

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF VÉLEZ RESTREPO AND FAMILY v. COLOMBIA
OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT
JUDGMENT OF SEPTEMBER 3, 2012
(Preliminary objection, merits, reparations and costs)

The instant case refers to the attack suffered by the journalist Luis Gonzalo Vélez Restrepo on August 29, 1996 by members of the Colombian National Army while he was filming a protest against the government policy of fumigation of coca plantations in Caquetá department, Colombia, as well as the failure to conduct an effective investigation into this attack. Following the attack, Mr. Vélez Restrepo and his family were subject to threats and harassment, and there was an attempt to abduct him. These facts, in addition to the lack of timely prevention and protection measures, caused the exile of Mr. Vélez Restrepo, his wife Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

The Republic of Colombia (hereinafter “the State” or “Colombia”) partially acknowledged its international responsibility for the attack suffered by Mr. Vélez Restrepo “as a consequence of the action of the members of the National Army [...] on August 29, 1996” and, “[p]artially, for the violation of the rights to a fair trial and judicial protection.”

On September 3, 2012 the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) issued the Judgment, in which it rejected the preliminary objection filed by the State, accepted the referred partial acknowledgment of responsibility, and declared, unanimously, that the State is internationally responsible for the violation of the right to personal integrity, freedom of movement and residence, the right to a fair trial and judicial protection enshrined in Articles 5(1), 22(1), 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles and their children Mateo and Juliana Vélez Román. In addition, the Court unanimously declared that the State violated the right to freedom of thought and expression enshrined in Article 13 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Luis Gonzalo Vélez Restrepo. The Court also decided that the State is internationally responsible for the violation of the rights of the family, contemplated in Article 17(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles and their children Mateo and Juliana Vélez Román, as well as for the violation of the rights of the child, recognized by Article 19 of the American Convention, to the detriment of Mateo and Juliana Vélez Román.

I. Preliminary objection

The State filed the preliminary objection of “lack of jurisdiction of the [...] Court to examine and admit facts or claims included within the factual background of the Merits Report presented by the Commission when submitting the case.” The State claimed that the Inter-American Commission had declared as proven some facts “due to the inadequate assessment of the [...] documents provided as evidence of their existence and circumstances” and asked to the Court to “declare that it did not have the jurisdiction to hear those facts erroneously determined by the Commission.”

The Court indicated that “it is not limited by the evidence assessment and qualification of the facts made by the Commission in the exercise of its powers,” but that it performs its own

determination of the facts of the case. Similarly, the Court indicated that the State has procedural opportunities to exercise the right to defend itself and challenge and dismiss the facts submitted for consideration of the Court. The Court deemed that it was not necessary to rule in a preliminary manner on the factual background determined by the Commission in the Report on Merits, given that said analysis corresponds to the Merits stage of the case; consequently, it rejected the preliminary objection filed by the State.

II. Merits

A. Summary of the facts of the case

In 1996 Mr. Luis Gonzalo Vélez Restrepo, also known as "Richard," worked as a cameraman for the national news program, "*Colombia 12:30*," with offices in Bogota, the city in which he lived with his spouse Aracelly Román Amariles and their children Mateo and Juliana Vélez Román, who were approximately four and a half years old, and one and a half years old, respectively. On August 29, 1996 Mr. Vélez Restrepo was in the municipality of Morelia, department of Caquetá, covering the events of one of the protest marches against the Government's policy of fumigating coca crops.

On August 29, 1996 a confrontation took place between the "marchers" and the soldiers on and around the bridge over the Bodoquero River. Mr. Vélez Restrepo was filming the events and he recorded, *inter alia*, when members of the Army beat a defenseless protester. According to Mr. Vélez Restrepo, when several soldiers realized that he was filming they attacked him. The soldiers' attack destroyed the camera but not the videotape, which allowed the recording to be massively disseminated by the media the same day. This recording shows how several men in military uniforms physically attacked Mr. Vélez Restrepo and screamed at him phrases such as "take out [...] that tape."

Mr. Vélez Restrepo was taken that day to a hospital in the city of Florencia, Caquetá. That same day he was transferred to a Clinic in Bogotá, where he was hospitalized until the next day. He had a fifteen-day disability during which he remained at home. On August 31, 1996 a preliminary investigation was initiated before the criminal military jurisdiction for the offense of personal injuries.

