

B. Communication No. 181/1984, A. and H. Sanjuán Arévalo v. Colombia (views adopted on 3 November 1989, at the thirty-seventh session)

Submitted by: Elcida Arévalo Pérez on behalf of her disappeared sons, Alfredo Rafael and Samuel Humberto Sanjuán Arévalo

Alleged victims: Alfredo Rafael and Samuel Humberto Sanjuán Arévalo

State party concerned: Colombia

Date of communication: 17 September 1984 (initial letter)

Date of decision on admissibility: 7 April 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 3 November 1989,

Having concluded its consideration of communication No. 181/1984 submitted to the Committee by Elcida Arévalo Pérez under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of her disappeared sons Alfredo Rafael and Samuel Humberto Sanjuán Arévalo.

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial letter dated 17 September 1984 and subsequent correspondence) is Elcida Arévalo Pérez, a Colombian national residing in Colombia, writing on behalf of her sons, Alfredo Rafael and Samuel Humberto Sanjuán Arévalo, who disappeared in Colombia on 8 March 1982.

2.1 The author states that Alfredo Rafael (born on 7 October 1947), a student of engineering at the District University of Bogotá, left the family home in Bogotá, on 8 March 1982 at 8 a.m., with the intention to go to the university and that Samuel Humberto (born on 25 March 1959), a student of anthropology at the National University of Colombia, left their home on the same day at 3 p.m. for the purpose of attending to a job offer. They did not return and their whereabouts has been unknown ever since. The author further states that on the same day she was told by neighbours that their home had been watched by armed individuals carrying walkie-talkies, that these men had inquired about the activities of the Sanjuán

* The text of an individual opinion submitted by Mr. Nisuke Ando is reproduced in the appendix.

family and that they had identified themselves as agents of the "F2" (a section of the Colombian police forces).

2.2 On 10 March 1982 the author reported the disappearance of her sons to the local police and to the Section of Disappeared Persons of the "F2". She also regularly visited the morgues. Between June and September 1982 the case of her sons was reported to the assistant prosecutor of the Police, to the Armed Forces, to the Attorney General's office and to the Administrative Department of Security "DAS". Investigations were carried out by most of these authorities for some weeks, but without results. The author also mentions several letters written to the President of the Republic and states that, at the behest of his Office, a judge of a criminal court was appointed in February 1983 to initiate the appropriate investigation. At the time of writing, she stated that these proceedings were still pending, due to frequent changes of judges.

2.3 The author claims that she could never obtain from the authorities any official information about her sons' whereabouts. However, in a letter dated 17 August 1982 from the alleged victims' father addressed to State Minister Rodrigo Escobar Navia (with copies sent to the President of Colombia, Minister of Justice and Attorney General), submitted to the Human Rights Committee as part of communication No. 181/1984, it is stated that the parents of Alfredo and Samuel Sanjuán Arévalo received indications in August 1982 from the Chief of the Administrative Department of Security, "DAS", that their sons had been arrested by agents of the "F2" and that on 13 August 1982 in the course of an interview with the National Director of the "F2", it was intimated that they would soon reappear ("confíen en Dios que pronto aparecerán y estén tranquilos").

2.4 The author claims that articles 2, 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights have been violated.

2.5 She indicates that the case of her sons is not being examined under another procedure of international investigation or settlement.

3. Having concluded that the author of the communication was justified in acting on behalf of the alleged victims, the Working Group of the Human Rights Committee decided on 17 October 1984 to transmit the communication under rule 91 of the rules of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication. The Working Group also requested the State party to forward copies of any official inquiries made in connection with the reported disappearance of Alfredo Rafael and Samuel Humberto Sanjuán Arévalo.

4. The deadline for the State party's submission under rule 91 of the Committee's rules of procedure expired on 20 January 1985. No rule 91 submission was received from the State party.

5.1 With regard to article 5, paragraph 2, of the Optional Protocol, the Committee noted that the author's statement, that the case of her sons was not being examined under another procedure of international investigation or settlement, remained uncontested.

5.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that

there were available remedies in the circumstances of the present case which could or should have been pursued.

6. On 11 July 1985 the Human Rights Committee therefore decided that the communication was admissible. The State party was further requested to forward copies of any official inquiries made in connection with the reported disappearance of Alfredo Rafael and Samuel Humberto Sanjuán Arévalo.

7.1 In its submissions under article 4, paragraph 2, of the Optional Protocol, dated 11 August 1986, 21 January and 8 July 1987, 20 October 1988 and 27 January 1989, the State party forwarded the Committee copies of the relevant police reports on the on-going investigations into the disappearance of the Sanjuán brothers.

7.2 A report from the Office of the Attorney-General of Colombia (Procuraduría General), dated 19 June 1986, indicates that pursuant to an order of the Attorney-General of Colombia, dated 21 May 1986, the Colombian lawyer Martha Julieta Tovar Cardona was entrusted with a general review of the records of the Colombian Police Department aimed at determining whether the cases of 10 disappeared persons and 2 deceased persons had been properly investigated.

