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**REPORT No. 39/18**  
**PETITION 196-07**  
REPORT ON ADMISSIBILITY

JOSÉ RICARDO PARRA HURTADO, FÉLIX ALBERTO PÁEZ  
SUÁREZ AND THEIR FAMILIES

COLOMBIA

Approved by the Commission at its session No. 2126 held on May 4, 2018  
168<sup>th</sup> Special Period of Sessions

**Cite as:** IACHR, Report No. 39/18, Petition 196/07. Admissibility. José Ricardo Parra Hurtado,  
Félix Alberto Páez Suárez and their families. Colombia. May 4, 2018.



Organization of  
American States

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	Libardo Preciado Camargo, Libardo Preciado Niño, and Mónica Bachué Peña Mantilla
<b>Alleged victims:</b>	José Ricardo Parra Hurtado, Félix Alberto Páez Suárez, and their families
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights, <sup>2</sup> and other international treaties <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	February 22, 2007
<b>Notification of the petition to the State:</b>	August 11, 2011
<b>State's first response:</b>	November 15, 2011
<b>Additional observations from the petitioners:</b>	December 16, 2011
<b>Additional observations from the State:</b>	July 13, 2012

**III. COMPETENCE**

<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) and Inter-American Convention to Prevent and Punish Torture (instrument of ratification deposited on January 19, 1999)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception provided for at Article 46.2.c of the American Convention

<sup>1</sup> In compliance with the terms of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in discussing or deciding this case.

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

<sup>3</sup> Universal Declaration of Human Rights, American Declaration of the Rights and Duties of Man, International Covenant on Civil and Political Rights, Inter-American Convention to Prevent and Punish Torture, Inter-American Convention on Forced Disappearance of Persons, and other international instruments.

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party. Since their last substantive communication, the petitioners have communicated with the IACHR on several occasions requesting the adoption of a decision on admissibility. The most recent of those communications was dated August 8, 2017.

**Timeliness of the petition:**

Yes, as set in section VI

**V. FACTS ALLEGED**

1. The petitioners state that José Ricardo Parra Hurtado and Félix Alberto Páez Suárez (hereinafter “the alleged victims”) planned a meeting to finalize the purchase of a number of boxes of dynamite they had been offered by a group of police officers. They claim that the alleged victims planned to sell the explosives to local mine workers. The meeting was to take place on the night of May 27, 1991, in the city of Chiquinquirá, department of Boyacá. According to witnesses, however, the presumed sellers failed to arrive and a number of unidentified persons forcibly took the alleged victims away to an unknown destination, in a red-and-white official police vehicle. They report that the following day, friends who had begun to search for them found their charred corpses alongside the highway leading to the city of Tunja. According to the medical examiner’s report, they had been shot and their bodies showed signs of torture.

2. The petitioners state that during the investigation, the prosecutor assigned to the case issued accusations against two police officers from department F-2 in Tunja and one civilian. Nevertheless, in a court document dated March 3, 1992, the Twelfth Criminal Instruction Court in Tunja ordered the investigation to continue, claiming that there was insufficient evidence. The Public Prosecution Service filed an appeal against that decision, stating that several indications of false explanations, contradictions, and inconsistencies had been found pointing to the guilt of three individuals who had been accused. Accordingly, in a judgment of May 29, 1992, the Superior District Court of Tunja found that insufficient grounds existed to file charges against one of the police officers, and thus ratified the decision to continue the investigations with respect to him to better determine his participation in the facts. The petitioners note that to date, the investigation has not been reopened, which clearly constitutes impunity. In addition, the judgment found sufficient evidence regarding the other two accused—the civilian and the other police officer—and, consequently, formalized the corresponding charges and ordered their preventive custody. Nevertheless, the petitioners report that the police officer was never arrested and was ruled to be a fugitive from justice. The petitioners further report that in May 1992, the Boyacá Police Department, allegedly showing him undue favor, stated that since January of that year it had had no contact with him or information about him. However, police records obtained on a later date indicate that the officer remained on duty until February 23, 1992. They therefore contend that the police authorities hampered the investigations and unduly provided cover for the police officer in question.

3. On March 17, 1993, the First Circuit Criminal Court of Tunja found the accused criminally responsible for the crimes of aggravated homicide and qualified theft and sentenced them to prison terms of 25 years and to the payment of material and moral damages to the alleged victims’ families, to be made within four months after the finalization of the judgment.

