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REPORT No. 203/20

PETITION 1510-10

REPORT ON ADMISSIBILITY

ANSELMO ARÉVALO MORALES AND FAMILY
COLOMBIA

Approved by the Commission electronically on August 4, 2020.

Cite as: IACHR, Report No. 203/20, Petition1510-10. Admissibility. Anselmo Arévalo Morales and Family. Colombia. August 4, 2020.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Didier Augusto Pizza Gerena |
| Alleged victim: | Anselmo Arévalo Morales and family |
| Respondent State: | Colombia |
| Rights invoked: | Articles 4 (life), 10 (compensation), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ¹ in relation to its Article 1.1 (obligation to respect rights). |

II. PROCEEDINGS BEFORE THE IACHR²

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| Filing of the petition: | October 22, 2010 |
| Additional information received at the stage of initial review: | October 28, 2010, December 17, 2010 and March 6, 2017 |
| Notification of the petition to the State: | October 2, 2017 |
| State's first response: | May 2, 2018 |

III. COMPETENCE

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| 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 the instrument of ratification made on July 31, 1973) |

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible | Articles 4 (life), 10 (compensation), 24 (equality before the law) and 25 (judicial protection) of the American Convention in relation to its Article 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects) of the same instrument. |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes. The exception foreseen in Article 46.2.c of the American Convention is applicable |
| Timeliness of the petition: | Yes, in the terms of section VI |

¹ Hereinafter "the American Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petitioner claims responsibility of the State of Colombia for the death of Mr. Anselmo Arévalo Morales (hereinafter “the alleged victim”) who was reportedly murdered by a police agent in the Municipality of Mompo, Bolívar. He argues lack of investigation and punishment for those responsible of the facts, as well as lack of reparation for his family.

2. As it is stated, on June 11, 2000 a police agent in a drunken state shot at people who were being held captive at the cells of the police station at the Municipality of Mompo, Bolívar killing one of them and wounding other four. The petitioner points out that, upon learning of these events, the following day, the family and other people from the area gathered at the police station in protest for what occurred; in this context several violent attacks took place over such aforesaid facilities. The petitioner argues that, upon the acts of violence, and even though the Commander in charge instructed not to shoot, some agents did open fire on the protestors and gave death to Tomás Alberto Pérez Ferreira and the alleged victim.

3. The investigation of the facts was assumed by the Sectional Unit of the 25 Delegate Prosecutor before the Criminal Court of the Mompo Circuit, Bolívar, with the opening of a preliminary inquiry on June 12, 2000. However, the petitioner claims that such investigation remained at that stage for 7 years, until by means of mandate N 407 of June 8, 2007, the aforesaid prosecutor forwarded the proceedings to the Military Criminal Courts, for considering it was not within its competence. The petitioner argues that at no time did the Prosecutor notify the family of its actions.

4. The matter was known by the 175 Court of Criminal Military Instruction based in Cartagena de Indias, and the case remained at a stage of preliminary inquiry under number 1591. On January 25, 2008 such court dictated an inhibition order on the grounds of extinguishment of the criminal action. This order was challenged by the Public Ministry under the premise that the bullet which killed both people was from a rifle; and it was corroborated that only the police opened fire, which is why the investigation had to be reopened and focused on those police officials who were located at such station. On June 27, 2008 the High Military Court decided to partially revoke the first instance mandate concerning extinguishment, yet confirmed the inhibition mandate, upon the impossibility to identify those responsible and consequentially, the criminal investigation did not continue. This order was not notified to the petitioners either.

5. Without providing greater detail, the petitioner indicates that the family of the alleged victim filed a direct reparation complaint before the Sixth Administrative Court of the Circuit of Cartagena; and that their aspirations were denied by means of an enforceable sentence of 2010.

6. The State, for its part, points out that the petition must be declared inadmissible since the national jurisdiction already took all the necessary actions conducive to determining the responsibility of the State and the compensation that the family had the right to. Accordingly, the State argues that the bodies of the Inter-American system are not competent to hear the case of the present petition, in virtue of the “fourth instance formula”.

7. As for the criminal responsibility, the State indicates that the preliminary inquiry ended with an inhibitory decision by the High Military Court. In spite of verifying that there had been considerable investigative efforts, such tribunal was unable to identify those responsible for the death of the alleged victims, mainly because many of the relevant elements of proof were lost due to the burning of the records during the protest of June 12, 2000 at the Mompo police station. The State also claims that the petitioner has not proven the inefficiency of the investigation, but has limited to refer to its status; that it was diligently brought forward and that it was not possible to identify the perpetrators; based on which the court decided to support its decision of inhibiting from starting the investigation. On the other hand, the State holds that the criminal military jurisdiction was suitable since the death of Mr. Arévalo Morales had been the result, allegedly, of the action by members of the public force who had actioned their service weapons in the performance of their duties to preserve public order during a violent rising.