In mid-September 1996 Mr. Vélez Restrepo began receiving threats and being harassed, including death threats, and these threats even referred to his son. Unidentified persons also showed up at his house, claiming to be from the Attorney General's Office, and asked the wife of Mr. Vélez Restrepo about his schedule and activities. Mr. Vélez Restrepo and his wife decided to move, and although the threats at the house ceased he continued to receive threatening calls at his workplace. At the beginning of October 1996 a criminal investigation was opened for the offense of threats.

Between February and August 1997 Mr. Vélez Restrepo and his family received no threats; consequently they returned to the house where they had lived previously. On August 27, 1997 Mr. Vélez Restrepo testified before the Prosecutor in charge of the investigation regarding the threats. After this, Mr. Vélez Restrepo and his family once again began receiving telephone calls with death threats and a new visit by persons who, without any ID, claimed to be employees of the Attorney General's Office.

On October 5, 1997, Mr. Vélez received a written death threat, and the following day there was an attempt to kidnap him, in which they tried to put him in the backseat of a vehicle. In the struggle, Mr. Vélez managed to escape and run to his house. This fact was reported to the State authorities, and that same day a meeting was held with the authorities of the Ministry of the Interior and the Presidential Human Rights Council, during which he was offered several security measures, *inter alia*, including relocating in another part of the country. That same day Mr. Vélez Restrepo expressed his intention to leave the country, and three days later he left Colombia for the United States of America. Mr. Vélez Restrepo filed requests for asylum with the competent authorities of said country for himself and his wife and children. On August 14, 1998 he was notified that the asylum was granted for his wife and kids, who during that time lived in Medellín

with the help of their relatives. After almost one year the Vélez Román family reunited in United States in September 1998, where they currently reside.

Regarding the facts that occurred on August 29, 1996, disciplinary proceedings were conducted within the Armed Forces in which two soldiers were punished with a "severe reprimand," but the State did not submit the final decisions to the Court given that "they were not found." The Attorney General's Office led the disciplinary investigation, which ended in the closing of the preliminary inquiries given that the Commander of Brigade XII "did not commit any misconduct" and ordered copies to be certified so that an investigation could be conducted within the National Army on the possible responsibility of soldiers in regard of the facts. Similarly, an investigation was initiated in the criminal military jurisdiction for the offense of personal injuries, but the file was lost. The State only provided to the Court the final decision of the 122nd Military Criminal Investigations Court in which it abstained from opening a formal investigation.

With regard to the threats and harassments after August 29, 1996, a disciplinary investigation was carried out by the Attorney General's Office. On May 3, 2002 the Oversight Bureau of the Attorney General's Office ordered the final closing of the investigation due to the lack of clarification on the participation of employees of the Attorney General's Office in said facts. Similarly, on August 27, 2006 the Bogota Second District Attorney's Office ordered the final closing of the procedure against the sergeant allegedly involved in the facts. In October 1996 a criminal investigation was opened in the regular jurisdiction for the offense of threats, but the 243rd Bogota Sectional Prosecutor's Office issued a decision concluding the inequity based on that the facts "had already been denounced in civil and criminal complaints before the criminal military justice" by Mr. Vélez Restrepo. Subsequently, through an official communication dated August 23, 2007 by the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs, the 253rd Bogota Sectional Prosecutors' Office assumed the investigation for the crime of threats and on January 25, 2010 it decided to "[a]bstain from opening preliminary proceedings" given that "the statute of limitations had taken effect."

With regard to the attempted kidnapping that occurred in October 1997, in September 2009 the 253rd Bogotá Sectional Prosecutor's Office assumed the investigation of the case and ordered the implementation of several measures. On April 26, 2012 this Prosecutor's Office decided to abstain from opening the preliminary investigation, based on that Mr. Vélez Restrepo had not provided information "on the facts which become simply a possibility."

B. Conclusions and determinations of the Court regarding the attack of August 29, 1996 in relation to the obligation to respect and guarantee the rights to personal integrity and freedom of thought and expression

The Court, taking into account that Colombia accepted part of the facts submitted to its jurisdiction and that it partially acknowledged the international responsibility for the violation of Article 5(1) of the American Convention, as well as the evidence on file, concluded that Colombia was responsible for the attack committed against Mr. Vélez Restrepo on August 29, 1996 by members of the Army, which constituted a violation of the obligation to respect the right to personal integrity of Mr. Vélez Restrepo, Mrs. Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

With regard to the right to freedom of thought and expression enshrined in Article 13 of the Convention, the State recognized that it violated said right to the detriment of Mr. Vélez Restrepo, "because the attacks that occurred on August 29, 1996, interrupted the victim's work as a journalist, thus violating his right to seek information." The Court called to mind that the freedom of thought and expression has wide-ranging content that includes the right to seek, receive and to spread ideas and information of all kinds, as well as to receive and to obtain the information and ideas disseminated by others. It also called to mind that freedom of expression has both an individual and a social dimension, both of which are equally important.

