

REPORT Nº 33/92
COLOMBIA
CASE 10.581
September 25, 1992 (*)

BACKGROUND:

1. On July 6, 1990, the Inter-American Commission on Human Rights received a petition, which the petitioner added to on September 26 of that year, as follows:

1. BRIEF ACCOUNT OF THE EVENTS:

- 1.1 On July 4, 1990, at approximately 10 p.m., doctor Alirio de Jesús Pedraza Becerra was arbitrarily detained by a group of eight heavily armed men in civilian dress, as Dr. Pedraza was leaving the San Pablo bakery shop in the La Campiña shopping center, at the intersection of Calle 145 and Carretera 92 near his residence in the Suba sector, of northwestern Bogotá.
- 1.2 The abductors had arrived earlier in three vehicles: a dark Mazda, a white Chevrolet trooper and a third vehicle of unknown description. The three vehicles parked outside the bakery shop, and their occupants assaulted and beat Dr. Pedraza as he was leaving the bakery shop, and then forced him into the Mazda.
- 1.3 These events were witnessed by two policemen who were in the vicinity when the events transpired. Two of Alirio's abductors identified themselves to these policemen as members of a State security agency, which is why the policemen did nothing as the abduction occurred.
- 1.4 Doctor Alirio de Jesús Pedraza Becerra, 40, had for more than eight years been a member of the Political Prisoners Solidarity Committee. He had served as the attorney in several cases against the Colombian State wherein various members of the armed forces were convicted of human rights violations, specifically the right to life. Moreover, he served as the attorney for 42 union members who had been arrested and tortured by members of the National Army between March 1 and March 7, 1990.

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

- 1.5 Prior to his disappearance, Dr. Pedraza had received death threats from a paramilitary group operating in the Department of Boyacá, of which Alirio Pedraza was a native. On August 21, 1989, his mother's home had been searched by members of the Tarquí Battalion, from Sogamoso (Boyacá), in what Alirio described at the

time as "political reprisals for my professional activities."

- 1.6 Since his detention-disappearance, Alirio de Jesús Pedraza Becerra has not returned home, where his wife Virginia Vargas and his little son Oscar Alberto await him.

2. EXHAUSTION OF THE REMEDIES UNDER DOMESTIC LAW

The wife of the disappeared, Mrs. Virginia Vargas Pirabán, filed a petition of habeas corpus with the Twentieth Superior Court of Bogotá. This petition, as the Inter-American Court of Human Rights properly pointed out in its judgment on the disappearance of Saúl Godínez, is the "normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty." Therefore, since the remedies under domestic law have been exhausted in the instance case, we are requesting that the Commission declare it so and process this petition accordingly.

Allow us to note, nonetheless, that since the petition of habeas corpus has not produced any result thus far in terms of locating the whereabouts of Dr. Pedraza, it need not have been filed; since the mechanism provided under domestic law was ineffective, this would be a case of the kind provided for under Article 46.2 of the American Convention.

3. VIOLATION OF HUMAN RIGHTS:

We contend that Colombia has violated the Pact of San José, which is binding upon it, inasmuch as the crime against humanity committed is a violation of the right to life upheld in Article 4 of the American Convention, the right to humane treatment upheld in Article 5, the right to personal liberty upheld in Article 7 and the right to a fair trial upheld in Article 8 of the Convention.

4. PETITION:

In accordance with Article 34 of the Regulations of the Inter-American Commission on Human Rights, we are requesting that the processing of this matter be initiated so that it may be examined by the Commission in due course.

2. Having received a copy of the complaint, on February 7, 1991, the Government of Colombia sent the Commission the following reply, which was then forwarded to the petitioners on February 12 of that year:

On behalf of the Government of Colombia, I have the honor to address Your Excellency with reference to your note of January 15, 1991, concerning case 10,581, relative to Mr. Alirio de Jesús Pedraza Becerra.

The National Bureau of Criminal Investigation reported that the 35th Ambulatory Criminal Examining Court of Bogotá is hearing the case and thus far has taken a number of steps, such as receiving testimony, making special visits to garrisons and military posts, all in an effort to ascertain the whereabouts of Mr. Alirio de Jesús Pedraza Becerra.

The Office of the Attorney General of the Nation, through the Special Office for the Public Ministry, designated a special agent to the 35th Criminal Examining Court, whose mission was to monitor this process constantly.

