

REPORT N° 54/04
PETITION 559/02
ADMISSIBILITY
NELSON CARVAJAL CARVAJAL
COLOMBIA
13 October, 2004

I. SUMMARY

1. This report refers to the admissibility of petition 559-2002, submitted to the Inter-American Commission for Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") on June 21, 2002, by the Inter-American Press Association (hereinafter "the IAPA," "the petitioner," or "the complainant") against the Republic of Colombia (hereinafter "Colombia," "the State," or "the Colombian State").

2. The petition refers to the assassination of Mr. Nelson Carvajal Carvajal, a journalist killed April 16, 1998, according to the complainant for reasons related to his work as a journalist, referring as well as to the judicial proceedings and investigations carried out to clarify the circumstances of the killing.

3. The petitioner alleges that the Colombian State is responsible for violating the rights to life, a fair trial, freedom of expression and thought, and judicial protection, enshrined at Articles 4, 8, 13, and 25 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). The IAPA argues, first, that the proceedings held to investigate the murder of Mr. Carvajal Carvajal were detrimentally affected by a series of irregularities both in the investigative phase before the Public Ministry and in the phase of obtaining and weighing the evidence before the Judiciary. Consequently, the complainant alleges, the three persons accused of the assassination were acquitted at both stages of that criminal proceeding. The petitioner notes, in addition, that the Colombian State is responsible for the impunity enjoyed by the assailants. The petitioner argues that the case remains in impunity, for subsequent to the judicial proceeding mentioned, no efforts have been made by the State to investigate and clarify the assassination of Mr. Carvajal Carvajal. As of the date of this report, the investigation into the assassination of Mr. Carvajal Carvajal remains open.

4. The State argues that to clarify the assassination of Mr. Carvajal Carvajal, a judicial proceeding was held that culminated in the acquittal of the persons allegedly responsible, which became firm on April 6, 2001. Accordingly, the State requests that the Commission declare the petition inadmissible, for having been filed after the time for doing so had lapsed, given that more than six months elapsed from the last judicial proceeding to the submission of the petition, six months being the period established in Article 46(1)(b) of the Convention.

5. Pursuant to the provisions of Articles 46 and 47 of the American Convention as well as Articles 30 and 37 of its Rules of Procedure, and after analyzing the petition without prejudging on the merits, the Commission decided to declare the petition admissible in relation to the alleged violations of Articles 4, 8, 13, and 25, in conjunction with Article 1(1) of the same instrument. The Commission also decides to report this decision to the parties, publish it, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BEFORE THE COMMISSION

6. The complaint was submitted to the Executive Secretariat of the IACHR on June 21, 2002. In keeping with Article 26(2) of its Rules of Procedure, on July 22, 2002, the Commission asked the petitioner to add to its petition, specifying the facts which in its opinion constituted the violations alleged. By communications received on August 22, 2002, and October 17, 2002, the petitioner responded to the Commission's request providing additional information regarding the facts alleged.

7. On December 3, 2002, the Commission informed the petitioner that the processing had begun. The petition was assigned the number 559-2002, and the pertinent parts of the complaint and supplemental submission were forwarded to the State, which was given two months to submit any observations, in keeping with Article 30 of the Commission's Rules of Procedure.

8. On February 6, 2003 the State sent its observations through a communication whose pertinent parts were forwarded to the petitioner on February 13, 2003; the petitioner was asked to submit any comments it might have on the State's observations within 30 days. On March 11, 2003, the petitioner requested an extension of the term for presenting its observations; accordingly, the Commission, by note of March 20, 2003, gave the petitioner an additional 30 days, and informed the petitioners of that decision by a letter of the same date.

9. The petitioner submitted its observations through a communication received April 17, 2003, whose pertinent parts were forwarded to the State on May 6, 2003; the State was given one month to submit its comments. The State submitted its comments on the petitioner's observations brief by a written communication received August 19, 2003, the pertinent parts of which were forwarded to the complainant on August 21, 2003; the complainant was given one month to submit observations. The petitioner then set forth observations in a communication received September 23, 2003, the pertinent parts of which were forwarded to the State on September 30, 2003; it was given one month to submit comments. The State forwarded its comments by a communication received November 10, 2003, the pertinent parts of which were sent to the petitioner on December 11, 2003.

