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REPORT No. 212/24
PETITION 2040-13
REPORT ON INADMISSIBILITY

DEY GERMÁN VILLAREAL CADENA AND FAMILY MEMBERS
COLOMBIA

Approved electronically by the Commission on November 19, 2024.

Cite as: IACHR, Report No. 212/24, Petition 2040-13. Inadmissibility. Dey Germán Villareal Cadena and family members. Colombia. November 19, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Alberto Leguizamo Velásquez
Alleged victims:	Dey Germán Villareal Cadena and family members ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 10 (compensation), 17 (protection of the family), 21 (private property), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights, ³ in relation to its Article 1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	December 13, 2013
Warning of possible archiving	May 23, 2017
Petitioner's response to warning of possible archiving	June 25, 2018
Notification of the petition to the State:	January 3, 2019
Request for extension:	April 3, 2019
State's first response:	April 25, 2019
Warning of possible archiving:	May 13, 2022
Petitioner's response to warning of possible archiving:	April 10, 2024, April 24, 2024

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 (deposit of instrument of ratification done 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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, in the terms of Section VI
Timeliness of the petition:	No, in the terms of Section VI

¹ Diomedes Villarreal Heredia (father), Nancy Cadena Castro (mother), Deicy Janeth Díaz Vargas (common-law wife), Didier Diomedes Villareal Heredia (brother), Diana Milena Villarreal Cadena (brother), Daniela Mercedes Villareal Díaz (daughter).

² In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the decision in the instant matter.

³ Hereinafter "the American Convention" or "the Convention."

⁴ Each party's observations were duly considered and forwarded to the other party.

V. PARTIES' POSITIONS

Petitioner

1. The petitioner alleges the lack of compensation for the death of Dey Germán Villarreal Cadena at the hands of paramilitary forces with the Bloque Meta y Vichada (Meta and Vichada Bloc) of the Autodefensas Unidas de Colombia (AUC), as well as for the forced displacement of his family.

2. The petitioner recounts that on December 14, 2000, at 11 p.m., armed members of an illegal group stole the family pickup truck, a Toyota Hilux, in the village of Peralonzo, municipality of Puerto López, Meta. Dey Germán Villarreal Cadena and his family used the pickup truck for their work.

3. On January 1, 2001, Dey Germán Villarreal Cadena was assassinated in the village of Murujuy, municipality of Puerto López, Meta, by paramilitary forces, while defenseless. At the time of the facts Dey Germán Villarreal Cadena was living with Ms. Deicy Janeth Díaz Vargas. His assassination caused serious economic and moral harm that they have not overcome. It is also argued that he provided economic and moral support to his mother, Nancy Cadena Castro; his father, Diomedes Villarreal Heredia; his siblings Didier Diomedes Villarreal Cadena and Diana Milena Villarreal Cadena; and his daughter Daniela Mercedes Villarreal Díaz.

4. Subsequently (the petitioner presents the information in this manner, without indicating dates), petitioners argue, the family's system for accessing the Internet in the village was sabotaged, which the family interpreted as a threat. In addition, in March 2002 Didier Diomedes Villarreal Cadena, the son of Dey Germán Villarreal Cadena, who was studying at the Servicio Nacional de Aprendizaje (SENA: National Learning Service), was chased by two motorcycles with four persons in all, who shot at him. As a result, petitioners argue, the family was forced to get him out of the village and send him to Bogotá, thereby initiating his forced displacement.

5. The petitioner says that the robbery of the vehicle, the sabotage of the SAI, and the forced displacement are attributable to the Bloque Meta y Vichada of the AUC, and that the Colombian State is responsible for failing in its duty to provide security in the jurisdiction of the municipality of Puerto López, Meta, in keeping with the international human rights treaties signed by Colombia.

6. With respect to the domestic proceedings, the petition is quite terse. It indicates that "*these crimes were reported to the authorities in Colombia, and in the regular proceedings by the Office of the Attorney General.*" It notes that the instant case was tried in a proceeding under the Law on Justice and Peace, as case number 035768, but the objectives of truth, justice, and reparation were not attained.

7. In addition, the petitioner generically adduces that the Justice and Peace Courts did not attain the objectives of truth, justice, and reparation as proposed, for of the 35,200 perpetrators, only 11 received a judgment, as of 2013; and reparation had been made to approximately 5% of the 6 million victims.

