

OEA/Ser.L/V/II.
Doc. 143
19 October 2018
Original: Spanish

REPORT No. 126/18
PETITION 872-08
REPORT ON ADMISSIBILITY

LUIS MARIANO PERTUZ LARA AND FAMILY
COLOMBIA

Approved electronically by the Commission on October 19, 2018.

Cite as: IACHR, Report No. 126/18, Petition 872-08. Admissibility. Luis Mariano Pertuz Lara and Family. Colombia. October 19, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	" <i>Mínimo Vital</i> " Fund for the Development of Basic Living Conditions
Alleged victims:	Luis Mariano Pertuz Lara and family ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 19 (Rights of Child) and 25 (Judicial Protection) of the American Convention on Human Rights, ³ in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	July 25, 2008
Notification of the petition to the State:	September 2, 2014
State's first response:	March 9, 2015
Additional observations from the petitioner:	February 4 and April 30, 2015
Additional observations from the State:	January 4, 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 ratification instrument on March 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	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 19 (Child), 22 (Freedom of Movement and Residence) and 25 (Judicial Protection) of the Convention, in relation to Article 1.1 (Obligation to Respect Rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Josefina Cañas Cantillo, Luis Martín Pertuz Cañas and Lorena Patricia Pertuz Cañas.

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not partake in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

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

V. ALLEGED FACTS

1. The petitioning party claims that the State of Colombia violated the right to humane treatment, liberty and life, among other rights, of Luis Mariano Pertuz Lara (hereinafter “the alleged victim” or “Mr. Pertuz”), allegedly a victim of arbitrary and illegal deprivation of liberty who was executed by members of the United Self-Defenses of Colombia (AUC) operating in the department of Magdalena with the acquiescence of the State. It argues that these “Self-Defense Groups” were legally organized under national laws such as Legislative Decree No. 3398 of 1965, Law No. 48 of 1968 and Decree No. 815 of 1989. It alleges that after the murder of Mr. Pertuz, his family members were threatened, robbed and persecuted; that they had to move to other towns accordingly. It affirms that the State has violated the alleged victims’ right of access to justice and full redress for the damage caused by a state policy that has ensured impunity for the perpetrators.

2. The petitioner claims that, by the time of the facts, Mr. Pertuz was working as a teacher of religious studies at the Manuel Rudas school in the village of Santa Rita, municipality of Remolino, department of Magdalena; and he was married to Josefina Cañas Cantillo, whom he had a son and a daughter with, both minors. It explains that on June 23, 1997 some paramilitaries forced the villagers out of their houses, deprived them of liberty and forced them to attend a meeting at the main square of Santa Rita. After that, villagers were made to walk along a street without looking backwards, and after they walked two hundred meters, the paramilitaries killed Mr. Pertuz behind a church, by shooting him thrice to the head. The petitioner alleges that, subsequently, the paramilitaries robbed the cows, mules, chickens and other animals of the alleged victim’s family which these relied on for sustenance and a source of income; that therefore these had to move to the city of Soledad.

3. On June 27, 1997 Remolino police inspector transmitted an order to remove the body, to the Municipal Court and ordered that the proceedings be sent to the Sectional Unit for the Prosecutor’s Offices of Ciénaga, which in turn ruled to open preliminary investigation no. 569. It claims that on May 19, 1998, however, it was ruled that the proceedings be suspended because after 180 days it was found that there were no grounds to issue a restraining order or rule that an investigation be open. The petitioner informs that on May 12, 2008 Mr. Pertuz’s family members filed a request for information to the Prosecutor’s Office on the developments in the investigation, and that this body indicated that the procedure had been archived on December 20, 2002.

4. Mrs. Cañas affirms that in view of a generalized context of fear in the region and their being permanently at risk—for the State did not provide effective protection for the civil population—she had to wait several years before resorting to the administrative and judicial jurisdictions. Accordingly, she submits that on October 31, 2007, after some paramilitary corps were demobilized and some of their members signed up for Law No. 975 of 2005 (the Justice and Peace Law), she and her family decided to file, before the 43rd Judicial Attorney General’s Office for Administrative Matters of Santa Marta Magdalena, an application for an extra-legal conciliation agreement with the State of Colombia whereby she sought the recognition and payment of compensation in view of the damages resulting from the extrajudicial killing of her husband.

5. The petitioning party claims that the Attorney General’s Office fixed a date for a hearing, held on February 25, 2008. It alleges that the representative of the Ministry of the Interior and Justice expressed that the State of Colombia decided not to propose a conciliation agreement because the period for filing a claim on non-contractual civil liability was due, as more than two years had passed since the facts took place. Thus, the conciliation stage terminated.

6. The petitioner submits that the State has failed to fulfill its duty to clarify the facts and punish the persons responsible, both masterminds and perpetrators involved in the facts. It adds that although it has been more than two decades since then, the family members have not had the opportunity to participate, be heard or bring a civil action in the framework of the criminal proceeding, because the developments in the investigations have not been clarified or duly notified.