The National Director of Criminal Investigation, Dr. Carlos Eduardo Mejía, ordered the National Deputy Director, Dr. Víctor Navarro, to direct and keep abreast of the criminal investigation.

On October 2, 1990, the Examining Judge in question ordered that the preliminary proceedings be sent to the Technical Corps of the Court Police, a specialized investigative unit that is continuing the investigation.

Moreover, the Office of Special Investigations of the Office of the Attorney General of the Nation, in furtherance of the purposes for which it was established, has become a new investigative tool that acts swiftly to investigate complaints of violations of the basic civil rights of individuals under the jurisdiction of the Colombian State, reported that it is pursuing an investigation into the alleged disappearance of Mr. Pedraza Becerra. It further reported that it has taken numerous steps, one of which is to send staff to all those places where Dr. Pedraza is said to have been seen. Investigators from that unit have also been present for a number of exhumations and have been sent out on field missions. During some of those missions, members of the Political Prisoners Solidarity Committee, a non-government agency, have been present.

Dr. Pablo Elías González, Chief of the Office of Special

Investigations, informed this Ministry that statements were taken from all of the policemen working in and around the scene of the events; thus far, however, there are no clues as to the identity of the authors of the alleged disappearance of Mr. Alirio Pedraza.

The Chief of the Office of Special Investigations also reported that his office is continuing to make every effort to find Mr. Pedraza, and to discover and punish the authors of this alleged disappearance.

Furthermore, the Office of the Presidential Advisor for Defense of Human Rights has been kept abreast of all of the investigations and has published announcements on television and radio, requesting the cooperation of the public in the form of information on the whereabouts of Dr. Pedraza.

Nevertheless, thus far there is no evidence to indicate that State agents participated in the commission of the alleged disappearance of Dr. Alirio Pedraza.

In keeping with its obligation to investigate, effectively and seriously, all human rights abuses, the Colombian State has devised and established special rules, which in turn have spawned new specialized agencies such as the Office of Special Investigations of the Office of the Attorney General, whose mission is to contend with the present crisis, without ever overstepping the boundaries established by the Constitution and the law.

Colombia is confident that the measures that are set in motion day after day will help counteract any violation of the fundamental rights of persons living within its territory.

I would like to reiterate the national Government's commitment to report on developments in the investigations being conducted by the Office of the Attorney General and by the Technical Corps of the Judicial Police.

As Your Excellency can appreciate, the remedies under domestic law are fully underway.

3. On February 12, 1991, the Government of Colombia sent the Commission the following additional information, which was forwarded to the petitioners on February 19:

On behalf of the Government of Colombia, I have the honor to address Your Excellency to report developments in the investigation into case 10.581, concerning Mr. Alirio de Jesús Pedraza Becerra.

The National Bureau of Criminal Investigation reported that through a memorandum dated February 11 of this year, the attorney in charge of evaluating the case file received from the 35th Criminal

Examining Court had, through a decision dated February 1, 1991, ordered that the investigation continue, calling for seven pieces of evidence.

In that same decision of February 1, 1991, the case was sent to the Office of the Technical Corps of the Criminal Investigation Judicial Police so that the seven pieces of evidence might be taken.

Moreover, the Deputy Director of the Technical Corps of Judicial Police of the Department of Cundinamarca was asked to appoint two investigative attorneys to arrange for the seven pieces of evidence to be taken.

As Your Excellency can appreciate, both from our note of February 7 and from this note as well, the Office of the Attorney General of the Nation and the National Bureau of Criminal Investigation are continuing to investigate the alleged disappearance of Dr. Pedraza.

The Colombian State has set in motion all of the remedies under domestic law, in order to clarify the facts and punish those allegedly responsible for them.

I would like to remind Your Excellency of the National Government's pledge to report developments in the proceedings underway.

4. On August 15, 1991, the Colombian Government sent still more information on developments in the investigation into the murder of Alirio Pedraza, in response to a new request for information sent by the Commission on July 10 of that year:

In connection with case No. 10,581, concerning Mr. Alirio de Jesús Pedraza Becerra, the Preliminary Investigation Unit of Santa Fé de Bogotá reported that it had ordered the taking of evidence, which is done by agents attached to the Investigating Unit of the Technical Corps of the Judiciary Police.

On February 21, 1991, the designated agents submitted the report on their findings and the evaluation of those findings, but it is still impossible to identify the authors of the alleged forced disappearance of Mr. Pedraza Becerra, or his whereabouts.

