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REPORT No. 114/19

PETITION 1403-09

REPORT ON ADMISSIBILITY

**CARLOS PIZARRO LEONGÓMEZ, MARIA JOSÉ PIZARRO
RODRÍGUEZ AND THEIR FAMILY MEMBERS
COLOMBIA**

Approved electronically by the Commission on June 7, 2019.

Cite as: IACHR, Report No. 114/19, Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and their family members. Colombia. June 7, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Colombian Commission of Jurists and the Lawyers Collective "José Alvear Restrepo"
Alleged victim:	Carlos Pizarro Leongómez, María José Pizarro Rodríguez and their families
Respondent State:	Colombia ¹
Rights invoked:	Articles 1.1 (obligation to respect rights), 3 (juridical personality), 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 19 (rights of the child), 22 (freedom of movement and residence), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	November 6, 2009
Additional information received at the stage of initial review:	September 29, 2010
Notification of the petition to the State:	May 3, 2011
State's first response:	October 21, 2011
Additional observations from the petitioner:	January 24, 2012; February 10, 2014; June 11, 2018
Additional observations from the State:	September 7, 2012; October 26, 2016

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 made 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	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 18 (name), 19 (rights of the child), 22 (freedom of movement and residence), 24 (equal protection), and 25 (judicial protection), in relation to Articles 1.1 and 2 of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in either the discussion or decision in the present case.

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

³ The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. In the present petition, the petitioners denounce the murder of Mr. Carlos Pizarro Leongómez (hereinafter "Mr. Carlos Pizarro", or "the alleged victim"), which occurred on April 26, 1990, when he was presidential candidate for the period 1990 to 1994. They indicate that the death occurred with the collaboration of the Administrative Department of Security (hereinafter "DAS"). They claim that the events were not properly investigated, and thus remain in impunity. On the other hand, they point out that the alleged victim's daughter, María José Pizarro Rodríguez, was not protected from the threats made against her, nor was her right to identity respected as the daughter of Mr. Carlos Pizarro.

Carlos Pizarro Leongómez.

2. The petitioners allege that Mr. Carlos Pizarro, who was a candidate for the presidency of the Republic of Colombia for the Democratic Alliance Party M-19 was assassinated. They explain that the alleged victim was the top military commander of the "Movimiento 19 de Abril (M-19)" guerrilla group, and that in that capacity he participated in the dialogue with the Colombian State enabling the first joint declaration between the Movement and the Government on January 10, 1989, in Tolima. They confirm that this joint statement led to the demobilization of the armed group as a political-military structure, the surrender of its weapons before an international commission in the Santo Domingo camp on March 8, 1990, and the signing of the peace agreement on March 9, 1990. They point out that they thereby achieved their reincorporation into civilian life on March 10, 1990, at which point the alleged victim became a candidate for the Presidency.

3. They maintain that the events took place in a context of human rights violations committed by paramilitaries and state agents, at the end of the 1980s and throughout the following decade, as a reaction against the internal peace agreements concluded at that time. They emphasize, among other cases, the murders of social and political leaders of the time, including Luis Carlos Galán Sarmiento and Bernardo Jaramillo Ossa, who were also presidential candidates in those elections. They point out that the murder of the alleged victim occurred 47 days after the agreements were signed.

4. They refer that as a result of his activities as leader of the M-19 and later as a candidate of the Democratic Alliance party M-19, both Carlos Pizarro and his family were subjected to violent threats against their lives and integrity. They argue that as a candidate for the Presidency, he had a security scheme established by the national government, given that his particular conditions involved a very high level of risk. The scheme consisted, in alternating shifts, of 3 drivers and 11 bodyguards of the DAS and 5 close protection personnel belonging to the M-19.

5. They report that on April 26, 1990, the alleged victim had a personal commitment connected with the electoral campaign in the city of Barranquilla, and therefore required protection at all times throughout the trip and during the planned events. They relate that the security scheme suffered from irregularities in its performance, revealing a possible collaboration of the DAS in the crime. Thus, they argue that the candidate and some members of his security team received confirmation of commercial airline flight Avianca 532 only 15 minutes prior to boarding, despite the fact that one of the bodyguards had requested the flight tickets from the Presidency of the Republic, two days before the trip. They indicate that a young man known by his alias "Jerry" - who would carry out the assassination minutes later - was booked on the same flight well in advance. They argue that due to the brief timeframe, the alleged victim and his bodyguards had to board via a route that was not in a public area and that did not pass through the departure lounge. They point out that for previous flights, the airline requested that weapons be carried in the check in luggage; however, on that flight, the bodyguards took their weapons with them inside the passenger cabin, although in their declarations they stated that they had been asked to carry them unloaded. The petitioners indicate once on board, the bodyguards suggested, for the protection of the candidate, that he be seated in the last rows next to the bathroom. They allege that, after a few minutes in the air, the assassin walked to the bathroom of the plane, went in and came back out armed, and from this position he shot the alleged victim face to face. They indicate that the attacker was subdued and disarmed by the security agents and that the DAS bodyguard repeatedly shot him despite the protestations of his companions and the pleas of alias Jerry who had already surrendered.

