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REPORT No. 135/20
PETITION 573-09
REPORT ON ADMISSIBILITY

JOSÉ RODRIGO ESPINOSA VANEGAS
COLOMBIA

Approved electronically by the Commission on June 9, 2020.

Cite as: IACHR, Report No. 135/20, Petition 573-09. Admissibility. José Rodrigo Espinosa Vanegas. Colombia. June 9, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Rodrigo Espinosa Vanegas
Alleged victim:	José Rodrigo Espinosa Vanegas
Respondent State:	Colombia
Rights invoked:	4 (life), 5 (integrity), 7 (personal liberty), 8 (judicial guarantees), 12 (freedom of conscience and religion), 16 (freedom of association), 25 (judicial protection), 27 (suspension of guarantees), 28 (federal clause) in accordance with articles 1.1 and 2 of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	May 12 th 2009
Additional information received at the stage of initial review:	May 6 th 2013, January 4 th 2016, August 22 nd 2018
Notification of the petition to the State:	May 26 th 2015, August 23 rd 2018
State's first response:	August 24 th 2018
Additional observations from the petitioner:	December 28 th 2018

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of the instrument made on July 31 st 1973)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	5 (personal integrity), 8 (judicial guarantees), 22 (circulation and residence) and 25 (judicial protection) of the American Convention in accordance with article 1.1 of the same instrument.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on the terms of section IV
Timeliness of the petition:	Yes, on the terms of section IV

¹ Hereinafter "the American Convention" or "the Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. In the petition it is alleged that the human rights of José Rodrigo Espinosa Vanegas (hereinafter the “alleged victim” or “petitioner”) were violated by the State of Colombia, since the State did not foresee nor investigate properly an attack perpetrated against him by members of a guerrilla group from the Revolutionary Armed Forces of Colombia-People’s Army (FARC-EP) which left him with permanent physical injuries.

2. The petitioner narrates that on May 17th 2000, when he was going from the city of Pereira-Risaralda, towards his country estate in the Municipality of Caldas he was attacked by a group of armed men that, from several points of the highway pestered him with long range firearms for over 30 minutes, receiving over 25 gunshot wounds in his body. He assures that in the middle of the attack he called one of his employees, who informed Mr. Espinosa Vanegas’s wife what was happening, while he also told these events to the Municipal Police. It is said that by the time the Police forces arrived to the place, they only found Mr. Espinosa Vanegas’ truck abandoned.

3. The alleged victim reports that upon suffering the attack, a taxi driver who was passing along the highway noticed his presence, which is why after seeing the condition the alleged victim was in, he got him onto his vehicle and drove him to the Hospital where he was treated. It is said that two uniformed police officers were present in the facilities of the Hospital to tell the alleged victim that it was indispensable to receive his testimony in order to proceed with the investigations of this case. Likewise, during the days when the alleged victim was an inpatient at the Hospital, the Commander of the Risaralda Department Police received a verbal petition for protection by the Hospital’s administrative staff, as to provide guard in the intensive care floor where the alleged victim was located, since there were rumors of a possible second attack against him. He claims, however, that such petition was denied by the Commander of the Police which is why relatives and friends of the petitioner had to watch over the intensive care floor themselves and check the surroundings of the hospital to prevent any future eventual attack.

4. On May 29th 2000, the alleged victim was transferred to the Valle del Lili Clinic in the city of Cali, where he received an ophthalmologic surgery due to the impact of some chips of the bullets. He reports that on May 16th 2000 a police agent assigned to the Station of the Virginia, informed him of the confiscation of the truck he was driving the day of the attack, in order to commence the pertinent investigations. The alleged victim assures that the vehicle was returned by the municipal police within the 30-day period along with cash, leasing contracts he had with him, and identity documents he was carrying at the time of the attack. He claims that by the time he received such elements, he was not informed as to the commencement nor the status of the criminal investigation.

