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INFORME No. 119/20
PETITION 596-09
REPORT ON ADMISSIBILITY

RICARDO MARTINEZ RICO AND FAMILY
COLOMBIA

Approved by the Commission electronically on April 25, 2020.

Cite as: IACHR, Report No. 119/20, Petition 596-09. Admissibility. Ricardo Martinez Rico and family. Colombia. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Miguel Piñeros Rey
Alleged victim:	Ricardo Martínez Rico and Family ¹
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 10 (compensation), 17 (rights of the family), 22 (movement and residence), 24 (equal protection), 25 (judicial protection) in connection with Article 1.1 (obligation to respect rights) of the American Convention on Human Rights ² ; Articles I (life, liberty and personal security), II (equality before the law), VIII (residence and movement), XI (right to preservation of health and to wellbeing) and XVIII (justice) of the American Declaration on the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	May 15, 2009
Additional information received at the stage of initial review:	March 21, 2012
Notification of the petition to the State:	May 1, 2014
State's first response:	April 16, 2015
Additional observations from the petitioner:	June 5, 2015; July 18, 2017
Additional observations from the State:	September 10, 2015

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
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¹ María Rocío Triana Gómez (wife) and in representation of her children Heidy Yessenia Martínez Triana, Franklin Eduardo Martínez Triana, David Stiven Martínez Triana and Angélica Martínez Triana.

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

³ Hereinafter "American Declaration" or "Declaration".

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

Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 17 (rights of the family), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in connection with Articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exceptions under Article 46.2.c of the Convention
Timeliness of the petition:	Yes, under Section VI

V. SUMMARY OF FACTS ALLEGED

1. The petitioner asserts that Mr. Ricardo Martínez Rico (hereinafter “the alleged victim”), lost his life at the hands of the Revolutionary Armed Forces of Colombia (hereinafter “FARC”) as he was discharging his duties in the National Police, attached to the security force of Vanguardia Airport of the City of Villavicencio in the department of Meta. The petitioner alleges a failure to conduct a diligent investigation and punish those responsible and unwarranted delay of justice in domestic proceedings.

2. According to the petitioner, the morning of March 6, 1998, the alleged victim was in the company of agents Arquímedes Tapia Yara and Juan Escobar Bautista, when they were ambushed by members of the FARC, who had set up an illegal check point near Villavicencio, at a location known as Chorillano. The petitioner claims that the attack with firearms caused the death of the alleged victim and that his death was deemed to have occurred in the line of duty, because at that time, he was acting as a police agent.

3. The petitioner contends that the alleged victim left his three children⁵ orphaned and that his spouse, Mrs. María Rocío Triana Gómez, was expecting at the time of the death of the alleged victim. He claims that the death of the alleged victim caused pain and suffering and disrupted the family nucleus as a social, cultural and emotional setting. He further alleges that his family became economically impaired, because the widow’s pension awarded by the National Police was not deemed to be full reparation but only provides her with less than 50% of the agent’s salary. Additionally, he notes that his family members have been unable to settle in the area of Villavicencio after the incidents and were compelled to move to another region of the country.

4. The petitioner notes that the death of the alleged victim is the consequence of a failure of duty attributable to the State, inasmuch as prior to the incidents that are the subject of this matter, in the sector of Chorillano, guerrilla attacks had been taking place with a death toll of several police agents and, therefore, the State should have taken measures of control, prevention, security and intelligence in order to avoid his death. He contends that the State was all the more negligent because facilities of the National Army are located fewer than 15 kilometers away from the scene of the crime, including the Fourth Division, the Seventh Brigade and several battalions, where a military post is commanded by a general, who would have been able to give the necessary orders to displace the guerrilla forces, who remained in the area for more than four hours. He notes that the Air Force Base of “APIAY” is located in the same city and has the helicopters, military personnel, weapons and logistics required to make a timely and adequate appearance in the area where there was a presence of the subversive forces. He argues that the death of the alleged victim and the emotional, socio-cultural and economic implications thereof on his immediate family are the sole and direct consequence of the internal conflict that the Colombian State is engaged in with illegal armed groups such as the FARC and the paramilitary Self-Defense forces, and that this entails a heightened sense of responsibility of the State, since it was aware of the presence of the insurgent group in the town.

5. In this context, he notes that the locals, the authorities of the Municipality of Villavicencio and of Vanguardia airport reported the presence of illegal armed groups and requested protection and investigations from the Office of the Ombudsman, the Office of the Chief Oversight Officer of the Nation

⁵ Heidy Yessenia Martínez Triana, born on June 13, 1991; Franklin Eduardo Martínez Triana, born on June 30, 1993, Davide Stiven Martínez Triana born on June 20, 1993 and Angélica Martínez Triana born on May 7, 1997.

