

OEA/Ser.L/V/II.151
Doc. 13
21 July 2014
Original: Spanish

REPORT No. 48/14
PETITION 11.641
REPORT ON ADMISSIBILITY

PEDRO JULIO MOVILLA GALARCIO AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 1990 held on July 21, 2014
151 Regular Period of Sessions

Cite as: IACHR, Report No. 48/14, Petition 11.641. Admissibility. Pedro Julio Movilla Galarcio
and Family. Colombia. July 21, 2014.

REPORT No. 48/14

PETITION 11.641

ADMISSIBILITY

PEDRO JULIO MOVILLA GALARCIO AND FAMILY

COLOMBIA

July 21, 2014

I. SUMMARY

1. On June 17, 1996, the IACHR (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition submitted by the Corporación Colectivo de Abogados “José Alvear Restrepo,” (hereinafter “the petitioners”) alleging violation by the Republic of Colombia (hereinafter “the State” or “the Colombian State”) of Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) in connection with the obligation to respect and guarantee rights, contained in Article 1.1 of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”); as well as Article I b) of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “CIDFP”) to the detriment of Pedro Julio Movilla Galarcio and the members of his family.¹

2. The petitioners maintain that Pedro Julio Movilla Galarcio (hereinafter “the alleged victim”) was forcibly disappeared in Bogota, Colombia on May 13, 1993. They maintain that this act was perpetrated by alleged agents of the State and to date those responsible have not been tried nor have any reparations been made for the reported events.

3. The State argues that the petition is inadmissible due to the fact that criminal investigations are still under way and, consequently, the available domestic remedies have not been exhausted. The State also indicates that in the instant case there is no unwarranted delay of the investigations, given the complexity of the matter and the activities of the judicial authorities.

4. After analyzing the parties’ positions, the Commission concluded, without prejudging on the merits of the case, that it is competent to rule on the complaint submitted by the petitioners, and that the case is admissible under Articles 46 and 47 of the American Convention based on alleged violations of the rights enshrined in Articles 3, 4, 5, 7, 8, 16, and 25 of that instrument, in connection with Article 1.1 thereof, as well as Article I b) of the Inter-American Convention on Forced Disappearance of Persons.

II. PROCEDURE BEFORE THE IACHR

5. The petition was received on June 17, 1996 and recorded under No. 11.641. On June 20, 1996, the petition was forwarded to the State so it could submit its observations, which were received on November 29, 1996.

6. Subsequently, the Commission received information from the petitioners on the following dates: June 18, 1997, May 18, 1998, August 17, 1998, and September 25, 1998. It also received observations from the State on December 20, 1996, May 1, 1997, January 22, 1998, July 22, 1998, and October 27, 1998. The additional information and observations were duly forwarded to the parties.

7. On October 22, 2008, the IACHR requested updated information on the matter. The State’s response was received on November 21, 2008. On August 11, 2010 the IACHR repeated its request to the petitioners for information. On February 6, 2013 the petitioners submitted their response, which was forwarded to the State for its information. Finally, the State sent additional information on May 6, 2014, which was sent to the petitioners for their information.

¹ As reported by the petitioner, the family members are Candelaria Nurys Vergara Carriazo; Carlos Julio Movilla Vergara; José Antonio Movilla Vergara; and Jenny Movilla Vergara.

III. POSITION OF THE PARTIES

A. Position of the petitioners

8. The petitioners indicate that Pedro Julio Movilla Galarcio was a member of the Board of the union of the Colombian Institute for Agrarian Reform, a member of the People's Workers Committee in the department of Córdoba, and a militant member of the Marxist-Leninist Communist Party of Colombia. They state that after having been subjected to various threats and harassment by the army, the national police, and the Judicial and Investigative Police Department (DIJIN), Mr. Movilla was forced to move with his family first to Medellín and then to Bogotá. In this regard, Mr. Movilla's wife stated that her husband and his family were being followed by State security agencies and had been the victims of threats and harassment due to her husband's activity as a union leader and leftist activist.