4. The petitioners report that this decision was upheld by the Superior Court of the Tunja Judicial District on May 28, 1993, but that it was not fully implemented: although the civilian complied with the sentence, the convicted police officer did not. They argue that after they had made several requests, it was not until November 21, 2005, that the Second Judge for Sentence Execution and Security Measures in Tunja reiterated the order for the police officer’s arrest. On November 23, 2006, the arrest warrants were sent to the Administrative Security Department, the National Police, and the office of the Attorney General, but to date he has not been taken into custody. The petitioners contend that the State has failed to act diligently in locating this fugitive from justice. They further maintain that impunity still prevails since the only criminal judgment in the case was not fully observed: only the convicted civilian served the sentence, the convicted police officer is a fugitive from justice, and the responsibility of the second police officer was not determined.

5. In addition, the alleged victims’ families lodged an application for direct redress with the Administrative Tribunal of Boyacá against the Ministry of Defense and the National Police. The Tribunal, in a judgment of November 20, 1996, ordered a partial payment of damages, arguing that although the cause of the harm had a causal link with the police service, the clandestine purchasing of restricted explosives entailed a clear and inherent risk on account of the absence of legal protection for illicit business dealings. The parties lodged an appeal against that decision, which was dismissed by the Third Section of the Council of State on

September 13, 2001, rejecting the families' claims, relieving the State of responsibility, and finding that it could not be established with certainty that the murders had been committed by police officers while on service.

6. In response, the petitioners filed a special reconsideration remedy, which was rejected by the Council of State in a ruling dated July 25, 2002, on the grounds that they had failed to submit the special power of attorney of their representative within the specified deadline. They report that on July 22, 2002, a motion requesting that the proceedings be voided was presented to the Third Section of Council of State on the grounds that the attorney was unable to follow up on the case within the set time because of a medical problem. That motion was dismissed on November 1, 2002. In response, they lodged an action for protection, claiming that due process and the right of defense were being violated in that their attorney enjoyed power of representation from the time the complaint was filed. On November 13, 2003, the Fourth Section of the Council of State dismissed the protection action, ruling that the remedy was not admissible against judicial rulings ordering the conclusion of proceedings; that the power of attorney granted for the initial formalities could not be extended to the presentation of special remedies and that a special power was required; that the medical excuse submitted suffered from inconsistencies; and that in addition, it did not indicate that the alleged illness prevented the plaintiff from presenting the powers of attorney required. The protection motion was later reviewed by the Constitutional Court which, in judgment T-563/2004 of June 3, 2004, upheld the dismissal of the motion and the arguments related to the special power requirements.

7. Finally, the petitioners lodged a remedy for annulment with the Administrative Tribunal of Boyacá, enclosing their attorney's medical history to prove that he was incapacitated at the time that the power of attorney was to be submitted. The Administrative Tribunal forwarded the proceedings to the Third Section of the Council of State which, on February 17, 2006, ruled that the remedy was inadmissible on the grounds that the case had already been sent to the archive. They contend that the judicial proceedings at the administrative venue curtailed the right of access to justice and guarantees of due process of the alleged victims' families.

8. The State maintains that the facts in the petition do not tend to establish violations of human rights, since the crimes committed against the alleged victims were not caused by state actions. It holds that although one of the guilty was identified as an active member of the National Police, the actions he took were so unrelated to his official duties that they must be seen as belonging to the private sphere, with no connection to the State. It contends that the obligation of ensuring the alleged victims' families access to justice was met, in that they were able to pursue judicial proceedings—both criminal and administrative—in accordance with the domestic legal framework and thus their rights were upheld.

9. Colombia further maintains that the petition is inadmissible in that it was lodged after the six-month deadline established by the Convention had expired. It notes that as regards the criminal case, the final decision was the ruling upholding the conviction adopted by the Superior Court of the Tunja Judicial District on March 17, 1993. Similarly, the administrative suit for redress concluded with the ruling of the Third Section of the Council of State on September 13, 2001.

10. Finally, the State contends that the petitioners are seeking to use the Commission as a fourth instance, in that they seek to challenge the decisions adopted by the domestic judicial authorities, a fact that also triggers the petition's inadmissibility.