III. THE PARTIES' POSITIONS

A. The Petitioner's Position

10. The petitioner notes that Mr. Nelson Carvajal Carvajal was assassinated on April 16, 1998, for motives related to his work as a journalist. He was the director of the new program "*Momento Regional*" and of the radio magazines "*Mirador de la Semana*," "*Amanecer en el Campo*," and "*Tribuna Médica*" of the radio station *Emisora Radio Sur*, in the municipality of Pitalito, department of Huila.

11. The complainant indicates that Mr. Nelson Carvajal Carvajal was engaged in investigative journalism into corruption-related issues in the region. According to the complainant, Mr. Carvajal Carvajal was denouncing businessman and politician Fernando Bermúdez Ardila for the construction of housing in a high-risk area, with unsuitable materials. The complainant further notes that days prior to his assassination, Mr. Carvajal Carvajal was said to have obtained documents implicating Mr. Bermúdez Ardila in an arms-trafficking network in the region.

12. The petitioner states that the day of the murder, he was at the Los Pinos school, where he was the principal and a teacher. At approximately 6:00 pm, while Mr. Carvajal Carvajal was leaving the school on his motorcycle, an individual shot him seven times at the door to the school. The individual escaped minutes later on a motorcycle with another person who was waiting for him.

13. The petitioner argues that there have been four hypotheses regarding the death of Mr. Carvajal Carvajal, two of them linked to Mr.

Bermúdez Ardila. The first refers to the information that Mr. Carvajal Carvajal allegedly had regarding an arms-trafficking network. The second had to do with the construction of defective housing in the area. The other hypotheses link the assassination to the "*Fuerzas Armadas Revolucionarias de Colombia*" (FARC) and a gang of local criminals.

14. The complainant indicates that after the assassination, the Office of the Twenty-Second Prosecutor before the Criminal Circuit Courts in Pitalito formally opened the investigation into Carlos Andrés Correa Meneses, as the alleged material perpetrator of the crime, based on a report by the Technical Corps of the local Office of the Prosecutor. The case was forwarded to the Office of the Prosecutor before the Regional Judges, based in Bogotá, which by resolution of May 10, 1998, ordered the pre-trial detention of Mr. Correa Meneses. On December 28, 1998, the Office of the Prosecutor (*Fiscalía Delegada*) considered that there was not sufficient evidence to link Mr. Correa Meneses to the murder, and it was ordered that he be released immediately. On December 29, 1998, the same Office of the Prosecutor began a new investigation, leading to the indictment of Messrs. Fernando Bermúdez Ardila, Marco Fidel Collazos, Ramiro Falla Cueca, and Víctor Félix Trujillo Calderon, as the direct perpetrators and masterminds of the crime, and they were arrested for pre-trial detention. On February 19, 1999, Mr. Alfaro Quintero Alvarado was included in the investigation and also arrested for pre-trial detention.

15. The petitioner indicates that afterwards Messrs. Bermúdez, Collazos, and Falla pleaded before the respective Office of the Prosecutor before the Regional Courts that the arrest warrants for them be revoked; these motions were denied. On November 2, 1999, after that decision was appealed, the Unit before the Superior Court of Bogotá, Chamber for Clearing up Backlog (*Unidad Delegada ante el Tribunal Superior de Santa Fé de Bogotá, Sala Penal de Descongestión*), ordered the release of Mr. Falla. Similarly, on December 10, 1999, the Office of the Special Prosecutor (*Fiscalía Especializada*) overturned the order to have Mr. Collazos held in pre-trial detention.

