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REPORT No. 45/19
PETITION 289-09
REPORT ON ADMISSIBILITY

GABRIEL ANGEL GOMEZ MARTINEZ AND FAMILY
COLOMBIA

Approved electronically by the Commission on April 24, 2019.

Cite as: IACHR, Report No. 45/19, Petition 289-09. Admissibility. Gabriel Ángel Gómez Martínez and family. Colombia. April 24, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Roberto Fernando Paz Salas
Alleged victim:	Gabriel Ángel Gómez Martínez and next-of-kin
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 8 (fair trial), 25 (judicial protection) of the American Convention on Human Rights ² , and other international treaties. ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	March 17, 2009
Notification of the petition to the State:	August 22, 2014
State's first response:	January 28, 2015
Additional observations from the petitioner:	February 27, 2015, June 14, 2016, May 23, 2017
Additional observations from the State:	June 19, 2015, November 22, 2017

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	4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2
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, of Colombian nationality, did not take part in either the discussion or the decision in the present case.

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

³ The petitioner alleges Articles 6, 7 and 10.1 of the International Covenant on Civil and Political Rights.

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

V. FACTS ALLEGED

1. The petitioner indicates that the village of Nutivara, in the Municipality of Frontino, Department of Antioquia, was abandoned by security forces after an attack launched on December 28, 1998, by Fronts 5, 18 and 34 of the Revolutionary Armed Forces of Colombia. He alleges that since the incursion, the civilian population has been left unprotected because the police personnel have withdrawn. He also argues that several residents have on numerous occasions requested from the Frontino authorities the presence and help of the security forces on account of the constant acts of extortion and threats made by the guerrillas and paramilitary groups.

2. He specifically alleges that Mr. Gabriel Ángel Gómez Martínez (hereinafter "the alleged victim"), was a construction official living in the village of Nutivara. He states that on May 16, 1999, while he was playing in a soccer match, paramilitaries armed with machetes invaded the pitch and began to pursue the alleged victim, in front of spectators in the stands. They state that he was murdered on the spot along with two other people.

3. He states that the alleged victim's murder remains in total impunity and that almost 20 years have passed without any identification of the individuals responsible. He states that on May 16, 2001, the alleged victim's next of kin filed a claim for direct reparation before the Contentious-Administrative Court of Antioquia. This claim was dismissed on September 8, 2008, on the grounds that the State could not be held liable due to the lack of a sufficient causal link between the absence of the security forces in the village of Nutivara and the murder of the alleged victim. He states that they filed an appeal against this decision, which was dismissed on October 24, 2008, by the Administrative Court of Antioquia, on the ground that the issue could not be subject to a second instance review because the amount claimed did not exceed 500 current minimum salaries, in accordance with the provisions of Law No. 446 of 1998.

4. For its part, the State maintains that the Sectional Unit of the Municipality of Frontino Prosecutor's Office initiated an investigation into the murder of the alleged victim. According to the State, on August 17, 2000, the Prosecutor's Office decided to suspend procedural steps as it was not possible to identify the perpetrators of the acts. It alleges that the lack of specific progress in the investigation into the events does not preclude prompt action from the Public Prosecutor's Office. Therefore, given that criminal proceedings are the adequate way to clarify the alleged violations, the State argues that domestic remedies have not been exhausted.

5. In addition, the State contends that the trial proceedings in the contentious administrative jurisdiction followed all the judicial guarantees and complied with the domestic law. Therefore, it argues that the admission of the petition would imply a fourth instance review by the Commission.

6. Finally, it states that the events fail to characterize a violation of human rights, due to the failure to demonstrate the participation of state agents, and that the acts committed by third parties are not attributable to the State.

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

7. The petitioner maintains that the events continue to remain in impunity to the present day. In addition, he argues that as regards the reparation action before the contentious administrative court, domestic remedies were exhausted with the rejection of the appeal filed on October 23, 2008. The State, for its part, indicates that the adequate and effective remedies of domestic law have not been exhausted through the criminal trial.

8. The Commission reiterates that, in situations related to possible violations of the right to life, the domestic remedies to be taken into account for the purposes of admissibility of the petition are those related to the investigation and punishment of the perpetrators, which under domestic legislation are offenses prosecutable ex officio. In this case, the Commission observes that, according to the information

provided, with regard to the alleged acts of violence causing the alleged victim's death, the Sectional Unit of the Municipality of Frontino's Prosecutor's Office initiated a criminal investigation that was suspended on August 17, without so far establishing the identity of the perpetrators responsible. Attributing this burden to the petitioners would be incompatible with the System's case law, and would also impose a heavier obligation on those who, in general, lack the means and the capabilities to discharge those responsibilities. The IACHR therefore concludes that in the present case the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the Convention is applicable.

9. With respect to the proceedings before the contentious-administrative jurisdiction, the IACHR recalls that, for the purposes of determining the admissibility of a claim such as this, it does not constitute the appropriate means nor does it need to be exhausted, given that it is not appropriate to provide comprehensive reparation and justice to family members. Notwithstanding the above, although in the present case, criminal proceedings are the appropriate remedy for the investigation of the events, the Commission observes that the petitioner also alleges specific violations in the context of the direct reparation action. Therefore, given the connection between the two proceedings, the Commission takes into account that in the contentious-administrative jurisdiction, domestic remedies were exhausted with the decision handed down by the Administrative Tribunal of Antioquia on October 23, 2008.

10. Therefore, given the characteristics of the case, the IACHR considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding timeliness has been satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

11. In view of the factual and legal elements advanced by the parties and the nature of the matter brought to its attention, the Commission considers that at the merits stage it will have to analyze whether the State's alleged knowledge of the situation of risk in the area where the alleged victim lived, his later death, the lack of effective judicial protection concerning these events and the impossibility for his next-of-kin to appeal a judgment for direct reparation based on a minimum claim figure, could characterize possible violations of rights enshrined in Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the Convention, to the detriment of the persons named and their relatives respectively, in conjunction with Articles 1.1 and 2 of the same instrument, to the detriment of the alleged victim and his next-of-kin.

12. In connection with the International Covenant on Civil and Political Rights, the Commission lacks competence to establish violations of the rules of said treaty, without prejudice to the fact that it may be taken into account as part of its interpretative exercise of the norms of the American Convention at the merits stage of this case, under the terms of Article 29 of the Convention.

13. With respect to the State's arguments regarding the fourth-instance formula, the Commission recognizes that it is not competent to review judgments handed down by national courts acting within their sphere of competence and applying due process and judicial guarantees. However, it reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when it refers to domestic proceedings that could be in violation of rights guaranteed by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 in conjunction with Articles 1.1 and 2 of the American Convention;

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 24th day of the month of April, 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.