



PRESS RELEASE

Colombia: ECCHR presents amicus curiae brief on command responsibility in Special Jurisdiction for Peace

Berlin/Bogotá, 28 July 2017 – The doctrine of command responsibility is a fundamental legal principle in international criminal law. As international crimes regularly include systematic practices, it is necessary to hold to account those most responsible of such practices and not only the direct perpetrators. The doctrine is set out in international legal standards such as Article 28 of the Rome Statute of the International Criminal Court (ICC).

In April 2017, as part of the implementation of the peace agreement between the Government of Colombia (a State Party to the Rome Statute) and the FARC, the Colombian Congress passed a law which fails to meet the standards of the ICC on command responsibility.

“If the Colombian Constitutional Court approves the law in its current form, there is a real risk that it will reinforce and cement the impunity enjoyed by those – particularly within the military – bearing greatest responsibility for international crimes in Colombia”, explains Andreas Schüller, head of the “International Crimes and Accountability” programme at the European Center for Constitutional and Human Rights (ECCHR) in Berlin. “Should this occur, it will fall to the ICC to step in and take up investigations into the responsibility of senior Colombian military officials.” ECCHR has addressed this question of international law in an amicus curiae brief filed with the Colombian Constitutional Court at Bogotá on 28 July 2017 as part of the Court’s assessment of the provisions on the Special Jurisdiction for Peace.

In its submission, ECCHR emphasizes that the oft-amended formulation of the law contains gaps on the subject of impunity, including regarding military commanders’ effective control over their subordinate units, and that the number of conditions to be met sets an overly high threshold for establishing the criminal liability of commanders. The amicus curiae makes specific reference to the [Bemba judgment](#) in March 2016, which constitutes the ICC’s first conviction where the accused was found guilty under the principle of command responsibility.

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