16. The petitioner adds that on January 17, 2000, the Office of the Prosecutor before the Criminal Judges of the Specialized Circuits brought criminal indictments against Messrs. Bermúdez, Trujillo, and Quintero for the assassination. This began a judicial proceeding in which Mr. Fernando Bermúdez Ardila was charged with masterminding the crime, and Messrs. Víctor Félix Trujillo Calderón and Alfaro Quintero Alvarado were charged as the direct perpetrators, based on the second of the aforementioned hypotheses. The judicial proceedings in the trial stage

culminated in an acquittal of the accused by the Single Criminal Court of the Specialized Circuit of Neiva, Huila, on December 15, 2000. That verdict was later affirmed on final appeal by the Criminal Chamber of the Superior Court for the Judicial District of Neiva, Huila, on April 6, 2001.

17. The petitioner argues that in that proceeding the competent authorities committed a series of irregularities, in both the investigation before the Public Ministry and the phase of obtaining and weighing the evidence, before the Judiciary.

18. The complainant states that said judicial proceedings “did not lead to the identification of persons who might have been responsible, concluding in a judgment of acquittal, constituting a denial of justice.” It further argues that in the judicial proceeding to clarify the murder “there was no due process of law.” This assertion is supported by its argument, as it notes (1) that in Colombia there was a pattern of impunity in human rights violation in the cases of journalists who have been killed, (2) that the identity of the witnesses was not adequately protected, and, (3) that the attorneys in the region had been intimidated in relation to the case. It also notes that the prosecutor on the case was changed as many as four times.

19. The petitioner asserts that after the acquittal the crime remains in impunity, for the Colombian State has not made any effort to open a new investigation to clarify the facts in the murder. The petitioner places special emphasis on the flaws of the investigation and the fact that to date the investigation has gone nowhere. It concludes that the State will not open a new investigation, since it has said that it has already discharged its obligation to impart justice.

20. The petitioner argues that according to the case-law of the Inter-American Court of Human Rights, the obligation to guarantee access to domestic remedies in keeping with the generally recognized principles of international law implies that such remedies must be adequate and effective, which was not so in this case, and which opens the door to the application of the exceptions provided for in Article 46(2) of the Convention. The complainant has indicated that the exceptions to the requirement to exhaust domestic remedies include an exception to the rule by which the petition must be filed within six months. Accordingly, the six-month limit provided for in Article 46(1)(b) is not applicable to the instant case.

B. The State’s position

21. Through its various communications¹, the State has been emphasizing that the Commission should dismiss the petitioner's request based on Article 46(1)(b) of the Convention.

22. In effect, the State argues that while it is true that domestic remedies were exhausted with the judgment of acquittal, which was affirmed after final appeal on April 6, 2001, the complaint was submitted on June 21, 2002, when more than six months had already transpired since the last judicial action. Accordingly, the petition is time-barred.

23. Similarly, the State rejects applying any of the exceptions to the exhaustion of domestic remedies requirement of Article 46(2) of the Convention in the instant case. The State argues that appropriate remedies were available to defend the right violated, and that access to them was not hindered, as alleged by the complainant.

24. The State also argues that the petitioner has set forth contradictory arguments about compliance with the admissibility requirements set forth in the Convention. It notes that the IAPA originally argued exhaustion of domestic remedies, only later asserting in its communications that it was arguing instead that the exceptions to prior exhaustion set forth in the Convention apply to the instant case.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence

25. The Commission observes that Colombia has been a party to the Convention since July 31, 1973, when it deposited the respective instrument of ratification, and, therefore, answers internationally for violations of the Convention.

26. Pursuant to Article 44 of the American Convention and Article 23 of the Commission's Rules of Procedures, the petitioner has standing to file petitions with the Commission regarding alleged violations of the rights established in the American Convention. The alleged victim is a natural person with respect to whom the State undertook to ensure the rights enshrined in the Convention. Therefore, the Commission is competent *ratione personae* to examine the complaint.

1 As detailed in section II of this report, the communications from the State were received by the Commission on February 6, 2003, August 19, 2003, and November 10, 2003.

27. The Commission is competent *ratione materiae* since the petition refers to alleged violations of human rights protected by the American Convention. In addition, the Commission is competent *ratione temporis* insofar as the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date on which the facts alleged in the petition would have taken place. Finally, the Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected in the American Convention, which, if true, took place in the territory of a State party to the Convention.

