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Colombia

CO/142 - Álvaro Araújo Castro

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

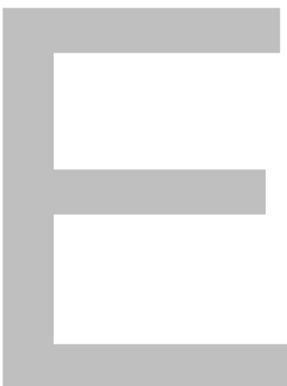
Referring to the case of Mr. Álvaro Araújo Castro, a former member of the Colombian Congress, and to the resolution adopted at its 193rd session (October 2013),

Considering the information provided by Mr. Álvaro Araújo at the hearing held with the Committee on 18 October 2015,

Recalling the following information on file:

- On 15 February 2007, the Supreme Court issued detention orders for the then Senator Araújo on charges of aggravated criminal conspiracy and voter intimidation, allegedly for having collaborated in his Department César with paramilitary group *Bloque Norte*, led by Mr. Rodrigo Tovar Pupo (alias "Jorge 40"), for the purpose of winning the parliamentary election;
- Given that members of Congress are investigated and judged in single-instance proceedings by the Supreme Court, Mr. Araújo relinquished his seat in Congress on 27 March 2007; as a result, his case was transferred to the ordinary judicial system, under which he would be investigated by the Prosecutor's Office and tried by an ordinary court with the possibility of appealing;
- However, after a reinterpretation of its jurisprudence, the Supreme Court re-established its jurisdiction with respect to his case and, on 18 March 2010, without giving him the opportunity to be heard, declared him guilty of aggravated criminal conspiracy and voter intimidation and sentenced him to a prison term of 112 months and to payment of a fine; in the same ruling, the Supreme Court ordered that an investigation be conducted to establish whether or not Mr. Araújo could be considered part of the paramilitary command structure and therefore to share responsibility for the crimes against humanity it had committed; as with the original charges, both the investigation and any subsequent trial on this matter are entrusted to the Supreme Court, whose ruling would not be subject to appeal;
- A legal expert, Mr. Alejandro Salinas, asked by the Committee to examine whether the right to a fair trial had been respected in the case, concluded that the legal proceedings against Mr. Araújo were fundamentally flawed;
- Mr. Araújo was released on parole in February 2011, having served three-fifths of his prison sentence,

Considering that, on 18 March 2015, the Supreme Court ordered that the investigation into crimes against humanity establish whether or not Mr. Araújo appeared in the records of paramilitary groups as a member or integral part of its structure and that it examine the dispossession of land, as revealed by demobilized paramilitary member, Mr. José del Carmen Gelves Albarracín (alias "El Canoso"), and the murder in 1997 of Mr. Araújo's employee, Mr. Eusebio de Jesús Castro Visbal,



as denounced by demobilized paramilitary member, Mr. Hernando de Jesús Fontalvo Sánchez (alias “El Pájaro”), so as to establish whether Mr. Araújo bore responsibility for these crimes; on 22 September 2015, the Supreme Court extended the investigation by 30 days; *considering* that there are no time limits for the Supreme Court in advancing its investigation into Mr. Araújo’s possible responsibility, as the accusations concern crimes against humanity,

Recalling that, according to Mr. Araújo, the Prosecutor’s Office had already previously investigated his alleged involvement in the murder of his aforesaid employee, but had decided to discontinue the investigation; Mr. Araújo affirms in this regard that the statements made by “El Pájaro” are hearsay and not credible and that a member of the Prosecutor’s Office had pressured Mr. Jesús Castro’s family members, who first, in the presence of the former paramilitary member, denied the truth of his testimony regarding false accusations against Mr. Araújo, which they later retracted,

Considering that Mr. Araújo affirms that Mr. Jesús Castro had been killed by the paramilitary for the sole reason that guerrilla groups had set up road blocks and carried out targeted kidnappings opposite his terrain; he affirms that he was quick to denounce the murder publicly, went under heavy protection to Mr. Jesús Castro’s funeral, and in 2009 took action to obtain reparation for his family, as no such reparation had been forthcoming after more than 13 years,

Considering that Mr. Araújo has made sworn statements to the Prosecutor’s Office to denounce the untruthfulness of the statements made by “El Canoso” and “El Pájaro”, which matter was being examined by the Working Group on False Witnesses of the Prosecutor’s Office; with regard to the allegation made by “El Canoso” that Mr. Araújo was responsible for the dispossession of land, the latter denied it and said that, out of loyalty to a friend, he had helped his mother to protect a piece of land in Santa Marta that belonged to her with fences, but which had subsequently been invaded, which matter was before the courts,

