

REPORT N° 1/94
CASE 10.473
COLOMBIA
February 1 1994(*)

I. BACKGROUND:

1. On May 30, 1989, the Inter-American Commission on Human Rights received a complaint against the Colombian State for alleged violations of the right to life, to safety and personal security, and to justice, which was subsequently expanded by the petitioner on June 30 of the same year, in reference to the following:

II. THE FACTS:

Introduction

1.1 On August 15 and 16, 1987, the municipality of Sabana de Torres, in the north of the Department of Santander, celebrated the town's livestock festival with a fair, a parade of floats, a bullfight and a grand ball. The mayor of the locality, Dr. **ALVARO GARCÉS PARRA**, a prominent activist of the Unión Patriótica - Frente Amplio del Magdalena Medio alliance, was present and took part in all these celebrations. During the ball on the night of the 15th and in the early morning of the 16th, during the ball, when the mayor got up from the table where he was seated with his family in order to go out to the dance floor, he was killed by a group of persons from outside the area who had sat down at a table near his. The bodyguards who accompanied him at all times were unable to prevent his death, (two of these guards also died as a result of the attack).

The murder (As recounted by family members present at the time)

1.2 At approximately 3:45 a.m. in the early morning of August 16, when a song was dedicated to Yolanda Garcés Parra, sister of the mayor, everybody who was at his table, which was 2 meters from the dance floor, got up to dance, except for his mother and two of his sons. The opening chords of the music were still in the air when the first shot was heard. Myriam Garcés Parra saw a man with his hand out of sight move closer to her brother, then when he raised his hand she heard the shot. The bullet

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

struck the mayor directly in the head and lodged there; he died almost

instantaneously. The security guard Luis Orlando Castaño, who was dancing with one of the mayor's sisters at that moment, fatally wounded the gunman who had fired the shot. Various other persons also tried to catch him. Jairo Loaiza Pavas, another guard, ran after the fellows who moments before had been at the adjoining table watching the mayor. In addition to those who were at the table, other men who were at the entrance of the building fired into it. One of the gunmen ran out pursued by guard Carlos Gamboa Rodriguez. The brothers of **ALVARO GARCÉS PARRA** clustered around his body. Various people were wounded. Luis Orlando Castaño, after shooting the mayor's murderer, also joined in the pursuit of the other gunmen, and found outside the still bodies of his fellow guards Jairo Loaiza and Carlos Gamboa. In addition the dead killer, other members of the group of attackers were also wounded.

Before the murder; the military plot

1.3 One day before the mayor's murder, a group of persons including **LUIS FRANCISCO ROA MENDOZA**, **LUIS MEDINA TIRADO**, **LUIS HORACIO TRASLAVINA** and **ISIDRO CORRENO ESTEVEZ** entered the barracks of the Ricaurte Battalion and went to the Second Military Intelligence Section (S-2), to the office of CAPTAIN LUIS ORLANDO **ARDILA ORJUELA** and where MAJOR OSCAR **ECHANDIA SANCHEZ** was third in command of the Battalion. At this meeting, as was established by the investigation, (1) the details of the killing of the mayor were finalized and scheduled for that night, the 15th, and the morning of the 16th; (2) the men were handed the weapon that would be used to kill the mayor, a Smith and Wesson No. 7489, and (3) a special license bearing a seal belonging to Captain Ardila was issued in the name of **RAUL BERMUDEZ ALCANTARA**, the man who actually killed mayor Garcés Parra.

After the murder; military cover-up and assistance to the wounded killers

1.4 Almost half an hour after the murder of mayor Alvaro Garcés Parra, i.e. approximately 4 a.m. in the morning of August 16, Major Jesús Echandía Sánchez (one of the officers involved in the plot) and Dr. L.J. Pardo de Arteaga, attached to the Battalion of the 5th Military Brigade, brought to the Clínica Santa Teresa in Bucaramanga, the capital of Santander Department and close to where the events took place, **LUIS FRANCISCO ROA MENDOZA**, who had three recent bullet wounds. The killer was registered as a "soldier" wounded in combat and his hospital bill was paid by the Army authorities. It has also been reported, but has never been confirmed or denied, that another of the wounded gunmen, Amado Ruiz, took refuge in the Luciano D'Lhuyar Battalion barracks in San Vicente de Chucurí.

III. THE VICTIMS:

2. In addition to the persons who were wounded, the following died as a result of the criminal attack:

ALVARO GARCES PARRA, Mayor of Sabana de Torres
CARLOS GAMBOA RODRIGUEZ, security guard
JOHN JAIRO LOAIZA PAVAS, security guard
ELIDA ANAYA DUARTE, resident of the locality.

IV. PROCESSING OF THE CASE BEFORE THE IACHR

3. Upon receipt of the complaint and without prejudging its admissibility, the Government of Colombia was notified on October 16, 1989.

4. The Government of Colombia responded to the Commission on January 15, 1990, and with regard to the case of the murder of **ALVARO GARCES PARRA** informed it that the internal investigation process was still in progress, detailing the status of each of the following proceedings: DISCIPLINARY PROCEEDINGS, CASE BEFORE ORDINARY CRIMINAL COURT, CASE BEFORE MILITARY CRIMINAL COURT, and, later, CASE BEFORE ADMINISTRATIVE LAW COURT. The Colombian Government reiterated its undertaking to inform the Commission regarding the progress of these proceedings, which it has in fact done, and regarding the final outcome of same insofar as a decision is reached, **noting that the internal mechanisms were in full play, which meant that the internal remedies provided for in Colombian legislation had not been exhausted.**

5. The Colombian Government having responded in a timely fashion to the complaint as detailed above, the Commission continued to process the case in accordance with the rules laid down in the Inter-American Convention on Human Rights and its Regulations, giving each of the parties an opportunity to argue as it felt appropriate concerning statements the other made.

