

OAS/Ser.L/V/II
Doc. 242
5 December 2024
Original: Spanish

REPORT No. 230/24
PETITION 15-14
REPORT ON ADMISSIBILITY

FLORENTINO QUIROGA CHARRY & FAMILY
COLOMBIA

Approved electronically by the Commission on December 5, 2024.

Cite as: IACHR, Report No. 230/24. Petition 15-14. Admissibility. Florentino Quiroga Charry and Family. Colombia. December 5, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Luz Mary Charry Rodríguez and Jaime Rojas Tafur
Alleged victims:	Florentino Quiroga Charry and family ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	January 7, 2014
Additional information received during the review stage:	August 2, 2018
Notification of the petition to the State:	September 4, 2018
State's first response:	March 3, 2020
Additional observations from the State:	June 12, 2020 and May 20, 2021
Additional observations from the petitioner:	October 9, 2020

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 of ratification deposited on July 31, 1973)

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

Duplication of proceedings and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (life), 5 (personal integrity), 8 (judicial guarantees), 11 (protection of honor and dignity), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception:	Yes, the exception contained in Article 46(2)(b) of the Convention, under the terms of Section VI
Timeliness:	Yes, under the terms of Section VI

¹ Luz Mary Charry Rodríguez (wife); Cenon Aureliano Quiroga Charry, Josefina Quiroga Charry, Nina Quiroga Charry, Elvira Quiroga Charry, and Graciela Quiroga Charry (siblings); and Florentino Quiroga Martínez and Duván Fabián Quiroga Charry (children).

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not take part in the discussion or the decision on this matter.

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

⁴ Each party's observations were duly transmitted to the other party. The petitioners' August 2, 2018 letter, listed in the "Additional information received during the review stage" field, was an expression of interest in continuing to have the petition processed. In its March 3, 2020 letter, referred to in the "State's first response" field, the State notified the IACHR that it was gathering the information necessary to submit its first observations on admissibility, which it did on June 12, 2020.

V. POSITION OF THE PARTIES

The petitioners

1. The petitioners allege the extrajudicial execution of Florentino Quiroga Charry (hereinafter also, "the alleged victim" or "Mr. Quiroga") by the Colombian army, as well as impunity and a lack of reparations in the case, which have caused his relatives to suffer. They indicate that the extrajudicial execution occurred in the context of so-called "false positives."⁵

2. According to the petitioners, Florentino Quiroga Charry traded in livestock and agricultural products. They state that on November 22, 2004, in the village of Lucitania, municipality of San Vicente del Caguán, department of Caquetá, on his way home from conducting business in the area, Mr. Quiroga fell victim to an indiscriminate ambush perpetrated by a patrol of the Colombian army's Counter-Guerrilla Battalion No. 72 Centauro.

3. The soldiers, who were in the area to capture a guerrilla combatant known as "Yerbas," opened fire, unprovoked, on a red Toyota pickup truck whose passengers included Florentino Quiroga Charry and a number of others. The damage to the truck included more than 360 bullet holes. The soldiers also employed rifle grenades and bombs.

4. Upon realizing they had killed civilians, the soldiers engineered the crime scene to give the appearance that an armed confrontation with FARC guerrillas had taken place by planting weapons next to the bodies. To support Mr. Quiroga's innocence and refute the army's version of events, the petitioners highlight the alleged victim's role as an active member of the Guayabal Centro Pato hamlet's Community Action Board and furnished a certificate issued by the Board attesting to his impeccable conduct.

5. With regard to the criminal proceedings, the petitioners report that the nine soldiers involved in the operation were the subject of preliminary military criminal investigation 069 conducted by the 97th Military Criminal Investigating Court located in the Tenerife Battalion in Neiva, Huila. The investigation concluded, however, with an *auto inhibitorio* [order to waive prosecution].

6. On July 7, 2006, Florentino Quiroga Charry's relatives filed a claim for direct reparation against the State. On March 9, 2011, the Second Administrative Court of the Circuit of Florencia, Caquetá, ruled in favor of the plaintiffs, ordering the State to pay them compensation. On May 24, 2012, however, the Contentious-Administrative Court of Caquetá, at the appeals level, revoked the judgment and denied the claim.