The National Human Rights Unit has requested special assistance from the Office of the Deputy Director of the Technical Corps of Judicial Police, in order to step up the investigation.

Thus, the Colombian Government, in furtherance of its legal duty to investigate events that violate the fundamental rights of Colombian residents, is using every means possible to discover evidence, in the hope of clarifying the circumstances under which Mr. Alirio de Jesús Pedraza Becerra was deprived of his freedom and presumably

disappeared.

5. On September 3, 1991, the petitioner forwarded the following communication:

I. PROOF OF THE FACTS:

It will be recalled that on July 4, 1990, at around 10 p.m., at the La Campiña shopping center located in the Suba neighborhood of the city of Bogotá, Alirio de Jesús Pedraza Becerra, an attorney and defender of human rights, was intercepted by a number of armed men traveling in three vehicles. They apprehended him in a violent and arbitrary way, and forced him into one of their vehicles.

In response to the assault, Mr. Pedraza began to yell his name, asking help from all those present. There were two policemen on duty at the shopping center at that time; the abductors identified themselves as members of a State security agency; the policemen did not prevent Mr. Pedraza from being beaten and abducted and did not ask why he was being taken, even though they could have checked the facts using the portable radio they were carrying.

Mr. Víctor Hugo Martínez Jáuregui, a guard at that shopping center, was a witness to the entire incident. He gave the following testimony in the Office of Special Investigations of the Office of the Attorney General of the Nation on July 11, 1990:

STATEMENT BY AN EYEWITNESS

What happened happened fifteen minutes after a bomb exploded in downtown Bogotá; I heard about it on a radio that was playing in the pharmacy; two cars came up, one a dark Mazda and the other a Trooper with a white cab, and another car that parked near the exit from the shopping center's parking lot. The men in the Mazda got out, and the light of the Mazda stayed on; the two who came in the Trooper also got out and the driver of the Trooper went into the bakery. I was in front of the Trooper, which was parked outside the bakery; when the man inside got out, they left the doors open. It was then that I heard the noise; I immediately started walking in the direction of the noise, and that was when I saw a man in a yellow jacket; they had him pinned up against the wall which, I believe, is the back of Noah's Ark, a pet shop. There were four people against him and they were using dirty words. I heard them tell the man in the yellow jacket that this was a search, to get up against the wall; I went toward him to help him, because I thought they were robbing him and I got as far as the shoe store, there by Noah's Ark. At that point I was about to take out my revolver, but the driver of the Trooper told me that they were the judicial Police and not to do anything. Then he took out a black card and showed me. It read it said POLICIA JUDICIAL, and it had the flag on it. Let the record show that the individual making the statement then makes a drawing of the identification card shown to him by

the Judicial Police

He continues: The one with the moustache stayed with me for another five minutes; he was afraid and was looking all around. At that point, he called out to his friend and said "stay here with him," and that was when the little black guy was with me; the order was given like a command; his voice was heavy. The young black boy came to me immediately, until finally they took the man in the yellow jacket away and put him in the Mazda. That was when he started to scream that he was, I don't know. The one with the curly hair slammed the Mazda door shut and started the car immediately. He told the two policemen who were standing by the telephone booth "it's okay, nothing happened, they were with the Judicial Police"

QUESTION: Please indicate whether any member of the NATIONAL POLICE was present as these events transpired.

ANSWER: Yes, they were; there were two policemen in uniform, with boots and hats with green visers; one of them had a radio that was bigger than the one used in the Office of the Attorney General (Let the record show that the individual making the statement saw it when it was put before him).

He continues with his statement: The radio that I saw was longer; they were tall young men; they had revolvers and they were aware of everything that was happening, like the couple I mentioned earlier and the policemen whom the abductors told to relax, that nothing had happened, that they were from the Judicial Police. All three cars started and the Trooper headed out by way of Telecom, in other words against the traffic.

QUESTION: Please say where the two policemen were located and how they reacted to the incident.

ANSWER: The policemen were there, near the long distance telephones; all they did was watch what was happening at the shopping center; but they did not take any action. They came from the direction of the pool rooms, on the avenue, in other words from the south; as they were passing by they stopped to look at what was going on, and they stayed there watching until the cars left. I don't know where they went from there, because I went into the bakery shop to speak with the owner.

We hope that the Colombian Government has sent you the full text of the statement made by Mr. Martínez Jáuregui, the guard; in all events, we are sending it to the Commission today, under separate cover.

This statement, taken just seven days after the disappearance occurred, is highly credible inasmuch as it is spontaneous and its author has no reason to want to hurt anyone who may be involved in these events.