6. As part of its process of receiving and examining information from the parties the Commission made available to the Colombian Government the pertinent parts of the communications sent by the petitioner formulating observations as to their allegations and/or making reference to known or new evidence. The notes sent to the Colombian Government by the Commission were the following:

Note of February 1, 1990, acknowledging receipt of the information sent in response to the petitioners' request;

Note of June 13, 1990, transmitting the complainant's observations on the

Colombian Government's response to its complaint;

Note of August 31, 1990, acknowledging receipt of the information sent by the Colombian Government in response to the complainant's observations detailing the progress of the case before the Santander Administrative Court;

Note of October 29, 1990, transmitting the petitioner's response to its note of August 31 of the same year;

Note of January 17, 1991, acknowledging receipt of additional information and noting the reopening of the investigation by the Eleventh Criminal Trial Court of Bucaramanga upon the request of the Office of the Attorney General of the Nation for the purpose of determining the facts regarding the murder of Mayor **ALVARO GARCES**;

Note of July 11, 1991, requesting additional information concerning the status of the investigation;

Note of July 26, 1991, acknowledging receipt of information on the progress of the case.

7. The Commission also informed the petitioner regarding the responses sent by the Colombian Governments, forwarding the relevant parts thereof. The list of notes sent to the petitioner by the Commission is as follows:

Letter of February 1, 1990, transmitting Government's response;

Letter of June 13, 1990, acknowledging receipt of observations concerning the Colombian Government's response;

Letter of August 31, 1990, transmitting additional information provided by the Colombian Government in connection with petitioner's observations;

Letter of October 29, 1990, acknowledging receipt of supplementary observations concerning the Colombian Government's response of August 31, 1990;

Letter of January 14, 1991, transmitting the Colombian Government's response of January 10, 1991;

Letter of January 22, 1991, sending additional response by the Government communicated in note of January 15, 1991;

Letter of April 16, 1991, acknowledging receipt of additional information sent by complainant on March 20, 1991;

Letter of August 2, 1991, transmitting Colombian Government's note of July 26, 1991, and

Letter of June 16, 1992, providing additional information requested by complainant.

V. REMEDIES UNDER DOMESTIC LAW

8. A following summary is given of the information provided by the parties and updated during the processing of the case before the IACHR, regarding the investigations performed and proceedings brought before the Colombian authorities concerning the murder of the Mayor of Sabana de Torres and of the findings and decisions resulting therefrom:

1) BEFORE THE ORDINARY CRIMINAL COURT

The 11th Criminal Trial Court opened its investigation to determine the circumstances in which the killing of a number of persons took place in Sabana de Torres and on January 8, 1988, it issued an order for investigation of the crime and ordered the questioning of the following Colombian Army personnel: Privates REINALDO LANDAZABAL, GERARDO ORTEGA BARRERA, YESID CANCINO VARGAS; Corporal PLINIO SANDOVAL TOSCANO; Sergeant JORGE ELIECER CARDENAS CORRALES; Captain LUIS ORLANDO ARDILA ORJUELA; Major OSCAR ECHANDIA SANCHEZ and the physician for the local military personnel Dr. LINDA JENNY DE ARTEAGA. Only Captain ARDILA and Major ECHANDIA were heard, on November 1988.

On February 1, 1988, the Court issued arrest warrants in respect of the civilians ISIDRO CARREÑO ESTEVEZ, LUIS HORACIO TRASLAVIÑA and LUIS FRANCISCO ROA MENDOZA, which were never carried out, and, when the legal position of these persons was resolved on May 30, 1989, a new judge in charge of the court was unable to find evidence justifying issuance of arrest warrants.

The Court, after hearing the questioning of the Colombian Army officers, took the position that their actions were connected with official acts of the Armed Forces and that they should be judged by the Military Criminal Court in respect of their participation in what took place in Sabana de Torres, with the result that there was a conflict of jurisdiction, on the grounds of which the

Court sent the case documents to the Fifth Brigade headquartered in Bucaramanga.

At the present time the ordinary criminal case concerning what took place in Sabana de Torres is in the stage of "determination of responsible parties" and there is "no known accused individual" with regard to the commission of the crime.

2) BEFORE THE OFFICE OF THE ATTORNEY GENERAL OF THE NATION

(Assigned to the Military Forces). First proceeding, which concluded with Decision No. 20 of January 18, 1989, **dismissing** Major OSCAR ECHANDIA SANCHEZ and Captain LUIS ORLANDO ARDILA ORJUELA from the Armed Forces as those responsible for the acts which caused the death of the Mayor of Sabana de Torres, Dr. **ALVARO GARCES PARRA.**

FACTS THAT INCRIMINATE CAPTAIN ARDILA. The Office of the Attorney General took into consideration (1) the statement by the former soldier GONZALO ORTEGA PARADA who accused Captain Ardila of having asked him, as his informant and assistant, to follow and observe the murdered mayor and of having ordered him to kill the mayor, offered him the sum of Col\$100,000 to do so. He refused to carry out the order. In addition to this statement and the fact (2) that Captain Ardila owned a Mazda car, the most compromising circumstance was (3) the visit to his office on August 15, 1987, the day before the mayor of Sabana de Torres was gunned down, of LUIS MEDINA TIRADO, LUIS HORACIO TRASLAVIÑA, LUIS FRANCISCO ROA MENDOZA and ISIDRO CARREÑO ESTEVEZ, and (4) the expert opinion concerning the license issued by his military unit in the name of RAUL BERMUDEZ ALCANTARA to carry revolver SW N° 7489, although the expert was not positive as to the captain's signature he was with regard to the impression of the seal of the Fifth Brigade S-2 Ricaurte Battalion on the document. (5) A further piece of evidence was formed by the fact that ORTEGA PARADA's version concerning the threats made to him by Captain ARDILA after the mayor's death was corroborated by the statement of RODRIGO ORTIZ MONTERO (page 87 of reserve book). The Court concludes that in light of all this testimonial and documentary evidence, of such importance, the accused's effort to discredit it does not carry sufficient weight.

FACTS THAT INCRIMINATE MAJOR ECHANDIA. Also in this case, the Office of the Attorney General considered (1) that the accusations of former soldier GONZALO ORTEGA PARADA concerning Major ECHANDIA were

not discredited by the latter's protestations. It was also amply demonstrated that (2) it was Major ECHANDIA who put LUIS FRANCISCO ROA MENDOZA involved in the killing of the Mayor of Sabana de Torres, in the Clínica Santa Teresa in Bucaramanga and even paid his hospital bill; (3) that the correction made by Dr. LINA JENNY DE ARTEAGA, on responding to his answers contradicted him in stating (pp. 429-430) "I did not go to get anybody from outside in the street with Major ECHANDIA..." did not support his veracity either.