9. The events covered in this petition occurred on May 13, 1993, after Mr. Movilla dropped off his daughter at the John F. Kennedy school on Highway 68 and Avenue First of May in Bogota at 8:00 a.m. The alleged victim had agreed to pick up his daughter at 11:00 am, and since then the whereabouts of Mr. Movilla have been unknown. The petitioners allege that from the early hours of that day other students' parents and professors noted the presence of three motorcycles whose drivers were armed with machine guns.

10. They also indicated that nearby the school on that same day, around 9:00 am, Mr. Pedro Julián Pabón Díaz was allegedly arrested by agents of the national police after shooting in the air while drunk.

11. They allege that this simultaneous event generates a series of factual gaps around this case that have not been cleared up nor disputed by the State with respect to the forced disappearance of Mr. Movilla, in that two persons with similar names and wearing clothes of the same color were arrested in the same place and at the same time.

12. They also state that it was determined that Mr. Pabón Díaz was working as a DIJIN informant and the weapon he allegedly carried on the day he was arrested belonged to a police officer. The petitioners allege that to date the State has not taken a statement from Mr. Pabón Díaz in order to clarify the alleged arrest that occurred on the same day as the disappearance of Mr. Movilla, his alleged participation in the network of DIJIN informants, and the reasons why he was carrying a weapon belonging to an active member of the national police.

13. They state that around the time of these events Mr. Movilla had been followed by the military intelligence service, Brigade XIII, of the national police, who had identified him as a dissident member of the People's Liberation Army. On this subject, the petitioners believe there is a lack of clarity in the investigations as to why the Colombian army had engaged in intelligence activities regarding the alleged victim, since despite the existence of a report on alleged intelligence activities, only a document with partial information and written in military code was submitted in the criminal process.

14. Regarding the criminal investigations conducted, the petitioners believe that the steps taken were directed to establish that Pedro Movilla was a member of the People's Liberation Army in order to point him out as a member of the guerrilla. They also allege that the reasonable period of time has been exceeded, since more than 20 years have passed since the disappearance of the alleged victim. They indicate that despite evidence that would point to responsibility of members of the security forces and at least one individual who participated with the acquiescence or complicity of agents of the State, the investigations are still in the preliminary stage or have been provisionally filed away without having identified those responsible. Thus, with respect to meeting the requirement of prior exhaustion of domestic remedies, they allege that the exception provided in Article 46.2 c) is applicable.

15. With regard to proceedings filed on the domestic level, on May 19, 1993 the petitioners filed a habeas corpus petition before the Criminal Judge 54 of the Bogota Circuit. The investigation was provisionally filed away on June 5, 1996 because no evidence had been found on the basis of which to

determine who was responsible. On October 24 of the same year that ruling was reversed in order to continue the procedures to determine those responsible. As of now, the criminal process is in the preliminary investigation stage.

16. The petitioners also point out that the Code of Criminal Procedure in force at the time provided that no civil action would be admitted as long as the case remained in the preliminary stage. Once that provision was amended, the petitioners state they filed a civil action that was declared inadmissible on January 21, 2003. Finally, they state that they filed the action again on February 2011 and that it was admitted on May 2011.

17. In addition, a disciplinary proceeding was initiated in response to the complaint that the alleged victim's wife filed before the Office of the Attorney General, this process was on the preliminary investigation stage. On February 17, 1998 an order was issued to file away the disciplinary proceeding, order that was appealed by the petitioners and reversed by the Attorney General on July 8, 1998. However, on January 23, 2001 the Prosecutor decided to file away the investigation on a provisional basis.

18. The petitioners state that they filed a restitution action before the Administrative Court of Cundinamarca – Section Three, which was admitted on May 19, 1995. The Court ruled on October 30, 2001, rejecting the claims, indicating that the responsibility of the State had not been proven. The petitioners state that the decision was appealed and later confirmed by the Council of State on June 23, 2011.