(*Procuraduría General de la Nación*), the Office of the President of the Republic, the Ministry of the Interior and Justice, the Ministry of Defense and the Department of Meta. He asserts that the responses to these requests were not continuous and did not yield positive or concrete results, inasmuch as the State failed to ensure the rights of citizens without providing further information. He claims that State entities breached provisions, duties and obligations under international humanitarian law, when they did not take measures of prevention in response to the presence of illegal armed groups, thus incurring State responsibility for this negligence or omission, as provided for under international conventions or treaties.

6. The petitioner reports that on July 7, 1999, the Office of the Attorney General of the Nation ordered the Fifth Regional Prosecutor's Office of Villavicencio to conduct a preliminary investigation, though as of the date of the filing of the petition the investigation has not been completed nor have those responsible for the murder been identified, much less convicted. He asserts that no appeals, notifications or procedural steps have been taken for the victims within the criminal proceeding directly, because they would first have to join the case as civil plaintiffs. He claims that, for these reasons, the alleged victim's family does not know whether there has been a final decision, as it was not served notice of any ruling.

7. He indicates that the alleged victim's wife filed a motion on September 8, 1998 for direct reparation against the Nation – Ministry of Defense – National Police, which was denied by the Court of Administrative Claims of Meta on April 17, 2001. The petitioner notes that she appealed this decision, and it was upheld on July 7, 2011 by the Chamber of Administrative Claims -Third Section – of the Council of State, ten years later, which he understands to be a violation of Article 46.2.c of the Convention.

8. For its part, the State claims that the facts, as laid out in the petition by the petitioner, do not tend to establish a violation of rights ensured by the Convention, inasmuch as the facts cannot be attributed to the State pursuant to the parameters established in Resolution A/RES/56/83 of the United Nations General Assembly on State Responsibility for Internationally Wrongful Acts. It contends that it is clear the alleged victim's death cannot be attributed to state agents or agencies, inasmuch as it was caused by the FARC. It argues that the State has not breached its duty of prevention, because the alleged victim's status as a member of the public security force entails a number of risks that are inherent to the profession, including the possibility of sustaining harm to his physical integrity or his life as a consequence of the actions of armed groups operating outside the law. Additionally, it claims that, in the context of such risks, it has not been proven that the State had knowledge of the existence of an actual or imminent danger, over and above the danger faced in the normal course of discharging his duties and, therefore, it is not its responsibility to take special measures of protection with respect to the alleged victim. Consequently, the State moves for the petition to be found inadmissible pursuant to Article 47.b of the Convention.

9. It argues that as of 2010, the State has repeatedly recognized before national and international bodies that Colombia has been battered by a situation of non-international armed conflict for more than 60 years. Notwithstanding, it contends that the mere existence of the armed group operating outside the law does not mean that the State is aware of when and how their criminal activities will crop up. Therefore, in order to prove that State authorities were aware of a potential criminal act or an operation that could impact the local population under its protection in the context of an armed conflict, evidence must be provided to be able to establish that it was aware of the risk and such evidence cannot be mere proximity of military outposts. It further contends that the alleged victim was found in the location of his death against the orders of his superiors and, consequently, no evidence has been introduced to prove negligent conduct of the State with respect to the protection of the alleged victim, because he went to the scene of the crime by his own volition and fully aware of the existence of the illegal check point where he lost his life.

10. As for exhaustion of domestic remedies, it notes that the Office of Special Prosecutor 8 of the city of Villavicencio opened investigation No 35208 on July 7, 1999, against Mr. Edwin Escobar Useche (member of the 53rd Front of the FARC) as the possible perpetrator of the crimes of homicide for terrorist purposes, extortive abduction and rebellion in the context of the illegal check point on March 6, 1998. It notes that on March 18, 2002, a ruling was issued precluding the investigation, and was upheld on April 10 that same year on the grounds that evidence was insufficient to open a criminal proceeding against the subject of the investigation. It claims that the Office of Special Prosecutor 4 of the City of Villavicencio was looking into the

feasibility of continuing the preliminary investigation into the death of the agent with regard to other persons allegedly responsible for the death, in keeping with the principle of full reparation.

11. Lastly, the State claims that the petition is also inadmissible, because the fourth instance formula is applicable to the case, given that domestic decisions were made by competent, independent and impartial bodies, which have provided an adequate and effective response to the requests of the petitioners, in both the administrative and criminal jurisdictions.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The petitioner contends that there has been unwarranted delay in the decision on appeal in the administrative jurisdiction and in the criminal investigation and, therefore, the exception set forth in Article 46.2.c. is applicable to the case. Additionally, he notes that information about the existence and location of the case proceedings instituted in the criminal sphere could not be obtained, because the State does not grant motions, serve notices or take procedural actions within said case directly with the victims, who instead must join the criminal case as private plaintiffs and, therefore, the exceptions set forth in Articles 46.2.a and 46.2.b of the Convention are applicable to this case. For its part, the State argues that, in resorting to the Inter-American human rights protection system, the petitioner is attempting to contest domestic decisions handed down by competent, independent and impartial bodies, which have provided an adequate and effective response to his requests, in both the administrative and criminal jurisdiction.