7. On October 19, 2012, Mr. Quiroga's relatives filed a *tutela* action against the aforementioned Contentious-Administrative Court of Caquetá decision. On December 13, 2012, the Council of State [Colombia's highest court for administrative matters] denied the *tutela* action. An appeal of that decision was lodged on January 21, 2013, but was denied on May 27, 2013. Lastly, in October 2013, the Constitutional Court refused to accept the case for review and ordered it be dismissed.

8. The petitioners argue that the internal investigations were ineffective and that the State did not act with due diligence to investigate and punish the perpetrators of Florentino Quiroga Charry's death. They further argue that the Contentious-Administrative Court of Caquetá's legal decision attributing sole negligence to the victim ignored the evidence of the State's responsibility.

9. The petition to the IACHR claims the violation of Mr. Quiroga's rights to life, humane treatment, due process, and legal reparations, and the impact of this incident on his relatives. The petitioners argue that the Colombian army flagrantly violated Mr. Quiroga's right to life, as well as the special rights of protection he enjoyed as an older adult. They stress that there was no clash between the army and the vehicle's

⁵ In Colombia, a series of extrajudicial executions of civilians committed by State security forces and then presented as combat casualties are known as 'false positives.' See: IACHR, Truth, Justice, and Reparation: Fourth Report on the Situation of Human Rights in Colombia, December 31, 2013, paragraphs 21, 122 et seq.

occupants and that no civilian fired a weapon. The petitioners further allege that the internal investigations were ineffective, that the regular justice system did not take into account the evidence proving the extrajudicial execution, and that the Colombian State has not guaranteed the right to either justice or full reparation for the harm suffered.

10. Lastly, the petitioners emphasize that in their petition they are not seeking to have the IACHR act as a “fourth instance” or higher court for potential reparations. Rather, they want the Commission to hold the Colombian State responsible for the violation of human rights. They argue that impunity in cases like this encourages violence and human rights violations in Colombia.

The Colombian State

11. The State indicates that Florentino Quiroga Charry’s death occurred on November 22, 2004 during a lawful military operation carried out by the Colombian army in the village of Lucitania, municipality of San Vicente, Caquetá.

12. According to the State, Mr. Quiroga’s death occurred during an operation against members of the FARC guerrilla group, specifically during the hunt for a guerrilla fighter known as “Yerbas” who was wanted by the authorities for the crime of extorting money from the region’s inhabitants. The State further notes that Mr. Quiroga was traveling in a truck belonging to “Yerbas” at the time of the operation.

13. This incident prompted a military criminal investigation (No. 069) by the 97th Military Criminal Investigating Court into soldiers Aramis Junior Rico Freyle, José Gabriel Mora Tinoco, Ángel Yovany Sánchez Loaiza, Carlos Audi Castaño Angulo, Hermenegildo Vega López, Eider Cardona Vargas, John Freddy Ortiz, and Blady Alexis Román Murillo. The investigation concluded with an *auto inhibitorio* [order to waive prosecution] on May 23, 2005.

14. Additionally, the State reports that Luz Mary Charry Rodríguez, wife of the alleged victim, filed a claim for direct reparations against the Colombian State – Ministry of National Defense on July 7, 2006. In a March 9, 2011 judgement, the Second Administrative Court of the Circuit of Florencia, Caquetá, found the State liable and ordered payment of moral and material damages for Mr. Quiroga’s death. The Court based its decision on the special harm liability regime, arguing that, while the military operation was lawful, Mr. Quiroga was a civilian who was not himself involved in the incident and was impacted by State actions. The Court determined that Mr. Quiroga had had no choice but to ride in “Yerbas” vehicle because of a lack of public transportation in the area.

15. However, in a May 24, 2012 judgement, the Contentious-Administrative Court of Caquetá overturned the lower court’s ruling and exonerated the State. The Court argued that although the harm was evident, the sole negligence of the victim absolved the State of its liability. The Court further determined that Mr. Quiroga had acted recklessly by boarding a vehicle with guerrilla combatants “*clearly identifiable by their clothing and weapons*,” and thus assumed the risk entailed in such an action.