8. In conclusion, petitioners ask the IACHR to order the State to pay fair compensation to the family members of Dey Germán Villarreal Cadena for the moral and economic harm caused.

The Colombian State

9. After presenting its own summary of the facts narrated by the petitioner, the State reports that the Office of the Attorney General, through its Bureau of Transitional Justice, specifically Office 22 Delegate before the Superior Court of the Judicial District, documented the crimes committed by the Bloque Autodefensas Campesinas del Meta y Vichada (hereinafter "ACMV"). This process of documentation was subsequently reassigned to the Sixth Office Delegate before the Superior Court of the Judicial District by Resolution No. 0273 of July 21, 2017.

10. The Office of the Attorney General also undertook criminal investigation No. 292760 for the aggravated homicide of Mr. Villareal Cadena. The State mentioned several actions undertaken in the context of this investigation, such as the inspection of the corpse on January 1, 2001; the autopsy protocol of January 2, 2001; the taking of statements from family members and persons close to Dey Germán Villareal Cadena who attested to his death; the review of preliminary investigation No. 35786, undertaken by the Office of the 8th Departmental Prosecutor of Villavicencio. In addition, the Office of the Attorney General took into account the unsworn statements of the candidates (for benefits of the Justice and Peace Law) José Baldomero Linares Moreno (December 23, 2008 and January 28, 2010) and Miguel Ángel Achury Peñuela (January 28, 2010 and December 23, 2008), both seeking to be judged by the Justice and Peace Courts, and who confessed their participation in the homicide of Mr. Dey Germán Villareal Cadena. According to the State, the actions of the Office of the Attorney General made it possible to clarify the facts and to identify, as mediate perpetrators of the death of Mr. Villarreal, José Baldomero Linares, Rafael Salgado Merchán, and as co-perpetrator Miguel Ángel Achury Peñuela, all members of the ACMV.

11. The State also reports that in the context of the proceedings of the Justice and Peace Courts, on December 6, 2013, the Superior Court of Bogotá handed down a judgment in proceeding No. 11-001-60-00253-2006-80531. In that judgment the court convicted José Baldomero Linares, Rafael Salgado Merchán, and Miguel Ángel Achury Peñuela of the crime of homicide of a protected person with respect to the death of Dey Germán Villareal Cadena, imposing 40-year prison terms on each of them. The judgment also held them liable for the crimes of illegal use of uniforms and insignia, homicide of a protected person, homicide of a protected person in the modality of attempt, forced disappearance, forced displacement of the civilian population, aggravated larceny (*hurto calificado y agravado*), unaggravated and aggravated kidnapping, acts of terrorism, torture of a protected person, destruction and appropriation of protected property, exaction or arbitrary contributions, and unlawful recruitment of minors all stemming from their paramilitary activities.

12. The family members of Dey Germán Villareal Cadena filed a motion for appeal, arguing that the Court had failed to include the crimes of forced displacement and larceny among the conduct of which they were accused. On June 17, 2015, the Chamber of Criminal Cassation of the Supreme Court of Justice affirmed the judgment after considering, in summary, that the candidates (for the benefits) did not confess to or accept that the organization to which they belonged was involved in stealing the pickup truck or in the threats made to the family members of Dey Germán Villareal Cadena. The failure of the candidates to confess to and accept these facts was sufficient for the Office of the Attorney General to set aside the charges for the crimes of larceny and forced displacement from the bill of indictment. In the record, the prosecutor delegate explained that there were not sufficient material elements to tie the organization to these crimes, which kept the Court from legalizing charges that were not the subject of a confession and of which they were not accused during the judicial proceeding.

13. Based on the foregoing, the State asserts that the Inter-American Commission lacks jurisdiction to review the decisions of the Colombian authorities, since they were made in the context of domestic legal proceedings and with full respect for due process guarantees.

14. In addition, it argues that the petitioners did not exhaust domestic remedies, particularly the action for direct reparation, which is available in Colombia to make alleging state responsibility, and to seek full reparation for the damages. It adduces that the action for direct reparation is a suitable and effective remedy for securing compensation for material and non-material damages caused by the act or omission of state agents.

