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REPORT No. 81/18
PETITION 190-07
REPORT ON ADMISSIBILITY

EDGAR JOSÉ SÁNCHEZ DUARTE AND FAMILY
COLOMBIA

Approved electronically by the Commission on July 7, 2018.

Cite as: IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte and family. Colombia. July 7, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Graciela Sánchez Duarte and <i>Corporación Colectivo de Abogados Opción Jurídica</i>
Alleged victims:	Edgar José Sánchez Duarte and family
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	February 1, 2007
Additional information received at the stage of initial review:	October 18, 2007; February 24, 2008; September 24, November 1, 2 and 14, 2012
Notification of the petition to the State:	May 29, 2013
State's first response:	October 21, 2013
Additional observations from the petitioner:	January 2, 2014 and March 16, 2017
Additional observations from the State:	November 11, 2014; May 16, 2018

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 ratification instrument 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), 17 (Family), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention in connection with Articles 1.1 and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46.2. b and c of the ACHR applies
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

³ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners allege that on September 13, 1993 Mr. Edgar José Sánchez Duarte (hereinafter “the alleged victim”) was violently killed with three gunshots by the Anti-Kidnapping and Anti-Extortion Unit (hereinafter “UNASE”), a special group based in *La Popa* Battalion in Valledupar, department of Cesar. They indicate that UNASE agents believed that the alleged victim belonged to the Revolutionary Armed Forces of Colombia and thus carefully prepared a military operation. They claim that the agents followed Mr. Sánchez Duarte for several days and attacked him when he was outside his house, in front of his wife and his two children. The petitioners assert that eyewitnesses to the shootings could record the license plate number of the car from which the alleged victim was shot; and that this helped to find that it belonged to the cars given to UNASE. They indicate that two days after the incidents, that is, on September 15, 1993, the same car returned to the alleged victim’s house, and that the driver asked around about the alleged victim’s family, which caused them anxiety and fear.

2. They allege that, as a result of the investigations filed ex officio on July 31, 1994, the Fourth Criminal Court of the Circuit of Valledupar sentenced a retired soldier of the National Army to 30 years in prison for murder. On October 27, 1994 this ruling was upheld by the Superior Court of Valledupar. They claim that in several statements, the punished person confessed having driven the institution’s car, but also he blamed the Commander in Chief of UNASE and two other military officers for the masterminding and perpetration of the alleged victim’s death.

3. They assert that, based on those witness statements, on January 3, 1995 the Prosecutor’s Office filed a preliminary investigation against the aforementioned three military officers, and that on November 4, 1995 it ordered to arrest the Commander in Chief. The petitioners indicate that on his detention, the alleged victim’s family members started to be threatened by members of UNASE, whose cars patrolled and surveilled the house of Mr. Sánchez Duarte’s parents for the sake of intimidation.

4. They claim that despite the family’s attempts, on November 14, 1995 the case was forwarded to the Military Criminal Court since the persons involved were active members of the National Army. On November 16, 1995, the Second Brigade of Barranquilla ruled to stop investigating one of the officers, release the Commander in Chief, and continue proceedings against a third officer involved. On July 14, 1997 the Oral War Council ruled to dismiss the proceeding against the Commander in Chief and to punish the other military officer. They indicate that on July 2, 1998 the Superior Military Court refrained from hearing said resolution and forwarded the case to the Superior Court of the Judicial District of Valledupar, arguing that the incidents were not related to the military duties.

5. They allege that in the framework of the ordinary criminal proceeding, the court ordered to preclude the investigation against the Commander. Moreover, on June 18, 2003 Special Circuit Criminal Court of Santa Marta sentenced the military officer to 26 years in prison for aggravated murder. The punishment was upheld by the Superior Court of Santa Marta on June 22, 2004 and by the Criminal Chamber of the Supreme Court of Justice on April 3, 2008.

6. They also indicate that the alleged victim’s family members lodged two claims for damages against the Ministry of Defense, in the administrative jurisdiction. The first was filed by Ms. Clara Inés Uribe Reyes, Mr. Sánchez Duarte’s former wife, and her daughter Angélica María Sánchez Uribe. In regard to said proceeding, the petitioners claim that on April 25, 1996 the Administrative Court of Cesar approved the judicial conciliation between the claimant and the Ministry of Defense, thus ruling reparation in favor of Ms. Uribe Reyes and her daughter.

7. The second claim for damages was filed by the alleged victim’s parents and siblings and by Ms. Martha Cecilia Fuentes Gutiérrez and Edgar José Sánchez Fuentes, the widow and the son of Mr. Sánchez Duarte. On February 6, 1997 the Administrative Court of Cesar declared administrative responsibility on the part of the State and ruled the payment of compensation to the claimants. However, due to the appeal lodged by the accused institutions, this judgment was revoked on November 27, 2002 by the Third Chamber of the

State Council, which claimed that the military functions of the persons involved in the case did not necessarily mean that they had acted on behalf of the State.

