

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



PRESS RELEASE

Swiss Judiciary declines access to justice

The responsibility of the company Nestlé for the murder of the Colombian Sinaltrainal trade unionist and Nestlé-worker Luciano Romero remains unclear.

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EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS e.V.
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ZOSSENER STR. 55-58
AUFGANG D
10961 BERLIN, GERMANY
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PHONE +49.(030).40 04 85 90
FAX +49.(030).40 04 85 92
MAIL INFO@ECCHR.EU
WEB WWW.ECCHR.EU

Lausanne / Berlin / Bogotá, 1 August 2014 The Swiss Federal Supreme Court dismissed the appeal of the Swiss widow of the assassinated Colombian Sinaltrainal trade unionist and Nestlé-worker Luciano Romero in its decision of 21 July 2014 ([published on 31 July](#)). She had appealed against the closing of the investigations into the responsibility of Nestlé for the murder of her husband. The Federal Supreme Court confirmed the legal reasoning of the prosecutor's office and the Cantonal Court, that the investigations were statute-barred. It thereby departed from the interpretation of the Federal Council and great parts of the literature that it is a continuing offence – which, hence, would not be statute-barred in the present case. It brought the proceeding to an end on formal grounds. The real issue of the responsibility of the company Nestlé for the assassination of one of its workers remains unexamined. The Colombian lawyer of the widow, Leonardo Jaimes, demands: *“It must be possible to assert the responsibility of transnational companies such as Nestlé through effective mechanisms. In Colombia enough impunity has prevailed. We had hoped for more justice in Switzerland and a sign, which compels the Colombian criminal justice system to investigate the Nestlé managers in Colombia.”*

This paradigmatic proceeding regarding the murder of Luciano Romero posed, for the first time in Switzerland, the question of corporate criminal responsibility under article 102 of the Criminal Code in cases of human rights violations. At least the Federal Supreme Court clearly defined the requirements for companies. It stated that companies must provide *inter alia* “a clear description and separation of competencies and responsibilities” as well as “concrete and assigned work plans within the company”. Whether Nestlé complied with this duty, still remains open and uninvestigated due to the dismissal of the appeal. *“Switzerland must comply with its international obligations to investigate facts of this kind and set clear standards for corporate duties with regard to human rights risk management”*, demands Wolfgang Kaleck, General Secretary of ECCHR.

With the restrictive interpretation of the Federal Supreme Court there is now a need to reform the statute of limitations. Otherwise in practice companies with complex organizational structures will profit from long investigations – as is apparent in this precedent. *„The result shows that the Swiss justice system thus far has not granted access to justice for victims of grave human rights violations committed through corporations. Therefore, the laws should be reformed in order to make this possible”*, says the Swiss lawyer of the widow, Marcel Bosonnet.

In view of the continuing attacks on trade unionists in Colombia it would have been an important signal to clarify the responsibility of a company. In conflict zones such as

Colombia, Nestlé must guarantee the security of its workers and may not aggravate the hazardous situation of trade unionists. This follows from its guarantor and due diligence obligations, which are elaborated in international guidelines by the UN and the OECD with respect to the corporate human rights obligations. The reality is different: Trade unionists constantly suffer death threats and attacks. To date 15 Sinaltrainal trade unionists, who had worked for Nestlé, have been murdered. Most recently, in November 2013 a Nestlé worker was shot during a hunger strike for the enforcement of workers' rights and the freedom of the Sinaltrainal trade union. In June 2014 there was an assassination attempt on the Vice President of the Bugalagrande section of the Sinaltrainal Trade Union. As in the case of Luciano Romero, the latest murder in November was also preceded by stigmatizations by the Colombian Nestlé management which had not been prevented by the company's Swiss headquarters. The President of the Sinaltrainal trade union declares, *"there must be authorities which we can turn to in our search for justice. This decision consolidates impunity and reinforces the continuing repression of our trade union work. It is the duty of the justice system to do its job and assert the responsibility of corporations for human rights violations."*

ECCHR, the Colombian trade union, Sinaltrainal, as well as the Swiss and Colombian lawyers of the widow are assessing further legal steps, such as a complaint to the European Court of Human Rights. The case of Luciano Romero was [submitted to the International Criminal Court](#) in The Hague, as one example of the systematic persecution of trade unionists in Colombia. In Colombian criminal proceedings, the murder was [qualified as a crime against humanity](#).

More information under: <http://www.ecchr.de/nestle-518.html>

For more information please contact:

ECCHR: Tel.: +49 (0)30- 4004 8590, Mail: info@ecchr.eu

Swiss lawyer of the widow: Marcel Bosonnet, Tel.: +41 (0)44 261 90 68, Mobile: +41 (0)76 376 49 12, Mail: bosonnet@bluewin.ch

Colombian trade union Sinaltrainal: President Javier Correa, javier@sinaltrainal.org