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**REPORT No. 60/20**  
**PETITION 443-10**  
INFORME DE ADMISIBILIDAD

LUIS MANUEL CARRERO GÓMEZ  
COLOMBIA

Approved electronically by the Commission on April 24, 2020.

**Cite as:** IACHR, Report No. 60/20, Petition 443-10. Admissibility. Luis Manuel Carrero Gómez. Colombia. April 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

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|--------------------------|---|
| <b>Petitioner:</b>       | Luis Manuel Carrero Gómez   |
| <b>Alleged victim:</b>   | Luis Manuel Carrero Gómez and family <sup>1</sup>   |
| <b>Respondent State:</b> | Colombia  |
| <b>Rights invoked:</b>   | Articles 8 (fair trial) and 24 (equal protection) of the American Convention on Human Rights <sup>2</sup> |

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

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| <b>Filing of the petition:</b>   | March 26, 2010   |
| <b>Additional information received at the stage of initial review:</b> | March 16, 2011; January 25, 2012; May 9, 2012, and June 18, 2012 |
| <b>Notification of the petition to the State:</b>                      | April 10, 2017   |
| <b>State's first response:</b>   | June 7, 2018   |

**III. COMPETENCE**

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| <b>Competence <i>Ratione personae</i>:</b> | Yes  |
| <b>Competence <i>Ratione loci</i>:</b>     | Yes  |
| <b>Competence <i>Ratione temporis</i>:</b> | Yes  |
| <b>Competence <i>Ratione materiae</i>:</b> | Yes, American Convention (instrument of ratification deposited 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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| <b>Duplication of procedures and International <i>res judicata</i>:</b>              | No  |
| <b>Rights declared admissible</b>  | Articles 8 (fair trial), 22 (freedom of movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in connection with Article 1.1 thereof (obligation to respect rights) |
| <b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b> | Yes, the exception of Article 46.2(c) of the American Convention is applicable  |
| <b>Timeliness of the petition:</b>   | Yes, in the terms of Section VI   |

**V. FACTS ALLEGED**

1. Mr. Luis Manuel Carrero Gómez asks the IACHR to declare the State of Colombia internationally responsible for the alleged impunity that surrounds an attempted assassination of which he was the target, at the hands of members of the paramilitary group United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia* - AUC, hereinafter "AUC") in 2000.

2. The petitioner declares that on January 25, 2000, at his office as a lawyer in the city of Barrancabermeja, two individuals identified by him as members of the AUC fired gunshots at him; he managed

<sup>1</sup> In the initial petition, Mr. Luis Manuel Carrero is identified as a direct victim and the following members of his family are identified as "indirect victims": (1) Janneth Navarro Quintero, wife; (2) Camilo Leonardo Carrero Navarro, son; (3) Manuel Alejandro Carrero Navarro, son; (4) Marcos Darío Carrero Navarro, son; and (5) Adela Gómez de Carrero, mother.

<sup>2</sup> Hereinafter, "the American Convention" or "the Convention."

<sup>3</sup> Each party's observations were duly forwarded to the opposing party.

to escape running away and saved his life, although he sustained injuries to his legs as he fled because he had to jump from a second story. He reports that, from that date, he was forced to leave Colombia with his family to preserve their security, and that they settled in France, initially with the status of political refugee and, subsequently, obtaining the French nationality together with his wife and children. In the petitioner's view, the attack was motivated by his work as a defense attorney for people being prosecuted for the crime of rebellion.

3. According to the allegations in the petition, the Office of the Fourth Specialized Prosecutor attached to the Judges for Criminal Matters of the Circuit of Barrancabermeja opened *ex officio* a preliminary investigation into the attack on February 14, 2000; and, in 2003, the Deputy Attorney-General for Criminal Matters requested the case file to be transferred to the National Prosecutor's Office Unit for Justice and Peace, transfer which was effectively carried out on May 12, 2003, when the case was assigned to Prosecutor 16 of the Justice and Peace Unit attached to the High Tribunal of the Judicial District of Antioquia. The petitioner asserts that since that time there has been no progress in the criminal investigation and that several petitions he filed before the Office of the aforementioned Prosecutor for Justice and Peace have not been answered, including one motion for the appointment of a public *ex-officio* defense lawyer -request which was again presented in 2008 and 2009 and has gone unresolved-, as well as several queries on the status of the investigation. Subsequently, the petitioner reports that he was informed in a communication received in July 2009 that the case had been assigned to the Office of Prosecutor 51, attached to the Tribunal for Justice and Peace of Bucaramanga; and he notes that said Office of Prosecutor 51 for Justice and Peace sent him a communication on July 6, 2009, informing him that because of the transfer of the case file to the Justice and Peace Unit, the original investigation that had been conducted by the Office of the Fourth Specialized Prosecutor of Barrancabermeja had been suspended. As of the present date, there has allegedly been no significant progress in this criminal investigation. According to the petitioner, all of the above amounts to a "*chain of impunity*" that has caused him different types of damages. Notwithstanding this, he notes that both he and his family have already been registered in the database of the National Justice and Peace System as victims of the crimes of attempted homicide and forced displacement.

