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REPORT No. 114/17
PETITION 1151-08
REPORT ON ADMISSIBILITY

JOSÉ ISMAEL MARTÍNEZ ROMÁN AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

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I. INFORMATION ABOUT THE PETITION

Petitioner:	Eliana Patricia Quintero García
Alleged victim:	José Ismael Martínez Román and family
State:	Colombia
Rights invoked:	Articles 4 (life); 5 (humane treatment); 8 (fair trial); and 25 (judicial protection) of the American Convention on Human Rights; ² and articles I (life), XI (health), and XVII (fair trial) of the American Declaration of the Rights and Duties of Man ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	October 1, 2008
Additional information received at the initial study phase:	December 12, 2008, and September 18, 2014
Date on which the petition was transmitted to the State:	September 30, 2014
Date of State's first response:	February 12, 2015

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 (ratification instrument deposited on July 31, 1973) and American Declaration

IV. ANALYSIS OF 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 5 (humane treatment); 8 (fair trial); and 25 (judicial protection) of the American Convention, in conjunction with its Article 1(1) (obligation to respect rights)

¹ Commissioner Luis Vargas, of Colombian nationality, did not participate in the deliberations nor in the decision in this case, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

² Hereinafter the "Convention" or the "American Convention."

³ Hereinafter the "Declaration" or the "American Declaration."

⁴ The comments of each party were duly forwarded to the counter-party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, February 23, 2012
Timeliness of the petition:	Yes, October 1, 2008

V. ALLEGED FACTS

1. The petition states that at the time of the facts, José Ismael Martínez Román (hereinafter “the alleged victim”) was a member of the National Army of Colombia, under the Fifth Brigade of Barrancabermeja. It states that on May 7, 1995, the alleged victim was in an urban area of Santander when he found an explosive device, known as a “radio bomb.” The petitioner states rather than order the controlled detonation of the device, Sgt. Aurelio Morales, the alleged victim’s commanding officer ordered it be placed in the alleged victim’s custody, without measures of protection. The petition states that the radio bomb exploded in the alleged victim’s hand. As a result, he lost both eyes, his left hand, and phalanges from his right hand. The petition notes that after these facts, the alleged victim returned to live with his family in a squatter settlement, with no access to rehabilitation treatment that would have enabled him to rejoin the workforce.

2. It says that the alleged victim filed a suit seeking direct compensation from the National Army on September 11, 1995. The suit alleges that he was suffering from deep depression and that his family did not have the financial resources to pay for psychological treatment, nor to pay for the rehab sessions recommend by the doctors. It states that in a judgment handed down on June 14, 2001, the Administrative Backlog Reduction Court of Cali dismissed the suit, finding that “the injuries suffered by Second Corporal José Ismael Martínez Román were the result of his careless and imprudent actions in tampering with an explosive device, which should have been left to explosives experts.” On July 17, 2002, the judgment was appealed before to the Council of State, which, as of the filing date of this petition (October 1, 2008) had still not been resolved, for which reason the petitioner alleged existence of an unjustified delay.

3. The State maintains that the petition should have been declared inadmissible because it does not describe facts that would comprise human rights violations. It argues that the petitioner wants the Commission to act as a “fourth instance” by reviewing rulings made by domestic courts. Regarding the facts, it alleges that Sgt. Aurelio Morales left the radio bomb in the custody of the alleged victim with clear orders not to connect the battery or turn the device on, due to its suspicious nature. It states that the aforementioned item turned out to be an explosive device left by the members of the National Liberation Army guerilla group, and that despite the warnings of his commanding officer, the alleged victim tampered with the device in an attempt to intercept communications from the illegal group. It alleges that these facts were demonstrated during the adversarial administrative proceeding and recognized by the representative of the alleged victim in his appeal pleading.

4. The State adds that on February 23, 2012, the Council of State issued its judgment on the appeal. In its judgment, it upheld the decision of the lower court, finding that “none of the evidence [...] supports the conclusion that the entity being sued [the National Army] was responsible for the failure, and there is no evidence to indicate the alleged omission of the commanding officer of the counter-guerilla patrol; on the contrary, the evidence shows that when Sgt. Aurelio Morales handed over the radio to Second Corporal Martínez Román, he warned him of the danger involved in connecting the battery and the further danger in turning the communication device on, as it could be an explosive device. Nevertheless, the plaintiff ignored this advice and proceeded to turn the device on.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The information available indicates that on September 11, 1995, the alleged victim filed suit for direct compensation, and the suit was dismissed by the Administrative Debottlenecking Court of Cali on June 14, 2001. This judgment was appealed, and the Council of State issued a judgment on this appeal on February 23, 2012, upholding the lower court. The State made no argument with regard to exhaustion of domestic remedies. Based on this, the Commission concludes that the alleged victim exhausted domestic

remedies with the issuing of the judgment on February 23, 2012, in compliance with articles 46(1)(a) of the Convention and 31(1) of the Rules of Procedure.

6. Regarding the petitioner's allegation of violation of Article XI (health) of the American Declaration, the IACHR observes that no information has been provided regarding the steps taking to obtain the requested medical treatments. In this regard, the Commission finds that the internal remedies regarding this pleading have not been exhausted.

7. The petition before the IACHR was submitted on October 1, 2008, and the remedies were exhausted on February 23, 2012, when the judgment on the appeal was handed down while the petition's admissibility was still under examination. In accordance with IACHR case law, analysis of the requirements established in articles 46(1)(b) of the Convention and 32(1) of the Rules of Procedure should be conducted based on the situation at the moment the admissibility or inadmissibility of a claim is declared. This requirement is therefore considered fulfilled.

VII. COLORABLE CLAIM

8. In view of the elements of fact and law presented by the parties and the nature of the matter under consideration, the IACHR finds that should the alleged unjustified delay of more than 17 years in resolving the direct compensation claim be proven, along with the injuries suffered by the alleged victim and the lack of compensation, they could represent violations to the rights protected in articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the Convention, in conjunction with Article 1(1) thereof. The Commission decides to declare this petition inadmissible in its allegation of the violation of Article 4 of the Convention.

9. Regarding allegations of violations of the American Declaration, pursuant to the provisions of articles 23 and 49 of its Rules of Procedure, in principle, the Commission enjoys *ratione materiae* competence to examine violations of rights enshrined in that Declaration. However, the IACHR has previously established that once the American Convention enters into force with regard to a State, it is that instrument—not the Declaration—that becomes the specific source of law to be applied by the Inter-American Commission, as long as the petition alleges violations of rights that are substantially identical to rights enshrined in both instruments and that an ongoing situation is not involved.

10. Regarding the State's pleadings on the fourth instance, the Commission recognizes that it lacks competence to review judgments handed down by domestic courts acting in the realm of their own competence, in observance of the rights to due process and judicial guarantees. However, it reiterates that within the framework of its mandate, it is competent to declare a petition admissible and rule on its merits when the petition addresses domestic proceedings that could violate rights protected by the American Convention.

VIII. DECISION

1. To find this petition admissible in relation to articles 5, 8, and 25 the American Convention, with regard to Article 1(1) of the same instrument;

2. To find this petition inadmissible in relation to Article 4 of the American Convention and Article XI of the American Declaration;

3. To notify the parties of this decision;

4. To continue with the analysis of the merits of this matter; and

5. To publish this ruling 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 in the city of México, on the 7 day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.