The Court highlighted that the attack against Mr. Vélez Restrepo occurred while he was performing his journalistic work as a cameraman for a national news program and that the attack was intended to prevent him from continuing to record the incidents that were taking

place and to disseminate those that he had already recorded. The Court indicated that although the images recorded by Mr. Vélez Restrepo were ultimately disseminated this was because in spite of the beating by the soldiers he did not let go of the video camera and the tape was not damaged.

The Court highlighted that the information being taped by Mr. Vélez Restrepo was of public interest, insofar as it dealt with images of soldiers who in the midst of activities to control a demonstration attacked defenseless individuals, thus the dissemination of this information allowed the recipients to confirm and control due compliance with the functions of the Public Forces, as well as to consider whether their use of force was adequate.

Finally, the Court found it reasonable to conclude that the attack perpetrated by soldiers against Mr. Vélez Restrepo while he was covering a public demonstration, and its widespread dissemination in the Colombian media, had a negative impact on other journalists who had to cover events of this type, who could fear suffering similar acts of violence. In addition, the Court indicated that by having prevented Mr. Vélez Restrepo from continuing to record the events of August 29, 1996, this affected the possibility that this information would reach the potential recipients.

Consequently, the Court concluded that the attacks of August 29, 1996 constituted a violation by the State of Colombia of the obligation to respect the right to freedom of thought and expression of Mr. Vélez Restrepo, enshrined in Article 13 of the Convention in relation to Article 1(1) thereof.

C. Conclusions and determinations of the Court regarding the facts of threats, harassment and attempted kidnapping occurred after August 29, 1996

Regarding the obligation to respect the right to personal integrity

The Court presented some additional considerations to explain the assessments made when establishing the proven facts regarding that after August 29, 1996, Mr. Vélez Restrepo and his family were subject to threats and intimidations, as well suffering a kidnapping attempt on October 6, 1997. Subsequently the Court determined that Colombia is responsible for those facts and referred to the evidence that allowed it to confirm the relationship between the threats, harassment and attempted kidnap and the actions undertaken by Mr. Vélez Restrepo seeking the prosecution and punishment of the soldiers responsible for the attack of August 29, 1996.

Based on the foregoing and taking into account the testimonies of Mr. Vélez Restrepo and Mrs. Román Amariles, as well as the expert opinion of the psychiatrist provided to the Court, it concluded that the threats, harassment and attempted deprivation of liberty caused fear and constant tension and "overwhelming anxiety" that was detrimental to their mental integrity. The Court concluded that the State violated the right to personal integrity recognized by Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Mrs. Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

Alleged violation of the right to life of Mr. Vélez Restrepo

Regarding the claims by the victims' representative on the violation of the right to life of Mr. Vélez Restrepo, the Court deemed that the evidence in this case does not confirm exceptional circumstances such as having survived an attack in which murder was attempted or a situation that represents grave risk to his life. Consequently, it concluded that there was no violation of Articles 4(1) and 1(1) of the American Convention.

In relation to the obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, his wife and children through the investigation and the adoption of measures of protection

The Court considered that in this case the failure to conduct a serious investigation into the threats and harassments entailed a violation of the obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, his wife and children. This in turn constituted a violation of the duty of prevention, insofar as the investigation could have prevented the continuation and escalation of the threats, which reached the point of attempted kidnapping of Mr. Vélez Restrepo, at which point he had to leave the country to protect his life and integrity and that of his family. Similarly, the Court found that the State failed to comply with its duty to adopt special measures of prevention and protection of Mr. Vélez Restrepo and his family prior to the attempted kidnapping of October 6, 1997. The Court considered that the context of risk for journalists in Colombia should have been taken into account by the State authorities to diligently assess the need for timely measures of protection. In addition, the specific situation of Mr. Vélez Restrepo should have been taken into account, as he sought and disseminated information of public interest, was attacked by soldiers and was subsequently subject to threats and harassments. The Court indicated that it was highly relevant that there was evidence on file of the brief of September 1996 by the Human Rights Unit of the Attorney General's Office informing the Administrative Department of Security (DAS) of the situation of Mr. Vélez Restrepo and his family. However, the State did not assert before the Court that, prior to October 6, 1997 it had evaluated the specific situation of Mr. Vélez Restrepo and his family and the level of risk. Regarding Colombia's position that prior to that date it had no obligation to adopt measures of protection because Mr. Vélez Restrepo had not requested them, the Court established that it corresponds to the State authorities to know the situation regarding special risk, identify or assess whether the person subject to threats and harassment requires measures of protection, or to refer the case to the competent authority to do this.