DECISION. On the basis of these facts and in addition to the fact that the officers implicated did not succeed in discrediting the charges brought against them concerning the events which occurred in Sabana de Torres and resulted in the death of the mayor Dr. **ALVARO GARCES PARRA**, "the maximum penalty hereby imposed on them, is DISCHARGE." /s/ MANUEL SALVADOR BETANCUR, Assistant Attorney General for the Armed Forces.

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3) BEFORE OFFICE OF THE ATTORNEY GENERAL OF THE NATION. 2nd proceeding, which considers the appeal lodged against the above-cited Decision No. 20 of January 18, 1989, and **confirms** it with Decision No. 406 of November 23, 1989.

The Assistant Attorney General for the Armed Forces, in exercise of the powers conferred by Article 143 of the National Constitution, Law 25 of 1983 and Article 217 of Decree 85 of 1989, after considering the reasons for discharge contained in Decision No. 20 of January 18, 1989, and finding that it concurs with the opinions stated therein, DECIDES: **NOT TO REINSTATE and hence to UPHOLD** the disciplinary penalty of discharge and absolute dismissal imposed on the officers of the National Army Major OSCAR ECHANDIA SANCHEZ and Captain LUIS ORLANDO ARDILA ORJUELA on account of the events in connection with the death of the mayor of the Municipality of Sabana de Torres on August 16, 1987. /s/ JOSE PLINIO MORENO RODRIGUEZ, Assistant Attorney General for the Armed Forces.

4) BEFORE THE MILITARY CRIMINAL TRIAL COURT

a) The 11th MILITARY CRIMINAL TRIAL COURT of Bucaramanga, Colombia, concluded its deliberations on February 23, 1989, and ruled in the following way on the questions of responsibility of Officers ECHANDIA SANCHEZ and ARDILA ORJUELA;

After a recapitulation of the facts proven in the investigation, the Military Criminal Trial Court concluded that the following facts were certain and unquestionable:

Concerning the victims: On September [sic (Tr.)] 16, 1987, in the early morning, the Mayor **ALVARO GARCES PARRA** was killed by act of violence, as were also JOHN JAIRO LOAIZA PAVAS, CARLOS RODRIGUEZ GAMBOA and ELIDA ANAYA DUARTE, the latter succumbing to wounds received during the events investigated. Also injured were LORENZA CASTRO DE SUAREZ and MYRIAM CASTRO DE ALVAREZ.

Concerning the actual perpetrator: It is proven that the person who killed the Mayor of Sabana de Torres by a shot in the head was RAUL BERMUDEZ ALCANTARA, who was also killed during the perpetration of his criminal act.

Verification of multiple participation. It is evident that RAUL BERMUDEZ ALCANTARA was not alone in the commission of his crime but that a number of individuals were involved because of the shootout which occurred in the building and then outside of it.

Identification of the killers. Regarding the other killers who accompanied RAUL BERMUDEZ ALCANTARA, Dr. VICTOR ENRIQUE NAVARRO JIMENEZ, in his capacity as Special Prosecutor in the preliminary proceedings, stated that he knew that the following individuals had left San Juan Bosco Laverde heading for Sabana de Torres to kill the mayor: AUGUSTO AMADO RUIZ, LUIS HORACIO TRASLAVIÑA, RAUL BERMUDEZ ALCANTARA, LUIS ROA MENDOZA and SERVILIO CEPEDA QUIROGA. Raúl Bermúdez was killed during the murder and Luis Roa Mendoza and Augusto Amado Ruiz were wounded.

Links between the killers. The investigations revealed a relationship between BERMUDEZ ALCANTARA, the killer of the mayor, and the other individuals who on August 15 were at the Battalion HQ. Based on the fact that as far back as 1982 and as detailed in the documents, they were all connected with the paramilitary group "MAS". It was further evident that there was a relationship between BERMUDEZ ALCANTARA and AMADO RUIZ, because a paper with the telephone number of the latter's brother was found on the dead killer. In addition, ARNULFO AMADO RUIZ, brother of AUGUSTO AMADO RUIZ, was also found to be linked with Luis Francisco Roa Mendoza.

Links between the killers and Captain Ardila: (1) This relationship is evidenced by the visit made, as recorded in the Guard Register, to the Captain's office in the Second Section of the Ricaurte Battalion, of which he was the commanding officer, by the individuals identified as the killers on August 15. (2) It is doubly incriminating and inexplicable that Captain Ardila, as Chief of Military Intelligence of the Battalion, upon being confronted with

so serious an accusation, did not deploy his investigative agents and other means at his disposal to establish and determine exactly what the said visitors were doing and where they were on the day they came to the Unit, instead of limiting himself, as he did, to simply denying that fact and leaving it to the investigator to prove it. (3) In addition, Captain Ardila's links with the killers were confirmed when there was found in the wallet of BERMUDEZ ALCANTARA, who was killed in the shootout, the license to carry a revolver with the genuine stamp of the Second Section of the Ricaurte Battalion which, as confirmed by statements of his subordinates, remained in his office and was only used by persons duly authorized to do so and in his presence, which indicates that he either apposed said stamp himself or had someone apply it upon his instructions.

Links between the killers and Major Echandía: These links were evidenced by the following: (1) Major ECHANDIA admitted that he knew ROA MENDOZA from past time when he was acting as Military Mayor of Puerto Boyaca. In view of this relationship (2) his statement that ROA MENDOZA came to the Battalion Ricaurte HQ on August 15, 1987 and did not speak with his "friend or acquaintance" is inconsistent, since he knew that he was on the premises. (3) ROA MENDOZA was in the Battalion HQ on the morning of August 15 just hours after he received bullet wounds and he went to his friend Major ECHANDIA who immediately picked him up and took him to the Clínica Santa Teresa. (4) To have him receive surgical treatment, Major ECHANDIA lied by identifying him as a soldier wounded in military action. (5) Afterwards, he again lied to the investigator by telling it that he picked him up after he was injured in a street brawl because he was an old informer of his and that he had compassion on him. (6) Instead of taking the wounded killer to a State hospital, which would have been consistent with the latter's modest means as a fellow of peasant background with no family, he took him to an expensive private clinic. (7) He personally undertook to pay his expenses, writing a personal guarantee check for the purpose. (8) He also involved the Ricaurte Battalion in the payment. (9) Finally, it is incriminating to Major ECHANDIA that, in his capacity as third in command of the Ricaurte Battalion, he did not take steps to verify where ROA MENDOZA, HORACIO TRASLAVIÑA and ISIDRO CARREÑO ESTEVEZ were and what they were doing in the Technical Unit the day before the events, whereby his position was seriously compromised. **This conduct demonstrates that there was indeed an understanding between Major ECHANDIA and ROA MENDOZA that obliged the major to take care of the killer, rather than the alleged reasons of pity, and shows that he was aware of the plan and participated in it from the beginning and also after the murder of GARCES PARRA.**

