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REPORT No. 14/20
PETITION 725-10
REPORT ON ADMISSIBILITY

SILFREDO ANTONIO PEREZ CARVAJAL AND FAMILY
COLOMBIA

Approved electronically by the Commission on March 13, 2020.

Cite as: IACHR, Report No. 14/20, Petition 725-10. Admissibility. Silfredo Antonio Perez Carvajal and family. Colombia. March 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Walter Raúl Mejía Cardona
Alleged victim	Silfredo Antonio Pérez Carvajal y familia
Respondent State	Colombia
Rights invoked	Articles 2 (domestic legal effects), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 25 (judicial protection) of the American Convention on Human Rights ¹ ; article 14 (due process) of the International Covenant on Civil and Political Rights; and articles I (life, liberty and personal security), XVIII (fair trial) of the American Declaration on the Rights and Duties of Men.

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	May 14, 2010
Additional information received during initial review	October 26, 2011
Notification of the petition	May 12, 2016
State's first response	November 30, 2017
Additional observations from the petitioner	January 22, 2018
Additional observations from the State	December 6, 2017 and September 18, 2018

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (instrument of ratification deposited on July 31, 1973) and Inter-American Convention to Prevent and Punish Torture ³ (instrument of ratification deposited on January 19, 1999)

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	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention, in connection with article 1.1.; and articles 1, 6 and 8 of the ICPPT.
Exhaustion or exception to the exhaustion of remedies	Yes, exception under article 46.2.c of the American Convention
Timeliness of the petition	Sí, in the terms of Section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner alleges the responsibility of the Colombian State for the forced disappearance and later execution of Silfredo Antonio Pérez Carvajal (hereinafter, "the alleged victim") by the National Army. The petitioner explains that the alleged victim was removed from his ranch in *Vereda Palaya Larga*, district of *Nueva Antioquia*, county of *Turbo-Antioquia*, by members of the National Army on August 20, 2007, at 5:30 in the morning and led to a ravine, where he was extra-judicially executed. His lifeless body was found dressed with a camouflage uniform similar to that used by illegal armed groups. The petitioner holds that the Army reported to the media that the death of the alleged victim happened during a combat. The petitioner also

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

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

³ Hereinafter, "ICPPT".

adduces that the body of the alleged victim had a gunshot wound in his forehead and that the body was tortured. He states that the case follows the same *modus operandi* than other so called “false positives” in Colombia, as the deceased had no connection with illegal armed groups, was a young peasant and was presented by the Army as a dangerous terrorist killed in combat and placing a gun by his lifeless body at the place of the event. He alleges that criminal investigations and disciplinary proceedings, as well as a lawsuit before the administrative litigation jurisdiction, were initiated following the situation that is being denounced and that they are still ongoing. He argues that more than 10 years after the fact, the State has not cleared up the circumstances of the alleged victim’s death nor has it identified or punished the alleged responsible or provided complete reparation to the former’s family.

2. The petitioner argues that once the body of the alleged victim was retrieved, an investigation was started at the Criminal Military Justice which was later transferred to ordinary jurisdiction, with the Office of the Prosecutor No. 114, District of *Turbo Antioquia* where they are identifying those materially responsible. On April 18, 2011, the Antioquia District Direction of Prosecutors apparently undertook a judicial inspection with the purpose of requesting that the criminal prosecution be undertaken by the National Human Rights and International Humanitarian Law Unit, being transferred to the Office of the Prosecutor No. 51 of said Unit, where the evidence is being analyzed. The petitioner holds, however, that no judgment against the material authors or knowledge of the circumstances of the case has been reached.

3. With regards to the disciplinary proceedings, on November 10, 2008, the family members of the alleged victims filed a complaint at the Office of the Prosecutor General of the Nation against the National Army, identifying Major Juan Carlos Vanegas and other soldiers. The petitioner argues that, to this date, none of the participants of the disappearance and later execution of the alleged victim had received disciplinary sanctions or been linked to the facts.

4. Additionally, on December 11, 2009, the family members of the alleged victim filed a direct reparation lawsuit before the Administrative Court of *Turbo-Antioquia*, which determined the responsibility of the State by establishing that the death of the alleged victim did not take place in combat. The petitioner notes that this judgment was confirmed on August 20, 2015, by the Administrative Tribunal of *Antioquia*, which ordered a monetary reparation, which the family members deem partial, and which was not been paid by the Ministry of National Defense as it has argued that it lacks the budget to do so.