B. Admissibility requirements of the petition

1. Exhaustion of domestic remedies

28. After the murder of Mr. Carvajal Carvajal, a judicial proceeding began that culminated, in the first instance, in the acquittal of the accused, handed down by the Single Criminal Court of the Specialized Circuit of Neiva, Huila, on December 15, 2000. The judgment of acquittal was later affirmed by the Criminal Chamber of the Superior Court for the Judicial District of Neiva, Huila, on April 6, 2001. In the instant case, the Colombian State notes that domestic remedies were exhausted on April 6, 2001, when the judgment of acquittal of criminal liability of the accused, for the murder, was affirmed.

29. The IACHR notes that in the judgment of acquittal of December 15, 2000, the Single Criminal Court of the Specialized Circuit of Neiva, Huila, ruled as follows:

Finally, it will be ordered that a photocopy, with two copies, of the entire record in this proceeding be issued and forwarded to the office of assignments of the prosecutorial units (*Fiscalías Delegadas*) before this Court, to continue investigating the perpetrators and participants in the murder of Nelson Carvajal Carvajal.²

Nonetheless, it does not appear from the information provided by the parties that any judicial investigation has been opened or continued.

30. The Commission, through its case-law, has been noting that in cases such as this, the adequate remedy to be exhausted, as made

2 Judgment of the Single Criminal Court of the Specialized Circuit in Neiva, Huila, of December 15, 2000, at page 41.

explicit in the excerpt quoted from the judgment of acquittal in the first instance, is an investigation that adequately clarifies the facts.³

31. The Commission observes that in this case, it is the Judiciary itself that determined that after the proceeding in which three persons were tried, the investigation should continue to clarify the murder of Mr. Carvajal. Nonetheless, the State has been arguing continuously that the judicial proceeding exhausted the domestic remedies. Moreover, the State has not given any explanation of why the investigation ordered by its own courts would not be an adequate remedy for the purposes of identifying and eventually sanctioning the persons responsible for the murder of Mr. Carvajal. Accordingly, the Commission considers that the criminal investigation constitutes the adequate remedy to be exhausted, and that for the purposes of the admissibility of this petition, the judgment of April 6, 2001, did not exhaust domestic remedies in Colombia.

32. The Commission observes that the assassination of Mr. Carvajal Carvajal occurred on April 16, 1998, and that more than six years have now transpired without the investigation to determine liability for that murder having reached any conclusion. In this respect, the IACHR notes that Article 46(2)(c) of the American Convention sets forth an exception to the rule of prior exhaustion by reason of "unwarranted delay in rendering a final judgment under the aforementioned remedies." In the Commission's opinion, the fact that the investigation is still open without yielding any results after more than six years constitutes an unwarranted delay in the terms of Article 46(2)(c) of the Convention.

33. Invoking the exceptions to the rule of exhaustion of domestic remedies provided for in Article 46(2) of the Convention is closely tied to the determination of possible violations of certain rights contained therein, such as the guarantees of access to justice. Nonetheless, Article 46(2) of the American Convention, given its nature and purpose, has content autonomous from the substantive norms of the Convention. Therefore, determining whether the exceptions to the rule of exhaustion of domestic remedies set forth therein are applicable to the instant case comes prior to and separate from the analysis of the merits, since it depends on a different standard of appreciation from that used to determine whether there has been a violation of Articles 8 and 25 of the

3 Report No. 05/03, Petition 519/2001, *Jesús María Valle Jaramillo*, Annual Report of the IACHR 2003, para. 28. See also, Report No. 52/97, Case 11,218, *Arges Sequeira Mangas*, Annual Report of the IACHR 1997, paras. 96 and 97; Report 55/97, Case 11,137, *Juan Carlos Abella*, Annual Report of the IACHR 1997, para. 392; and Report 57/00, Case 12,050, *La Granja, Ituango*, Annual Report of the IACHR 2000, para. 40.

