

OEA/Ser.L/V/II.
Doc. 109
24 April 2020
Original: Spanish

REPORT No. 99/20
PETITION 1010-09
REPORT ON ADMISSIBILITY

MERARDO IVÁN VAHOS ARCILA AND FAMILY
COLOMBIA

Approved by the Commission electronically on April 24, 2020.

Cite as: IACHR, Report No. 99/20, Petition 1010-09. Admissibility. Merardo Iván Vahos Arcila and family. Colombia. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Oscar Darío Villegas Posada
Alleged victim:	Merardo Iván Vahos Arcila and Family
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 19 (rights of the child) and 25 (judicial protection), in connection with Article 2 of the American Convention on Human Rights; ¹ Articles I (life, liberty and personal security), XI (preservation of health and well-being) and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man; ² and Article 14 (due process) of the International Covenant on Civil and Political Rights

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 8, 2009
Additional information received at the stage of initial review:	April 11, 2010
Notification of the petition to the State:	July 13, 2011
State's first response:	October 17, 2011
Additional observations from the petitioner:	November 22, 2011; April 3, 2017; May 20, 2019
Additional observations from the State:	April 2, 2012
Notification of the possible archiving of the petition:	March 27, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	April 3, 2017
Precautionary measure granted:	

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), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights in connection with Articles 1.1 and 2

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.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exceptions in Articles 46.2.b and c of the ACHR are applicable
Timeliness of the petition:	Yes, under Section VI

V. SUMMARY OF FACTS ALLEGED

1. The instant petition is about the alleged extrajudicial execution of Mr. Merardo Iván Vahos Arcila (hereinafter “the alleged victim”), which took place on August 9, 2000 and the lack of an exhaustive investigation to get to bottom of the motives for his death. The petitioner argues that at the time of the events, small land-holding farmers (*campesinos*) and workers, as well as the alleged victim, were facing an ongoing situation of violence, because in rural areas groups operating outside the law were engaging in illegal activities of extortion, illicit crop-growing and kidnappings; and the workers were being confused with the guerrilla force members and mistakenly becoming victims in police operations or direct victims under the phenomenon known as ‘false positives,’ that is, intentional murdering of civilians by soldiers to pass them off as rebels killed in battle.

2. The petitioner claims that on August 9, 2000, the alleged victim was on his way to work as a sugar cane cutter in the settlement (Vereda) of Bengala of the municipality of Yolombó, in the Department of Antioquia, when he came across uniformed men belonging to the special forces Rural Gaula group of Antioquia,⁴ which was moving through the area in an operation to rescue a civilian, who had been kidnapped by the guerrilla forces. He contends that the agents shot the alleged victim dead for no reason and abandoned his body on the road. He asserts that the disproportionate action caused the death of the alleged victim, who at no time acted illegally in front of the agents, but was simply walking through the scene of the events unaware. He notes that the alleged victim’s family members learned about the incidents in the afternoon, and the removal of the body was performed by the Prosecutor of the Municipality of Cisneros, who on August 10, 2000, forwarded the background information to the Sectional Prosecutor’s Office of Yolombó.

3. The petitioner claims that the State did not conduct a thorough or diligent investigation to elucidate the motives surrounding his death, but on the contrary, the defendants consistently sought to conceal any sort of information on this score.

4. The petitioner contends that no criminal investigation was conducted into the death of the alleged victim in the ordinary jurisdiction. He asserts that the aforementioned Section Prosecutor’s Office of Yolombó did not bring the case in court, as it decided that the Military Criminal Investigating Magistrates of the Fourth Brigade of Medellín should be requested to investigate, because this was the competent jurisdiction to carry out the investigation. He notes that this military court responded on February 25, 2005, explaining that it was not competent to conduct the investigation, because the jurisdiction of Yolombó (the site where the death of the alleged victim took place) belongs to the Infantry Battalion of Bombona, headquartered in Puerto Berrío, and asserted that Puerto Berrío is the venue where the investigation proceedings should be opened. The petitioner notes that the military criminal justice system was unable to provide information about the case, on the grounds “that the case file could not be found anywhere.”