Other incriminating evidence. The statements of former soldier ORTEGA are considered accurate in that they are confirmed by other statements such as those of JAIME CASTRILLON BLANDON, ALVARO LOPEZ MIRANDA, ERNESTO ACEVEDO MENDOZA and BRUNO VASQUEZ MENDEZ, to the effect that some days before the events ORTEGA was telling them that Captain ARDILA was going to order the killing of the Mayor of Sabana de Torres. Also, the incident at Street 33 and Avenue 18 in the city of Bucaramanga was corroborated, to the effect that Major ECHANDIA and Captain ARDILA tried to force ORTEGA into a "yellow" car (like that of Ardila). Further the fact that the Guard Register who records the entry of persons into the Ricaurte Battalion HQ had spilled a liquid, as if to destroy the evidence, on the page that showed that FRANCISCO MENDOZA, LUIS HORACIO TRASLAVINA and ISIDRO CARRENO ESTEVEZ were there in the Battalion HQ on August 15, which indicates that an attempt to conceal this fact was made by the officers involved. Then there was the matter of Captain Ardila's hatred for and declared enmity against the members of the Unión Patriótica, which was so extreme that his conduct called for attention by his commanding officer.

Classification. The facts having been proven and the guilt in connection therewith of Major ECHANDIA and Captain ARDILA having been demonstrated, it is concluded that the facts can be classified under Title VII, Chapters II and III of the Second Book of the Military Criminal Code under the generic heading of HOMICIDE and BODILY HARM, and that it is the judge's responsibility to determine in a final decision whether those involved were acting as coperpetrators, coparticipants, accomplices or accessories.

Decision. In light of the foregoing, the 9th MILITARY CRIMINAL TRIAL COURT, administering justice in the name of the Republic and by authority of the Law: (1) ORDERS preventive detention of National Army officers Major OSCAR DE JESUS ECHANDIA SANCHEZ and Captain LUIS ORLANDO ARDILA ORJUELA, the personal and military data of both of whom are duly recorded, as accused persons and the persons presumed responsible for the crimes of **homicide** against ALVARO GARCES PARRA, JOHN JAIRO LOAIZA PAVAS and ELIDA ANAYA PAVADUARTE and of bodily harm against LORENZA CASTRO DE SUAREZ and MYRIAM CASTRO DE ALVAREZ; crimes that are classified and for which the penalties are specified in Book II, Title VII, Chapters II and III of the Military Code of Criminal Justice, and in accordance with the reasons set forth in the relevant part hereof; (2) NAMES as location for said detention the Officers Detention Facility of the Fifth Brigade HQ; (3) requests the Army Command to suspend the functions and powers of the officers involved. /s/ Oscar Vicente Pedraza Durán, Military Criminal Trial Judge.

b) THE COURT MARTIAL of the Fifth Brigade of Bucaramanga, which tried Major Echandía and Captain Ardila, in its decision of October 3, 1989, found the two officers not guilty of the murder of the mayor of Sabana de Torres.

The Court Martial considered, among other things, the following: that the Prosecutor refrained from seeking a verdict of guilty because he did not believe there was full proof of the participation of the accused; the considerations of the defense to the effect that both officers had served in a manner that demonstrated their loyalty and nonself-seeking service in the interests of the institution; that the true identity of the dead killer had not been proven; that the weapon used had never appeared; that despite the fact that the killer was covered with blood, there was no stain whatsoever on the license to carry the weapon, which prompted the assumption that the license had been fabricated and placed on the body to incriminate the army officers; that none of the agents of the Attorney General's office who performed the prior investigations deserved credibility; that there was a manufactured setup to incriminate officers of the Colombian Army; that this case had been used by the extreme left to discredit the good name and prestige of the Military and that declaring the officers guilty would be continuing to play the game of the subversive interests; that the entrance of civilians into the facilities of the Ricaurte Battalion on August 15, 1987, could not be held to be proof of a charge against the officers; that the imputations against Captain Ardila did not in fact compromise him and neither did the allegations against Major Echandía since he had performed an act of charity for a wounded man who was an old acquaintance and an Army informant; and that the principle that where there is doubt, the defendant should be given the benefit should be taken into account.

Decision. In virtue of these considerations, the Court Martial unanimously decides as follows: (1) **Major OSCAR DE JESUS ECHANDIA SANCHEZ and Captain LUIS ORLANDO ARDILA ORJUELA are declared not guilty of homicide in respect of the person of ALVARO GARCES PARRA**, by being the organizers of the crime, in accordance with the grounds set forth in the relevant part of this decision. (2) As a result, Major ECHANDIA SANCHEZ (in absentia) and Captain ARDILA ORJUELA, are **acquitted** of the crime of **homicide** of which **ALVARO GARCES PARA** was victim. (3) It orders that all proceedings against Major OSCAR DE JESUS ECHANDIA SANCHEZ (in absentia) and Captain LUIS ORLANDO ARDILA ORJUELA in respect of the crime of **homicide** against the persons of JOHN JAIRO LOAIZA PAVAS, CARLOS RODRIGUEZ GAMBOA and ELIDA ANAYA DUARTE, and in respect of bodily harm to LORENZA CASTRO DE SUAREZ and MYRIAM CASTRO DE ALVAREZ be halted; (4) It **grants** Major ECHANDIA SANCHEZ (in absentia) and Captain ARDILA ORJUELA the

benefit of **provisional liberty**, against posting of a bond of Col\$50,000; (5) If the absent defendant Major ECHANDIA SANCHEZ presents himself and meets the requirements for the granting of provisional liberty set forth in (4) preceding, the warrant issued for his arrest shall be canceled; (6) It orders the **release** of Captain ARDILA ORJUELA once all the requirements set forth in (4) of this decision have been met.

c) THE BOGOTA SUPERIOR MILITARY COURT. In a decision announced on December 18, 1989, this court abstained from considering the judgment submitted for its advisory opinion, thereby leaving the acquittal pronounced by the Bucaramanga Court Martial entirely unmodified.