8. The State points out that the facts raised in the direct reparation complaint do not entirely match those raised in the petition filed to the Commission. While the petition claims that Mr. Arévalo died during the riot of June 12, 2000, in the direct reparation complaint it is stated that he had been one of the murdered people inside the cell the day before. The State informs that the knowledge of the case corresponded to the Sixth Administrative Court of Cartagena. On September 3, 2009 such court rendered a first instance decision which granted acquittal to the Ministry of Defense and concluded that it was not proven that the death of Mr. Morales was attributable to the State of Colombia. Based on these considerations, the Court decided to declare the assumptions of the plaintiffs as unproven; according to the information forwarded by the Ministry of Defense, decision which was appealed by the claimants. Through a mandate of October 30, 2009, the Court granted the appeal. On April 28, 2010 the Administrative Court of Bolívar gave transfer to the applicant to support the appeal, which was not complied. For this reason, through a decision of May 31, 2010 the Court decided to dismiss the appeal of the claimant against the sentence of September 3, 2009, and thereby dictate the “be executed” of such challenged order.

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

9. The petitioner claims that the State is responsible for breaching its duty to investigate, since the 25 Delegate Prosecutor before the Criminal Court of the Mompox Circuit, Bolívar kept the investigation at a preliminary inquiry phase for 7 years and that after such time, declared itself incompetent forwarding the investigation to the military criminal jurisdiction. The petitioner argues that on January 25, 2008 the 175 Court of Criminal Military Instruction dictated an inhibition order due to extinguishment of the criminal action. The petitioner states that, because of the delay and lack of due investigation, as well as the refusal for integral reparation for the family of the alleged victims, it is justified to apply the exception to the norm of exhaustion of domestic remedies. In return, the State argues that both the criminal investigation and the administrative judicial proceedings were carried out diligently, without specifically referring to the exhaustion of domestic remedies.

10. The Commission has established that every time a crime is committed with the alleged participation of public officials, the State has the obligation to conduct and foster the criminal proceedings; and that this is the suitable course of action to clarify the facts and establish the corresponding punishments, along with enabling other pecuniary reparations. In the instant matter, the IACHR notes that the criminal investigation remained in a preliminary stage for seven years and was then forwarded to the Military Criminal Jurisdiction, which decided to inhibit from furthering the investigations due to extinguishment of the criminal action. The IACHR warns that the development and conclusion of the investigation, both in the 25 Prosecutor and in the Military Criminal Justice, posed, actually, an impediment in the exhaustion of domestic remedies. In regard to resorting to military jurisdiction, the Commission has been clear in several occasions in the sense that it does not constitute a proper forum to investigate the death of civilians, insofar as it does not offer the minimum guarantees and therefore does not provide a suitable resort to investigate, judge and punish claims of violations of human rights consecrated in the American Convention³. Additionally, and considering the lack of an effective criminal investigation and the delay in the judicial proceedings, the Commission regards that in the instant matter it is appropriate to apply the exception contemplated in Article 46.2.b and c of the American Convention.

11. As for reparations, the Commission insists that, in order to assess the admissibility of a petition as the present one, the reparation complaint does not constitute the suitable path nor is its exhaustion necessary, since it is not appropriate to provide integral reparation and justice to the family.

12. In regard to the timeliness of the filing, the Commission observes that the petition was filed on October 22, 2010; that the facts alleged therein initiated on June 11, 2000; and that its alleged effects persist

³ IACHR, Report N° 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão and others. July 25, 2014, par. 18.

to this date. Therefore, in light of the context and its characteristics, the Commission regards that the petition was filed within a reasonable period of time and thus such admissibility requirement is to be considered met.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims are not manifestly unfounded and require a study on the merits, since the alleged facts related to the death of the alleged victim by police agents; the subsistent impunity and lack of clarification of the facts; as well as the unjustified delay in the investigation followed by proceedings developed within military jurisdiction and its consequences, if corroborated, may characterize violations in detriment of the alleged victim and his family of Articles 4 (life), 10 (compensation), 24 (equality before the law) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 and 2.

14. Regarding the claim on the alleged violation of Article 10 of the American Convention, the Commission clarifies that compensation for a judicial error corresponds in cases in which a firm decision has been rendered. In light of the above, the Commission observes that the petitioner has not provided enough allegations or support that allow to consider *prima facie* the possible violation of such provision.

15. As for the claim by the State referred to the "fourth instance" formula, the Commission reiterates that, for admissibility purposes, it must decide whether the alleged facts may characterize a violation of rights as stipulated in Article 47(b) of the American Convention, or if the petition is "manifestly unfounded" or it is "obviously out of order", as stated in subsection (c) of such Article. The criteria to assess these requirements differs from the one used to decide on the merits of a petition. Likewise, within its mandate it is competent to declare a petition admissible when it refers to domestic procedures which may result violators of rights guaranteed by the American Convention. That is to say, in accordance with conventional norms hereby cited, pursuant to Article 34 of its Rules for Procedure, the admissibility assessment centers in verifying such requirements, which refer to existence of elements that, if corroborated, may characterize *prima facie* violations to the American Convention⁴.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 8, 24 y 25 of the American Convention in relation to its Article 1.1 (obligation to respect rights) and 2;
2. To find the instant petition inadmissible in relation to Article 10 of the American Convention; and
3. 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 4th day of the month of August, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

⁴ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, par. 12.