Considering also that Mr. Araújo has made sworn statements to the Prosecutor’s Office that he had become an enemy of the paramilitary because: (i) they had made an attempt on his life on 1 October 2000, after which Mr. Araújo immediately rushed to the police, with whose help one of the responsible paramilitary members was killed and another seriously injured; and (ii) he denounced the crimes and pressure exerted by the paramilitary, naming “Jorge 40”, in a speech he delivered in Valledupar on 29 September 2002 at an event attended by the then President Uribe and other dignitaries; Mr. Araújo affirms that many of the members of the political party he belonged to, ALAS, were assassinated by the paramilitary between 1998 and 2004; *considering* also that “Jorge 40” has stated to the Prosecutor’s Office that Mr. Araújo was not part of his organization and acknowledged that Mr. Araújo had publicly denounced the crimes committed by his group,

Considering that, in September 2015, the Colombian Supreme Court closed the investigation into the possible responsibility for crimes against humanity of seven other former members of Congress, most of whom were part of the original case which led to Mr. Araújo’s conviction in 2010, with the argument that the fact that they were found guilty of criminal conspiracy for having cooperated with the paramilitary for electoral support did not make them automatically responsible for their illegal activities; *considering* also that these seven former members of Congress all signed, unlike Mr. Araújo for whom there is no such evidence, a political and electoral pact with the paramilitary and had admitted to cooperating with the paramilitary in return for lenient sentences as part of a plea bargain agreement,

Recalling also that an IPU delegation travelled to Bogotá in August 2011 to help strengthen the National Congress of Colombia and, as part of that assignment, formulated a series of recommendations, including with a view to helping ensure greater respect for fair-trial standards in criminal cases against members of Congress; *recalling* also that the Committee’s then Vice-President, Senator Juan Pablo Letelier, met with the relevant Colombian parliamentary and judicial authorities and the source during his visit to Colombia on 20 and 21 March 2013 and discussed implementation of those recommendations with them,

Recalling that Mr. Araújo submitted a petition to the Inter-American Commission on Human Rights in 2011 denouncing the flawed judicial proceedings in his case; *considering* that in light of the ongoing investigation by the Supreme Court on crimes against humanity, Mr. Araújo fears that he might soon be re-arrested and has therefore asked the Inter-American Commission to adopt precautionary measures in his favour,

Considering that Committee member Senator Letelier travelled to Washington in September 2015 to meet with the Secretariat of the Inter-American Commission to discuss progress in the consideration of this and other cases that are simultaneously before the Committee and the Commission,

1. *Reaffirms* its long-standing view that Mr. Araújo was convicted in 2010 in legal proceedings that violated his right to a fair trial and in the absence of compelling, tangible and direct evidence to substantiate his conviction, on the grounds of complicity with the paramilitary forces, and on charges of aggravated criminal conspiracy and voter intimidation; *points out* in this regard that, to the contrary, events and statements show that there was clear hostility between Mr. Araújo and the paramilitary groups in his Department;
2. *Remains deeply concerned*, therefore, that the Supreme Court invoked his 2010 conviction to order an investigation into the much more serious accusation that he was, in fact, part of the paramilitary command structure, and that such investigation, which relates to crimes against humanity, can run indefinitely, as it is not subject to the statute of limitations;
3. *Considers* that, so long as basic fair-trial concerns are not addressed and there is no convincing evidence for the lesser charge, such investigation is inappropriate;
4. *Fails to understand* in this regard that the Supreme Court recently discontinued an investigation on the same charge against several other parliamentarians who had admitted to having cooperated with paramilitary groups and who had been signatories to cooperation agreements with these groups, but did not take the same decision in Mr. Araújo's case, in which such evidence and admission are absent; *wishes* to receive clarification on this point;
5. *Considers* that, as a minimum, the investigation of the Supreme Court against Mr. Araújo should be suspended until the Prosecutor's Office has terminated its investigation into the denunciations against the two demobilized paramilitary members or, better still, dropped altogether; *recalls* in this regard its long-standing concerns about the credibility of testimonies of demobilized paramilitaries and the manner in which they are obtained and used in criminal cases;
6. *Remains convinced* that concerns about the lack of fair-trial standards inherent in the procedure applicable to Colombian members of Congress in criminal matters can only be fully addressed through new legislation; *reaffirms* the continued readiness of the IPU to provide support for any legislative efforts undertaken by Congress and other relevant Colombian authorities in this regard;
7. *Recalls* that the American Convention on Human Rights and related jurisprudence provide extensive protection of the right to a fair trial; *considers*, therefore, that action by the Inter-American Commission on Human Rights is crucial to helping address the injustice suffered by Mr. Araújo; *sincerely hopes* that the Commission will rule on the petition for precautionary measures as a matter of priority, so as to prevent any further violations of Mr. Araújo's rights;
8. *Considers* that it would be timely to carry out a mission to Colombia to address the serious concerns that have emerged in this case with the relevant executive, parliamentary and judicial authorities, in particular the Supreme Court, the complainant and others who might be able to assist; *requests* the Secretary General to seek the agreement of the Colombian parliamentary authorities for this purpose in the hope that the mission can soon take place;
9. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.