5) THE COURT OF ADMINISTRATIVE LAW. On February 5, 1992, the **Administrative Court** of Santander sentenced the Colombian State to pay compensation to the members of the families of the victims, under which, conciliation between the parties, the Government was required to pay Col\$30 million to the members of the family of murdered mayor Garcés Parra and Col\$18 million to those of the security guard Carlos Gamboa.

The Court, after considering, among other things, the facts connected with the murder of the mayor of Sabana de Torres as contained in the investigations conducted by the Office of the Attorney General of the Nation (Decisions 20 and 406 of January 18, and November 23, 1989) and of the Military Criminal Trial Court (of February 23, 1989) and those of law contained in the rules regulating the administrative law procedure and others connected with the extracontractual responsibility of the State for acts exceeding their authority on the part of public employees, as occurred in the present case to the extent that the conduct of the public employees concerned represented abuse of their powers and responsibilities, the Administrative Court of Santander, administering justice in the name of the Republic of Colombia and by authority of the law,

HEREBY DECIDES:

That the State, Ministry of Defense, National Army, is administratively responsible for the material harm and pain and suffering caused to his family by the death of Dr. ALVARO GARCÉS PARRA; that the State, Ministry of Defense, National Army, is administratively responsible for the material harm and pain and suffering caused to the family of CARLOS GAMBOA RODRIGUEZ; The Court hereby orders the Colombian State Ministry of Defense, National Army, to pay to the family of Alvaro Garcés the value of 1,000 grams of gold at the price certified by the Banco de la República on the date of this decision; The Court hereby orders the Colombian State, Ministry of Defense, National Army, to pay to the mother of Alvaro Garcés

the value of 1,000 grams of gold at the price certified by the Banco de la República on the date of this decision, as compensation for the pain and suffering caused by the death of her son; The Court hereby orders the State, Ministry of Defense, National Army, to pay as material damages the sum of Col\$6,547,575.31 to the family of Alvaro Garcés, as compensation for the losses caused by loss of income; The Court hereby orders the State, Ministry of Defense, National Army, to pay to the family of Carlos Gamboa the value of 1,000 grams of gold, at the price certified by the Banco de la República on the date of this decision, as compensation for pain and suffering caused by the death of their husband and father; The Court hereby orders the State, Ministry of Defense, National Army in the abstract to pay the material losses caused to the Gamboa family, which shall be settled by incident taking as grounds the bases previously laid down in the part setting out the grounds for this decision.

The judgment specified that if it were not appealed, the superior court should be consulted. In that stage of the proceedings, as a result of negotiations among the parties it was agreed that the State would pay Col\$30 million to the family members of the murdered mayor Garces Parra and Col\$18 million to the kin of the deceased security guard Carlos Gamboa. This formula was accepted and approved by the magistrates of the Administrative Law Court on March 9, 1992, thereby acquiring the effect of res judicata.

9. With respect to these proceedings, the parties have expressed their observations which are summarized in the following:

VI. STATEMENT OF THE GOVERNMENT OF COLOMBIA CONCERNING THE INVESTIGATIONS

Concerning the administrative disciplinary investigation

That administrative disciplinary investigations are not intended to uncover the actual perpetrators or planners of punishable acts but to review the conduct of officials and punish disciplinary shortcomings; their objective is to determine nonperformance of duties by public employees whereas criminal investigations are intended to determine responsibility for crimes. Specifically, the investigation of the conduct of Army Officers Ardila Orjuela and Echandía Sánchez demonstrated that as public officials they failed in the performance of their duties, but from no legal standpoint can the findings of that disciplinary investigation be taken as a basis for a judicial decision; criminal law must not be confused with disciplinary law. Criminal law is designed to maintain social or general order, whereas disciplinary law has the specific purpose of verifying the conduct of public officials in relation to

an established administrative order; the former seeks to investigate punishable facts while the latter oversees discipline in the state agencies, for which it utilizes corrective penalties. That administrative disciplinary cases constantly refer to the rules and proofs in criminal cases, since the legal formalities to be taken into account to secure proofs in them are known, whereas decisions handed down in administrative cases have no legal effect in a criminal case because violation of a disciplinary rule does not imply violation of a Criminal Code rule.

Concerning the Military criminal investigation

That the Court Martial that tried Major Oscar Echandía Sánchez and Captain Luis Orlando Ardila Orjuela acquitted them on the grounds that the proofs submitted did not give absolute certainty as to their presumed masterminding of the crime committed against ALVARO GARCES PARRA, and that a legal handwriting expert's opinion established that the signature on a license authorizing Raúl Bermúdez Alcántara, the killer who murdered ALVARO GARCES PARRA and a member of the gang of criminals known as "Los Grillos", to carry a revolver, was not that of Captain Ardila Orjuela or of Major Echandia Sanchez. Furthermore, expert testimony also declared that the typewriter used to prepare said license was not that of the Ricaurte Battalion's Second Section, nor did it match the other machines of the Unit, which were also checked out for the purpose.

Concerning the administrative law proceedings

That the law has established the administrative law courts in Colombia as: (1) a means for overseeing the State's administrative activity; (2) a means for punishing abuses of authority by the Government or the Executive; (3) an institution to correct abuses by the Government or Executive; and (4) a means by which private individuals harmed by acts, facts or procedures can obtain redress and compensation for abuses by the executive, and that the Council of State, the highest administrative law court, rules on acts, facts and administrative operations of the national authorities, handing down decisions against which there is no appeal, and also hears, second instance appeals, against decisions by the departmental administrative courts.