13. The IACHR has previously held that, in cases such as this one involving potential human rights violations, that is, those which can be prosecuted by the State on its own initiative, particularly, when agents of the State are implicated in the alleged facts, for possibly failing to prevent, in a situation of risk which authorities should have been aware of, the State has a legal obligation to investigate them. This burden must be borne by the State as its own legal duty, not as an instrument of the interests of private individuals and it may not be contingent upon the initiative of those individuals or the evidence they provide.⁶ Based on the available information, the Commission notes that more than 20 years after the events took place, even though an investigation was opened in the civilian jurisdiction, as of the present date, the facts have not been elucidated nor have those responsible been punished. Consequently, the IACHR finds that the exception provided for in Article 46.2.c. of the Convention is applicable.

14. Additionally, regarding the motions for direct reparation, the Commission has repeatedly held that, for the purpose of assessing the admissibility of a claim of this nature,⁷ such a motion is not a suitable remedy, given that it is not adequate to provide full redress and justice to the family. Nonetheless, the IACHR notes that, in the context of the administrative claims proceedings, the petitioner alleges that the courts exceeded the reasonable time to settle a claim for direct reparation, more than 13 years since the motion was filed. Therefore, the Commission finds that, with respect to this proceeding, remedies were exhausted when the judgment on the appeal filed by the petitioner was issued by the Third Section of the Council of State on July 7, 2011.

15. In addition, the petition was received on May 15, 2009, the alleged facts giving rise to the petition took place on March 6, 1998, and the effects of the incidents that are the subject of the claim would extend into the present due to the unduly delay in the criminal investigations. Therefore, the Commission finds that the petition was filed within a reasonable period of time and deems the requirement to have been met.

VII. ANALYSIS OF COLORABLE CLAIM

16. 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 allegations of the petitioner are not manifestly groundless and warrant an examination of the merits, inasmuch as the alleged illegal check point stop and subsequent execution of agent Ricardo Martínez Rico by illegal armed groups, the alleged failure to investigate and punish those

⁶ IACHR, Report No. 68/08, Petition 231-98, Admissibility, *Ernesto Travesi*, Argentina, October 16, 2008, para. 32.

⁷ IACHR, Report No. 72/16, Petition 694-06, Admissibility, *Onofre Antonio de La Hoz Montero and Family*, Colombia, December 6, 2016, para. 32.

responsible, the unwarranted delay of justice in the domestic proceedings and the preclusion of his family members from taking part therein, as well as the internal displacement, the multiple, complex and continuous nature of which has had a direct impact on rights including the right to a home and the uprooting in social and cultural terms and directly impacted their family life due to the lack of reparation and the inability to settle in Villavicencio, if proven, could tend to establish possible violations of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial rights), 17 (protection of the family), 22 (movement and residence), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in connection with Articles 1.1 and 2, to the detriment of the alleged victim and his family.

17. As for the allegations on Article 10 (compensation), it must be noted that the petitioner claims that in responding to domestic remedies, the State has ignored the full damage that was caused by the death of the alleged victim to his family members and did not fairly and fully redress the damages endured by them. In turn, the State argues that under resolution 004941 of 1998, the right of agent Martinez's family to receive compensation, in addition to a monthly pension for the victim's family members, is recognized. Notwithstanding, while it must be determined during the examination of the merits whether the alleged victim is entitled to full reparation, the Commission finds that the allegations set forth by the petitioner do not allow it to consider, *prima facie*, the violation of Article 10.

18. As for the allegations on the violation of Article 24 (equality) of the American Convention, the Commission notes that the petitioner has not put forward arguments or sufficient evidence to be able to identify or determine, *prima facie*, a violation of this provision.

19. With respect to the alleged violations of the American Declaration, the Commission has established in the past that, once the American Convention comes into force on a State, the Convention and not the Declaration becomes the primary source of applicable law for the Commission, provided that the petition involves an alleged violation of rights identified in both instruments and a situation of continuous violation is not involved.

20. Lastly, as to the State's allegations pertaining to the fourth instance formula, the Commission reiterates that within the scope of its mandate it is competent to declare a petition admissible and rule on the merits when the petition involves domestic proceedings that could be a violation of rights ensured by the American Convention.

VIII. DECISION

1. To declare admissible the instant petition in relation to Articles 4, 5, 8, 17, 22, 25 and 26 of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of the alleged victim and his family members;

2. To declare inadmissible the instant petition as to Articles 10 and 24 of the American Convention.

3. To notify the parties of this decision; to continue with the analysis of 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 25th 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.