5. Additionally, the petitioner explains that in early July 2000 he started receiving visits from his friends and acquaintances, who suggested that the responsible for the attack were FARC-EP members. The alleged victim narrates that upon recovery from the attack, while he was in the city of Manizales visiting his parents, one of his neighbors mentioned him that in order to keep his estate he had to pay monthly extortion to the FARC guerrilla, that the money was for Commander Ríos, who operated on the Coffee Belt zone and that the same commander had manifested that Mr. Espinosa Vanegas was a guerrilla military target. As a consequence of the above, the alleged victim decided to leave the country with his wife and children in early 2001.

6. Once settled in the United States, the alleged victim intended to return to Colombia on several occasions, but the conflictive situation the country was immerse in made it impossible, to the point of not being able to attend his mother’s funeral. As a result from this, on January 26th 2009 the alleged victim sent to the General Procuratory of the Nation a right to petition manifesting that from the day of the attack the Prosecutor of the city of Pereira had assumed the investigation of the facts, but that until that moment of filing the petition he had received no news regarding the status of the criminal investigation, neither had he being required by the fiscal entity to render detailed information on the case. He argues such request had no answer, which is why, the petitioner requests this Commission demand the State Colombia a compensation for damages suffered.

7. On their part, the State assures that the attack Mr. José Rodrigo Espinosa Vanegas received, cannot be attributed to the State since the aggressions the alleged victim suffered were inflicted by third parties. The State also admits that although it has the duty of protecting citizens who inhabit its territory, such duty is conditioned to the knowledge of a situation of real and imminent risk for a determined individual or group, as well as the reasonable possibility to prevent or avoid that risk; but due to the lack of request for protection by the victim, the State had no obligation of taking special protection and prevention for his right to life and integrity. Likewise, the State argues that after the facts took place back in 2000, the petitioner entered the country in 4 different occasions (October 8th 2000, December 17th 2000, January 5th 2002 and August 28th 2003), and that the longest stay of Mr. Espinosa Vanegas was of approximately 20 days; which proves the state that he had the chance to request protection measures to State authorities.

8. As for the exhaustion of domestic remedies, the State claims that, regarding the criminal process, none of the exceptions of exhaustion set forth in the IACHR are admissible, since at this time the 14th Sectional Prosecutor of Pereira is conducting an investigation under the crime of attempted murder, process assigned with Number. 139152. The State also claims that on November 30th 2015 the alleged victim appeared at the facilities of the Colombian Consulate which receives his testimony regarding the criminal process which the State of Colombia moved forward. Regarding the reasonable timeframe within the criminal process, it states that the situation under which the rights of the alleged victim were violated turns out to be complex and furthermore, becomes aggravated upon the lack of procedural activity from the petitioner, since Mr. Espinosa Vanegas departed the country in a sudden manner without any request for protection before competent authorities upon a risk or threat against his life; and it so happens that only 9 years after the facts occurred did he request the Procurator office for information as to the advances of the investigation.

9. The State of Colombia also sustains that, although up until the moment of the submittal of the petition before the Commission the petitioner had not been required, he could activate the mechanisms established at a national level as to take part in the criminal process, support authorities in the investigation, add proofs he could have and eventually request repair for the damage caused. For the State, the procedural activity of the alleged victim has not been entirely diligent since he did not use the resources available to him.

10. Finally, regarding the indemnity demanded by Mr. Espinosa Vargas, the State requests withdrawal of such demand arguing he never appeared before the governing administrative jurisdiction in order to request repairs for damage suffered, or a sentence versus the State of Colombia for its alleged administrative liability.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. Regarding the exhaustion of domestic remedies, the State affirms that domestic remedies have not been exhausted since the criminal investigation is still in progress, and that the delay in this case's resolution has to do with its complexity and with the alleged victim's lack of diligence. Also, the State assures that the alleged victim could have filed a direct remedy action concerning the indemnity he seeks. On his part, the petitioner argues that the State of Colombia never investigated efficiently the circumstances that caused the attack he suffered, which according to the petitioner proves lack of compliance with the State's duty towards citizens. The petitioner states having requested information from the General Procuratory of the Nation on January 26th 2009, adding that the State of Colombia never answered such request; also, assures that once he received his vehicle back along with his other belongings, police never informed him about the initiation of the process, the status of the investigation, neither of measures adopted to find those responsible for the attack.