II. THE RESPONSIBILITY OF THE COLOMBIAN STATE

A number of elements constitute convincing evidence that the forced disappearance of Alirio de Jesús Pedraza was the work of agents of the State.

On the one hand, according to the statement made by Mrs. Virginia Vargas Pirabán, wife of Mr. Pedraza, which is on record with the Commission, he had been the target of harassment and his life and the lives of the members of his family had been threatened because at the time of his disappearance, the attorney Pedraza was representing a number of people in the city of Cali (Valle) who had been tortured; the investigations conducted had shown that several members of the national army were implicated in those crimes of against humanity.

Mr. Pedraza had been the target of constant persecution on the part of military and State police agencies, as his wife stated in the aforementioned declaration. Everything points to the fact that Alirio de Jesús Pedraza's commitment to defending human rights and his progressive position vis-a-vis the serious crisis that Colombian society has experienced and is still experiencing, was enough to put his life and personal safety in jeopardy, as had happened with so many other human rights defenders in the past (such as Dr. Héctor Abad Gómez, Martín Calderón Jurado, Valentín Basto Calderón, among many others; some of these are cases the Commission is well aware of).

The Judge of the 20th Superior Court of Bogotá, in processing the petition of Habeas Corpus, found that the First Army Brigade had issued an arrest warrant against Mr. Pedraza, an arrest warrant that is still in effect; this is very compromising for the State, since it is both odd and illegal for a warrant of that nature to be issued against a civilian, since on March 5, 1987, the Supreme Court declared the state of siege that gave the military jurisdiction over civilians to be unconstitutional.

As if that were not enough, the commandant of the police station in the area where the incident occurred refused to reveal the identity of the two policemen who were on duty at the shopping center that night. The other policemen attached to that station also refused when they were called upon to make depositions in the Office of Special Investigations of the Office of the Attorney General of the Nation. This was a clear case of gross omission calculated to prevent justice from being done. As a result those responsible have not been identified.

It is incomprehensible that thus far Colombia has been unable to identify the two policemen who were on duty in the area of Dr. Pedraza's apartment on July 4, 1990. The fact that the Colombian Government has been unable to establish who those policemen were and that the Office of the Director General of National Police has been unable to come up with any type of results in this regard, after more than a year since the disappearance, grievously compromises the responsibility of the Colombian State, both because of its inability to guarantee the rights of individuals and because the will to punish those responsible and to

redress the violations committed against the victims is lacking.

III. EXHAUSTION OF REMEDIES UNDER DOMESTIC LAW

Three actions and proceedings have been conducted in connection with this case:

- A. Habeas Corpus. On September 20, 1990, Mrs. Virginia Vargas filed a petition of habeas corpus with the judge of the 20th Superior Court of Bogotá, who ordered that the petition be processed and sent various communications to administrative and military authorities and to State police agencies to obtain information on the whereabouts of Mr. Pedraza. Having received replies stating that there was no information available on the whereabouts of Pedraza Becerra, the judge of the 20th Superior Court of Bogotá decided, in a ruling of October 22, 1990, to refrain from issuing any decision on the merits of this case, thereby concluding the proceedings thereon.

In accordance with the provisions of Article 46.1 of the American Convention on Human Rights, for the Commission to admit a petition, the remedies under domestic law must first be exhausted; this is precisely what happened in the instant case, since the petition of habeas corpus was filed, processed and decided and, as the Inter-American Court of Human Rights stated when it ruled on the Godínez Cruz case: "... habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty." (Paragraph 68).

B. Measures taken by the Office of the Attorney General of the Nation. The measures being taken by the Office of Special Investigations of the Office of the Attorney General of the Nation have not produced any positive results, even though more than a year has passed without news of the whereabouts of Mr. Alirio Pedraza.

It should be noted here that the policemen who were derelict in their duty when they allowed Mr. Pedraza to be beaten and seized in the manner described above, in an episode that ultimately turned out to be a crime against humanity, as forced disappearance is classified, have never even been sanctioned.

This internal disciplinary procedure cannot be construed as one of the remedies that, by their nature, must be exhausted before turning to the Inter-American Commission, since it is simply an internal control mechanism used by the State to monitor and sanction civil servants when, by either action or omission, they violate internal rules.

