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REPORT No. 50/19
PETITION 1376-08
REPORT ON ADMISSIBILITY

HUGO FERNEY LEÓN LONDOÑO AND FAMILY
COLOMBIA

Approved electronically by the Commission on May 5, 2019.

Cite as: IACHR, Report No. 50/19. Petition 1376-08. Admissibility. Hugo Ferney León Londoño and family. Colombia. May 5, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Edgar José Rodríguez
Alleged victim:	Hugo Ferney León Londoño and family ¹
Respondent State:	Colombia ²
Rights invoked:	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 ³ , in connection with its Article 1.1 (obligation to respect rights); articles I, II and III of the Inter-American Convention on Forced Disappearance of Persons; article 9 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights ⁴

II. PROCEDURE BEFORE THE IACHR⁵

Filing of the petition:	December 1, 2008
Additional information received at the stage of initial review:	December 3, 2008; June 11, 2009; July 9, 2013
Notification of the petition to the State:	June 17, 2014
State's first response:	October 24, 2014
Additional observations from the petitioner:	December 9, 2014; May 27 and June 1, 2015
Additional observations from the State:	April 24 and September 25, 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 (deposit of instrument on July 31, 1973) and Inter-American Convention on Forced Disappearance of Persons (deposit of instrument on April 12, 2005)

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
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¹ Luis Alfonso León Ramírez, the alleged victim's father, Rubiela Londoño de León, the alleged victim's mother, Betsy Yane León Londoño and Sandra Constanza León Londoño, the alleged victim's sisters.

² In accordance with Article 17, paragraph 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 Hereinafter "Protocol of San Salvador."

⁵ The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention, in connection with its Article 1.1 (obligation to respect rights); article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46,2.c of the ACHR applicable
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner alleges that between December 21 and 22, 1988, youth León Londoño (“the alleged victim”), aged 22, went missing in the city of Cali when he was working with the Colombian National Police Special Operations Group (GOES). He claims that on December 22, 1988, a Cali Police Major called Londoño’s relatives to inform that the alleged victim had not reported to the worksite since the previous morning. He indicates that on December 25, 1988, León Londoño’s family members traveled from Bogotá to Cali and found the alleged victim’s room “with the door open and his belongings searched”. On December 26, the relatives came to Cali Metropolitan Police station seeking information about the alleged victim’s going missing but received no answer. He submits that, given the negligence by the Police Department—which did not search for the alleged victim—the relatives decided to search for him in Cali on their own. They unsuccessfully searched in hospitals and forensic medicine services, as well as neighboring cities. The petitioner affirms that over 26 years have passed since the alleged victim went missing, yet state authorities have not investigated, identified, prosecuted or sentenced the persons responsible for his disappearance nor established his whereabouts.

2. The petitioner alleges that when the reported events took place, there was a systematic practice of forced disappearance of police and military officers, and civilians. Around that time, eight officers were reported missing in Cali. He argues that police authorities claimed that the alleged victim and the other missing officers had deserted their jobs, to conceal their forced disappearance. He adds that despite the existence of similar cases, the State failed to ensure their safety. He claims that the State was omissive for tolerating or disregarding risks and failing to protect the alleged victim’s life, help the family to search for the missing relative immediately, further the claim for forced disappearance filed by the alleged victim’s mother, and fulfill its obligation to initiate a criminal investigation for the alleged victim’s forced disappearance. He also alleges negligence by the State because it appointed the alleged victim to the GOES even though the latter did not meet the requirements of age, experience, and seniority for that job. The State thus violated the alleged victim’s rights, to the detriment of his family, which members faced moral, psychological, physical, social and financial damages, as a result of the uncertainty about the alleged victim’s situation, the need to investigate into his disappearance on their own, with no support from the State, and the feeling of helplessness about such a painful situation. The petitioner moreover submits that the alleged victim’s relatives realized that the police were following them and even wiretapped the telephone they were using at their place of accommodation. He also indicates that, while the alleged victim was missing, the Military Criminal Court and the Police Department brought fiscal, administrative, and criminal charges against him for abandonment of duty. These bodies thus deprived the alleged victim of his right of defense, violating his right to a fair trial and tarnishing his and his family’s name and honor. The petitioner alleges that the relatives were therefore unable to fully access the general social security plan.