7.3 The report reflects that on 19 June 1986 Ms. Tovar Cardona studied the records of the investigations started by the Colombian Police on 8 March 1983 concerning the suspected crime of kidnapping of 12 persons, including the Sanjuán brothers. In her report Ms. Tovar Cardona notes that there were indictments against 18 police officials. She also notes the appointment of a judge in charge of the investigations into the suspected crime of kidnapping and that in the course of the police investigations the records of prior discoveries of corpses, on 7 and 27 June 1982, 11 and 19 July 1982, 28 September 1982, 21 November 1982, and 15 February 1983 had been examined. None of the bodies had been identified.

7.4 The next 16 pages of the 18-page report consist mainly of listings of the names of some 193 persons interrogated (including the names of police officials suspected of involvement in the disappearances), with an indication of the date and place of deposition. There is no indication, however, as to the contents of any of the depositions or as to their relevance to the disappearance of the Sanjuán brothers. Except for declarations made by Elcida María Arévalo Pérez and Yolanda Sanjuán Arévalo on 11 March 1983 it cannot be seen which, if any, of the other declarations and depositions listed relate to their cases. There is reference, however, to inquiries which had been made at prisons and police stations to ascertain that the Sanjuán brothers were not being detained there. Other references concern the appointment of court officials to evaluate the evidence and the assignment of persons for on-site inspections. There is no indication of the outcome.

7.5 Ms. Tovar Cardona observes that the Colombian Police has carried out very considerable investigations into the alleged disappearances and killings. The investigations are said to have continued until the end of May 1986. It cannot be seen whether the indictments against the various police officers have led to any further actions against them.

7.6 Ms. Tovar Cardona concludes her report by making the following observations:

"The original records, numbered 1 to 7 inclusive were examined and, in conformity with the instruction given verbally by the attorney assigned to the

police, particular importance was attached to determining by means of dates of reception and transmittal, the various activities undertaken in the preliminary proceedings both in ordinary jurisdiction and in the military criminal justice system as well as the various formalities carried out by the departments responsible for acting on the files. In addition to this, because of their quantity and since they were not absolutely germane to the fulfilment of the mandate of legal vigilance of the representative of the Office of the Attorney-General assigned to the police, the items of judicial evidence were not considered as a whole. Nevertheless, a scrutiny of the material evidence available with which the preliminary proceedings were conducted, complicated as they were on many occasions by the passage of time, distances, the lack of resources, the lack of co-operation on the part of relatives, friends, neighbours or in general those who had knowledge of the facts in coming forward with their testimony or in participating in confrontation formalities, identification parades and the adducing of items of judicial evidence as a whole. An examination of the proceedings does not reveal any irregularity or delay constituting a breach of discipline which would justify bringing charges, pursuant to the opening of a formal disciplinary investigation, and accordingly since the task set out in the order of 21 May 1986 issued by the office of the attorney assigned to the police has been completed, the files are returned herewith."

8.1 In response to the Committee's request for more precise information about the progress of investigations concerning the disappearance of the Sanjuán brothers, the State party indicated by note of 22 January 1987 that the case of the Sanjuán brothers (file No. 45317) was under review and that a statement of charges against members of the police force could follow. By letter of 27 January 1989 the Colombian Ministry of Foreign Affairs informed the Committee that a criminal investigation is being conducted by Court 34 of the Criminal Bench of Bogotá:

"In these criminal proceedings, the Ninth Criminal Investigation Judge of Bogotá, who initially heard the case, on 2 May 1983, admitted an application for related civil proceedings brought by the relatives of the victims. Such proceedings are established in Colombian criminal legislation for compensation, in the event that the acts reported are confirmed for the damages incurred, both materially and morally. Further, they offer the injured parties or their representatives an opportunity of requesting evidence in order to ascertain the truth about the offence, its perpetrators and accessories, their criminal liability and the nature and extent of the damages incurred as well as many other activities granted to them by the law, such as the filing of remedies. In the case of the Sanjuán Arévalo brothers, the records show that their representatives have not made effective use of that right and have confined themselves to requesting copies of the proceedings, without really moving matters forward.

Because of the alleged involvement of members of the national police force, the military criminal proceedings were expedited by the Inspector-General of Police, the judge of the court of first instance, who, on 12 March 1987 qualified the pre-trial proceedings by dismissing the case against the officers, non-commissioned officers and members of the police alleged to be implicated. The decision was taken on the ground that the requirements of article 539 of the Code of Military Criminal Justice are not satisfied, i.e. full proof of corpus delicti or the existence of a convincing statement offering solid grounds for credibility or serious evidence

identifying the accused as the principals or accomplices of the act under investigation ...

This decision by the judge of the court of first instance was transmitted to the Military Superior Court which confirmed it in toto."