16. The Colombian State indicates that in a December 13, 2012 decision, the Council of State denied the *tutela* action the petitioners had filed on October 19, 2012 against the Contentious-Administrative Court of Caquetá’s judgment after finding no evidence of violations of due process. The Council of State examined the Court’s ruling and determined that the assessment of the evidence, although different from the lower court’s, was factually sound and so did not justify the intervention of the *tutela* judge. It argued that the Court’s ruling on sole negligence of the victim was based on a reasonable interpretation of the evidence and fell within the scope of judicial autonomy. An appeal of this ruling was denied on May 21, 2013 by the Fourth Section of the Council of State, which upheld the Court’s decision. The Constitutional Court, in a September 26, 2013 brief, decided not to select the *tutela* for review and ordered the process be dismissed on October 11, 2013.

17. The State maintains that the Colombian judges, in both the regular and the constitutional jurisdictions, followed the law, ensuring due process at all levels. It holds that the judicial rulings are duly

grounded in the evidence and in proper application of domestic law. The State likewise asserts that the action for direct reparation, provided for in Colombia's legal system, is an adequate and effective mechanism for claiming State responsibility for harm caused by its agents.

18. The State concludes that the petition before the IACHR is inadmissible inasmuch as it seeks to turn the Commission into a fourth instance by asking it to review the evidentiary assessments and interpretation of domestic law made by the Colombian judges, who, in the State's view, acted diligently and respected the alleged victims' judicial guarantees.

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

19. At the heart of the petition is the extrajudicial execution of Florentino Quiroga Charry, as well as the impunity and lack of reparations in the case thus far and the consequent suffering of Mr. Quiroga's relatives.

20. In this connection, the appropriate remedy to be exhausted at the domestic level is the criminal justice system, through the official and diligent conduct of investigations to identify the perpetrators of the violation of the right to life and prosecute and punish them pursuant to the American Convention.⁶ This burden must be assumed by the State as its own legal duty, and not as a management of private interests or reliant on the initiative of the latter or on the provision of evidence by them.⁷

21. In the instant case, the information furnished by the State indicates that the death of Florentino Quiroga Charry occurred on November 22, 2004. A military criminal investigation (No. 069) into the incident was conducted by the 97th Military Criminal Investigating Court. The investigation concluded with an *auto inhibitorio* [order to waive prosecution] on May 23, 2005.

22. According to inter-American jurisprudence, the military jurisdiction is not an appropriate forum and does not offer an effective remedy with respect to investigating, prosecuting, and punishing alleged violations of the human rights enshrined in the American Convention, allegedly committed by members of security forces or with their collaboration or acquiescence. The Commission therefore considers that, in the instant case, since the investigations were conducted and then closed in the military criminal justice system, the exception provided for in Article 46(2)(b) of the Convention applies.⁸

23. In this regard, the Commission first reiterates, as it has consistently done, that Article 46(2) of the Convention, by its nature and purpose, is an independent provision vis-à-vis the American Convention's substantive provisions. Therefore, consideration of whether the exceptions to exhaustion of domestic remedies established therein apply to the case in question must be prior to and apart from the analysis of the merits of the case because a different standard than the one used to determine a potential violation of Articles 8 and 25 of the Convention applies.⁹

24. As to the question of timeliness, per Article 32(2) of its Rules of Procedure, the IACHR concludes that the instant petition was filed in a timely manner since the initial incident occurred in 2004, the petition was lodged in 2014, and the impact of the alleged violations in terms of the purported impunity remain

⁶ IACHR, Report No. 13/22, Petition 1332-11. Admissibility. Orlando Hernández Ramírez and Family. Colombia. February 9, 2022, para. 7; IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala. June 20, 2018, para. 10; IACHR, Report No. 70/14, Petition 1453-06. Admissibility. Maicon de Souza Silva, Renato da Silva Paixão et al. Brazil. July 25, 2014, para. 18; IACHR Report No. 3/12, Petition 12,224, Admissibility, Santiago Antezana Cueto et al. Peru. January 27, 2012, para. 24; IACHR Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al. Peru. September 7, 2017, paras. 3, 9-11.

