

REPORT Nº 32/92
CASE 10.454
COLOMBIA
September 25, 1992 (*)

BACKGROUND:

1. On August 11, 1989, the Inter-American Commission on Human Rights received the following complaint:

On October 8, 1988, Mr. Martín Calderón Jurado, President of the Asociación Nacional de Usuarios Campesinos de García Rovira, legal counsel to the Human Rights Solidarity and Defense Committee of García Rovira and Chairman of the El Cerrito Town Council, was traveling on the road from El Cerrito to Chitagá when, at the fork in the road leading to Cacota (Norte de Santander) his car was stopped by a paramilitary group that killed him, firing fifty bullets into his body. Also killed was Primitivo Silva, the driver of the vehicle. Martín Calderón Jurado's political leanings were liberal.

Mr. Martín Calderón Jurado and his cousin Valentín Bastos Calderón had received death threats at a human rights meeting held in Málaga on August 6 and 7, 1987; the individuals named as the authors of those threats were associated with the police and the army. There is a tape of the charges they made.

After that, Valentín Bastos Calderón was murdered. Martín Calderón Jurado took active part in the investigation that the Office of the Attorney General of the Nation conducted into the murder of his cousin Valentín Bastos Calderón and as a result was again threatened.

2. When this petition was conveyed to the Government of Colombia on September 20, 1989, that Government, in a letter dated October 25, 1985, reported that the information had been brought to the attention of the competent national authorities and that the Commission would be duly informed of the status of the investigations.

3. Later, on May 7, 1990, the Government of Colombia reported again that:

Notwithstanding the previous communication, I would like to inform the Commission of the special visit that the Special Prosecutor for the Defense of Human Rights made in November 1990 to the Technical

(*) Commission member Dr. Alvaro Tirado Mejía abstained from participating in the consideration and voting on this Report.

Corps of the Judicial Police of Pamplona, Norte de Santander, where the proceedings are being conducted to ascertain those responsible. In the course of this visit, it was found that the case file contains a copy of the proceedings of the exhumation of the body of Mr. Martín Calderón Jurado, performed by the Deputy Commandant at the Cécota Municipal Station. There is also a record of referral of the proceedings to the competent judge, who appointed the Technical Corps of the Judicial Police, a strictly investigative body, to further the investigation and clarify the circumstances of his death and anyone who may be responsible.

Once information is received on the developments in the criminal proceedings, that information will be sent to the Commission.

As Your Excellency can appreciate, the remedies under domestic law have not been exhausted and the mechanisms provided in the criminal laws are in full motion.

4. Corroborating his complaint, the petitioner sent the following incriminating testimony to the Commission which was written and signed on January 15, 1989, by Mr. Jairo Alberto Carvajal Tarazona, the "El Cerrito" Municipal Representative, addressed to the Attorney General of the Nation:

Lieutenant Colonel Plinio Rodríguez Villamil was in the jurisdiction of the town of El Cerrito on the day of the murder. He was in a grey, two door Toyota, with a short wave telephone that he used to call Sergeant Jiménez Ruiz César Augusto with the Battalion in the city of Pamplona. He ordered him and Sergeant Puentes Ramírez David, from the second section of García Rovira Battalion, to take two 9 mm. Madsen submachine guns and their accoutrements and to use a black, four-door Toyota van, Venezuelan license plate No. XAS-910, which was the property of INCAL, driven by Pedro Rueda, alias Zapatoca. They were to take the road to Chitagá and near the town of Cécota they were to stop the vehicle of Mr. Martín Calderón Jurado and kill him and whomever was with him.

And this was how Mr. Martín Calderón Jurado and Mr. Primitivo Silva lost their lives.

I was able to get this information because of some unusual circumstances that occurred the day their bodies were to be brought in and the day of their burial, such as the meeting held in the main park in El Cerrito by Lieutenant Colonel Plinio Rodríguez Villamil, at about seven in the evening, at which time he said that he was going to bomb Tabeta and Mortiño (places in this district). That same night some ten people were

taken to the jail of the National Police, myself among them; I identified myself but they did not acknowledge anything and we spent that night in a cell.