C. Criminal Proceedings. The judge of the 35th Criminal Examining Court of Bogotá conducted some preliminary criminal proceedings, but under no circumstances can those proceedings be considered a criminal proceeding per se, but rather measures that are part of a sixty-day inquiry to find those responsible; after those sixty days the judge conducting these measures must refer the proceedings to the Unit of the Technical Corps of the Judicial Police so that it may continue inquiries into the case (Article 346 of the Code of Criminal Procedure).

For this reason, on October 8, 1990, the judge of the 35th Criminal Examining Court sent the proceedings to the Technical Corps of the Judicial Police, where they are at the present time; thus far, no measure has been taken that has contributed significantly to the investigation's progress.

To illustrate how this case is going, we opted to send the Commission a descriptive narration of the various measures taken by the Colombian State in connection with this forced disappearance, though this is not to imply that the latter, too, must be exhausted which, as said before, are not remedies under domestic law that have to be exhausted before the Inter-American Commission on Human Rights can admit a case of forced disappearance, as happened with Dr. Alirio de Jesús Pedraza Becerra.

IV. PETITION

For all these reasons, we would respectfully request that the Commission adopt a resolution declaring the Colombian State responsible for the forced disappearance of Mr. Alirio de Jesús Pedraza Becerra inasmuch as his right to life, upheld in Article 4 of the American Convention, his right to humane treatment, upheld in Article 5, his right to personal liberty, upheld in Article 7 and his right to a fair trial, upheld in Article 8 of the Convention, have been violated.

6. At its 80^o session the Commission adopted Report N^o 33/91, 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 inasmuch as it involves violations of the rights stipulated in the American Convention on Human Rights, Article 4, concerning the right to life, Article 7, the right to personal liberty, 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 contained

in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights;

c. In the instant case it is more than obvious that the petitioners have been unable to secure effective protection from the domestic agencies having jurisdiction, which in spite of the irrefutable evidence placed at their disposal have failed to formally charge the police officers, either directly or indirectly responsible, so that whether or not the remedies under domestic law have been exhausted, they cannot be invoked on behalf of the Government of Colombia to suspend the processing of this case with this Commission, in view of the unjustified delay in the internal investigation of this case; moreover, the fact that the proceedings have been with the Technical Corp of the Judicial Police since October 1990 forces one to conclude that the investigation, in accordance with the provisions of Article 347, 347 bis and 348 of the Colombian 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 is not a duplication of an earlier petition already examined by the Commission.

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

a. The investigations that the Colombian Government authorities have conducted through the Office of the Attorney General of the Nation, the Office of the Special Prosecutor for the Public Ministry, the National Bureau of Criminal Investigation and the Office of the Chief of the DAS, have compiled information, such as the information that appears in this report, that is more than sufficient to charge members of the Colombian police forces as the responsible parties in these events.

3. On other aspects related to the processing of this case:

a. The facts prompting the petition are not such that they can be resolved through recourse to the friendly settlement procedure provided for in Article 48.1.f of the Convention and Article 45 of the Regulations of the Commission, a procedure not requested by either of the parties;

b. If the friendly settlement procedure does not apply, the Commission has no other alternative but to abide by the provisions of Article 50.1 of the Convention, and draw up its report and findings on the matter submitted to it for consideration;

c. In prosecuting the instant case all legal and regulatory procedures established in the Convention and in the Commission's regulations have been exhausted.

4. Other considerations:

a. In the course of the instant case, it has been established--and the Colombian Government has not denied it--that agents of the Colombian police took part in the abduction and subsequent disappearance of Alirio Pedraza Becerra;

b. The abduction and subsequent disappearance of Mr. Alirio Pedraza is a

heinous crime;

c. In Resolution 666 (XIII-0/83) and Resolution 742 (XIV-0/84) the General Assembly of the Organization of American States declared that "forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity",

d. That the Government of Colombia requested reconsideration of the Commission's Report N° 33/91 on January 16, 1992, during the period provided for;

e. 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.

f. 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 Colombian Government has failed to comply with its obligation to respect and guarantee Articles 4 (the right to life), 5 (the right to humane treatment), 7 (the right to personal liberty) 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 to the abduction and subsequent disappearance of Mr. Alirio de Jesús Pedraza Becerra.

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

3. Recommends to the Government of Colombia that it continue and enlarge the investigation into the events denounced.

4. Requests the Colombian Government to guarantee the safety of and grant any necessary protection to the eyewitnesses to the events who, risking their own lives, have provided their invaluable and courageous cooperation in an effort to shed light on the events.

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° 33/91.