, in Ecuador, as part of a military action called “Operation Phoenix”. According to the inter-State communication, in this context, Ecuadorian citizen Franklin Guillermo Aisalla Molina, who was in the camp that was bombarded, was extrajudicially executed by members of the Colombian armed forces who took part in that operation.

2. As to the rights allegedly violated by the State of Colombia in the context of these events, the Ecuadorian State maintained that Colombia violated the right to life set forth in Article 4 of the American Convention on Human Rights (“the Convention”, “the Inter-American Convention” or “the IACHR”) in relation to Article 1.1 of that instrument, to the prejudice of Ecuadorian citizen Franklin Guillermo Aisalla Molina, as the result of his alleged arbitrary killing that occurred during the military operation carried out by agents of the Colombian State in Ecuadorian territory.

3. The State of Ecuador also alleged that Colombia was responsible for violation of Article 5.1 of the American Convention to the prejudice of the family of Mr. Franklin Aisalla Molina, by reason of the suffering caused by the extrajudicial killing of the alleged victim and the alleged lack of any complete and effective investigation of the facts—which caused them feelings of anguish, desperation, insecurity and frustration. The State of Ecuador indicated that the family members directly affected by Mr. Aisalla Molina’s death were his parents and his uncle.

¹ Commissioner Rodrigo Escobar Gil, who is of Colombian nationality, did not participate in either the deliberations on the present case nor in the decision on it, in accordance with the provisions of Article 17(2) (a) of the Rules of Procedure of the Commission.

4. Lastly, the petitioning State maintained that Colombia violated judicial guarantees and the right to judicial protection, to the prejudice of the members of the family of the alleged victim. This was the case because the State of Colombia had failed to conduct a criminal investigation that would have led to specific knowledge of the circumstances of the death of Mr. Franklin Aisalla. It added that such an investigation was the proper judicial remedy, and the lack thereof impeded access to effective protection.

II. POSITION OF THE STATE OF COLOMBIA

5. The State of Colombia asked the Commission to exclude from any analysis certain facts and evidentiary documents presented by the petitioning State, because it considered that they were outside the precise scope of the petition, which should be confined to the alleged violation of the right to life (Article 4.1), right to humane treatment (Article 5.1), right to a fair trial (Articles 8.1 and 8.2) and right to judicial protection (Article 25.1) of the American Convention to the prejudice of Franklin Guillermo Aisalla Molina and members of his family (in relation to the alleged violation of the right to humane treatment).

III. PROCEEDINGS BEFORE THE COMMISSION

6. The Inter-American Commission received a communication on June 11, 2009 from the State of Ecuador in which it lodged a complaint against the State of Colombia. Since both the State of Colombia and the State of Ecuador had deposited their declarations recognizing the competence of the Commission to receive and examine communications among States, the IACHR decided on July 20, 2009 to process the communication in accordance with the provisions of Articles 45 et seq. of the Convention, and to transmit the communication presented by Ecuador to the State of Colombia.

7. The IACHR approved Admissibility Report No. 112/10 on October 21, 2010, as provided in Articles 46 and 47 of the Convention and Articles 30 and 36 of the Rules of Procedure in force. Both States were informed of this report on November 4, 2010. Along with that notification, the Commission set a period of three months for the State of Ecuador to present its additional observations on the merits, in accordance with the provisions of Article 37.1 of the Rules of Procedure in force. The Commission also placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, in accordance with Article 48.1(f) of the Convention.

8. On January 11, 2011, the State of Ecuador requested that it be granted an extension of time in which to present its additional observations on the merits, in accordance with Article 37.2 of the Rules of Procedure. On January 24, 2011, the Commission granted the extension until March 4, 2011. On that date, the State of Ecuador presented additional observations on the merits of the matter, and on March 15, 2011, the Commission transmitted the pertinent parts thereof to the State of Colombia, with the request that it present its observations within three months.

9. By communication of March 4, 2011, the Colombian State requested that the Commission suspend the proceedings since a direct dialogue had been initiated among the two parties. The Commission asked both States to take the steps necessary to clarify whether they wished to engage in the procedure for friendly settlement as set out in Article 40 of the current Rules of Procedure.

10. On April 18 and June 13, 2011 respectively, the States of Ecuador and Colombia stated their wish to engage in the procedure for reaching a friendly settlement. On June 22, 2011, the IACHR placed itself at the disposal of the parties with a view to achieving a friendly settlement in the case and asked the parties to keep it informed about progress in the proceedings. The Commission received information about progress in the matter from June through September 2011.

11. By official note received in the Commission on October 25, 2011, the State of Ecuador “formally announced its withdrawal from the friendly settlement procedure in case 12.779 [...] and requested the Commission to continue to process it”. On November 7, 2011, the Commission concluded its intervention in the friendly settlement procedure, and decided to continue to process the case. It set a period of three months for the State of Colombia to present its observations on the merits of the case.

12. By official note received in the Commission on November 22, 2011, the State of Ecuador requested that the report on the merits be issued, and invited the IACHR to reconsider the time period granted to the State of Colombia. On December 28, 2011, the Commission reported that it was maintaining its decision to grant three months to the State of Colombia to present its observations on the merits.

13. On February 7, 2012, the two States forwarded a communication from their Ambassadors to the OAS in which they requested that the friendly settlement procedure be reopened in accordance with Article 40.2 of the Rules of Procedure in force. They also requested that the decision on the merits provided for in Article 43 of the Rules of Procedure be suspended. On February 14, 2012, the Commission accepted the stated wishes of the States and placed itself at the disposal of the parties to provide such assistance as might be necessary.

14. On August 29, 2013 the State of Ecuador advised that both parties had reached “an agreement for social and economic development and reparations and investment for social compensation along the border”. It further indicated that “since that agreement satisfies the claims of the victims and the State of Ecuador raised in case 12.779, the Ecuadorian State, pursuant to the provisions of Article 41 of the Rules of Procedure of the IACHR, informs the Honorable Commission [...] of its withdrawal of the claim lodged against the State of Colombia”.

15. On September 24, 2013, the Commission transmitted the Ecuadorian State’s withdrawal to the State of Colombia, and requested that it present its observations within a period of one month. The State of Colombia presented its observations on October 10, 2013, and indicated that “the agreement reached with the Republic of Ecuador for social and economic development and reparations and investment for social compensation along the border, and Ecuador’s withdrawal of Inter-State Case No. 12.779 demonstrate the importance that both States attach to friendly settlements.” It stated that it “was in agreement with the Republic of Ecuador that it is appropriate to archive the petition”.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

16. In accordance with the request presented by the petitioning State, the observations of the State petitioned and the provisions of Article 41 of the Rules of Procedure of the IACHR, which provide that the petitioner may at any time desist from his or her petition or case, to which effect he or she must so notify it in writing to the Commission, the IACHR has decided to archive the present case.

Done and signed in the city of Washington, D.C., on the 4th day of November 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton, Rose-Marie Antoine, Commissioners.