The next day, following the burial of the murdered men, that same Colonel stood up in the main park and, for no reason ordered that those people whom he believed to be suspicious be taken to the Police Station. That was how I learned that several people who went to retrieve the body of Mr. Martín Calderón Jurado had been mistreated by that Lieutenant Colonel; and around Puno Romeritos (Páramo del Almorzadero), he made five people walk barefooted for some forty minutes. A few days later I went to the Pamplona and while there at a place called El Camellón, this Sergeant second class Puente Ramírez David was there talking about the things that he had done and, drunk as he was, I got the information that I am supplying you.

5. Commenting on the Government's response and the content of that testimony, the petitioner on September 10, 1990, states the following:

The Colombian Government states in its communication that a report presented by the Special Prosecutor for the Defense of Human Rights in November 1989, states that the proceedings were turned over "to the competent judge, who appointed the Technical Corps of the Judicial Police, a strictly investigative body, to further the investigation and clarify the circumstances of his death and anyone who may be responsible."

In accordance with the standards on criminal procedure in effect in Colombia, there is a period of preliminary investigation before any criminal proceedings are instituted in those cases where there is some doubt as to whether or not an investigation should be instituted (Article 341 et seq. of the Code of Criminal Procedure). This preliminary inquiry is used to determine whether the matter being denounced has in fact occurred, whether it is a punishable offense under criminal law and to supply the evidence so essential with respect to the identity or person of the authors or accomplices. This phase lasts for sixty days, after which the judge hearing the proceedings must refer same to the Technical Corps of the Judicial Police, which has up to 180 days to establish those responsible for the punishable offense. Once this 180 days have expired, the Judicial Police Unit must suspend the investigation if the identity of any of the authors or accomplices has not been established and it is to file the proceedings until they are requested by the judge hearing the case (Articles 347, 347 bis, 348 of the Code of Criminal Procedure).

The above means that in the strict sense there was never any trial for the extrajudicial execution of Martín Calderón and that, according to the report prepared by the Office of the Special Prosecutor for Human Rights, the fact that the proceedings have been with the Technical Corps of the Judicial Police since November 1989 forces one to conclude that the 180 day period has already expired, so that the investigation has been suspended by the Judicial Police. Consequently, the mechanisms that the Code of Criminal Procedure provides are not fully underway; instead they have shown once again that they are utterly ineffectual in properly investigating and sanctioning those responsible for a crime committed against a recognized popular activist and defender of human rights, such as Dr. Martín Calderón Jurado.

There is not the slightest doubt that there was sufficient evidence to pursue the investigation and sanction those responsible well before the date on which the Office of the Special Prosecutor for Human Rights reports that it found the only existing proceedings in the judicial police unit. As far back as January 23, 1989, the Municipal Representative for El Cerrito had filed a written report with the Attorney General concerning the authorship of the crime. The representative, Jairo Alberto Carvajal Tarazona, told the prosecutor that Lieutenant Colonel Plinio Rodríguez Villamil ordered Sergeant David Ramírez Puente to assassinate Martín Calderón and anyone who was with him. Mr. Carvajal Tarazona came by this information directly, as a result of the incident with Sergeant Puentes Ramírez when he was drunk and because of events that occurred on the day that Dr. Calderón Jurado was buried.

On March 3, 1989, the Office of the Special Prosecutor for the Military Forces ordered that the corresponding investigation be launched, based on the complaint filed by the representative of El Cerrito; thus far, that investigation has not produced any results in terms of identifying and disciplining those responsible for the crime.

For all of the foregoing reasons, we are requesting that the Commission, at its next session, declare Colombia to be responsible for the extrajudicial execution of Martín Calderón Jurado.

6. When the petitioner's observations were sent to the Government on October 24, 1990, they replied on December 18, 1990:

In this regard, I would like to inform Your Excellency that on November 27, 1990, the National Bureau of Criminal Investigation reported that the preliminary investigation into the death of Martín

Calderón Jurado is at the Preliminary Investigation Unit of the city of Pamplona. During the course of this investigation, work order No. 152 CTPJ-ULP was issued, but with no results.

The National Bureau of Criminal Investigation further stated that at the present time work order No. 784-CTPJ-ULP is being processed, the purpose of which is to establish the identity of the authors of the crime.

The National Bureau reports that as soon as the findings of that work order arrive, they will be forwarded to this Ministry.