12. The IACHR notes that the State informally started a criminal investigation in the year 2000 for the attack perpetrated upon the alleged victim, and that such investigation continues at a research stage with no facts having been clarified to this date nor those responsible having been found. On the other hand, as for the State's argument concerning the complexity of the case, this Commission has established that within criterion to consider when analyzing whether a criminal investigation has been conducted with due promptness and diligence, it is necessary to assess several factors such as: the time elapsed since the crime

occurred, whether the investigation has progressed from the preliminary stage, and the measures adopted by authorities upon the complexity of the case³. For the corresponding analysis, this Commission notes it has been over 20 years since the occurrence of the facts and, within the State's approach, there is no reference as to the measures taken to progress with the investigation. Also, in cases involving the right to life and personal integrity, which means, prosecutable *ex officio*, and the obligation to investigate them relies upon the State. Such duty must be assumed by the State as an own juridical obligation, and not as a management from private individual's interests or that it depends on their initiative or their provision of proof⁴. Having stated the aforesaid, the IACHR concludes that, given the characteristics of the petition, the exception for exhaustion of domestic remedies is applicable foreseen in articles 46.2.c of the American Convention.

13. Regarding direct reparation processes, the Commission has repeatedly sustained that even when alleged victims have turned to civil jurisdiction in search for a pecuniary indemnity, such action is not decisive for the analysis of exhaustion of domestic remedies since it is not appropriate to provide an integral reparation and justice to the alleged victims and their relatives⁵.

14. Finally, this Commission considers that the petition has been submitted within a reasonable timeframe based on article 32.2 of its Rules, since although the alleged facts date back to 2000 and the petition was received on May 12th 2009, some of the effects of the alleged facts, such as the lack of identification and sanction of those responsible, would persist until the present.

VII. ANALYSIS OF COLORABLE CLAIM

15. The Commission observes that the present petition includes allegations as to the breach to the right of personal integrity of Mr. Espinosa Vanegas as a result of an armed attack perpetrated allegedly by the FARC guerrilla, without having concluded the investigation until this date, nor the perpetrators being judged and sanctioned.

16. Regarding the right to integrity, this Commission clarifies that the States have the obligation to guarantee the right to integrity of all people under its jurisdiction, implementing preventive actions and effective operative measures⁶. Upon the liability of the State for the acts committed by third parties even when a State is not directly chargeable for being actions from individuals, the Commission has established that such acts can carry international liability of the State, not for the facts themselves, but for the lack of due diligence to prevent the violation or to treat it in the terms required by the Convention. Hence, the State has the juridical duty to reasonably prevent human rights violations, to investigate seriously with instruments available violations that have been committed within the scope of their jurisdiction in order to identify those responsible, to impose pertinent sanctions upon them and to ensure the victim a proper reparation⁷.

17. In light of these considerations and after examining the elements of fact and law exposed by the parties, the Commission deems the allegations from the petitioner party not expressly baseless and require a deep study since the facts alleged, if proven true may constitute violations to articles 5 (personal integrity), 8 (judicial guarantees) 22 (circulation and residence) and 25 (judicial protection) of the Convention in accordance with article 1.1 of the same instrument.

On the other hand, this Commission considers that the petitioner did not provide enough elements to allow it to conclude, not even at *prima facie*, that there is a breach of articles 4 (life), 7 (personal liberty), 12 (freedom

³ IACHR, Report N. 50/ 08, Petition 298-07. Admissibility. Néstor José Uzcátegui and others. Venezuela. July 24th 2008, par.42.

⁴ IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30th 2017, par. 14.

⁵ IACHR, Report No. 105/17, Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7th 2017, par. 11.

⁶ IACHR, Report About Citizen Safety and Human Rights. OEA/Ser.L/V/II, Doc.57 December 31st 2009, par.142.

⁷ IHR Court, Case Velásquez Rodríguez vs. Honduras. Ground. Sentence July 9th 1988. Series C No. 4, pars. 172-174.

of conscience and religion), 16 (freedom of association), 27 (suspension of guarantees), and 28 (federal clause) of the Americana Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 22 and 25;
2. To find the instant petition inadmissible in relation to Articles 4, 7, 12, 16, 27 and 28; and
3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 9th day of the month of June, 2020.
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.