3. The petitioner submits that on December 22, 1988, the trial judge of the military criminal court ordered the military examining magistrate to investigate the alleged victim’s disappearance. However, on December 23, 1988, a military criminal investigation was filed against the alleged victim for abandonment of duty and breach of trust. The petitioner alleges that on March 19, 1991, an oral court-martial was held without court officers or the alleged victim. On March 22, 1991, the court sentenced Mr. León Londoño to 28 months in prison and a six thousand pesos fine. An appeal was filed. On June 4, 1991, the Superior Court

revoked the proceedings and ordered to resume the investigation in order to obtain evidence that proved those charges. On January 21, 1993, the Inspector-General's Office for the Police Department established, in the trial, that there was no probable cause to issue a resolution of convocation of the court-martial. Therefore, it ruled to dismiss all the proceedings filed for abandonment of duty and theft. On May 20, 1993, the Superior Military Court upheld the lower court's decision and ruled that the circumstances indicated that this appeared to be "a case of forced disappearance instead". The petitioner submits that despite this decision, the Superior Court did not take any measures. At the same time, on December 28, 1988, the Commander of Cali Metropolitan Police Department ordered the filing of two fiscal, administrative proceedings: one for the loss of an official firearm and another for the loss of an item of radio equipment and other working tools. On February 3, 1989, a trial court found the alleged victim administratively guilty in both proceedings. An appeals court upheld both resolutions. On February 20, 1989, the alleged victim was terminated for not reporting to his worksite for over 10 days without cause. The petitioner affirms that the military investigation against the alleged victim was meant to conceal the truth and to question and tarnish the alleged victim's name by leading to the latter's being prosecuted and sentenced to 28 months in prison. It was the Military Superior Court that, noticing the alleged victim's disappearance, revoked the said proceedings; yet it failed to take any action in this respect.

4. On January 27, 1989, the alleged victim's mother presented a criminal complaint for the disappearance of his son, before the Judicial Police Unit, which sent it to the 15th Magistrate's Court. According to the petitioner, the court undertook preliminary inquiries; however, on June 4, 1992, it ruled not to file a criminal investigation and to close the case. He alleges that the court did not notify the alleged victim's mother of this decision, and that only on August 28, 2008, did she learn of this. In October 2014, the Unit for Crimes against Individual Liberty ruled to resume the case because the order to close the case had been dismissed—the previous order had serious irregularities regarding due process. Also, on April 29, 1994, the alleged victim's father lodged a claim for disappearance before the family judge for the Bogotá circuit, for it was over five years since the alleged victim had gone missing. On May 21, 1999, the court declared the alleged victim legally dead for absence and that the legal date of his death was December 23, 1990. The decision was upheld on August 30, 1999. The petitioner claims omission by the State in that it failed to duly investigate the disappearance of the alleged victim, whose whereabouts remain unknown, and prosecute the persons responsible.

5. The alleged victim's relatives also filed two administrative remedies. The first was a claim for damages before the Administrative Court in Valle, Cali, which the said court dismissed on May 15, 2003, on considering that none of the claims had been proved in that court. Then, an appeals court ruled not to find their appeal admissible because it was a single-instance proceeding. The second was an appeal for annulment against the administrative decision in which the court denied the alleged victim's beneficiaries' access to death pension. On April 16, 2010, the court granted the alleged victim's relatives the said benefits.

6. For its part, the State argues that the instant petition does not portray any violation of the rights guaranteed by the American Convention, because it does not demonstrate the State's international responsibility for the actions of a third party. It claims that the petitioner does not refer to anything that demonstrates tolerance, knowledge or support by the State or its agents regarding a situation of special risk, or the State's knowledge of such a situation. It indicates that the alleged victim's job is well-known to be a high-risk job; hence the State's duty to protect is subject to its knowledge of a situation of special risk. Besides, the alleged victim was not performing any job-related activity on the date he went missing. Therefore, the instant petition is inadmissible under Article 47.b of the American Convention.