A number of clarifications are in order with respect to this investigation. The crime was initially investigated by the competent criminal examining judge, who was unable to compile the evidence needed to identify the author or authors of the crime; that judge handed down a ruling ordering that the proceedings be forwarded to the competent Technical Corps of the Judicial Police.

The Office of the Attorney General of the Nation monitors closely when proceedings are forwarded to the Technical Corps, since the court ruling ordering that those proceedings be sent must be reported to the agent of the Public Ministry, who may disagree and ultimately file an appeal to have that order reversed.

Even though thus far the results have been negative, all of the wheels of justice are in motion to discover the author or authors of this heinous crime that took the life of Mr. Martín Calderón Jurado.

Finally, as for the remedies under domestic criminal law, I would like to inform Your Excellency that the officials who have been in charge of this investigation have ordered that measures be taken and evidence compiled, the single purpose being to shed light on the events; because this is a preliminary investigation in Colombia, no evidence may be made public, although the law is observed when each piece of evidence is compiled.

7. In response to the Government's comments, the petitioner had the following observations, dated March 16, 1991:

In this most recent communication, the Government of Colombia has stressed the fact that "the remedies under domestic law are still in process," and bases that assertion on two main points: (FIRST) On the one hand, the existence of a preliminary inquiry which, according to the

Government's reply, cannot "be made public," and (SECOND) on the other hand, the fact that "information is expected from the Office of the Attorney General of the Nation and from the National Bureau of Criminal Investigation."

The statements by the National Government here add nothing new to what it has already presented to the Commission. The relatives of the victim have exhausted every possible domestic remedy, as we told you on a previous occasion. Thus far, no ruling has been handed down to identify and sanction, either through criminal or disciplinary proceedings, anyone for the execution of Martín Calderón Jurado, even though there is evidence, supplied to the Commission, regarding the authorship of the crime. Therefore, for the sake of the general principles of procedural economy, we shall not restate arguments already made in our previous communications but we are enclosing a copy of it.

Consequently, we repeat our request to the effect that the Commission declare the Colombian State responsible for this violation of human rights.

8. That communication from the petitioner was forwarded to the Government on June 28, 1991, which was given 30 days in which to make whatever observations it deemed appropriate. No response was forthcoming.

9. On August 6, 1991, the Government of Colombia sent a note requesting another 15 days in which to reply.

10. On August 15, 1991, the petitioner stated the following:

In reference to case 10.454, we wish to inform the Commission that based on what we know at this time, there is no court ruling concluding the criminal proceedings against those responsible for the crime that was committed against the person of Mr. Martín Calderón Jurado, even though by now two years and ten months have passed since the day of his murder.

11. Finally, on August 22, 1991, the Government of Colombia sent a note to the Commission to the following effect:

I would like to present to Your Excellency a summary of the report that the National Human Rights Unit of the National Bureau of Criminal Investigation submitted in connection with the criminal proceedings conducted thus far into the murder of Mr. Calderón Jurado.

The investigation was initiated by the Municipal Bench of Cécota, Norte de Santander, which conducted the following proceedings, among others: a judicial inspection of the scene of the events and a sketch thereof; inspection of the vehicle in which Mr. Calderón Jurado was traveling; taking a deposition from the wife of Mr. Martín Calderón in which she states that "no one had threatened him"; taking statements from Mr. Luis Antonio Salinas Calderón, Mr. Lizandro Salinas, neighbors and the sister of the victim. The Municipal Bench of Chitagá was commissioned to take testimony to compile more information with a view to ascertaining the facts.

Later, the proceedings were sent to the Second Ambulatory Criminal Examining Judge of Pamplona, who in turn referred them to the Preliminary Investigations Unit of the Technical Corps of the Judicial Police. Through work order UIP No. 152, dated January 18, 1989, this investigative body requested the Security Administration Department (DAS) of Pamplona to take steps to identify the murderers.

The report presented by the DAS suggests that the murder may have been politically motivated and that the authors may be members of guerrilla groups or even a paramilitary group with extreme rightist leanings, since Mr. Calderón Jurado was a political activist of the liberal party.

The evidence compiled thus far does contain certain clues as to the intellectual and material authorship of the murder. On the understanding that the investigations are confidential in nature, for the obvious reasons, as soon as new information becomes available related to the developments of the inquiries and their findings, this Ministry will convey that information to the Inter- American Commission.

