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REPORT No. 122/19
PETITION 1442-09
REPORT ON ADMISSIBILITY

LUIS FERNANDO HERNÁNDEZ CARVAJAL ET AL.
COLOMBIA

Approved electronically by the Commission on July 14, 2019.

Cite as: IACHR, Report No. 122/19, Petition 1442-09. Admissibility. Luis Fernando Hernández Carvajal et al. Colombia. July 14, 2019.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Jahir Alberto Hernandez Carvajal |
| Alleged victim: | Luis Fernando Hernández Carvajal et al. ¹ |
| Respondent State: | Colombia ² |
| Rights invoked: | Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 9 (freedom from ex post facto laws), and 25 (right to judicial protection) of the American Convention on Human Rights ³ and Articles I (right to life, liberty and personal security), XVIII (right to a fair trial), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man ⁴ |

II. PROCEEDINGS BEFORE THE IACHR⁵

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| Filing of the petition: | November 9, 2009 |
| Additional information received at the stage of initial review: | September 18, 2012 |
| Notification of the petition to the State: | April 21, 2014 |
| State's first response: | August 12, 2014 |
| Additional observations from the petitioner: | September 22, 2014 |
| Additional observations from the State: | November 26, 2014 |

III. COMPETENCE

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| 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*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

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| Duplication of procedures and International <i>res judicata</i>: | No |
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¹ Luis Fernando Hernández Carvajal, John Fredy Arenas, Deison Alberto Rodríguez Patiño, and Luis Felipe Rendón González. The petition also indicates that the following are family members: José Obdulio Hernández Rodríguez (father), María del Socorro Carvajal de Hernández (mother), Aniza María Hernández Carvajal (sister), Leyda del Socorro Hernández Carvajal (sister), Jahir Alberto Hernández Carvajal (brother), José Gabriel Antonio Hernández Carvajal (brother), Sandra Yolima Hernández Carvajal (sister), Diana Jaqueline Hernández Carvajal (sister), and Juan Camilo Hernández Carvajal (brother); María Eucaris del Socorro (mother), Claudia Yaneth Rodríguez Arenas (sister), Jonathan Osvaldo Roldan Arenas (brother), and Andrés David Roldan Arenas (brother), Jairo León Rodríguez Higueta (father), Consuelo de Jesús Patiño Gutiérrez (mother), Jairo León Rodríguez Patiño (brother), y Douglas Rodríguez Patiño (brother), Marta Cecilia Zuluaga Builes (spouse), Ana María Rendón Zuluaga (daughter), Pedro Iván Rendón Echavarría (father), Caridad del Socorro González Salazar de Rendón (mother), Margarita María Rendón González (sister), Luz Adriana Rendón González (sister), Jaime Rendón González (brother), and José Alejandro Rendón González (brother).

² Pursuant to the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the discussion or the decision on this case.

³ Hereinafter "American Convention" or "Convention."

⁴ Hereinafter "American Declaration" or "Declaration."

⁵ The observations submitted by each party were duly transmitted to the opposing party.

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| Rights declared admissible | Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention in connection with Articles 1(1) and 2 thereof |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, the exception in Article 46(2)(b) and (c) of the American Convention applies |
| Timeliness of the petition: | Yes, under the terms of Section VI |

V. ALLEGED FACTS

1. The petitioner alleges that the National Police arbitrarily detained Luís Fernando Hernández Carvajal and John Fredy Arenas without a warrant and later extrajudicially executed them, and wounded Deison Alberto Rodríguez Patiño and Luis Felipe Rendón González (hereinafter “the alleged victims”). The petitioner maintains that the State has violated the rights of the alleged victims and their family members to access to justice and to full reparation for the harm they suffered, as a result of its failure to investigate and clarify what happened.

2. The petitioner states that on August 14, 1992, the four alleged victims were traveling on two motorcycles to a recreational center in the city of Medellín when they were intercepted by a patrol of the National Police, who forced them to get off the vehicles and stand against a wall. The petitioner alleges that the police officers hit the alleged victims in the head and tied their hands together with their shoelaces, then loaded them onto the back of the motorcycles to be taken to the San Cristóbal Police Inspection Station. The petitioner indicates that once they were enroute and saw that they were headed elsewhere, Deison Alberto Rodríguez hit the police officer who was driving the motorcycle and was able to roll down a slope next to the road and escape. The other alleged victims were taken off the motorcycles and shot, causing John Fredy Arenas and Luis Fernando Hernández Carvajal to die instantly. Luis Felipe Rendón González managed to flee the scene and roll down a nearby slope, even though he had been shot six times.

3. On August 17, 1992, the victims’ relatives filed a complaint at the Police Command Office of Valle de Aburrá. This was forwarded to Military Criminal Trial Court 93, which ordered that a criminal investigation be opened against José Nevet López Giraldo, Rafael Alberto Oyola de la Hoz, Joel Metrio Muñoz Torrez, Luis Javier Restrepo, and Arquimidez Campuzano Martínez. On May 21, 1993, that office ordered that these police officers be placed in pretrial detention as a precautionary measure, along with police officers Alcibiadez López Caicedo and Alberto Villanueva González, for the crimes of murder, attempted murder, and aggravated robbery. Subsequently, on January 31, 1994, the trial court assigned to the National Police Command of Valle de Aburrá convened an oral court-martial (Consejo Verbal de Guerra), as it had been concluded that the police officers had engaged in aggravated conduct by physically subjugating the alleged victims. However, the court-martial issued a verdict of not guilty after finding that the evidence that was considered in convening a court-martial no longer held up as a result of the proceedings. On July 25, 1994, this decision was confirmed by the Military Superior Court, which recognized that the testimonial evidence provided by the plaintiffs was not sufficiently relevant to demonstrate the conditions and circumstances on which to establish the defendants’ responsibility.

