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REPORT No. 56/24

PETITION 800-13

REPORT ON INADMISSIBILITY

JAVIER CALVO ROCHA AND FAMILY MEMBERS
COLOMBIA

Approved electronically by the Commission on May 10, 2024.

Cite as: IACHR, Report No. 56/24. Petition 800-13. Inadmissibility.
Javier Calvo Rocha and family members. Colombia. May 10, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Robert Peter Pelaez Medina
Alleged victim:	Javier Calvo Rocha and family members ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (right to a fair trial), 17 (rights of the family), and 27 (suspension of guarantees) of the American Convention on Human Rights, ³ in relation to Article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	May 16, 2013
Additional information received at the stage of initial review:	May 22, 2013 and October 6, 2013
Notification of the petition to the State:	August 8, 2018
State's first response:	May 20, 2020
Additional observations from the petitioner:	October 5 and 13, 2020
Additional observations from the State:	May 21, 2021
Notification of the possible archiving of the petition:	October 24, 2023
Petitioner's response to the notification regarding the possible archiving of the petition:	November 24, 2023

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 instrument of ratification on July 31, 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	None, under the terms of Section VII
Exhaustion of domestic remedies or applicability of an exception to the rule:	Partially, under the terms of Section VI
Timeliness of the petition:	Partially, under the terms of Section VI

¹ The petition lists the following alleged victims as family members of Mr. Javier Calvo Rocha: 1. Ruth Mery Acevedo Villadiego (wife); 2. Rutnerieth Calvo Acevedo (daughter); 3. Javier Andrés Calvo Acevedo (son); 4. Anggie Mercedes Calvo Acevedo (daughter); 5. Gustavo Calvo Padilla (father); 6. Rebecca Amado García (stepmother); 7. Gustavo Calvo Rocha (brother); 8. Cira Esta Calvo Sarmiento (sister); 9. Álvaro José Sarmiento Rocha (brother); 10. Blacina Calvo Fernández (sister); 11. Carlos Enrique Calvo Fernández (brother); 12. Lila Maruja Calvo Fernández (sister); 13. Deyanira Calvo Fernández (sister); 14. María del Carmen Calvo Fernández (sister); 15. Delsy Ester Calvo Fernández (sister); 16. Daniel Enrique Acevedo Martínez (father-in-law); y 17. Gilma Rosa Villadiego Beltrán (mother-in-law).

² As provided in Article 17.2.a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or in the decision in this matter.

³ Hereinafter, the "American Convention" or the "Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. POSITION OF THE PARTIES

1. The petitioner decries international responsibility on the part of Colombia for its failure to investigate the murder of Mr. Javier Calvo Rocha by paramilitaries in the municipality of Zambrano, department of Bolívar. He alleges that the State failed to meet its duty to provide security in that locality, given the constant threats made by groups outside the law. He also alleges the failure to make comprehensive reparations in favor of the family members of Mr. Calvo Rocha for these events.

2. As background, the petition reports that on January 11, 2001 the Intelligence Section of the Police Department of Bolívar received information that members of the Revolutionary Armed Forces (FARC) had ordered terrorist actions in the localities of Cartagena, Carmen de Bolívar, San Jacinto, Zambrano, Ovenjas, San Onofre, and Sincelejo, Sucre. The objective of these actions was to detonate explosive devices against military installations, police stations, and police officers.

3. Closely related to the above, the petitioner relates that on January 13, 2001, at about 6:00 a.m., Mr. Javier Ignacio Calvo Rocha (hereinafter “Mr. Calvo Rocha”), who was serving at that time as commander of the Police Station in the municipality of Bolívar, traveled by land with another fifty police officers toward the municipality of Zambrano, following his superiors’ orders. The petitioner states that, during the trip, Front 37 of the FARC detonated and threw explosives at the vehicles in which the police were traveling, seriously wounding the occupants, who were ultimately executed with firearms by the members of the FARC. The victims included Mr. Calvo Rocha.