6. The petitioners state that during the initial investigations, the inspection of the perpetrator's corpse established that he was wearing light clothing, and that no marks were found indicating that the weapon had in any way been attached to his body. The murder weapon found was a Mini Imgram machine gun. They point out that the Criminal Investigation Section of Bogota designated an investigative commission composed of Public Order and Mobile Criminal Investigation Judges. They indicate that this commission summoned the bodyguards who were part of the security operation to obtain their versions of the events; however, during the subsequent investigation, nothing was added to these statements, they were not questioned, nor were the bodyguards summoned again. They point out that the DAS bodyguard, who shot the perpetrator, was not summoned nor were his actions investigated in the framework of the proceedings.

7. They state that four individuals were investigated within the proceedings, among them a well-known hit man of the Medellín cartel. They point out that on May 14, 1996, the Regional Prosecutor's Office of Santafé de Bogotá decided to terminate the investigation, due to insufficient evidence and copies were sent to the Specialized Investigatory Unit of the Bogota Regional Prosecutor's Office, in order to establish the motives and those responsible for the assassination. They argue that this preliminary investigation was assigned to the National Human Rights Unit of the Attorney General's Office, which focused on the brothers Fidel Antonio and Carlos Castaño Gil. They explain that they were convicted on December 18, 2002, by the First Criminal Court of the Special Circuit of Decongestion of Bogotá, and sentenced to 24 years in prison with a fine of 2,100 minimum wages, as joint participating perpetrators in the terrorist motivated murder of the alleged victim.

8. They allege that this sentence was never carried out, since the two paramilitaries were eventually murdered (Fidel before the judgment in 1994 and Carlos in 2004). They point out that there were no actions aimed at confirming the information on the basis of which they were tried and convicted. They state that this judgment was not appealed and became *res judicata*. They argue that the *modus operandi* used in this assassination is similar to that against Bernardo Jaramillo Ossa. In both cases, the DAS was in charge of security, and after the offenses occurred, the perpetrators were shot in order to silence them and thus prevent identification of the individuals behind the murders.

9. The petitioners indicate that on July 21, 2009, the representatives of the alleged victim's daughter, María José Barón Rodríguez or María José Pizarro Rodríguez, formally requested the Office of the Prosecutor to open preliminary proceedings to further investigate elements that remained unresolved. They also demanded that action be taken with urgency and diligence, given that April 26, 2010, would be the 20th anniversary since the events, and the criminal action could become time barred, preventing the establishment of truth and justice. They specify that after the request, the General Prosecutor's Office opened a preliminary investigation, and since then evidence has been collected, including statements from paramilitaries close to Carlos and Fidel Castaño Gil and former members of State security agencies abroad. They mention that a crime scene reconstruction was performed, in order to clarify several inconsistencies in the versions given by the DAS bodyguards as to the way in which the assassin alias Jerry was killed. Additionally, they point out that on April 20, 2010, the Sixth Prosecutor of the National Human Rights Unit decided that the statute of limitations was inapplicable to the relevant criminal proceedings, because it constituted a crime against humanity.

10. They argue that there are serious indications of involvement in the events by action and omission on the part of State agents, in particular by DAS members. Thus, they indicate that on December 21, 2009, before the Prosecutor's Office 15 of the National Human Rights Unit in Antioquia, a former paramilitary bodyguard of Carlos Castaño claimed that the DAS provided information on Mr. Carlos Pizarro's itineraries and movements, thus confirming the Castaño connections with the DAS and with other State security forces. In the same sense, they point out that two former officials of the DAS, were summoned to provide statements on the basis of recent testimony linking them to the paramilitary group of the Castaño brothers, as evidence of their participation and/or assistance in the murder. In addition, the petitioners state that by 2012, only the Director of Intelligence and Counterintelligence of the DAS had been formally linked to the investigation.