15. The State also argues that the petition is manifestly groundless because: (i) the petitioners do not produce sufficient evidence to uphold the alleged violations of Articles 17, 19, 21, and 22 of the American Convention; (ii) the homicide, robbery of the vehicle, and threats were purportedly committed by non-state agents, thus they are not directly attributable to the State; (iii) there is no evidence of tolerance, complicity, or acquiescence of state agents in those crimes; and (iv) the State did not have prior knowledge of any specific risk to Dey Germán Villareal Cadena, his family, or their property, thus it could not have prevented the acts committed by the ACMV.

16. Based on the arguments presented, the Colombian State asks the Inter-American Commission on Human Rights to find the petition inadmissible on the basis of Article 47(b) of the American Convention, as it constitutes a fourth instance review; that it find the petition inadmissible based on Article 46(1)(a) of the American Convention, for failure to exhaust domestic remedies; and that it find the petition inadmissible based on Article 47(c) of the American Convention as the petitioners' allegations are manifestly groundless.

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

17. For the purposes of evaluating the suitability of the remedies available domestically, the Commission usually establishes just what is the specific claim that has been made, so as to then identify the judicial remedies provided by the domestic legal system that were available and adequate to raise that particular claim. For that is what the suitability and effectiveness of each specific remedy considered entails, i.e. providing a genuine opportunity for the alleged harm to human rights to be remedied and resolved by the national authorities before it can be brought to the inter-American human rights system.⁵

18. Accordingly, the Commission observes that the main claim of the petitioner is the lack of compensation provided by the State in the wake of the forced displacement of the alleged victims. In effect, petitioners emphasize in their initial petition that "*the State of Colombia has not fairly compensated the victims for the moral and economic damages caused, failing to carry out its international human rights obligations.*" Taking stock, the IACHR considers that the remedy provided for by the domestic legislation to address the claim seeking compensation for human rights violations in Colombia is the action for direct reparation against the State, i.e. an action before the contentious-administrative courts.⁶

19. Nonetheless, if the petitioners decide to pursue the administrative remedy of reparation, they must exhaust it, as well as the regular judicial remedies to which the administrative process is subject to obtain fair compensation. In this respect, the State reported that the petitioners did not file any action domestically to make such a claim.

20. Given that the petitioners did not show they exhausted the action for direct reparation, the Commission cannot consider that the requirement of prior exhaustion of domestic remedies, provided for at Article 46(1)(a) of the American Convention, to have been met. Accordingly, it must find this petition inadmissible.⁷

21. Finally, the Inter-American Commission recalls that the filing of contentious cases with the organs of the inter-American human rights system, while not very formalistic given its nature, compared to other domestic judicial procedures, does demand that a series of requirements and minimal conditions be met; and it requires a level of commitment and ethics on the part of petitioners before the organs of the inter-American system, and above all vis-à-vis the victims themselves, who are clearly the objective and the *raison d'être* of international human rights law.⁸

⁵ IACHR, Report No. 279/21. Petition 2106-12. Admissibility. Huitosachi, Mogótavo and Bacajípare Communities of the Rarámuri indigenous people. Mexico. October 29, 2021, para. 29; and IACHR. Report No. 89/21, Petition 5-12, Mine Workers of Cananea and their families. Mexico. March 28, 2021, para. 32.

⁶ IACHR, Report No. 241/22. Petition 2377-12. Inadmissibility. Zuluaga Obando Family. Colombia. September 26, 2022, para. 18; IACHR, Report No. 236/22. Petition 1828-12. Inadmissibility. Relatives of Julio César Cardona Lozano. Colombia. September 17, 2022, para. 12; and IACHR, Report No. 328/22. Petition 657-08. Inadmissibility. Family members of Julio Roldán Burbano Lasso. Colombia. November 29, 2022, para. 10.

⁷ Along the same lines: IACHR, Report No. 22/24. Petition 2030-13. Inadmissibility. Lucero Sarria Reyes and Alón Esthewar Sarria Reyes. Colombia. April 30, 2024, para. 17.

⁸ IACHR, Report No. 193/22. Petition 1153-12 Inadmissibility. Luis Alejandro Cárdenas Tafur and Family. Colombia. August 3, 2022, para. 15.

VII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of this decision; 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 19th day of the month of November, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.