4. Regarding domestic level investigation of the attack, the petitioner states as follows:

[...] the family members of the victim, JAVIER IGNACIO CALVO ROCHA, (r.i.p.), “DID NOT” file with the Office of the Attorney General of the Nation, Criminal Courts, and Office of the Colombian Prosecutor a Criminal or Disciplinary Action against the public officials of the Colombian State who were involved in the events that took place, considering that according to Death Benefit Administrative Notice, Ns. 004/2001, the characterization assigned by the Colombian State – National Police, to the death of Mr. JAVIER IGNACIO CALVO ROCHA, (r.i.p.), framed it as falling under the provisions of Article 165 of Decree 1212 of 1990, “DEATH IN SPECIAL SERVICE ACTIONS AS A CONSEQUENCE OF ENEMY ACTION.” Thus, it is obvious that they cloaked under the mantle of impunity the violation of the aforementioned victim’s International Human Rights, deflecting any criminal action that could derive from the “ACTIONS OR OMISSIONS” that the Colombian State had committed, the purpose being to relieve itself of responsibility.

5. Closely related to the above, the petitioner indicates that the family members of Mr. Calvo Rocha did not submit a criminal complaint against the officials who ordered him to travel from the municipality of Carmen to Zambrano, both in the department of Bolívar, despite those officials having information that the FARC forces would launch attacks against the police officers.

Administrative court proceedings

6. In contrast, the petitioner indicates that the family members of Mr. Calvo Rocha did file an action for direct reparations against the Ministry of Defense and the National Police, seeking to be compensated for the damages they suffered due to the death of Mr. Calvo Rocha, alleging that the National Police, despite having knowledge of the threats made by FARC members against the police forces, failed to provide sufficient security measures to safeguard the life and safety of Mr. Calvo Rocha and the other police officers who were with him. In this regard, the petitioner points out that on October 4, 2010, Administrative Court 12 of Cartagena denied the claims made in the suit, establishing, *inter alia*, that: “... it was felt that the complainant did not succeed in proving the National Police’s failure to serve or the exposure to an exceptional risk, which was the direct cause of the death of Mr. Javier Ignacio Calvo Rocha.”

7. In response to the above, Mr. Calvo Rocha's family members filed an appeal. On November 1, 2012, the Administrative Court of Bolívar confirmed the judgment being appealed, concluding the Mr. Calvo Rocha died under circumstances inherent to the risk of the service he was rendering and, accordingly, there was no responsibility on the part of the State.

8. The petitioner specifically asks the IACHR to secure compensation for the family members of the alleged victim, in that the State seriously failed to protect Mr. Javier Calvo Rocha against the threats made by the FARC against military forces and the police, exposing the victim to a risk beyond those pertaining to his duties as an agent of the State. The petitioner emphasizes that the death of Mr. Calvo Rocha caused serious moral and economic harm to his family members, harm that continues to this date.

Position of the Colombian State

9. Colombia, for its part, confirms the facts established in the argument made by the petitioner. The State then asks the IACHR to declare this petition inadmissible because: (i) in its judgment, the claims made in the petition are manifestly groundless; and (ii) the instant case seeks to establish what is called a "fourth international instance."

10. Regarding point (i), Colombia establishes that the facts in the petition do not characterize violations of the rights enshrined in the American Convention, in that on the day of the events Mr. Calvo Rocha was traveling in a truck that was part of a caravan of about six vehicles, in which about fifty police officers were traveling, who were carrying high caliber firearms, grenades, and flares, as merited by the public order situation in the area. It also points out that Mr. Calvo Rocha had been in the National Army of Colombia for about sixteen years, thus demonstrating his military training and dedication to service. Along these lines, the State maintains that the risk that Mr. Calvo Rocha assumed was inherent to the duties of his position and that he had adequate training and weaponry to handle the situation. It therefore argues that the petition is inadmissible in accordance with Article 47.c) of the American Convention.

11. Regarding point (ii), the State indicates that the Administrative Court of Bolívar, when ruling on the appeal filed in the context of the administrative court proceeding, determined that the death of Mr. Calvo Rocha was perpetrated by groups outside the law, while Mr. Calvo Rocha was in service, so that it was not possible to attribute responsibility to the State. On this point, Colombia establishes that the decision in that court was well-founded and that procedural guarantees were respected during the course of the proceeding. Thus, it argues that the petitioner is seeking to have the IACHR act as an appellate court for review of judicial decisions handed down at the domestic level.