5. As for the disciplinary jurisdiction, he claims that the alleged victim’s wife filed a disciplinary complaint with the Regional Office of Oversight (*Procuraduría Regional*) of Antioquia on September 5, 2000, which did not take any investigatory steps, and did not issue an order to open the preliminary investigation until February 22, 2002, though as of the present date no further information is available.

6. The petitioner claims that a motion for direct reparation was filed with the administrative claims court on July 10, 2001, in order to compensate the family members of the alleged victim, and the motion was granted by the Tenth Decision Chamber of the Administrative Claims Court of Antioquia, in a judgment of July 24, 2007, recognizing administrative responsibility of the Ministry of Defense of the Nation, the Army and

⁴ It is noted that the Gaula Group was made up of agents of the Administrative Department of Security (hereinafter “DAS”), Police and National Army.

the National Police and the DAS, for the damages caused to the alleged victim and his family. In this judgment, the trial court judge noted that the abandoned body of the alleged victim presented “dirt under the fingernails, which suggests he was a person engaged in field labor, as is reinforced by the statements given in the proceeding and the Mayor and Sectional Prosecutor attest.”

7. The petitioner asserts that the National Army and the DAS filed appeals against the trial court judgment with the Council of State, for which leave was granted to appeal but no ruling has been issued on the appeal since the filing of the instant petition. Therefore, he contends there has been unwarranted delay and, consequently, a lack of reparation.

8. For its part, the State alleges the Commission’s lack of competence *ratio materiae*, with respect to the American Declaration of the Rights and Duties of Man and the International Covenant on Civil and Political Rights.

9. It argues that, in the administrative claims proceeding that is currently being heard before the Council of State, the DAS contests the petitioner’s claims, on the grounds that the facts that are the subject of the claim cannot be attributed to it. To provide a basis for this challenge, it cites a certification issued on August 9, 2000 by Major René Cadena Montenegro, commander of GAULA Group of Antioquia, which establishes that this group did not conduct operations in the sector nor did the National Army. It further argues that the National Police filed a motion for exoneration in the administrative proceeding, citing as grounds the act of a third party, because it was not members of the National Police who committed the crime, but “groups operating outside the law wearing attire of the Institution and the Army.”

10. The State alleges that the exceptions to prior exhaustion of domestic remedies provided for in Articles 46.2.b and c are not applicable. With respect to the exception set forth in Article 46.2.b, it claims that the petitioner not only was able to gain access to the Colombian legal system, but that this system respected the procedural guarantees of the parties. Additionally, as for the exception set forth in Article 46.2.c, the State contended that the direct reparation action before the court of administrative claims, later appealed before the Council of State, is a suitable remedy to achieve full reparation that is supplemental to criminal and civil reparation, is still pending a final ruling. It notes that in the context of the direct reparation proceeding, the petitioners are able to file a petition for constitutional relief via *tutela*⁵ to contest the ruling within a reasonable time. Lastly, it requests that the petition be declared inadmissible, inasmuch as the alleged facts do not tend to establish violations of rights.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The petitioner claims that there has been unwarranted delay in ruling on appeal in the administrative claims courts and that this makes the exception provided for in Article 46.2.c. applicable to the case. Furthermore, he stresses that information about the existence and location of any investigations and the corresponding files, which may have been opened in the military criminal jurisdiction, could not be secured and, therefore, this could be a violation of Article 46.2.b. of the Convention.⁶ For its part, the State argues failure of exhaustion of domestic remedies inasmuch as the petitioner had access to the Colombian judicial apparatus when he secured a favorable judgment on direct reparation at the trial level, which is being heard on appeal before the Council of State. Additionally, it contends that in the context of the direct reparation action, the petitioners are able to file a petition for constitutional relief via *tutela* to contest the ruling within a reasonable time.