Concerning the proceedings before the ordinary criminal courts

That the 11th Criminal Trial Court refrained from issuing measures to ensure effectiveness of the judgment against Luis Horacio Traslaviña and Isidro

Carreño Estévez because the minimum legal requirements were not met in the proceedings; That the Office of the Attorney General of the Nation was always kept informed regarding this criminal case in respect of the homicide of ALVARO GARCES PARRA through the Sixth Higher Prosecutor of the City of Bucaramanga; That the Second Higher Prosecutor of Bucaramanga was also commissioned to make a special inspection visit on February 8, 1990, in which he observed the investigative activity of the 11th Criminal Trial Court of Bucaramanga, and found that the proceedings were in accordance with those laid down in our current legal system. That up to the moment of the visit extensive evidence had been gathered, including more than 60 depositions. That prior to March 14, 1990, the Regional Attorney, Dr. Antonio Chaparro Vega, in accordance with the request made by the Office of the Attorney with responsibility for Defense of Human Rights, also made a special visit to observe the same criminal proceedings, and did not find any type of irregularity in the investigation conducted by said 11th Criminal Trial Court, and that the Office of the Attorney General of the Nation had announced that the 11th Criminal Trial Court of Bucaramanga, by writ of October 30, 1990, had reopened the investigation into the homicide of ALVARO GARCES PARRA in order to determine the true facts concerning so execrable a crime.

The Colombian Foreign Ministry, when providing information on the status of the different proceedings under way in respect of the murder of the Mayor of Sabana de Torre, always underscored to the Commission that the domestic remedies provided for in Colombian legislation were continuing in full progress.

VII. STATEMENT OF PETITIONER CONCERNING THE INVESTIGATIONS

Concerning the procedure followed before the ordinary criminal courts

When the court stopped investigating the position of the military men accused in the murder of mayor Garcés Parra the case remained at the level of determination of those responsible and without any known accused, and that the information provided by the Government to the effect that the 11th Criminal Trial Court of Bucaramanga has ordered the reopening of the criminal investigation procedure has no further meaning and is considered a simple formality, "since there is no known accused" and the proceedings are continuing on the basis of determining those responsible. This situation is maintained for 60 days, after which the case is sent to the Judicial Police Technical Corps to be continued by them or else to be archived. The foregoing amounts to simply performing a ritual that will ensure that this

crime remains totally unpunished.

Concerning the proceedings before the military criminal court

That the proceedings conducted by the military criminal justice authorities do not place responsibility on any of the other members of the Army, as had been ordered by the 11th Criminal Trial Circuit Judge of Bucaramanga, neither does it bring forward additional proofs to demonstrate the guilt or innocence of said officers; that the Court Martial which judged Captain ARDILA and (in absentia) Major ECHANDIA, only charged them with "having planned, together with another, to have the actual perpetrators cause the death of ALVARO GARCES PARRA" and not with all the crimes they committed: homicides, injuries, conspiring to commit a crime, abuse of authority, etc.; and that the prosecutor in the said Court Martial, in disregard of the existing evidence that demonstrated the officers' guilt in the crimes committed, refrained from calling for a verdict of guilty because he considered there was not proof of their participation in the acts, and that the judgment of October 3, 1989, by which the members of the Court Martial unanimously returned a verdict of not guilty, and was not appealed by the representative of society.

Concerning the decision of the Administrative Law Court

That when the family of the mayor of Sabana de Torres submitted a claim against the State for compensation for the material damages and pain and suffering caused as a result of the homicide of Dr. Garcés Parra, the State defense counsels limited themselves to requesting as proof that the economic capacity of the family be investigated and remained passive regarding the facts that gave rise to claim. The case record notes that the State defense counsels' response to the claim "are characterized by manifest poverty of legal argument and intellectual reasoning, especially in light of the nature of the case; the persons to whom the defense of the State's interests is entrusted should act in a more resourceful fashion and should not simply limit themselves to fulfilling the bare letter of their assignment" (p. 17 of the text of the Court's decision of February 5, 1992); and that the administrative law case has no impact: (1) on the criminal case before the 11th Military Trial Court; (2) on the military criminal justice proceedings; or (3) on the disciplinary proceedings of the Office of the Attorney General of the Nation.

Finally, the petitioner emphasizes that: (1) the facts reported are proved; (2) that the Government's responsibility is proven; and that (3) the reopening of the case is simply

a formality to allow the crime to remain totally unpunished.

10. During its 84th session in October 1993 the Commission adopted Report 26/93 and sent it to the Government of Colombia for presentation of any observations it might have within three months after the date on which the report was sent.

CONSIDERING:

That from the analysis of the proceedings and decisions cited by the parties the following is apparent:

1. With regard to admissibility

a. That as provided by Article 44 of the American Convention on Human Rights, to which Colombia is a State Party, the Commission is competent to examine the matter of the case since it is a question of violations of rights specified in the Convention, Article 4, concerning the right to life; Article 8, right to a fair trial; Article 25, concerning the right to judicial protection.

b. That the claim meets the formal requirements as to admissibility contained in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.

c. That the present claim is not pending in another international proceeding for settlement and is not a reproduction of an earlier petition already studied by the Commission.

2. With regard to utilization of remedies under domestic law

That among the remedies of domestic law pursued in connection with this case the following can be cited:

1. The Disciplinary Proceedings, conducted by the Office of the Attorney General of the Nation and which gave rise to decisions against the accused: Decision No. 020 of January 19, 1989 which ordered the discharge from the service of the officers responsible for the killing of the mayor of Sabana de Torres and Decision No. 406 of November 28, 1989, upholding and finalizing said decision.

2. The Proceedings before the Military Criminal Justice Court, in their preliminary stage the 109th Military Criminal Trial Court on February 23, 1989, found the two officers involved fully guilty; the Court Martial, acting in first instance, disregarded the evidence against them and on October 3, 1989, and acquitted the accused officers. Upon being referred in second instance to the Bogota Superior Court this acquittal was upheld, which definitively concluded the military justice process.
3. The Proceedings before the Ordinary Criminal Justice System, under which the investigation was to be performed by the 11th Criminal Trial Court of Bucaramanga, which pleaded conflict of jurisdiction and disqualified itself from hearing any charges against the military personnel involved forwarding the case documents to the military justice authorities and retaining under its jurisdiction the investigation of the civilians involved. At the present time there is no known accused of said crime, a situation which by law cannot be maintained for longer than 60 days, after which the case must be sent to the Judicial Police Technical Corps (today Inspector's Office) for archiving. The matter is completely stalled.

