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REPORT No. 46/19
PETITION 314-09
REPORT ON ADMISSIBILITY

GERMAN EDUARDO GIRALDO AGUDELO AND FAMILY
COLOMBIA

Approved electronically by the Commission on April 24, 2019.

Cite as: IACHR, Report No. 46/19, Petition 314-09. Admissibility. German Eduardo Giraldo Agudelo and Family. Colombia. April 24, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Javier Leonidas Villegas Posada
Alleged victim:	Germán Eduardo Giraldo Agudelo and family
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), 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 19, 2009
Additional information received at the stage of initial review:	December 2, 2009
Notification of the petition to the State:	July 30, 2010
State's first response:	August 10, 2011
Additional observations from the petitioner:	September 30, 2011
Additional observations from the State:	November 15, 2011
Notification of the possible archiving of the petition:	March 16, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	April 21, 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 (deposited instrument of ratification 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 (recognition of juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), and 25 (judicial protection) of the American Convention, in relation to its Articles 1(1) and 2

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the debate or decision in the instant matter.

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

³ Articles I, XI, and XVIII of the American Declaration of the Rights and Duties of Man; Article 14 of the International Covenant on Civil and Political Rights.

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

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exceptions at Article 46(2)(b) and (c) of the American Convention applied.
Timeliness of the petition:	Yes, in the terms of section VI

V. ALLEGED FACTS

1. The petitioner alleges that on January 25, 1991 Mr. Germán Eduardo Giraldo Agudelo (hereinafter “the alleged victim” or “Mr. Giraldo Agudelo”) was “arrested” by a group of armed men, in plainclothes, who were wearing arm bands representative of police authorities in his sister’s place of domicile. He indicates that the alleged victim was disappeared for two days until his family members learned of his death, which allegedly occurred as part of a confrontation. He argues that the State has not investigated or punished the persons responsible for the facts nor made reparation to the family members of the alleged victim, who, moreover, have been identified as family members of a kidnapper, to the detriment of the dignity and reputation of both the alleged victim and his family members.

2. He says that said mentioned armed group knocked on the door and arbitrarily entered the domicile of the sister of the presumed victim searching for a person with the nickname “El Gordo”. The alleged victim’s sister told them that there was no one with that nickname in the house, and that the only male present was her brother, after which they proceeded to capture the alleged victim leaving the domicile. He states that the alleged victim’s family members began a search in the police facilities of Medellín for two days, and it was on January 27, 1991, when they learned of his whereabouts.

3. Petitioner further states that they learned of the death of their relative when it was announced in the media that he had died during the confrontation in the context of the attempt to rescue journalist Diana Consuelo Turbay de Uribe, and that Mr. Giraldo Agudelo was identified as part of the group of kidnappers who participated in that crime. He notes that the area where the confrontation occurred was under the control of the State security forces, thus it was unusual that the alleged victim had been found after he was kidnapped and accused of being a co-participant in the kidnapping of the journalist. They indicate that they found his body at the cemetery in the municipality of Copacabana.

4. He reports that once these events occurred, a journalist communicated by phone with Mr. Giraldo Agudelo’s mother to coordinate an interview with her and to make a publication in the press concerning the death of the alleged victim. Nonetheless, a few days later he was informed that the publication would not go forward since the journalist in charge had been threatened. He notes that at that moment, only the journalist and the alleged victim’s mother had knowledge of that interview and publication, thus they considered that the lines were wiretapped, giving rise to a well-founded fear for the integrity of the alleged victim’s family. In the face of this situation they preferred to stay quiet and not bring any criminal action.

5. Petitioner says that the criminal proceeding with respect to the declaration of responsibility of the perpetrators and those who induced the death of the alleged victim was in the Military Criminal Jurisdiction, before the 93rd Military Criminal Investigative Judge, who issued his order on January 31, 1992, in which he absolved the police who participated since the act attributable to them occurred in service-related acts; the judge dismissed a series of irregularities that had been reported. That order was upheld by the Superior Military Court on February 9, 1993.

6. In the disciplinary proceedings, the Office of the Procurator Delegate for the Judicial and Administrative Police (Procuraduría Delegada para la Policía Judicial y Administrativa) investigated the police who participated in the operation the day of these events and detected irregularities related to the death of the alleged victim. Nonetheless, by ruling of January 14, 1992, that Office absolved officers of the National Police on considering that there was no certainty as to the conduct in the accusation or charges for the death of the alleged victim.