8. In view of this, the alleged victim's family presented a special remedy, but on July 31, 2006 the Provisional Special Chamber of the State Council found it groundless, arguing that the State cannot be held responsible for damages caused by state agents but which belong exclusively to the private sphere. And the claimants were punished to pay the legal costs. The resolution was notified by an edict on August 11, 2006. Mr. Sánchez Duarte's family challenged this resolution through a writ of protection of constitutional rights (*acción de tutela*), which was rejected as out of order on June 14, 2007 by the Fourth Chamber of the State Council.

9. The petitioners argue that the contradiction between the judgments adopted in the two proceedings undertaken in the administrative jurisdiction violate their right of access to justice and to equal protection. This is so, because the judicial authorities acted differently in relation to the same case, by granting compensation to two of the family members and leaving the rest of the family unprotected.

10. In turn, the State claims that the petition is inadmissible since the petitioners seek to obtain a review of the decisions adopted in the criminal proceedings and in the settlement of claims for damages, which would lead to a jurisdiction of fourth instance. It affirms that the legal actions filed by the parties and those furthered ex officio by the State were thoroughly studied by the competent judicial bodies in accordance with the domestic norms, which enabled the issue of judgments on the merits and final resolutions.

11. Furthermore, it asserts that the decision adopted by the State Council on July 31, 2006 exhausted the domestic remedies, and that the petition was filed on February 1, 2007; that it therefore exceeded the established period of six months.

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

12. The petitioners indicate that to date not all the persons responsible were punished for the alleged victim's death. In relation to the administrative jurisdiction, they claim that on June 14, 2007 the Fourth Chamber of the State Council declared a writ of protection of constitutional rights (*acción de tutela*) out of order, which exhausted the domestic remedies for reparation. In turn, the State alleges that remedies were exhausted in the criminal and the administrative jurisdictions, but that the petition was untimely.

13. The IACHR has established that when an alleged crime involving state officials is committed, the State is obliged to bring and pursue criminal proceedings and that this is the best way to clarify the facts, adjudicate any possible responsibility, in addition to enabling other forms of monetary compensation to be established.⁴ In the instant case, the IACHR notes that based on the petitioners' claims at least four UNASE agents are involved in the alleged victim's death. However, according to the available information, the Commission observes that only two people were found responsible for the offenses, through the judgments of October 27, 1994 and April 3, 2008 respectively. In relation to the other two persons responsible, the Commission finds that, in the framework of the military jurisdiction, one of these was excluded from the case by the decision of the Second Brigade of Barranquilla on November 16, 1995. For its part, in the ordinary jurisdiction the investigation was dismissed in favor of the Commander in Chief UNASE. In this regard, the IACHR notes that the development and results of the investigations in the military criminal justice prevented the exhaustion of the domestic remedies. Moreover, it takes into account the fact that in the ordinary jurisdiction the courts have not yet established a punishment for all the responsible. Therefore, the IACHR concludes that the exceptions to the prior exhaustion of domestic remedies apply to this case, pursuant to the provisions of Article 46.2, paragraphs b and c, of the Convention.

⁴ IACHR, Report No. 55/13, Petition 375-07. Admissibility. Spencer Friend Montehermoso *et al.* Guatemala. July 16, 2013, par. 31.

14. Furthermore, as to the claim for damages lodged by the petitioners in the administrative jurisdiction, the Commission has repeatedly established that it is not an appropriate remedy to assess the admissibility of a complaint of a nature of the instant petition,⁵ because it is ineffective to provide full reparation and justice to the family. Notwithstanding the foregoing, in this case it can be seen that the petitioners also allege specific violations in the framework of the claim for damages. Therefore, given the connection between the two proceedings, the IACHR bears into account that, in the administrative jurisdiction, the domestic remedies were exhausted through the judgment of July 31, 2006, of the Provisional Special Chamber of the State Council, because it established that the petition filed by the alleged victim's family was groundless. This judgment was notified on August 11, 2006.

15. Finally, the petition was presented on February 1, 2007; the claims matter of this petition began on September 13, 1993, and the alleged effects persist to date. Accordingly, in view of the context and the characteristics of the instant case, the Commission believes that the petition was filed within a reasonable time and that the admissibility requirement of timeliness must be declared 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 brought to its attention, the Commission believes that the alleged extrajudicial killing of the alleged victim by UNASE agents, the subsequent alleged threats to his family members, the continuing partial impunity and the lack of effective judicial protection in the proceedings in relation to the incidents all could establish possible violations of Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 17 (Family), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of the alleged victim and his family members.

17. In relation to the allegations of the petitioner regarding the alleged violation of the Article 7 (personal liberty) of the Convention, the Commission observes that the petitioner has not offered sustenance that allows to consider *prima facie* its possible violation.

18. As for the State's observation that this petition leads to a court of fourth instance, the Commission recognizes that it is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the judicial safeguards. However, the Commission reiterates that, under its mandate, it is competent to declare a petition admissible and rule on the merits of the case when the matter concerns domestic proceedings where any of the rights protected by the American Convention might have been violated.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 17, 24 and 25 of the American Convention, in connection with Articles 1.1 and 2;

2. To declare the instant petition inadmissible in relation to Article 7 of the American Convention; and

3. 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 7th day of the month of July, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice

⁵ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz and family. Colombia. December 6, 2016, par. 32.

President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.