Convention. It should be clarified that the causes and effects that have stood in the way of the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the report the Commission adopts on the merits, to determine whether they in fact constitute violations of the American Convention.

2. Time for submitting the petition

34. In its various communications, the State has asked the Commission to declare the case inadmissible for being time-barred, since the request was submitted to the Commission more than one year after the last judicial action domestically. The IAPA considers that the irregularities in the criminal proceeding, as well as the impunity in the case, render imply that the six-month term provided for in the Convention inapplicable.

35. Article 46(1)(b) of the Convention establishes that for it to be possible to declare the petition admissible, it must be submitted within six months from the date on which the interested person was notified of the final decision in the domestic jurisdiction.

36. Having determined in the previous section that the judgment of April 6, 2001, was not a decision that exhausted domestic remedies for the purposes of admissibility, the Commission rejects the State's argument that the petition was time-barred. On considering that there has been unwarranted delay in the criminal investigation, the rule that it must be submitted within six months does not apply.

37. In this respect, Article 32 of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of exhaustion of domestic remedies apply, the petition must be submitted within a time that is *reasonable*, in the Commission's judgment, bearing in mind the date of the alleged violation and the circumstances of each case.

38. Bearing in mind the date of the facts alleged and the situation of domestic remedies with respect to the specific facts submitted to the IACHR in the instant matter, the Commission considers that the petition in question was submitted within a reasonable time.

3. Duplicity of procedures and *res judicata*

39. From the record it does not appear that the complaint submitted is pending before another international procedure, nor has the

Commission received any information indicating the existence of any such situation, and it does not consider it to reproduce the petition or communication in any other matter previously examined by it, accordingly, it considers that the requirements of Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the facts alleged

40. In the instant case, the Commission considers that this is not the procedural phase for deciding whether the alleged violations of the rights of the alleged victim to life, freedom of expression, a fair trial, and judicial protection occurred. For the purposes of admissibility, the IACHR at this time need only determine whether facts are stated which, if proven, tend to establish violations of the Convention, as stipulated by Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” per Article 47(c).

41. The standard of appreciation of these rules is different from that required to make a decision on the merits of a complaint. The IACHR must perform a *prima facie* evaluation to determine whether the complaint lays the foundation for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of such a violation. The examination that must be done at this time is simply a summary analysis that does not imply any prejudgment or initial opinion on the merits. The Commission’s Rules of Procedure, on establishing two clear stages of admissibility and merits, reflects this distinction between the evaluation that the Commission must make for the purposes of declaring a petition admissible and that required for establishing a violation.

42. The Commission notes that a judgment of acquittal *per se* does not constitute a violation of any of the rights provided for in the American Convention. Nonetheless, the Commission observes that the failure to investigate on the part of the Colombian State entails a situation of impunity that could tend to establish a violation of Articles 8 and 25, and a breach of the obligation to ensure set forth at Article 1(1).

43. In the opinion of the Commission the arguments presented by the State require, to be resolved, an analysis on the merits. Similarly, the Commission considers that the petitioner’s allegations regarding the supposed violation of the rights to life, freedom of expression, and judicial protection, if proven, may tend to establish a violation of the rights guaranteed by Articles 4, 8, 13, and 25 of the American Convention in relation to its Article 1(1).

V. CONCLUSION

44. The Commission concludes that it is competent to take cognizance of this petition, and that it meets the admissibility requirements, in keeping with Articles 46 and 47 of the American Convention and Articles 30, 37, and related provisions of its Rules of Procedure. Based on the foregoing arguments of fact and law, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible with respect to Articles 4, 8, 13, and 25 of the Convention in relation to Article 1(1).
2. To notify the State and the petitioner of this decision.
3. To continue analyzing the merits of the case.
4. To publish this decision and include it in the Annual Report of the IACHR to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 13th, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán de la Puente, Second Vice-President; Commissioners Evelio Fernández Arévalos, Paulo Sérgio Pinheiro, Freddy Gutiérrez Trejo, and Florentín Meléndez.