5. For its part, the State points out that local remedies have not been exhausted in what relates to the criminal action as the investigation is ongoing at the Office of the Prosecutor No. 51 of Human Rights and International Humanitarian Law, where new investigative proceedings have been undertaken between 2011 and 2016, which allowed establishing that the death of the alleged victim did not take place on the occasion of armed encounter and could be the result of an alleged irregular military operation. The State argues that it is acting with due diligence and that it is currently in the stage of assessing evidence with a view to prosecuting members of the armed forces involved in the events. With regards to the direct reparation action, the State holds that local remedies were exhausted by the judgment of the Administrative Tribunal of *Antioquia* of August 20, 2015, which settled the claims for reparation for moral and material damages and damage to life of the families of the alleged victim in less than four years and that, according to the internal schedule for payments, the Ministry of Defense plans to pay it during the first semester of 2020.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioner points out that since the death of the alleged victim to date, the criminal proceeding has not been advanced and that more than 10 years have elapsed since the incident without obtaining a greater degree of truth as to what happened to obtain justice and a full reparation for the family members. For its part, the State alleges lack of exhaustion of local remedies in relation to the criminal action, given that the investigation is still ongoing. With respect to the compensation claims, the State argues that the fourth instance formula is applicable, given that the contentious administrative jurisdiction resolved the compensation claims of the family members of the alleged victim in a timely manner.

7. The precedents established by the IACHR indicate that whenever an alleged crime is committed which may be prosecuted *ex officio*, the State has the obligation to promote and expedite the criminal process and that this constitutes the ideal way to clarify the facts, judge those responsible and establish the corresponding criminal penalties, in addition to enabling other forms of monetary reparation. In addition, the Commission has established that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, preserve the evidence and even safeguard the rights of any person who is considered a suspect in the context of the investigation.⁴ From the information provided, it is observed that more than 10 years having elapsed since the death of the alleged victim, the criminal process did not conclude with a substantive decision establishing a penalty for those responsible. In view of the foregoing, the IACHR concludes that in this case the exception to the exhaustion of local remedies provided for in Article 46.2.c of the American Convention is applicable.

8. With regard to proceedings before the administrative litigation jurisdiction, the IACHR reminds that, for the purposes of determining the admissibility of a claim of a nature such as the one in the instant case, they do not constitute the suitable remedy nor is it necessary to exhaust it, inasmuch as it is not adequate to provide full reparation and justice to family members.⁵ Regardless, the Commission takes into account that in the administrative litigation jurisdiction, local remedies were exhausted by the decision of August 20, 2015, of the Administrative Tribunal of Antioquia. The petition was filed on May 14, 2010, the alleged facts begun on August 20, 2008, and the alleged effects continue to this day. Therefore, in light of the context and characteristics, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement must be considered to have been met.

VII. COLORABLE CLAIM

9. In view of the elements of fact and law set forth by the parties and the nature of the matter brought before it, the Commission considers the allegations of the petitioner are not manifestly unfounded or require an examination of the merits because the alleged facts about the disappearance torture and subsequent extrajudicial execution of the alleged victim by members of the National Army and their subsequent cover-up with the false attribution of criminal conduct to the latter are true; the lack of resolution within a reasonable period of time of the criminal and disciplinary proceedings; the lack of full reparation for the relatives of the alleged victim; if corroborated as true, these could characterize possible violations of articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention on Human Rights in relation to its Article 1.1; as well as articles 1, 6 and 8 of the ICPPT to the detriment of the alleged victim and his relatives.

10. With the allegations of the State concerning the fourth instance formula, the Commission reiterates that within the framework of its mandate it is competent to declare a petition admissible and rule on the merits when it refers to internal processes that could violate rights guaranteed by the American Convention.

11. On the other hand, in relation to the International Covenant on Civil and Political Rights, the Commission lacks competence to establish violations of the norms of said treaty, without prejudice to which it may take it into account as part of its interpretative exercise of the norms of the American Convention at the merits stage of the present case, under the terms of article 29 of the Convention. With respect to the alleged violations of articles of the American Declaration, this Commission has previously established that, once the Convention enters into force in relation to a State, it and not the Declaration becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and is not a situation of continued violation. In this case, the alleged violations of the Declaration fall within the scope of protection of articles 4, 5, 7, 8 and 25 of the Convention. Therefore, the Commission will examine these allegations in the light of the Convention.

⁴ IACHR, Report No.49/14. Petition 1196/07. Admissibility. Juan Carlos Martínez Gil, Colombia, July 21, 2015, para. 29.

⁵ IACHR, Report No.72/16. Petition 694/06. Admissibility. Onofre Antonio de La Hoz Montero and Family, Colombia, December 6, 2016, para. 32.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 11 and 25 of the American Convention on Human Rights, in connection with Article 1(1) of the American Convention and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and

2. 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 13th day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.