8.2 With regard to the disciplinary investigations, the State party adds that the Attorney-General "has reactivated the proceedings and accordingly appointed a special commission by an order dated 8 November 1988, comprising two co-ordinating lawyers of the Judicial Police and two technical investigators to continue to investigate the events that led to the disappearance of the Sanjuán Arévalo brothers. Having completed their mission, the appointed officials submitted on 27 November 1988 the relevant evaluation report suggesting the opening of a disciplinary investigation against the chief of the DIPEC (the former Intelligence Corps of the National Police), the chief of the Intelligence and Counter-Intelligence Section of the DIPEC, the chief of the Judicial Police of the DIPEC, and the non-commissioned officers and members of the National Police Force who acted on the orders of the aforementioned officers. The Office of the Attorney-General, on the basis of the evaluation report, ordered by decree of 19 December 1988 the proceedings to be referred to the Office of the Attorney-General assigned to the National Police so that a formal disciplinary investigation may be opened against the aforementioned officers and non-commissioned officers."

8.3 The State party further observes that since the investigations are still continuing and the applicable judicial procedures are pending, domestic remedies have not been exhausted.

9. No further submissions have been received from the State party or from the author of the communication.

10. The Human Rights Committee has considered the present communication in the light of all written information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. In adopting its views, the Committee stresses that it is not making any finding on the guilt or innocence of the Colombian officials who are currently under investigation for possible involvement in the disappearance of the Sanjuán brothers. The Committee limits itself to expressing its views on the question whether any of the Covenant rights of the Sanjuán brothers have been violated by the State party, in particular articles 6 and 9. In this connection the Committee refers to its general comment 6 (16) concerning article 6 of the Covenant, which provides, inter alia, that States parties should take specific and effective measures to prevent the disappearance of individuals and establish facilities and procedures to investigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life. The Committee has duly noted the State party's submissions concerning the investigations carried out hitherto in this case.

11. The Human Rights Committee notes that the parents of the Sanjuán brothers received indications that their sons had been arrested by agents of the "F2". The Committee further notes that in none of the investigations ordered by the Government has it been suggested that the disappearance of the Sanjuán brothers was caused by persons other than Government officials. In all these circumstances, therefore, the Committee, acting under article 5, paragraph 4, of the Optional

Protocol to the International Covenant on Civil and Political Rights, finds that the right to life enshrined in article 6 of the Covenant and the right to liberty and security of the person laid down in article 9 of the Covenant have not been effectively protected by the State of Colombia.

12. The Committee takes this opportunity to indicate that it would welcome information on any relevant measures taken by the State party in respect of the Committee's views and, in particular, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers.

APPENDIX

Individual opinion submitted by Mr. Eisuke Ando, pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the views of the Committee on communication No. 181/1984, Sanjuán Arévalo v. Colombia

I have no objection to the Committee's invitation that the State party continue to inform it of further developments in the investigation into the disappearance of the Sanjuán brothers (para. 12 of the views).

However, in inviting the State party to continue to inform, the Committee notes that "the Sanjuán brothers were arrested in the first place by the agents of the 'F2'". It further notes that "in none of the investigations ordered by the Government has it been suggested that the disappearance of the Sanjuán brothers was caused by private persons". Thus, "[In] all these circumstances ... the Committee finds that the right to life enshrined in article 6 of the Covenant and the right to liberty and security of the person laid down in article 9 of the Covenant have not been effectively protected by the State of Colombia" (*ibid*).

I have three reservations concerning these findings:

Firstly, the finding that "the Sanjuán brothers were arrested ... by agents of the 'F2'" is based on a statement contained in a letter of the victims' father (para. 2.3). According to this letter, the parents of the brothers "received indications in August 1982 from the Chief of the Administrative Department of Security ... that their sons had been arrested by agents of the 'F2'". In my opinion, the Committee should have made it clear that its finding is based on that particular letter. Moreover, the letter's evidentiary value must be treated with caution.

Secondly, the finding that "in none of the investigations ordered by the Government has it been suggested that the disappearance ... was caused by private persons" is not, in my opinion, well founded. It is true that the information contained in paragraphs 2.7 and 8 refers merely to the possible involvement of officers and members of the National Police in the brothers' disappearance. Nevertheless, since the investigations of the case are still continuing and the applicable judicial procedures are pending (para. 8.3), it is not proper for the Committee to make such a finding at this stage, notwithstanding the possibility that it might be established that private persons were involved in the disappearances.

Thirdly, the finding that "[In] all these circumstances ... the right to life ... and the right to liberty and security of the person ... have not been effectively protected by the State of Colombia" is, in my opinion, too sweeping. It is true that many cases of disappearances, including this one, are reported to have occurred in Colombia, and that the investigations of these cases seem to have encountered a number of difficulties. This situation is indeed deplorable. Nevertheless, considering the efforts made by the Colombian Government, which can be ascertained from its replies to the Committee's requests for clarifications, I am unable to persuade myself that the Committee's sweeping finding is justified.