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

11. The petitioners claim that the domestic criminal remedies were exhausted with the criminal proceedings that established the responsibility of only two of the alleged victims' killers. Nevertheless, they note that to date, that judgment has not been enforced since one of the convicted persons is a fugitive from justice and the responsibility of a possible third killer was not determined. They indicate that the final formality carried out by the Second Court for Sentence Execution and Security Measures in Tunja was the reiteration of the arrest warrant on November 21, 2006. Regarding the administrative proceedings, they state that on August 23, 2006, they were notified of the Administrative Tribunal of Boyacá's ruling of February 17, 2006, that ruled

the remedy for annulment inadmissible, thereby exhausting the internal channels for obtaining redress. Finally, they contend that the domestic remedies were illusory, which would trigger the exception provided for in Article 46.2.b of the Convention. In response, the State maintains that the criminal and administrative remedies were exhausted, but that the petition was lodged after the filing deadline. Colombia further holds that the exception provided for in Article 46.2.b is not applicable in the instant case, in that it was not designed to release those invoking the Inter-American system from the obligation of filing their petitions within a period of six months; instead, it was devised for those who involve the IACHR prior to exhausting those remedies because they were denied access to them.

12. The Inter-American Commission has ruled that whenever a crime involving the alleged participation of state officials is committed, the State is obliged to bring and pursue criminal proceedings and that, in such cases, this is the best way to clear up the facts, determine any criminal responsibility, and set the corresponding criminal punishments, in addition to enabling other forms of monetary compensation to be established.<sup>5</sup> In the case at hand, the IACHR notes that according to the petitioners' claims, three persons were involved in the alleged victims' death and that two of them were police officers. Nevertheless, according to the available information, the Commission notes that the continued investigation into one of the police officers suspected of involvement, ordered on May 29, 1992, by the Superior District Court of Tunja, has not to date taken place. Regarding the other two perpetrators, the Commission sees that although they were convicted of the murder of the alleged victims on March 17, 1993, one of them—the police officer—has not served his sentence by reason of allegedly being a fugitive from justice for almost 24 years. According to the available information, in spite of the request made by the alleged victims' families, it was not until November 21, 2006, that the Second Judge for Sentence Execution and Security Measures in Tunja again issued the warrant for the arrest of the convicted police officer, a formality that to date has produced no results. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies rule is applicable, in keeping with the provisions of Article 46.2.c. of the Convention.

13. At the same time, in connection with the suit for direct redress filed by the petitioners with the administrative justice system, the Commission has repeatedly said that such venues are not a suitable remedy for analyzing the admissibility of claims such as those involved in the case at hand,<sup>6</sup> in that they are not appropriate for providing families with comprehensive redress and justice. Irrespective of that, the Commission notes that the petitioners in this case also allege specific violations in the direct redress proceedings. Accordingly, given the relationship that exists between the two processes, the IACHR notes that in the administrative proceedings, domestic remedies were exhausted with the decision ruling the remedy for annulment inadmissible that was adopted by the Administrative Tribunal of Boyacá on February 17, 2006, and notified to them on August 23, 2006.

14. Finally, the petition before the Commission was received on February 22, 2007; the alleged facts described in the claim began on May 27, 1991; the warrant for the arrest of the convicted police officer was reissued on November 21, 2006; and the effects of the facts persist into the present. Consequently, considering the context and characteristics of this case, the Commission believes that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed met.

## VII. ANALYSIS OF COLORABLE CLAIM

15. In light of the elements of fact and law set out by the parties and of the nature of the matter placed before it, the Commission believes that the purported torture and execution of the alleged victims by three persons, including two police officers, the partial impunity that still surrounds the case, and the lack of effective judicial protection could tend to establish possible violations of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof; of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and

<sup>5</sup> IACHR, Report No. 55/13. Petition 375-07. Admissibility. Spencer Friend Montehermoso and Others. Guatemala. July 16, 2013, para. 31.

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

Punish Torture, due to the failure to conduct an investigation following the entry into force of that Convention, with respect to José Ricardo Parra Hurtado and Félix Alberto Páez Suárez; and of Articles 5 (humane treatment), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof, with respect to the members of their families.

16. Regarding the State's claims relating to the fourth instance formula, the Commission acknowledges that it does not have the competence to review judgments handed down by domestic courts acting within the scope of their competence and in accordance with due process and the right to a fair trial. Nevertheless, it reiterates that within the framework of its mandate it is competent to rule a petition admissible and to decide on its merits when it involves domestic proceedings that could entail violations of rights guaranteed by the American Convention.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof; and in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; 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 4<sup>th</sup> day of the month of May+, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.