7. For its part, the State alleges that the facts presented do not tend to establish violations of the American Convention because those offenses were committed by third parties (paramilitary groups) and there is no evidence of either tolerance or acquiescence on the part of State agents, or proof of their failure to comply with the duty of due diligence. In addition, the State claims that the petitioning party has not exhausted a claim for direct reparation and that in the criminal proceeding a criminal action is pending exhaustion. In this regard, it argues that on October 13, 2006 the Attorney General's Office National Unit for Justice and Peace registered the facts reported by Mrs. Cañas, opening investigation no. 80667 at the ordinary jurisdiction. It submits that on December 18, 2007 the Prosecutor's Office of Santa Marta resolved to open a preliminary investigation and that on December 27, 2013 this was consolidated with investigation 77558, concerning facts attributable to Illegally Organized Groups, led by commander "Esteban." It claims that although that investigation is underway, the petitioning party has not filed a civil claim within the criminal proceeding; that therefore it is clear that a criminal action is pending exhaustion.

8. Moreover, the State alleges that it must be taken into account the administrative system of reparation available in Colombia, which includes land restitution as one of the domestic claims to be exhausted. It adds that Mrs. Cañas has been on the Victims Single Registry (RUV) since February 8, 2013 and that she receives economic aid in view of her husband's murder and her being a victim of forced displacement. In light of the foregoing, it requests that the instant petition be declared inadmissible on grounds of lack of exhaustion of domestic remedies.

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

9. The petitioner alleges that, although decades have passed since the events took place, the proceedings remain in a preliminary stage and that the authorities have not yet clarified the facts or punished the persons responsible, which proves the authorities' judicial inaction and unwarranted delay and has ensured impunity for the offenses. The petitioner also explains that the alleged victims had to wait several years before filing actions against the State of Colombia because there was a generalized context of fear in the region for it was a zone of conflict. For its part, the State claims that domestic remedies have not been exhausted because the alleged victims never filed a claim for damages and the criminal action is pending resolution. It also alleges that the petitioning party did not bring a civil action within the criminal proceeding.

10. The Commission observes that in situations involving criminal offenses against the rights to life and humane treatment, the domestic remedies to be considered for the purpose of admissibility are those concerning the criminal investigation and the punishment of the persons responsible.⁵ In the instant case, based on the available information, in June 1997 the Sectional Unit for the Prosecutor's Offices of Ciénega ordered to open a preliminary investigation into the alleged victim's death. However, it was suspended on May 19, 1998, its archive being ordered on December 20, 2002. Likewise, according to the submitted information, on October 13, 2006 the National Unit for Justice and Peace of the Public Prosecutor's Office filed the investigation before the ordinary jurisdiction, and on December 18, 2007 the Prosecutor's Office of Santa Marta opened a preliminary investigation, which on December 27, 2013 was consolidated with another investigation and is to date in a preliminary stage.

11. In view of the foregoing, the IACHR concludes that, given the characteristics of the instant petition and that the criminal investigation is in a preliminary stage 21 years after the death of the alleged victim, the exception to the requirement of prior exhaustion of domestic remedies, set forth in Article 46.2.c of the American Convention must be applied to the instant case. Furthermore, the IACHR reiterates that in procedural systems where victims or their family members are entitled to participate in criminal proceedings, such participation is not an obligation but an option which under no circumstances substitutes actions by the State.⁶ Lastly, the IACHR recalls that, for the purpose of ruling on the admissibility of a complaint like the instant petition, the petition for direct reparation is not an adequate means nor is it

⁵ IACHR, Report No. 72/18, Petition 1131-08, Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala, June 20, 2018, par. 10.

⁶ IACHR, Report No. 53/17, Petition 1285-04. Admissibility. Dora Inés Meneses Gómez *et al.* Colombia, May 25, 2017, par. 38.

necessary to exhaust it, for it is inadequate to provide full redress and justice to the family.⁷ Additionally, the IACHR has established that the determination of reparation does not exempt the State of its obligations related to the component of justice for the violations caused.⁸

12. As for the time of presentation of the instant petition, in light of the abovementioned application of the exception to the requirement of prior exhaustion of domestic remedies, and given that the petition to the IACHR was received on July 25, 2008, that the alleged acts in this complaint began on June 23, 1997 and that the effects of these allegedly persist to date; and in view of the context and the characteristics of the instant case, the Commission finds that the petition was filed within a reasonable period thus the admissibility requirement on timeliness must be declared met.

VII. ANALYSIS OF COLORABLE CLAIM

13. Considering the factual and legal elements presented by the parties, and given the nature of the matter brought to its attention, the Commission believes that, if proven, the alleged wrongful deprivation of liberty and extrajudicial killing of Luis Mariano Pertuz Lara with the acquiescence of the State, the failure to investigate and sanction the persons responsible, and the internal displacement of his family as a result of the reported acts all could tend to establish possible violations of the rights protected by Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 22 (Residence and Movement) and 25 (Judicial Protection) of the American Convention in relation to Article 1.1 (Obligation to Respect Rights) thereof. In addition, from the information submitted by the petitioner there appears that two of the alleged victims, Luis Martín Pertuz Cañas and Lorena Patricia Pertuz Cañas, were minors at the time the events took place; therefore, the Commission finds that Article 19 (Rights of the Child) of the Convention, in connection with Article 1.1 thereof is admissible in relation to them.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 19, 22 and 25 of the American Convention, in connection with Article 1.1 thereof; and

14. 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 19th day of the month of October, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁷ IACHR, Report No. 72/16, Petition 694-06. Admissibility. Onofre Antonio de La Hoz and Family. Colombia, December 6, 2016, par. 32.

⁸ IACHR, Truth, Justice and Reparation: Fourth report on [the] human rights situation in Colombia. December 31, 2013, par. 467.