B. Position of the State

19. With regard to the facts, the State believes the petitioners are confusing two different incidents that took place on the morning of May 13, 1993; the disappearance of Mr. Pedro Julio Movilla Galarcio and the events related to the arrest of Pedro Julián Pabón Díaz.

20. In this regard, the State indicates that on May 13, 1993, around 8:00 a.m., Mr. Movilla took his daughter to the John F. Kennedy school, promising to pick her up at 11:00 a.m., since that time, he has been disappeared. On the other hand, in the area near the school, around 9:00 a.m., members of the national police arrested Mr. Pabón Díaz, who was drunk and shooting into the air. Mr. Pabón Díaz was arrested and his weapon was seized. Once the seizure requirements were completed, he was released.

21. The State maintains that this petition must be declared inadmissible because it does not meet the prior exhaustion of domestic remedies requirement established in Article 46.1 a) of the Convention. It also believes that the exceptions to the exhaustion of domestic remedies under Article 46.2 b) and c) would not apply.

22. In this regard, the State points out that there is a criminal process at the domestic level that is in the processing stage, so that the petitioners have not exhausted the criminal action. It states that the criminal investigation recorded under No. 096 was heard by various judicial as well as investigative authorities who made numerous efforts to clarify the facts, but so far that task has been impossible.

23. The State maintains that the investigations were conducted diligently and within a reasonable period of time given the complexity of the case. It points out that the circumstances surrounding Mr. Movilla's disappearance seriously complicated the investigative activity since various hypotheses emerged regarding his disappearance that required different logical lines of investigation. It also states that the progress made in the criminal process should be analyzed in the context of the Colombian situation, the complexity of which makes the administration of justice unwieldy.

24. As for actions taken by the judicial authorities, the State points out that intense investigative efforts were made in both the criminal and disciplinary processes and that the authorities ordered the taking of evidence to determine whether Mr. Movilla had actually been the subject of military intelligence activities and had been followed by members of the security forces. It maintains that despite the significant amount of

investigative work done, there is no evidence that could be used to establish the motive for and the perpetrator of Mr. Movilla's disappearance.

25. The State also alleges that Mr. Movilla's disappearance would not constitute a violation of the Convention. It points out that this offense could not be attributed to the State considering that to date there is no evidence linking the members of the public authority of the Colombian State to the disappearance of Mr. Movilla. It also emphasizes that there is no link at all between the disappearance of the alleged victim and the arrest of Mr. Pabón Díaz. It also points out that, contrary to what the petitioners state, a sworn statement was taken from Mr. Pabón Díaz in a procedure carried out on March 18, 2013.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

26. The petitioners are, in principle, authorized by Article 44 of the American Convention to submit petitions to the Commission. The alleged victims are individuals with respect to whom the State has promised to guarantee the rights enshrined in the American Convention and the Inter-American Convention on Forced Disappearance of Persons. With respect to the State, the Commission indicates that Colombia has been a State Party to the American Convention since July 31, 1973 and to the Inter-American Convention on Forced Disappearance of Persons since April 4, 2005, the dates on which it deposited the respective ratifying instruments. Therefore, the Commission is competent *ratione personae* to examine the petition.

27. In addition, the Commission is competent *ratione temporis* since the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition took place. The Commission notes that the Convention on Forced Disappearance took effect for Colombia on April 4, 2005. Therefore, the IACHR is competent *ratione temporis* with respect to the obligation in Article I of that Convention with respect to events subsequent to that date as regards the alleged continuation of and failure to clarify the crime of forced disappearance.²

28. The Commission is competent *ratione loci* to hear the petition since it alleges violations of rights protected in the American Convention that allegedly occurred within the territory of Colombia, a State Party to that Convention. Finally, the Commission is competent *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention and the applicable provisions of the Inter-American Convention on Forced Disappearance of Persons.