7. The State moreover contends that the petition does not indicate a violation of the right to judicial protection because the claims about the criminal investigation ignore the complexity of the matter. It indicates that the appropriate legal remedies were initiated to investigate the alleged facts. In this regard, in 2014, it informed the alleged victim's family of its intent to resume the criminal investigation. It also claims that a reliable attorney represented the alleged victim's interests in the military criminal proceedings. It argues that, by filing fiscal, administrative proceedings, it sought to protect its legal interests since this remedy is appropriate to judge the conduct of agents handling state goods or resources. Therefore, the State rejects the petitioner's claim regarding the State's purported surreptitious interest in furthering those

proceedings. Furthermore, it alleges that the petitioning party should have brought to the attention of the national authorities the claims on the alleged violations of the right to privacy and social security derived from the said proceedings, as well as from the proceedings in the military criminal jurisdiction. Therefore, it affirms that the instant petition does not meet the requirement established in Article 46.1.a. of the American Convention.

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

8. The petitioner indicates that on January 27, 1989, the alleged victim's mother filed a criminal complaint before the Judicial Police Unit in Cali for the disappearance of her son. He claims that the petition concerns an imprescriptible crime subject to ex officio prosecution. He alleges the State's failure to investigate, meet its obligation to initiate appropriate domestic remedies and further the criminal complaint presented. He submits that 26 years later, the alleged victim's whereabouts remain unknown and the persons responsible have not been prosecuted. Thus, he requests the application of the exception established in Article 46.2.c of the American Convention. The State, in turn, indicates that an investigation into the alleged facts is underway, that the competent judicial body has been diligent, and that the high degree of complexity of the matter must be considered. It moreover affirms that the petitioning party did not present the claims regarding the proceedings in the military criminal court and the judicial police unit, before the national, administrative courts; therefore, they have not exhausted domestic remedies.

9. The IACHR recalls that whenever there is an offense liable to prosecution ex officio, the State is obliged to promote and further the criminal prosecution and that this is the appropriate remedy to exhaust in an ordinary jurisdiction. In this regard, the Commission notes that the criminal complaints were filed on January 27, 1989, and that the State recognizes that the criminal investigation—first closed on June 4, 1992—remains open, and that 29 years have passed since the alleged disappearance yet the persons responsible remain unprosecuted and the alleged victim's whereabouts unknown. The Commission also notes that the alleged victim's relatives filed a claim for damages, rejected on May 15, 2003. The Commission reiterates that, for purposes of determining the admissibility of a claim of this nature, the said remedy is neither appropriate nor necessary because it is not adequate to provide comprehensive reparation and justice to the relatives. Therefore, the Commission deems that the exception established in Article 46.2.c of the Convention and Article 31.2.c of the IACHR Rules applies to the instant petition.

10. Likewise, the Commission observes that it received the petition on December 1, 2008, that the alleged facts occurred starting on December 1988, that the closing of the criminal investigation was notified to alleged victim's relatives on August 28, 2008, and that the effects of these facts allegedly persist. Therefore, the Commission believes that the instant petition meets the requirement of timeliness under the terms of Article 32.2 of the IACHR Rules, and Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

11. Based on the elements of fact and law submitted by the parties and the nature of the matter brought before it, the Commission finds that the alleged victim's forced disappearance, the unwarranted delay in identifying the persons responsible and the continued denial of justice, if proven, could establish violations of Articles 3 (juridical personality), 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 connection with its Article 1.1. As to the facts occurred before the deposit of the instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons, regarding the purportedly continued lack of clarification of the alleged victim's forced disappearance, the Commission deems that the alleged facts might constitute violations of its article I⁶.

⁶ IACHR, Report No. 154/17, Petition 239-07. Admissibility. Nicanor Alfonso Terreros Londoño and family. Colombia. November 30, 2017, para. 13.

12. As regards to the alleged violation of Article 9 of the Protocol of San Salvador, the Inter-American Commission notes that it is competent, under its Article 19.6, to rule only on possible violations of Articles 8 and 13 of the Protocol; as for the other articles, under Article 29 of the American Convention, the Commission may consider them to interpret and apply the American Convention and other applicable instruments.

VIII. DECISION

1. To find the instant petition admissible in connection with Articles 3, 4, 5, 7, 8, 11 and 25 of the American Convention, in relation to its Article 1.1; Article I of the Inter-American Convention on Forced Disappearance of Persons; 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 5th day of the month of May, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, and Flávia Piovesan, Commissioners.