12. At its 80^o session the Commission adopted Report N^o 32/91, which was referred to the Government of Colombia so that the latter might whatever observations it deemed pertinent within three months of the date of transmission.

ANALYSIS:

1. On the question of admissibility:

a. The Commission is competent to examine the subject matter of the case in as much as it involves violations of rights stipulated in the American Convention on Human Rights, Article 4, concerning the right to life, and Article 25, the right to judicial protection, as provided in Article 44 of that Convention, to which Colombia is a state

party;

b. The petition satisfies the formal requirements for admissibility as spelled out in the American Convention on Human Rights and the Regulations of the Inter-American Commission on Human Rights;

c. In the instant case, it is obvious that the petitioners have been unable to secure effective protection from the domestic jurisdictional agencies; those agencies have discarded the evidence available to them and have failed to bring charges against the members of the military who were directly named as the responsible parties; therefore, whether or not the remedies under domestic law have been exhausted, those remedies cannot be invoked on the Colombian Government's behalf to suspend the processing that this Commission is giving to this case, in view of the undue delay that the internal investigation of this process has suffered; moreover, because the very fact that the proceedings have been in the hands of the Technical Corps of the Judicial Police since November 1989 one is forced to conclude that the investigation, based on the provisions of Articles 347, 347 bis and 348 of Colombia's Code of Criminal Procedure, has been suspended by the Judicial Police;

d. The present petition is not pending settlement in any other procedure under an international organization and does not duplicate an earlier petition already examined by the Commission;

2. On the investigations conducted by the Government of Colombia:

a. The investigations conducted by the Colombian Government authorities through the Office of the Attorney General of the Nation, the Office of the Special Prosecutor for the Military Forces and the Regional Prosecutor for Bucaramanga, based on the evidence made available to them, all point to individuals in active military service with the Army's García Rovira Battalion as the individuals responsible for these deaths;

3. On other aspects of the case:

a. The facts prompting the petition are not such that they can be resolved by means of the friendly settlement procedure provided for in Article 48.1.f of the Convention and in Article 45 of the Regulations of the IACHR, and neither of the parties has requested that the Commission use this procedure;

b. Since the friendly settlement procedure does not apply, the Commission must comply with the provisions of Article 50.1 of the Convention, by drawing up its report and conclusions on the matter put to it for consideration;

c. In the prosecution of the instant case, all legal and regulatory procedures set forth in the Convention and in the Regulations of the Commission have been exhausted;

4. Other considerations:

a. As this case has unfolded, it has been established--and the Colombian Government has not denied--that agents of the Colombian armed forces participated in the murder of Martín Calderón Jurado and Primitivo Silva, driver of the vehicle.

b. That the Government of Colombia requested reconsideration of the Commission's report on January 16, 1992, during the period provided for;

c. That the Government of Colombia, while it made various observations regarding particular factual matters contained in the Commission's reports, did not provide any new evidence which would lead the Commission to modify its report;

d. That there are no new considerations presented in the Commission's files that would lead it to any other conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

In the exercise of its authority,

1. Concludes that the Government of Colombia has failed to comply with its obligation to respect and guarantee Articles 4 (the right to life), 5 (the right to humane treatment), and 25 (on judicial protection), in connection with Article 1.1, upheld in the American Convention on Human Rights, to which Colombia is a State Party, in respect of the murder of Mr. Martín Calderón Jurado, and Primitivo Silva, driver of the vehicle.

2. Concludes that Colombia must pay compensatory damages to the victim's next of kin.

3. Recommends to the Government of Colombia that it order the investigations of the murder of Mr. Martín Calderón Jurado and the driver of the vehicle, Mr. Primitivo Silva, be completed and those responsible for these heinous crimes be punished.

4. Requests the Government of Colombia to guarantee the security and give the necessary protection to Mr. Jairo Alberto Carvajal Tarazona, Municipal Representative of "El Cerrito" and other witnesses to the events who have provided their cooperation in order to clarify the facts.

5. Orders the publication of this report in the Annual Report to the General Assembly, pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, inasmuch as the Government of Colombia did not adopt measures to correct the situation denounced, within the time period stipulated in Report N° 32/91.