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REPORT No. 100/20
PETITION 1564-09
REPORT ON ADMISSIBILITY

CARLOS MARIO OSORIO LONDOÑO, EDWIN ARLEY MEJÍA
CARDONA AND THEIR FAMILIES
COLOMBIA

Approved by the Commission electronically on April 24, 2020.

Cite as: IACHR, Report No. 100/20, Petition 1564-09. Admissibility. Carlos Mario Osorio Londoño, Edwin Arley Mejía Cardona and their families. Colombia. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Oscar Darío Villegas Posada
Alleged victim:	Carlos Mario Osorio Londoño, Edwin Arley Mejía Cardona and their Families
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention on Human Rights ¹ and Articles I (life, liberty and personal security), and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 4, 2009
Additional information received at the stage of initial review:	December 4, 2010
Notification of the petition to the State:	July 26, 2011
State's first response:	October 28, 2011
Additional observations from the petitioner:	December 9, 2011; August 21, 2014; May 18, 2017
Additional observations from the State:	January 17, 2012

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 (instrument deposited 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 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in connection with Article 1.1 thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception under Article 46.2.c of the ACHR is applicable
Timeliness of the petition:	Yes, under Section VI

SUMMARY OF FACTS ALLEGED

1. The instant petition involves the extrajudicial execution of Messrs. Carlos Mario Osorio Londoño and Edwin Arley Mejía Cardona (hereinafter “the alleged victims”) by agents of the National Police and the alleged lack of judicial protection. The petitioner contends that on January 23, 1994, the alleged victims

¹ Hereinafter “the American Convention” or “the Convention.”

² Hereinafter “American Declaration” or “Declaration.”

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

were held by three members of the National Police's F2⁴ in the Belen neighborhood of the City of Medellín. He claims that the detention was set into motion by a telephone call that was made by residents of the sector to the authorities, because they were suspicious of the alleged victims. He asserts that several F2 agents appeared at the location dressed in plain clothes, they proceeded to frisk them and when they found that Mr. Carlos Mario Osorio Londoño was carrying a gun, they arrested them, over the opposition of Edwin Arley Mejía Cardona. He claims that the police proceeded to put them into a Sprint model vehicle and that hours later the lifeless bodies of the alleged victims were found in the Municipality of Amagá, with signs of suffering torture.

2. The petitioner notes that witnesses to the arrest reported what had happened to the family members and that a few days later, in the company of Edwin Arley Mejía Cardona's brother, they went to the facilities of the F2 in the Belen neighborhood, where they were able to recognize the captors of the alleged victims and the vehicle in which they carried out the operation. He asserts that the investigators of the Office of Oversight (*Procuraduría*) visited the facilities of the F2 and ascertained the existence of a Sprint model vehicle in the parking lot with the same characteristics as described by the witnesses.

3. The petitioner claims that the State has not investigated the culprits and has not gotten to the bottom of the facts or provided reparation to the families of the alleged victims, who were executed as a consequence of excessive and disproportionate use of force. The petitioner notes that on April 24, 1994 a preliminary investigation was opened in the Single Prosecutor's Office of Amagá, in which the proceedings were suspended due to lack of evidence to elucidate what had happened and, consequently, the investigation was archived without prejudice on April 21, 1995.

4. As for the disciplinary jurisdiction, the petitioner explained that the Delegate of the Oversight Office of the Judiciary and Public Administration (*Procuraduría Delegada Poder Judicial y Administrativa*) brought a complaint *ex officio* against members of the national police and F2. He notes that on April 19, 1996, the Delegate ordered the case to be transferred to the Metropolitan Oversight Officer (*Procurador Metropolitano*) of Valle Aburrá because "there is no evidence that either the Sectional Director of the Administrative Department of Security (DAS) or the Sectional Chief of the Judicial Police of the Office of the Prosecutor of the National Police for the Department of Antioquia, the public official that this Oversight Office oversees at the trial level, is implicated in the crime."

5. The petitioner indicates that on January 19, 1996, he filed a motion for direct reparation with the administrative claims court to hold the State responsible for failure in its duty. He claims that on October 27, 2003, the Administrative Tribunal of Antioquia denied the motion on the grounds of a lack of evidence to prove the involvement of government agents in the events. He notes that he appealed the trial court judgment to the Council of State on March 26, 2014, which upheld the finding that there was no direct or indirect evidence to be able to establish that the alleged victims were taken, disappeared and murdered by agents of the National Police. He further argues that the motion he filed in 1996 was not ruled on until 2014, which amounted to unwarranted delay in the investigation.

6. In turn, the State argues that the facts laid out in the petition do not tend to establish, even *prima facie*, a violation of the Convention and it alleges that the Commission lacks competence *ratio materiae*, with respect to the American Declaration of the Rights and Duties of Man. It contends that several judicial proceedings were carried out in the domestic courts in order to elucidate the facts that are the subject of the petition. With respect to the criminal investigation before the ordinary jurisdiction, even though it agrees that the case was suspended due to lack of evidence, it notes that the case was reopened and the investigation was transferred to the Sectional Prosecutor's Office of Medellín. Additionally, regarding the disciplinary jurisdiction, it notes that on April 30, 1996, the Provincial Oversight Office (*Procuraduría Provincial*) of Fredonia (Antioquia) archived the disciplinary case file, on the grounds that "the crime was not committed by the defendant."