⁷ IACHR, Report No. 13/22, Petition 1332-11. Admissibility. Orlando Hernández Ramírez and Family. Colombia. February 9, 2022, para. 7; IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and Family. Paraguay. November 30, 2017, para. 14.

⁸ IACHR, Report No. 154/17, Petition 239-07. Admissibility. Nicanor Alfonso Terreros Londoño and Family. Colombia. November 30, 2017, para. 10; IACHR, Report No. 107/17, Petition 535-07. Admissibility. Vitelio Capera Cruz. Colombia. September 7, 2017, para. 8.

⁹ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

to this day.

VII. ANALYSIS OF THE CHARACTERIZATION OF THE ALLEGED FACTS

25. For purposes of admissibility, the Commission must decide whether the facts being alleged might characterize a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to Article 47(c). The criterion for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, the Commission is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. In other words, in accordance with the aforementioned conventional norms, and in keeping with Article 34 of the Commission's Rules of Procedure, the analysis of admissibility centers on substantiating these requirements, which have to do with the existence of elements of fact, which, if proven, could constitute *prima facie* violations of the American Convention.

26. In the instant case, the Commission notes that the petitioners' main claim centers on the death of Florentino Quiroga Charry. According to the information provided, Mr. Quiroga was executed and then claimed by the authorities to be a guerrilla fighter despite his family's assurances that he had no ties to illegal groups. The petitioners also point out that the alleged victim was an older adult. The petitioners' description of the attack on the vehicle in which Mr. Quiroga was traveling, the number of shots fired, and the use of explosives, together with alleged tampering of the crime scene, raise serious doubts about the version of an armed clash. Added to this is, *inter alia*, the lack of an exhaustive and impartial investigation into the incident in the regular justice system that would make it possible to determine what really happened and the potential responsibility of State agents. The petition is, therefore, not manifestly groundless.

27. In view of these considerations, and after examining the elements of fact and law presented by the parties, the Commission considers that the petitioners' allegations are not manifestly groundless and require a study of the merits, since the facts alleged, if corroborated, could characterize violations of Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), 11 (protection of honor and dignity), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Florentino Quiroga Charry and his relatives.

28. Finally, with respect to the "higher court" argument, the Commission underscores the complementary nature of the inter-American system and points out that, as the Inter-American Court has held, for a "higher court" exception to apply, it would be necessary to seek a "review [of] the decision of the domestic court, based on its incorrect assessment of the evidence, the facts, or domestic law, without, in turn, alleging that such decision violated international treaties [...]"¹⁰ In the instant case, the Commission considers that, as indicated by the Inter-American Court, "[i]t is up to the Court to ascertain whether or not the State, in the steps effectively taken at the domestic level, violated its international obligations stemming from those inter-American instruments that grant authority to the Court."¹¹ Likewise, the Court must examine "whether or not the actions of the judicial bodies constitute a violation of the State's international obligations, [which] may lead the Court to examine the corresponding domestic proceedings in order to establish their compatibility with the American Convention."¹² In this regard, the analysis of whether or not the State incurred in violations of the American Convention is a matter to be decided during the merits stage of the case.

29. When admitting a petition, the IACHR does not intend to supersede the jurisdiction of the domestic judicial authorities. Rather, within the framework of its mandate, the Commission is competent to

¹⁰ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C, No. 220, para. 18.

¹¹ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C, No. 220, para. 19.

¹² I/A Court H.R., *Case of Palma Mendoza et al. v. Ecuador*. Preliminary Objection and Merits. Judgment of September 3, 2012. Series C, No. 247, para. 18; I/A Court H.R., *Case of Rosadio Villavicencio v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 14, 2019. Series C, No. 388, para. 24; I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C, No. 220, para. 19.

declare a petition admissible and rule on the merits when the petition refers to domestic proceedings that could violate rights guaranteed by the American Convention.

VIII. DECISION

1. To declare the instant petition admissible with respect to Articles 4, 5, 8, 11, and 25 of the American Convention, in connection with Article 1(1) thereof.

2. To notify the parties of this decision; to continue with its analysis of the merits of the case; 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 5th day of the month of December, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.