12. The Commission has repeatedly held that the military jurisdiction does not constitute an appropriate forum and therefore does not offer an adequate remedy for investigating, prosecuting, and punishing violations of the human rights enshrined in the American Convention, allegedly committed by members of the armed forces or National Police or with their collaboration or acquiescence.⁷ Based on the

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

⁶ Pursuant to pg. 264 of case file 05-001-23-31-000-2001-2377.

⁷ IACHR, Report No. 107/17. Petition 535-07. Admissibility. Vitelio Capera Cruz. Colombia. September 7, 2017, para. 8.

available information, the Commission notes that the investigations were transferred to the military criminal jurisdiction in 2000 and the alleged victim's family was unable to participate in the proceeding, introduce evidence, file motions, or have information about the case file or the fate of the case. For this reason, the IACHR understands the exception set forth in Article 46.2.b of the Convention to be applicable.

13. The Military Criminal Investigating Magistrates of the Fourth Brigade of Medellín was the competent jurisdiction to conduct the investigation. The Commission notes that this court responded on February 25, 2005 that it was not competent to conduct the investigation, because the jurisdiction of Yolombó (the town where the death of the alleged victim took place) falls under the Bombona Infantry Battalion, that is headquartered in Puerto Berrío, and it asserted that venue is where the proceeding should be instituted.

14. Additionally, as for the direct reparation proceedings, the Commission has repeatedly held that for the purpose of assessing the admissibility of a claim of this nature,⁸ it does not constitute a suitable remedy, given that it is not adequate to provide full redress and justice to the family. Notwithstanding, the IACHR notes that the family of the alleged victim filed a motion for direct reparation with the Administrative Claims Court of Antioquia, which was granted on July 24, 2007, but after an appeal filed by the National Army and the DAS, the case has not been settled by the Council of State as of the present date. Therefore, based on the specific allegations with respect to the direct reparation proceeding, the Commission concludes that in the instant case, the exception for unwarranted delay of justice, as set forth in Article 46.2.c of the American Convention, is applicable.

15. With regard to the timeliness of the petition, the IACHR observes that the petition was received on December 8, 2009, and the alleged facts that gave rise to the petition occurred on August 9, 2000 and the effects of the facts that are the subject of the claim have stretched out until the present. Since the IACHR concludes that in the present petition the exception to the exhaustion of domestic remedies apply due to unwarranted delay of justice, the Commission finds that the petition was filed within a reasonable time and this requirement have been satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

16. In view of the elements of fact and of law presented by the parties and the nature of the matter under examination before it, the Commission understands the allegations of the petitioner not to be manifestly groundless and warrant an examination on the merits, inasmuch as, if proven, the alleged extrajudicial execution of Mr. Merardo Iván Vahos Arcila as a result of the actions of the Rural Gaula group in the operation conducted in Antioquia, the lack of investigation and punishment of those responsible, as well as the unwarranted delay in the administrative proceeding, could tend to establish potential violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial rights), and 25 (judicial protection) of the American Convention in connection with Article 1.1 thereof, to the detriment of the alleged victim and his family.

17. As for the allegations of the violation of Articles 7 (personal liberty), and 19 (rights of the child) of the American Convention, the Commission notes that the petitioner does not provide arguments or sufficient evidence to be able to identify or determine, *prima facie*, the violation of these provisions.

18. With respect to the violations of the American Declaration, the 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 for the Commission, provided that the petition involves the alleged violation of identical rights in both instruments and does not involve a situation of continuous violation.

19. Lastly, in relation to the International Covenant on Civil and Political Rights, the Commission lacks jurisdiction to establish violations of the provisions of said treaty, without prejudice to being able to draw

⁸ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, para. 32.

from it in its interpretation of the provisions of the American Convention at the merits stage of the instant case, as provided for under Article 29 of the Convention.

VIII. DECISION

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

2. To declare inadmissible this petition in relation to Articles 7, 11 and 19 of the Convention and Article 14 of the International Covenant on Civil and Political Rights.

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