11. The State, for its part, argues that the petition is inadmissible because domestic remedies have not been exhausted. In this regard, it states that the Colombian justice system undertook to find the

perpetrators of the assassination of the alleged victim. Thus the Prosecutor General's Office declared the offense a crime against humanity, thereby preventing the investigation from becoming time-barred. It also argues that internal remedies were used, leading to an investigation and conviction of those responsible for the death of Mr. Pizarro, and that there had been an adequate and effective investigation. It emphasizes that investigations and trials have been conducted in the criminal and disciplinary jurisdictions. Thus, it mentions December 18, 2002, conviction of Fidel Antonio Castaño Gil and Carlos Castaño Gil, as joint masterminds in the death. It claims that there is no doubt regarding the sole perpetrator who was killed on the same day of the attack. On the other hand, it points out that on June 17, 2011, the then head of the DAS Intelligence was formally linked to the proceedings. However, due to his delicate state of health, the Institute of Legal Medicine and Forensic Sciences is expected to make a determination of his condition in order to establish a date and time for the investigation. It also states that the Judicial Police have carried out different steps, interviewing several demobilized members of the United Self-Defense Groups of Colombia, in order to establish the possible participation of other members without positive results to date. It emphasizes that no link between State officials and the events has been established.

12. The State points out that the Office of Registration, Control and Correspondence of the National Procurator's Office, reported that there was no information found relating to the possible failure of the security service provided on April 26, 1990. It indicates that the DAS began a internal disciplinary investigation, on the same day of the events. However, it was archived some time later. It argues that there are no proceedings relating to the alleged victim's death before the contentious-administrative jurisdiction, since there is no indication of participation by State agents and because the legal time limit to activate said avenue has already expired. Likewise, the State argues that the administrative mechanisms of integral reparation set out in Law 1448 of 2011 have yet to be exhausted. The State requests that the petition be declared inadmissible because the alleged facts do not characterize a violation of the rights guaranteed by the American Convention.

María José Pizarro Rodríguez or María José Barón Rodríguez

13. The petitioners state that María José was born on March 30, 1978, as a result of the de facto marital union between her mother Myriam Beatriz Rodríguez Aragón and her father Carlos Pizarro Leongómez between 1973 and 1983. They explain that her mother, Myriam Rodríguez, was previously married to Fernando Barón Velásquez, with whom she had her daughter Claudia Alexandra Barón Rodríguez. They indicate that this marriage ended in 1973 with the de facto separation of the couple. They point out that subsequently Myriam Rodríguez, Carlos Pizarro and the two girls became a family. They emphasize that María José's birth certificate includes information identifying her father.

14. They allege that, as from 1988, Mrs. Myriam Rodríguez and her daughters began to receive threats, and therefore decided to leave the country. To do this they needed to be issued with the appropriate passports from the competent authorities. They argue that in María José's case, this document was denied due to the fact that it was impossible for Mr. Carlos Pizarro to appear before the Ministry of Foreign Affairs, because at that time he was a guerrilla leader, a fact that was public and widely-known; had he done so, he would have been arrested by the authorities. After this denial, they indicate that Mrs. Myriam Rodríguez resorted to the Colombian Institute of Family Welfare (hereinafter "ICBF"), where a certificate was issued stating that parental authority over María José could be exercised solely by the mother. Despite this certification, they state that the Ministry of Foreign Affairs decided not to issue María José with a passport.

15. They maintain that in view of the urgency of leaving the country, on the basis of the document issued by the ICBF and by virtue of the applicable legal presumption, Mrs. Myriam Rodríguez requested Fernando Barón Velásquez - who for legal purposes was still considered as her husband - to recognize María José as his daughter, thus facilitating the authorization to take the girl out of the country. They state that this recognition was legalized by public deed on August 3, 1988, at the First Public Notary of Bogotá. As a result, a new civil birth certificate and passport were issued, in which the girl was registered as María José Barón Rodríguez.

16. Finally, they state that in 1990, after the signing of the peace agreement between "M-19" and the Government, Mr. Carlos Pizarro returned to public life, but due to his sudden death, was unable to register María José as his daughter. They allege that at the time of her father's death, María José was 12 years old and a minor, and due to the situation of risk in which she was before and subsequently, she did not have access to judicial remedies to claim her rights as a family member of the alleged victim. They indicate that in 1999, she left the country once more, due to the lack of guarantees, and that although she returned the following year, on January 25, 2002, she had to leave Colombia, due to constant threats, harassment and pressure. For this reason, she allegedly received protection from the Spanish Government. The petitioners argue that the paternity proceedings in the family courts linking Carlos Pizarro to María José are pending a final judgment. They indicate that there is a favorable ruling at first instance, issued by the Third Family Court of Bogotá and they expect it to be ratified by the Superior Tribunal. They point out that only after that decision has the alleged victim been able to participate in the investigation and in the judicial proceedings concerning the death of her father, which has violated her right of access to justice.