B. Admissibility Requirements

1. Exhaustion of remedies under domestic law

29. Article 46.1 a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in keeping with generally recognized principles of international law, as a requirement for admitting claims alleging violation of the American Convention. Article 46.2 of the Convention provides that the requirement to exhaust domestic remedies is not applicable when a) the domestic legislation of the state in question does not have due process of law for protecting the right or rights allegedly violated; b) the persons whose rights were allegedly violated have not been allowed access to domestic remedies, or have been kept from exhausting them; or c) there is an unwarranted delay in the decision on such remedies

30. The State alleges that the requirement of prior exhaustion of domestic remedies has not been met given that there are processes pending in the ordinary criminal jurisdiction; and that, due to the

² See IACHR, Report No. 65/09, Petition 616-06, Admissibility, Juan Carlos Flores Bedregal, Bolivia, August 4, 2009, para. 45; and Report No. 72/07, Petition 319-01, Admissibility, Edgar Quiroga and Gildardo Fuentes, Colombia, October 15, 2007, para. 44.

complexity of the matter and the actions taken by the domestic authorities, the exceptions contained in Article 46.2 of the Convention do not apply. On the other hand, the petitioners allege that the exception provided in Article 46.2 c) of the Convention is applicable considering that more than 20 years have passed since these events occurred and since the criminal investigation began without establishing criminal responsibilities.

31. In view of the allegations of the parties, it is necessary to clarify which domestic remedies must be exhausted, in light of the jurisprudence of the Inter-American system. The Commission notes that the subject of this petition refers to the events related to the alleged forced disappearance of Pedro Julio Movilla Galarcio and aspects related to the investigations of the circumstances in which those events took place. The precedents established by the Commission indicate that whenever a crime that can be prosecuted *ex officio* is committed, the State has the obligation to pursue and promote the criminal process³ and in such cases this is the suitable route for clarifying the facts, prosecuting those responsible, and establishing the corresponding criminal penalties, as well as making possible other means of reparation that are monetary in nature.

32. As a general rule, the Commission has indicated that a criminal investigation should be conducted promptly in order to protect the interests of the victim, preserve the evidence, and even safeguard the rights of anyone who in the context of the investigation may be considered a suspect.⁴ The Commission notes that the information provided by both parties indicates that the investigation meant to clarify the facts remains open, without having established material and intellectual responsibility for the offenses covered by this petition. Therefore, given the characteristics of the petition and the time elapsed since the events covered by the complaint, the Commission believes that the exception provided in Article 46.2 c) of the Convention is applicable with respect to the unwarranted delay in the conduct of domestic judicial proceedings, so that the requisite of exhaustion of domestic remedies cannot be imposed.

33. The invocation of the exceptions to the rule of exhausting domestic remedies as provided in Article 46.2 of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees on access to justice. However, Article 46.2, given its nature and purpose, is a standard with autonomous content *vis á vis* the substantive standards of the Convention. Thus, a determination as to whether the exceptions to the exhaustion of domestic remedies rule are applicable in the instant case must be made prior to and separate from the analysis of the merits of the case, since it depends on a standard of assessment different from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be made clear that the causes and effects that prevented the exhaustion of the domestic remedies will be analyzed in the report the Commission adopts on the merits of the dispute, in order to determine whether there are violations of the American Convention.

2. Timeliness of the petition

34. In accordance with the provisions of Article 46.1 b) of the American Convention, in order for a petition to be admitted by the Commission it must be submitted within a period of six months following the date on which the party whose rights have allegedly been violated was notified of the final decision. Article 32 of the Commission's Rules of Procedure establishes that in cases where the exceptions to the prior exhaustion of domestic remedies are applicable, the petition must be submitted within a reasonable period of time, in the judgment of the Commission. To this end, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances in each case.

35. In the complaint under review, the Commission has concluded that it is appropriate to apply the exception to the requirement of prior exhaustion of domestic remedies, and thus it falls to the IACHR to

³ IACHR, Report No. 52/97, Case 11.218, Merits, Arges Sequeira Mangas, Nicaragua, 1997 Annual Report of the IACHR, paras. 96 and 97. See also Report No. 55/97, Case 11.137, Merits, Abella et al., Argentina, para. 392.