4. In its response, the State opposes the petitioner's claims and requests the petition to be declared inadmissible. It firstly informs that the criminal investigation into the attempted assassination of Mr. Carrero is currently being conducted before the Office of Prosecutor 41, attached to the High Court of the Judicial District of Bucaramanga, Chamber for Justice and Peace, for the crime of attempted homicide; and that in the framework of that special justice and peace criminal procedure, the commanders of the Central Bolivar Block of the AUC, Rodrigo Pérez Alzate and Ivan Roberto Duque Gaviria, were charged with the crime, as part of the accusation and pretrial detention hearings held on May 8, 9, 10, 15 and 22, 2018. The State claims that the criminal investigation has been conducted with diligence since its initiation, within a time period it regards as reasonable in view of the complexity of the facts, of the *modus operandi* and of the paramilitary command structures of the area of Barrancabermeja, which must be determined during the proceedings. Consequently, and taking into account the charges brought by the Prosecutor's Office for Justice and Peace in 2018 against the AUC commanders for their responsibility in the attempted assassination of Mr. Carrero, the State contends that the petitioner has not yet exhausted the domestic remedies prior to resorting to the Inter-American System and as such has not met the requirement set forth in Article 46.1 of the American Convention.

5. The State further argues that the petition does not set forth facts that could tend to establish a human rights violation attributable to the State, not even under a *prima facie* standard of review, given that, as asserted by the petitioner himself, the attack was carried out by third parties belonging to the AUC and thus none of the circumstances of attribution of conduct to the State, as provided for in public international law, is applicable. It also contends that the it did not breach its obligation to protect rights, inasmuch as "*no proof exists that Colombia had any prior knowledge of the existence of a real and immediate risk that would warrant it to take concrete protection measures on behalf of the alleged victim,*" given that Mr. Carrero had not reported any threat before the attack, nor did he inform the authorities that his life was in jeopardy.

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

6. As a starting point for its review, the Commission notes that the petitioner's claim is focused on the alleged failure to investigate, prosecute and punish those responsible for the attack that he suffered on January 25, 2000. In support of this premise, petitioner states that, as of the present date, the criminal investigation has not yielded any significant progress. The State, for its part, argues that the criminal proceedings have been conducted within a reasonable time and points to the charges brought against the two paramilitary commanders in 2018 by the Office of Prosecutor 41, attached to the High Court of the Judicial District – Chamber for Justice and Peace, as significant developments in the course of the case proceedings.

7. In light of the foregoing considerations, and viewing the criminal proceedings as a whole since the events of the case first took place, the IACHR notes that nearly twenty years have elapsed since the attack, and that, as of the present date, the case is still at the investigation phase. In this regard, the Commission has repeatedly held that criminal investigations undertaken by the State must be conducted and pursued by the authorities of the criminal justice system *ex officio* and with diligence, and that this burden must be assumed by the State as its own legal duty, and not as the management of merely private interests, or as one that is contingent upon the initiative of private individuals or upon the provision of evidence by them.<sup>4</sup> Accordingly, the Commission takes note of the recent progress in the investigation as reported by the State, but concludes that, at least for purposes of the instant admissibility analysis, the exception of unwarranted delay in the exhaustion of domestic remedies, as set forth in Article 46.2.c of the American Convention, is applicable.

8. Based on the foregoing, the Commission notes that the attempted assassination of Mr. Carrero took place in May 2000; that, as a consequence, he and his family were compelled to settle in France; and the investigation is still ongoing. Therefore, it concludes that the petition was filed within a reasonable time as provided for in Article 32.2 of its Rules of Procedure, and in accordance with Article 46.1.b of the Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

9. In accordance with the above, and after examining the legal and factual arguments put forward by the parties, the Commission finds that the petitioner's allegations are not manifestly groundless and warrant an examination on the merits inasmuch as, should they be proven, they could characterize violations of Articles 8 (right to a fair trial), 22 (freedom of movement and residence), 25 (right to judicial protection) and 26 (economic, social and cultural rights) of the American Convention, to the detriment of Mr. Luis Carrero Gómez and his family.

10. However, the petitioners have not provided evidence to be able to identify *prima facie* a colorable claim as to potential violation of the right enshrined in Article 24 (right to equal protection) of the American Convention.

## **VIII. DECISION**

1. To declare this petition admissible in relation to Articles 8, 22, 25 and 26 of the American Convention; 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 24<sup>th</sup> day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice

<sup>4</sup> IACHR, Report No. 159/17, Petition 712-08, Admissibility, Sebastián Larroza Velázquez and Family, Paraguay, November 30, 2017, para. 14; IACHR, Report No. 108/19, Petition 81-09, Admissibility, Anael Fidel Sanjuanelo Polo and Family, Colombia, July 28, 2019, paras. 17-19.

President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.