17. The State, on the other hand, argues that a passport was issued to María José Pizarro Rodríguez on March 11, 1982, based on information from the Civil Registry, where Carlos Pizarro Leongómez and Myriam Rodríguez Aragón – the later with her maiden name – are registered as her parents. In the State's view it is unclear whether intentionally or due to an involuntary mistake the marital status and married surname of the girl's mother were omitted when the registration was made by the maternal grandmother. It points out that had this serious omission not occurred, the mother's civil status would have been evident to the Notary Public and thus the child would not have been registered with the name of a father different from the mother's husband. It argues that this situation induced the administration to commit an error, and therefore the Ministry of Foreign Affairs issued the passport and accepted the authorization granted by Carlos Pizarro, who at the time was deprived of his liberty.

18. The State points out that on July 27, 1988, they appeared to apply for a new travel document. Upon request of the daughter's Civil Birth Certificate and the father's exit authorization, the latter was not submitted because the father was in hiding. In his absence, Mrs. Rodríguez de Barón submitted an official document issued by an ICBF official, identifying her as the mother with her name and married surname, evidencing her marriage to Mr. Barón and not Mr. Pizarro. It explains that the document issued by the ICBF indicated "that given that the child had not been recognized by the father, she was not Mr. Pizarro's legitimate daughter." The State argues that this circumstance and the fact that the identity document submitted by the mother included her married surname, made evident to the passport issuing authority that the authorization flagrantly violated Law 75 of 1968 "On civil reforms (natural paternity)", then in force. In view of the above the State argues that the head of the Passport office was not obliged to comply with her request. The State argues that on August 22, 1988, after Mr. Fernando Barón Velásquez authorized the child to leave the country as the father, the passport was issued on behalf of María José Barón Rodríguez. As a result of the above, the State contends that at no time was María José Barón Rodríguez or María José Pizarro Rodríguez denied a passport.

19. In addition, in relation to the alleged threats against María José, Claudia Barón and Myriam Rodríguez Aragón, it points out that there is no record of complaints before the Ministry of Defense or the Ministry of the Interior. However, since 2006, the Protection Program provides a mobile security operation including a bullet proof vehicle and bodyguards to Carlos Pizarro's brother, Mr. Eduardo Pizarro Leongómez.

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

20. The petitioners maintain that after more than two decades there has been a failure to advance the investigation and establish the truth, and secure the identification, arrest, prosecution and punishment of all the perpetrators and participants. Therefore, they request the application of the exception to the requirement to exhaust domestic remedies, on the basis of the undue delay. The State, for its part, maintains that its domestic remedies are adequate and effective, and in the case of the present petition, they still have not been exhausted.

21. The case law established by the IACHR indicates that whenever an alleged offense is prosecutable *ex officio*, the State has the obligation to promote criminal proceedings as the adequate avenue to clarify the facts, prosecute those responsible and impose the appropriate criminal penalties, in addition to enabling other forms of financial reparation. The Commission has also established that, as a general rule, a criminal investigation must be conducted promptly to protect the interests of the victims, preserve the evidence and even safeguard the rights of any individual who may be considered as a suspect in the context of the investigation. The information provided by the parties shows that the only conviction - the one issued against the Castaño Gil brothers - was not enforced, and that the investigation against other individuals involved is still pending, without clear results. Therefore, the Commission concludes that the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable in this case. In addition, due to the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement regarding timeliness must be considered satisfied.

22. On the other hand, with respect to María José Pizarro Rodríguez, the Commission observes that the object of the petition is the alleged lack of protection by the authorities when she was a child vis a vis the threats against her family, as well as the alleged restriction on the access to justice as the daughter of Mr. Pizarro. The IACHR observes that as a result of the refusal to issue her a passport in 1988, the alleged victim was registered under another surname to enable her to leave the country, and that due to her age, she was unable to avail herself of any action or remedy. For this reason, to the effect of the *prima facie* analysis of the exhaustion of domestic remedies, the Commission considers that the alleged victim was denied access to domestic remedies, in the sense of the exception in Article 46.2.b of the American Convention. Additionally, it considers that the petition was filed in a timely manner, as it was received on November 6, 2009, and the alleged facts took place as from August 1988, and some of their consequences - such as the lack of access to justice - continue up to the present.

VII. ANALYSIS OF COLORABLE CLAIM

23. In view of the factual and legal arguments presented by the parties and the nature of the issue, the Commission considers that, if proven, the connivance of State agents in the killing of Mr. Carlos Pizarro Leóngomez, the alleged lack of judicial protection for these events, as well as the alleged threats and harassment against his relatives, and the lack of special protection for his daughter María José Pizarro Rodríguez, could characterize violations of the rights enshrined in Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 8 (fair trial), 17 (rights of the family), 18 (name), 19 (rights of the child), 22 (freedom of movement and residence), 24 (equal protection) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 and 2, to the detriment of the alleged victim and his next of kin.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 8, 17, 18, 19, 22, 24 and 25 of the American Convention in relation to its Articles 1.1 and 2;

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 7th day of the month of June, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.