The Court concluded that the State failed to comply with its obligation to guarantee the right to personal integrity through an investigation into the threats and harassment and by the adoption of timely measures of protection, which constituted a violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Restrepo, Aracelly Román Amariles and their children Mateo and Juliana Vélez Román.

In relation to the right of freedom of thought and expression of Mr. Vélez Restrepo

The Court indicated that journalism may only be exercised freely when those who carry out this work are not victims of threats, attacks or other acts of harassment. In addition, the failure to comply with the obligation to investigate resulted in the attack aimed at preventing the right to freedom of expression of the journalist, Mr. Vélez Restrepo, remained unpunished, as well as the subsequent threats aimed at preventing the investigation of said attack. Also, the State did not generate the adequate guarantees and conditions to protect the integrity of Mr. Vélez Restrepo. Following the kidnapping attempt he left Colombia and his journalistic activities were restricted, as he was unable to exercise them in terms similar to those he had in Colombia when he worked for a national news program.

Similarly, the Court deemed that the impunity of the facts is particularly grave due to the intimidating effect they could have on other journalists who cover news of public interest, which affects the information that is ultimately received by the members of society.

Consequently, the Court declared that the failure to comply with the obligation to investigate the attack of August 29, 1996 and the subsequent threats and harassment, and with the obligation to adopt measures of protection in view of the latter facts, constituted a violation of the obligations to respect and guarantee the right to freedom of thought and expression of Mr. Vélez Restrepo. Therefore, the State is responsible for violating Article 13 of the American Convention, in relation to Article 1(1) of this treaty.

D. Conclusions and determinations of the Court regarding freedom of movement and residence, rights of the family and rights of the child, in relation to the obligations to respect and ensure rights

The Court considered that *de facto* restrictions existed to the freedom of movement and residence of Mr. Vélez Restrepo, Mrs. Román Amariles, and their children Mateo and Juliana

Vélez Román, due to the State's failure to guarantee the right to personal integrity through an investigation and timely measures of protection or prevention, which resulted in great insecurity and their well-founded fear that their life and personal integrity were at risk of being violated if they remained in Colombia, which led to their exile. Although the State offered measures of protection after the attempted kidnapping of Mr. Vélez Restrepo of October 6, 1997, these were not timely. Mr. Vélez Restrepo continued to be at risk and had a well-founded fear that he would not be protected anywhere in the country, as evidenced by the fact that he left Colombia on October 9, 1997 for the United States, while his wife and two children went to Medellín. Almost one year afterward, when they were granted asylum in the United States, they were able to reunite there, where they remain to date. The Court concluded that the State violated the right to freedom of movement and residence, protected by Article 22(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Luis Gonzalo Vélez Restrepo, his wife Aracelly Román Amariles and his two children Mateo and Juliana Vélez Román.

The Court also determined that the threats and harassment against Mr. Vélez Restrepo and his family as of September 1996 and the failure to adopt timely measures of protection constituted the State's failure to comply with its obligation to protect from arbitrary or illegal interference in their family. Similarly, the Court considered that the enjoyment of coexistence between the members of Vélez Román family was affected, due to the separation of almost a year due to the fact that Mr. Vélez Restrepo had to leave the country first while the other family members had to wait for their asylum requests to be approved. During that time Mrs. Román Amariles and her children went to live in Medellín in the homes of family members. The Court deemed that these facts infringed the right specifically of the children, Mateo and Juliana, to live with their family and, consequently, to have their material, affective and psychological needs satisfied. In addition, the Court took into consideration that Mateo had to endure both the separation from his father as well as from his mother and sister, given that due to the economic conditions Mateo had to live in his paternal grandmother's home, while his mother and sister lived at other relatives' homes and they could only see each other during the weekends.

Based on the foregoing, the Court concluded that the State is responsible for the violation of the right to protection of the family, embodied in Article 17(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, Mateo Vélez Román, and Juliana Vélez Román, and also for violating the right to special protection of children embodied in Article 19 of the American Convention to the detriment of Mateo and Juliana Vélez Román.