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

12. To analyze the exhaustion of domestic remedies in this matter, the IACHR recalls that, according to its consolidated and reiterated practice, for purposes of identifying suitable remedies that should have been exhausted by a petitioner before the Inter-American System, the first methodological step consists of identifying the various complaints made in this petition in order to proceed with an individualized examination thereof.⁵ In the respective case, the petitioner has submitted two complaints to the Commission: (i) the lack of a diligent investigation of the murder of Mr. Javier Calvo Rocha; and (ii) the lack of administrative reparations in favor of the members of his family based on the events.

⁵ By way of example, the following IACHR admissibility reports can be consulted: Report No. 117/19. Petition 833-11. Admissibility. Freed workers of the Boa-Fé Caru Hacienda. Brazil, June 7, 2019, paras. 11, 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19 et seq.; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26, 27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15-16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 et seq.; Report No. 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 13 et seq.; Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and their family members. Colombia. June 7, 2019, paras. 20 et seq.

13. Regarding point (i), the IACHR recalls that, in situations relating to possible violations of the right to life, which constitute ex officio prosecutable offenses, the domestic remedies that must be taken into account for purposes of the admissibility of a petition are those related to the criminal process, in that this is the suitable route for clarifying the facts and establishing the corresponding criminal sanctions, in addition to making possible other means of reparations of a pecuniary nature.⁶

14. In line with these criteria, the Commission observes that the State did not initiate an investigation intended to clarify the facts claimed, because the death of Mr. Calvo Rocha occurred while he was performing his duties as a police officer. In this regard, the Inter-American Commission concludes, for purposes of analyzing admissibility, that the exception to the requirement of exhaustion of domestic remedies applies to this point of the petitioner, as provided in Article 46.2.a) of the American Convention.

15. Regarding the timeliness of submission as established in Article 46.1.b), the American Convention provides in Article 46.2 that the provision will not apply when any of the exceptions to the rule of the exhaustion of domestic remedies established in the same article is operable, as in the exception established in Article 46.2.a), applied in the instant case. Consistent with this Convention standard, Article 32.2 of the IACHR Rules of Procedure provides that “[...] *the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.*” On this same topic, the Commission has emphasized that “*the principles underlying the inter-American system of human rights certainly include legal certainty, which is the basis for the six-month rule and a reasonable time frame when applying exceptions to the exhaustion of domestic remedies.*”⁷

16. Thus, regarding this point in the petition, the Commission observes that the murder of Mr. Calvo Rocha occurred on January 13, 2001 and that the petition was submitted to the IACHR on May 16, 2013, i.e., more than a decade after the events occurred. The State did not in due course question the timeliness of the petition’s submission. For its part, the Commission observes that the petition does not provide specific information regarding concrete circumstances justifying or explaining its delay in submitting the petition. Therefore, the Commission concludes that it does not have evidence with which to establish that this point in the petition was presented within a reasonable period under the terms of Article 32.2 of its Rules of Procedure, consistent with Article 46 of the American Convention.

17. In addition, as regards point (ii), on the alleged lack of administrative reparations in favor of the family members of Mr. Javier Calvo Rocha, listed as alleged victims in this petition, the IACHR observes that these victims filed a direct action for reparations against the Ministry of Defense and the National Police, seeking compensation for the damages they suffered due to the death of Mr. Calvo Rocha, alleging that the National Police had knowledge of the threats of attacks against the police forces made by the members of the FARC. On October 4, 2010, Administrative Court 12 of Cartagena denied the claims in the suit. That ruling was appealed and, on November 1, 2012, the Administrative Court of Bolívar confirmed the decision on appeal. With regard to the above, considering that the definitive ruling was the one issued on November 1, 2012, the Commission concludes that the requirement of Article 46.1.a) of the American Convention was met with respect to the subject in this point of the petition.