⁴ IACHR, Report No. 151/11, Petition 1077-06, Admissibility, Luis Giován Laverde Moreno et al. Colombia, November 2, 2011, para. 28.

analyze whether the petition was submitted within a reasonable period of time based on the specific circumstances. In this matter, the petition was received on June 17, 1996 and the events covered in the complaint began on May 13, 1993 and the effects thereof continue to this day due to the alleged lack of results in the administration of justice. Therefore, in view of the context and characteristics of this petition, as well as the fact that criminal processes are pending, the Commission believes that the petition was submitted within a reasonable period of time and that the admissibility requirement with respect to the timeliness for its presentation should be deemed to have been met.

3. Duplication of proceedings and international *res judicata*

36. The case file does not indicate that the subject of the petition is pending in another international proceeding for settlement, nor that it reproduces a petition already examined by this or any other international body. Therefore, the requirements established in Articles 46.1 c) and 47 d) of the Convention should be deemed to have been met.

4. Colorable claims

37. For admissibility purposes, the Commission must decide whether the petition presents facts that tend to establish a violation as stipulated in Article 47 b) of the American Convention, and whether the petition is “manifestly groundless” or “out of order” in accordance with paragraph c) of the same article. In this phase of the procedure, the Commission must perform a *prima facie* evaluation not to establish alleged violations of the American Convention but to examine whether the petition reports facts that could tend to establish violations of rights enshrined in that instrument. This examination does not involve prejudgment nor an advance opinion regarding the merits of the case.⁵

38. Neither the American Convention nor the IACHR Rules of Procedure require the petitioners to identify the specific rights that are allegedly violated by the State in the matter submitted to the Commission, although petitioners may do so. In contrast, the Commission, based on the jurisprudence of the system, should determine in its admissibility reports which provisions of the relevant Inter-American instruments are applicable and could be concluded to have been violated if the alleged facts are proven by means of sufficient evidence and legal arguments.

39. In view of the factual and legal arguments made by the parties and the nature of the matter presented for its review, the IACHR believes that the petitioners’ allegations regarding the scope of the alleged responsibility for the facts covered in the complaint could establish possible violations of the rights contained in Articles 3, 4, 5, 7, 8, and 25 in connection with Article 1.1 of the American Convention, to the detriment of Pedro Julio Movilla Galarcio. In addition, the IACHR believes that the petitioners’ allegations regarding alleged violations of the rights to humane treatment, a fair trial, and judicial protection could establish possible violations of Articles 5, 8, and 25 of the American Convention to the detriment of the relatives of the alleged victim. Furthermore, given the nature of the alleged violations described in this petition – which includes the alleged forced disappearance and the absence of judicial clarification regarding that disappearance – the Commission believes that the merits stage should analyze the possible responsibility of the State for the alleged violation of Article 1 b) of the Inter-American Convention on Forced Disappearance of Persons.

40. Finally, the IACHR believes that the allegations referring to the potential relationship between the alleged disappearance of the alleged victim and the activities he was engaged in as a union activist, as well as the failure to provide judicial clarification regarding those facts, if proven, could constitute a violation of Article 16 of the American Convention.

V. CONCLUSIONS

⁵ See IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luís Tapia González et al., Chile, February 24, 2004, para. 33.

41. The Commission concludes that it is competent to examine the complaints presented by the petitioners regarding the alleged violation of Articles 3, 4, 5, 7, 8, 16, and 25 consistent with Article 1.1 of the American Convention, and Article I b) of the Inter-American Convention on Forced Disappearance of Persons; and that they are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

42. Based on the factual and legal arguments set out above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to Articles 3, 4, 5, 7, 8, 16, and 25 in connection with Article 1.1 of the American Convention and Article I b) of the Inter-American Convention on Forced Disappearance of Persons.

2. To inform the Colombian State and the petitioners of this decision.

3. To continue with analysis of the merits of the case.

4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.