That the information provided by the Colombian Government to the effect that "the 11th Criminal Trial Court of Bucaramanga, by writ of October 30, 1990, had reopened the investigation into the homicide of ALVARO GARCES PARRA, in order to determine the true facts concerning so execrable a crime", and the statement that "As your excellency will note, the remedies under domestic law are continuing to be pursued", do not modify the situation considered earlier, since in the case before the 11th Criminal Trial Court of Bucaramanga there is no known accused individual and the case is continuing, and to all appearances will continue for ever in the stage of "determination of responsible parties".

4. The Proceedings before the Administrative Law Court, concluded by decision of February 5, 1992, declaring the State, Ministry of Defense, National Army administratively responsible for the material damages caused to the families of the victims in the events that occurred in Sabana de Torres on August 16, 1987, and ordering the Colombian State, Ministry of Defense, National Army to pay as compensation for the damages caused by the murders and the losses due to loss of income, Col\$30 million to the family of the deceased mayor and Col\$18 million to the family of his security guard Carlos Gamboa, said amounts being fixed by negotiation, whereupon these proceedings were definitively concluded.
3. With regard to exhaustion of remedies of domestic jurisdiction

Despite the description of the way in which the mechanisms of domestic jurisdiction were used and completed, the Colombian Government has stressed that said remedies have not yet been exhausted and are continuing in full swing. On this point, the Commission considers as follows:

- a. The Colombian Government's assertion that the remedies of domestic jurisdiction have still not been exhausted, on the basis of the fact that the Bucaramanga Criminal Court has reopened the investigation into this murder, cannot be taken into consideration because whether or not these remedies have been exhausted this situation cannot be cited as grounds for suspending the processing of this case by the Commission, since in the said judicial proceedings the military personnel involved have been expressly excluded from the investigation and from any possible declaration of guilt and/or punishment; and also because, in the present case, the unwarranted delay that the domestic investigation of the case has suffered is well known, and
 - b. That this situation forms the exception to the rule containing in Article 46.1 on prior exhaustion of the remedies of domestic jurisdiction and renders the second part of said Article 46 applicable, under which such requirement shall not apply when, as in the present case, the domestic legislation of the State concerned does not afford due process of law for the protection of the right allegedly violated or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.
4. With regard to the demand for justice and punishment of the guilty parties
- a. That in the present case it is quite evident that the petitioners have not been able to obtain effective protection from the domestic jurisdiction agencies which, despite the incontrovertible evidence presented to them have allowed the members of the Colombian Army who are responsible for the murder of the Mayor of Sabana de Torres to be acquitted of the crimes committed and have ordered that all proceedings against them be halted, a decision that upon being referred to a higher court was upheld;
 - b. That the conclusions reached by the investigation conducted by the Assistant Attorney General for the Armed Forces and which are contained in Decision No. 20 of January 18, 1989 and in the confirmatory decision No. 406 of November 23 of the same year, unquestionably verify the guilt of Captain Ardila and Major Echandía of the Colombian Army in the multiple murder planned to eliminate the Mayor of Sabana de Torres, during which various other persons were also killed;

- c. That the investigations conducted by the Military Criminal Trial Court of Bucaramanga which concluded with the decision of February 23, 1989, also lead to the conclusion that the responsibility of the officers named was definitely and unquestionably proved both before and after the facts;
- d. That these investigations and their conclusions conflict with the subsequent legal decisions of the Court Martial whose decision of October 3, 1989, notwithstanding all the evidence placed before it, declared the officers questioned not guilty and accordingly acquitted them; this decision, upon being referred to the Bogota Superior Military Court, was upheld and made res judicata by said Superior Court's decision of February 5, 1992, not to consider the decision referred to it;
- e. That the perpetual delaying of a judicial investigation is contrary to timely and prompt administration of justice; and
- f. That in a country where various investigations are conducted simultaneously into one and the same criminal act and where, by law, when the facts constitute a violation of human rights and are attributed to military personnel in the performance of their duties, the judicial investigations have been carried out by the arm of the military concerned, it becomes symptomatic, although explainable, that said jurisdiction will almost always refuse to recognize incriminating evidence accepted as valid by other jurisdictions and will exonerate the military personnel implicated, which obstructs the determination of the truth and punishment of those responsible, as in the present case, thereby constituting a serious shortcoming that directly affects the right to justice of the victims and of their families.

5. With regard to friendly settlement

- a. That the questions forming the grounds for the complaint -- the irrecoverable right to life and the irreversible acquittal against evidence that deprives them for ever of the right to justice -- are not by their nature likely to be resolved by amicable settlement and neither have the parties requested from the Commission the procedure detailed in Article 48.1.f of the Convention and Article 45 of the Regulations of the IACHR; and
- b. That the procedure for amicable settlement not being applicable, the Commission must proceed pursuant to Article 50.1 of the Convention, issuing its opinion and conclusions concerning the matter submitted for its consideration.

6. With regard to the facts

The following are proved:

THE MURDER: That on August 16, 1987, at 3:30 a.m., **ALVARO GARCÉS PARRA**, Mayor of Sabana de Torres, together with **Carlos Gamboa Rodríguez, John Loaiza Pavas and Elida Anaya Duarte**, were murdered by a group of persons included the killer **Raúl Bermúdez Alcántara**, who died when one of the Mayor's security guards shot him;

That PRIOR TO THE MURDER: On August 15, 1987, just hours before the murder of Mayor Garcés Parra, **Luis Medina Tirado, Luis Horacio Translaviña, Luis F. Roa Mendoza and Isidro Carreño Estévez**, members of the paramilitary group "Los Grillos", entered the Ricaurte Battalion's barracks and headed for the offices of the Second Section (S-2), of the Intelligence Service, as shown by the Battalion guard book;

That on that day, and while said visitors were in the military barracks, Major Echandía Sánchez, the third in command of the Ricaurte Battalion, and Captain Ardila Orjuela, Chief of the Battalion's Second Section and of its military intelligence operations, were working in their offices, as they have admitted, although they denied receiving them;

That also on August 15, as evidenced by a license found in the pants of the deceased killer who murdered Mayor Garcés Parra, an official license was granted to **Raúl Bermúdez Alcántara** to carry Smith and Wesson revolver No. 7489, the weapon which is also assumed to have been provided and used for the crime. It is also proved that this license, issued by the office of the S-2 of the Ricaurte Battalion, which was headed by Captain **Luis Orlando Ardila Orjuela**, bore the seal of that office which, according to those who worked with him, always remained on his desk and under this care and could only be used with his authorization and in his presence.