7. The State contends that the exceptions to the requirement of prior exhaustion of domestic remedies provided for in the Convention are not applicable. With respect to the exception set forth in Article 46.2.b), it argues that the petitioner not only had access to the Colombian legal system, but that this system

⁴ An Office of the National Police which is in charge of everything relating to information, Crime and Crime Statistics.

respected fair trial rights of alleged victims and their families. The State further claimed, with regard to the exception set forth in Article 46.2.c), that the suit for direct reparation before the administrative court, which was appealed before the Council of State, is a suitable remedy to achieve full and complementary reparation to criminal and civil reparation, which at the time of the submission of the communication (April 2, 2012), was still pending a ruling. Additionally, it notes that in the context of the motion for direct reparation, the petitioners are able to pursue a petition for special constitutional relief (*tutela*)⁵ to contest the ruling within a reasonable time. Lastly, the State claims that the petition is also inadmissible, given that the fourth instance formula applies to both to the criminal proceeding and the proceeding before the administrative claims court.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The Commission has established that when a crime is committed with the alleged participation of state authorities, the State has the obligation to conduct and pursue a criminal proceeding and that such a proceeding is the suitable means to elucidate the facts and establish the appropriate criminal punishments, in addition to providing for other possible means of reparation of a pecuniary nature. Thus, with regard to the facts laid out in this petition, the Commission notes that a criminal investigation was opened on April 24, 1994 into the deaths of the alleged victims at the hands of states agents and was closed on April 21, 1995, and more than 25 years after the events took place, the facts have not been clarified nor have those responsible been punished. It notes that even though the State claims that the criminal investigation proceeding has been reopened and the National Prosecutor's Office of Medellin took charge of the investigation, it does not provide further information about how the proceedings unfolded, nor about case rulings, to be able to assess whether or not the facts were clarified. Based on the foregoing, and the undue delay in the criminal investigations, the Commission finds that the exception to exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable.

9. Additionally, as for the direct reparation proceedings before the court of administrative claims, the Commission has repeatedly held that this means is not a suitable remedy for the purpose of assessing the admissibility of a claim of this nature,⁶ given that it is not adequate to provide full redress, which includes clarification of the facts and justice for the family. Notwithstanding, even though a criminal proceeding in the instant case is the suitable remedy for the investigation into the facts, it is noted that the petitioner is also claiming specific violations in the context of the motion for direct reparation, such as the lengthy course of the proceeding. Therefore, given the link between the two proceedings, the Commission takes into consideration that domestic remedies were exhausted in the administrative claims jurisdiction when the decision upholding the trial court judgment of March 26, 2014, was issued by the Council of State and notice was served thereof by publication on April 07, 2014.

10. Lastly, based on the particularities of the case and the undue delay in the investigations which consequences continue at present, the IACHR finds that the petition was filed within a reasonable time and that the admissibility requirement pertaining to timeliness has been satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

11. In view of the elements of fact and law presented by the parties and the nature of the matter before it, the Commission finds that the facts alleged by the petitioner are not manifestly groundless and warrant an examination on the merits inasmuch as, if proven, the alleged extrajudicial execution of the alleged victims by agents of the National Police F2, the alleged lack of effective judicial protection based on the facts, could tend to establish violations of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial rights) and 25 (judicial protection) of the American Convention, in connection with Article 1.1 to the detriment of the alleged victims and their families.

⁵ Enshrined in Article 29 of the Political Constitution of Colombia.

⁶ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, para. 32.

12. As for the claim of the alleged violation of Article 11 (privacy) of the American Convention, the Commission notes that the petitioner has not offered arguments or sufficient evidentiary support to be able to consider *prima facie* a potential violation thereof.

13. In relation to the claim of violations of the articles of the American Declaration, this Commission has previously established that, once the American Convention comes into force on a State, the Convention, and not the Declaration, becomes the primary source of applicable law by the Commission, provided that the petition involves an alleged violation of identical rights in both instruments and a situation of continuous violation is not involved. In this case, the alleged violations of the Declaration fall under the scope of protection of Articles 4, 5, 8 and 25 of the Convention. Therefore, the Commission will examine these allegations in light of the Convention.

14. Lastly, with respect to the allegations of the State pertaining to the fourth instance formula, the Commission acknowledges it is not competent to review judgments issued by national courts, which act in the sphere of their competence and apply due process and judicial guarantees. Nonetheless, it reiterates that within the scope of its mandate it is competent to declare admissible a petition and rule on the merits thereof when the petition involves domestic proceedings that could violate rights guaranteed in the American Convention.

VIII. DECISION

1. To declare admissible this petition in relation to Articles 4, 5, 7, 8 and 25 of the American Convention in connection with Article 1.1 thereof, to the detriment of the alleged victims and their families.

2. To declare inadmissible this petition in relation to Article 11 of the Convention.

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 24th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.