E. Conclusions and determinations of the Court regarding the rights to a fair trial and to judicial protection, in relation to the obligations to respect and ensure rights

The State partially acknowledged its international responsibility for the violation of Articles 8(1) and 25 of the Convention in relation to Article 1(1) thereof, due to: (i) the absence of "a serious investigation that would have allowed the perpetrators of the attack suffered by Mr. [...] Vélez Restrepo on August 29, 1996, to be determined and punished under criminal law;" (ii) because "[n]o serious investigation was conducted that would have allowed the presumed authors of the threats of which Mr. [...] Vélez Restrepo was allegedly a victim to be determined and punished under criminal law," and (iii) because "[t]here was a violation of the reasonable term in the investigation underway for the presumed attempted kidnapping of Mr. Vélez Restrepo on October 6, 1997[7]."

In addition, the Court determined that Colombia is responsible for the violation of the guarantee of a competent tribunal, given that the investigation into the attack perpetrated by soldiers against Mr. Vélez Restrepo on August 29, 1996 was carried out in the criminal military sphere. The Court reiterated its case law on the restrictive and exceptional scope of the military criminal sphere, which lacks jurisdiction to investigate and, if applicable, prosecute and punish human rights violations. The Court reiterated that the criteria to prosecute and punish human rights violations in the civil sphere do not fall on the gravity of the violations, but rather on their very nature and on that of the protected right. Similarly, it indicated that the guarantee that a competent tribunal would investigate human rights violations such as the right to life and personal integrity is enshrined in the American Convention and does not arise from its

application or interpretation by the Court in the exercise of its contentious function. Consequently, the Court concluded that the State infringed the guarantee of the competent tribunal, which is a violation of Article 8(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Restrepo.

In addition, the Court highlighted that none of the violations committed against Mr. Vélez Restrepo and his family were effectively investigated in the criminal sphere, and there is only information of disciplinary decisions in which no soldiers were directly punished for having physically attacked Mr. Vélez Restrepo on August 29, 1996, and there is no certainty as to whether they were final and firm, given that the State indicated that it did not find the decisions of the remedies presented by the military. The Court also expressed that regarding the attack endured by Mr. Vélez Restrepo on August 29, 1996, this case was not very complex, given that the fact was taped with images and sound, and even though the faces of the soldiers were not recorded in the video there were elements that could have helped identify those responsible for beating him.

Consequently, the Court determined that the domestic investigations did not constitute effective remedies to guarantee access to justice and determination of the truth, the investigation and punishment of those responsible and comprehensive reparation of the consequences of the violations. This violates Articles 8(1) and 25 of the Convention in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, his wife Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román.

III. Reparations

The Court established that the Judgment constitutes *per se* a type of reparation and, in addition, it ordered the State to: (i) guarantee the conditions for the members of Vélez Román family to return to live in Colombia, if they decide to do so; (ii) in the event that the victims express their willingness to return and reside in Colombia, provide them with health attention through the specialized health institutions, and if they do not return to provide them with fixed amounts to contribute toward the payment of their health attention costs; (iii) publish, within six months from the date of notification of the Judgment: a) this official summary of the Judgment prepared by the Court, only once, in the Official Gazette; b) the official summary of this Judgment prepared by the Court, only once, in a newspaper with wide circulation, and c) the full text of the Judgment, available for a period of one year, at an official website; (iv) incorporate into its human rights training programs for the Armed Forces a specific module on protection of the right to freedom of thought and expression and the role of journalists and social commentators; (v) report to the Court whether, in conformity with the Colombian body of law, it is possible to adopt other measures or actions that would allow determining the responsibilities in the instant case for the attack of August 29, 1996 and the threats and harassment of 1996 and 1997, and if so to carry out said measures or actions; (vi) carry out an effective investigation, within a reasonable term, for the attempted kidnapping of Mr. Luis Gonzalo Vélez Restrepo on October 6, 1997, and (vii) pay the amounts established in the Judgment for pecuniary and non-pecuniary compensation and reimbursement of costs and expenses. The Court established that Colombia must present within one year from the notification of the Judgment a report on the measures adopted to comply with said Judgment. The Court shall monitor full compliance with Judgment in exercise of its powers and in compliance with its duties pursuant to the American Convention on Human Rights, and shall deem this case concluded once the State has fully complied with that set forth in the Judgment.

The full text of the Judgment can be accessed through the following link:

http://corteidh.or.cr/docs/casos/articulos/seriec_248_ing%20.pdf