7. He notes that the alleged victim's family members brought an action for direct reparation in the contentious-administrative jurisdiction, a trial that was entrusted to the Eighth Chamber of Decision of the Contentious-Administrative Court of Antioquia. This court, by judgment of April 15, 1999, declared as responsible party the Nation, the Ministry of Defense, and the National Police, for damages to the wife, children, and parents of Mr. Giraldo Agudelo, and ordered the payment of damages for moral and material harm. That order was appealed by the respondent, and in a conciliation hearing on February 22, 2007, it was agreed that the Ministry of Defense, National Police would pay the family members of the alleged victim eighty percent of the amount ordered by the court of first instance. Subsequently, on July 18, 2007, the Chamber for Contentious-Administrative Matters, Section Three of the Council of State, disapproved of the conciliatory agreement reached, thus the moving party filed a motion for reconsideration against it, and by interlocutory order on December 13, 2007, the decree of July 18, 2007 was upheld. In addition, the petitioner forwarded a copy of the judgment handed down on July 8, 2009, by the Chamber for Contentious-Administrative Matters, Section Three of the Council of State modifying the amount decreed in the judgment of April 15, 1999, issued by the Administrative Tribunal of Antioquia.

8. The State argues that the petition is inadmissible as the petitioners seek review of decisions made in judicial proceedings. It asserts that the actions taken by the parties and those promoted *sua sponte* by the State were examined in depth by the competent judicial organs in keeping with the domestic law.

9. In addition, it states that the decision of February 9, 1993, handed down by the Superior Military Tribunal, exhausted domestic remedies, and the petition was lodged on March 20, 2009, i.e. beyond the time period of six months stipulated in the American Convention.

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

10. The petitioner argues that to date no criminal proceeding has been brought for the death of the alleged victim. As regards the contentious-administrative jurisdiction, he states that while economic compensation has been made, the reparation for the harm has been partial, for the right to truth and justice continues to be violated. The State, for its part, indicates that all remedies in respect of criminal justice were exhausted, specifying that the military criminal courts had jurisdiction, and in the contentious-administrative jurisdiction, and that the instant petition was filed in an untimely manner.

11. The Commission has established that in situations such as this one that includes crimes against life, the remedies that must be taken into account for the purposes of the admissibility of the petitions are those related to the criminal investigation and punishment of those responsible. The IACHR notes that the investigations were conducted and concluded in the military criminal justice system. The IACHR has ruled repeatedly that the military jurisdiction is not an appropriate forum for investigating the death of a civilian, as it does not offer the guarantees required and, therefore, does not provide an adequate remedy for investigating, prosecuting, and sanctioning alleged violations of the human rights enshrined in the Convention. Accordingly, the IACHR concludes that the exceptions to the prior exhaustion rule apply in keeping with Article 46(2)(b) and (c) of the Convention.

12. Moreover, as regards the proceeding for direct reparations instituted in the contentious-administrative jurisdiction by the petitioners, the Commission has held repeatedly that it does not constitute a suitable remedy for the purposes of analyzing the admissibility of a claim such as the instant one, for it is not adequate to provide integral reparation and justice for the family members. Nonetheless, in the instant case one observes that the petitioners allege specific violations in relation to speedy process in the context of direct reparations. Therefore, given the link between the two processes, the IACHR takes into account that in the contentious-administrative jurisdiction domestic remedies were exhausted with the judgement of July 8, 2009, handed down by the Chamber for Contentious-Administrative Matters Section Three of the Council of State, which declared the Nation/Ministry of Defense/National Police liable for payment of monetary compensation for the damages caused the alleged victim's family, as a consequence of his death.

13. Finally, the petition was submitted on March 19, 2009, and alleged facts began on January 25, 1991, and their purported effects extend to the present moment. Therefore, in view of the context and the characteristics, the Commission considers that the petition was submitted in a reasonable time and that this admissibility requirement should be deemed satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

14. In view of the elements of fact and law set forth by the parties and the nature of the matter put before it, the Commission considers that the alleged extrajudicial execution of the alleged victim by the agents of the National Police, the subsisting impunity, and the lack of effective judicial protection in the judicial proceedings into the facts that tend to establish possible violations of Article 3 (recognition of juridical personality), Article 4 (life), Article 5 (humane treatment), Article 7 (personal liberty), Article 8 (judicial guarantees), Article 11 (protection of honor and dignity), and Article 25 (judicial protection) of the American Convention on Human Rights, in relation to its Articles 1(1) and 2, to the detriment of the alleged victim and his family members.

15. With respect to the State's arguments referring to the fourth instance formula, the Commission recognizes that it is not competent to review the judgments handed down by domestic courts that act within the scope of their jurisdiction and apply due process and judicial guarantees. Nonetheless, it reiterates that within its mandate it is competent to declare a petition admissible and rule on the merits when it refers to domestic proceedings that may violate rights guaranteed by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 11, and 25 of the American Convention in conjunction with its Articles 1(1) and 2; 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 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.