That AFTER THE MURDER: On August 16, 1987, according to testimony corroborated by doctors, nurses and administrative personnel and as evidenced in the registers of the Clínica Santa Teresa of Bucaramanga, at 4:00 a.m., Army Major **Oscar Echandía Sánchez** and Dr. **Linda Jenny de Arteaga** of the Army Medical Corps brought Luis Francisco Roa Mendoza into the clinic. Roa Mendoza had three bullet wounds and was in critical condition. As the investigation conducted by the Judicial Police Technical Corps found, Major Echandía identified the killer Roa Mendoza as a soldier wounded in combat and paid the sum of Col\$654,405 for his expenses, which sum was charged to the Ricaurte Battalion's account.

7. With regard to the responsibility of the Government of Colombia.

- a. That in the course of the present case the participation has been established of officers of the Colombian Army, on active duty, before and after the facts and that this involvement consisted in masterminding the criminal idea of eliminating the mayor of Sabana de Torres; looking for those who would be able to perform the dirty work of the actual murder; doing the planning and coordination work and summoning the killers to no less a place than their own military barracks with the probable purpose of instilling in them the idea that theirs was an official mission and to give them the impression that their security was guaranteed; paying their expenses and making the agreed payments to the killers and, after the crime had been committed resulting in the deaths of the persons listed under (2) hereof, providing them with assistance and concealment;
 - b. That this is conformed by the evidence and depositions included in the investigation reports cited in this report, which name Captain Ardila and Major Echandía as the persons who participated directly and indirectly in these acts; and
 - c. That the acts described constitute a set of serious violations of the basic norms of human rights as embodied in Colombia's domestic laws and also in the Inter-American Convention on Human Rights.
8. With regard to the international responsibility of the State

That the Government of Colombia, upon the international complaint, does not deny the facts; nor the participation in same of the military officers on active duty Major Echandía and Captain Ardila; nor the responsibility of these officers in the material facts of the case;

That the Government of Colombia does not deny, but rather admits, that the facts connected with the murder of the Mayor of Sabana de Torres as investigated by other public agencies have been brought to light domestically and publicly, at least as regards the responsibility of Captain Ardila and Major Echandía of the Colombian Army;

That neither has the Government of Colombia denied that, as the consequence of the elucidation of these facts and of the responsibility of the above-named military officers, the Administrative Law Court has declared the Ministry of Defense and the Colombian National Army responsible for the material damages and pain and suffering caused to his family as a consequence of the murder of the mayor and has ordered payment of compensation for said damages and also for the loss caused by loss of income;

That once again the inefficiency of the Colombian legal system for the administration of justice has been demonstrated, and the Colombian Government has helped to bring

same to light; in this system it is possible--and frequently occurs--that investigations carried out by public agencies other than the Judicial Branch uncover the truth concerning facts that the Judicial Branch ought to have determined, but fails to, either because of inefficiency on the part of that Branch or else because the law specifically removes its judges from investigations concerning State responsibility for human rights violations and turns these investigations over to the military justice system;

That moreover, once the guilty parties have been identified and are known, thanks to investigations conducted by such public entities, the distressing situation arises where the State has to use taxpayer money to pay compensation for crimes or abuses by members of its Armed Forces, who are not only released from any obligation to pay anything back but, because of the impunity granted them, actually in certain cases in which they are questioned, as in the present instance, they enjoy what amounts to a form of pardon or amnesty;

That this situation also gives rise to another irregularity which consists in that, with regard to State responsibility for violation of human rights, the legal truth concerning the facts is that declared by the military criminal justice authorities and not the ordinary courts, because when the ordinary courts discover in the course of a criminal case that a military man is involved who has committed a crime while on active duty, which usually occurs, they have to drop the case and transfer it to the military justice authorities;

That the system of military justice, which has been criticized on various occasions by the Commission, but never corrected, contributes to the low esteem in which the Colombian Judicial Branch is held, for which reason it is appropriate to reiterate the recommendations made to the effect that Colombia bring its legislation with regard to due process into line with the American Convention on Human Rights; and

That the international responsibility of the Colombian State with regard to human rights is not exhausted by just payment of civil compensation, but that the payment of said compensation also carries with it implicit acknowledgment of its failure to carry out its responsibilities in the criminal area, since while the State-Government may not interfere with or change decisions of the Judicial Branch, it does assume responsibility for the acts of said branch in those cases when either deliberately or involuntarily, by commission or omission, it violates the right to justice of persons in that it deprives them of their legitimate right to assistance in ensuring that the murder of a loved one is punished under criminal law.

9. Regarding compliance with the provisions of the Convention

That in processing the present case, all the legal and regulatory procedures laid down in the Convention and in the Regulations of the Inter-American Commission on

Human Rights have been observed, complied with and exhausted;

10. Regarding noncompliance with report 25/93 of October 1993

That the three-month deadline given the Colombian Government has elapsed and it has not complied with the Commission's recommendations in Report No. 25/93 of October 7, 1993, nor has it replied to the communication of October 22, 1993, notifying it of the adoption of that report and sending it a copy thereof.

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

CONCLUDES:

1. That the Government of Colombia has failed to meet its obligation to respect and guarantee Articles 4 (right to life); 8 (right to a fair trial); 25 (right to judicial protection) in connection with Article 1.1 of the American Convention on Human Rights, to which Colombia is a State Party, and I (life) and XVIII (fair trial) of the American Declaration, with respect to the murders of Dr. ALVARO GARCES PARRA, Mayor of Sabana de Torres, of CARLOS GAMBOA RODRIGUEZ and JOHN JAIRO LOAIZA PAVAS, personal security guards, and of ELIDA ANAYA DUARTE, resident of the locality.

2. That the Government of Colombia has not complied with the provisions of Article 2 of the American Convention on Human Rights, by adopting in accordance with its current constitutional and legal procedures, such legislative or other measures as may be necessary for persons to assert their right to obtain justice through punishment of armed forces members on active duty who, in the performance of their duties, commit crimes against the right to life.

3. That the Government of Colombia did not investigate the facts reported nor punish those responsible.

4. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of Colombia did not adopt measures to correct the situation denounced within the time period.