18. As for the timeliness of the petition, which has not been disputed by the State, the Commission observes that the last judicial ruling in the context of the administrative court proceeding was reported on November 16, 2012. Thus, considering that the petition was received by the IACHR Executive Secretariat on May 16, 2013, this point in the petition then satisfies the requirement in Article 46.1.b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

19. This petition, in those parts that prove to be admissible in accordance with Section VI of this report, includes allegations regarding the recognition of comprehensive compensation in the administrative court proceeding initiated due to the death of Mr. Javier Calvo Rocha, as a consequence of the attack he suffered on

⁶ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10

⁷ IACHR, Report No. 100/06, Petition 943-04, Inadmissibility. Gaybor Tapia and Colón Eloy Muñoz, Ecuador, October 21, 2006, para. 20.

January 13, 2001. Colombia suggests that the petitioner seeks to make use of the IACHR as an international court of appeals for review of decisions adopted by domestic courts, despite their being adopted pursuant to the judicial guarantees enshrined in the American Convention.

20. The Commission reiterates that, for purposes of determining the admissibility of a petition, it must decide whether the facts alleged may characterize a violation of rights, as stipulated in Article 47.b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order” in accordance with paragraph c) of the referenced article. The criterion for evaluating these requirements is different from that used to rule on the merits of a petition. In this regard, the Commission reiterates that it is not competent to review the decisions issued by domestic courts acting within the area of their jurisdiction, with strict respect for due process and judicial guarantees.

21. In this regard, the Commission recalls that the petitioners’ mere disagreement with the interpretation that the domestic courts have given to the relevant legal standards is not sufficient to constitute violations of the Convention. The interpretation of the law, the relevant procedure, and the weighing of the evidence is, *inter alia*, the domestic jurisdiction’s exercise of the judicial function, which cannot be replaced by the IACHR.⁸ In this sense, the function of the Commission consists of guaranteeing the observance of the obligations assumed by the States party to the American Convention, but it may not act as a court of appeals for examining alleged errors of law or of fact that domestic courts acting within the limits of their competence may have committed.⁹

22. Consistent with these criteria, and according to the information provided by the parties in this petition, the Commission observes that the petitioner has not presented concrete factual or legal evidence making it possible to establish that the decisions issued both by Administrative Court 12 of Cartagena and the Administrative Court of Bolívar, when ruling on the claims for direct reparations and the subsequent appeal, have suffered from any defect or have violated any guarantee enshrined in the American Convention. As emerges clearly from the exposition of the parties, the Administrative Court of Bolívar evaluated the risk to which Mr. Calvo Rocha was exposed, in his position as a police officer, establishing that: “[...] *it was felt that the complainant failed to prove the National Police’s failure to serve or the exposure to exceptional risk, which was the direct cause of the death of Mr. Javier Ignacio Calvo Rocha.*”

23. Therefore, the Commission concludes, as it has in other precedents like the instant case,¹⁰ that said allegation proves to be inadmissible based on Article 47.b) of the American Convention, in that the facts presented do not even point to possible *prima facie* violations of the American Convention.

VIII. DECISION

1. To find this petition inadmissible.
2. Notify the parties of this decision and 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 10th day of the month of May, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁸ IACHR, Report No. 83/05 (Inadmissibility), Petition 644/00, Carlos Alberto López Urquía, Honduras, October 24, 2005, para. 72.

⁹ IACHR, Report No. 70/08, (Admissibility), Petition 12.242, Pediatric Clinic of the Region of Los Lagos, Brazil, October 16, 2008, para. 47.

¹⁰ IACHR, Report No. 236/22. Petition 1828-12. Inadmissibility. Relatives of Julio César Cardona Lozano. Colombia. September 17, 2022; IACHR, Report No. 233/22. Petition 1482-13. Inadmissibility. Relatives of Ercid Rivas Salas and Felix Arturo Torres Ortiz. Colombia. August 28, 2022; IACHR, Report No. 428/21. Petition 419-12. Inadmissibility. Wilder González Ocampo and Family. Colombia. December 9, 2021; and IACHR, Report No. 365/21. Petition 125-12. Inadmissibility. Relatives of José Ancizar Ferreira Cedeño. Colombia. December 2, 2021.