4. On August 15, 1992, the alleged victims’ relatives filed a disciplinary complaint heard by the Provincial Prosecutor’s Office of Medellín, which opened a formal disciplinary inquiry on May 18, 1993. By means of an order issued on March 10, 1994, that office filed 10 sets of disciplinary charges against the National Police officers involved and began carrying out the necessary steps for each of them to answer the charges. As a result of this process, on March 21, 1995, the body of first instance ruled that those implicated were responsible and imposed the punishment of dismissal from service. This ruling was appealed, and the case files were sent to the Records and Control Division on February 7, 1996, to be forwarded to the Prosecutor’s Office assigned to the National Police. On August 15, 1996, that office issued a decision overturning the decision of first instance and nullifying the proceedings that had taken place since the filing of the disciplinary charges on March 10, 1994. It ordered the return of the records of the proceedings to the

original office, which reopened the case. After notifying those implicated, it filed charges against all of them on April 24, 1997. However, by August of that same year the statute of limitations on the disciplinary action had expired. On March 4, 1998, the Metropolitan Prosecutor's Office of Valle de Aburrá ruled that the statute of limitations on the disciplinary action applied to all those implicated.

5. On November 8, 1993, the alleged victims' relatives lodged a claim for direct compensation before the Contentious-Administrative Court of Antioquia, which in a ruling of May 25, 2000, argued that it could not grant the plaintiffs' claims due to a lack of effective evidence that could prove what had allegedly happened. This decision was appealed to the Third Section of the Contentious-Administrative Chamber of the Council of State, which in a ruling issued on October 26, 2011, overturned the decision and ordered the State to pay compensation to the relatives for the damage that had been caused. With respect to the sum recognized in the judgment issued by the Council of State during the contentious-administrative proceedings, the petitioner maintains that damages to the family members of the alleged victims were not taken into account, nor was the 20-year period of unwarranted delay of the court proceedings. The petitioner also demanded that the Office of the Attorney General of Colombia pursue a criminal investigation and offer a public apology to the relatives of the alleged victims. In response to the ruling, on April 23, 2012, the Prosecutor's Office assigned to the Circuit 123 Judges of Medellín issued a preliminary decision declining to open an inquiry on grounds that the facts to be investigated were already *res judicata*, having been investigated by the military justice system.

6. The State, for its part, maintains that the petition is inadmissible as the petitioners are seeking review of decisions made in judicial proceedings. The State claims that the actions undertaken by the parties and those advanced by the State *ex officio* were examined on the merits by the competent judicial bodies under the domestic legal system. Therefore, it argues that admitting the petition would amount to a fourth-instance review by the Commission. In addition, the State affirms that the petitioner has presented no arguments pertaining to the purported violation of the alleged victims' rights and that he is establishing his disagreement with the decisions handed down by the judicial bodies without providing supporting arguments related to how the rights cited in the petition were violated.

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

7. The State notes that it has facilitated, pursued, and ruled on the appropriate remedies available under criminal law and contentious-administrative law to address the claims of the alleged victims and their family members, and that the petitioner's claim related to examining the amount awarded for nonmaterial damages should not be subject to the Commission's review, as the Commission is not entitled to determine the amount of such an award. For his part, the petitioner maintains that the acts in question have yet to be punished, as the Attorney General's Office has not pursued a criminal investigation, even though the Council of State has ordered that such an investigation be opened. In terms of the contentious-administrative litigation, the petitioner states that while a monetary payment has been made, the compensation for damages is incomplete and does not provide full reparation for the harm, as no process has been undertaken to analyze the impact on constitutional rights and to examine each of the pieces of evidence presented in the proceedings. The petitioner also maintains that the compensation was not satisfactory in terms of legal precedent.

8. The Commission has established that whenever a crime is committed in which State authorities are presumed to have participated, the State must promote and pursue criminal proceedings and that this is the suitable way to clarify what happened and establish the appropriate criminal sanctions, as well as to allow for other forms of monetary reparation. In this regard, the IACHR observes that the development and conclusion of the investigations in the military justice system constituted an obstacle to the exhaustion of domestic remedies. With respect to the use of the military jurisdiction, the Commission has repeatedly stated that this is not an appropriate forum for investigating the death of a civilian, given that it does not offer the required guarantees and therefore does not provide adequate recourse to investigate, prosecute, and punish

alleged violations of the human rights established in the American Convention⁶. The Commission therefore considers that the exception contemplated in Article 46(2)(b), and (c) of the Convention applies in this case.

9. With regard to the process of direct compensation begun in the contentious-administrative jurisdiction, the Commission has repeatedly maintained that such a venue does not constitute a suitable remedy for the analysis of the admissibility of a complaint of this nature, as it does not adequately provide for full reparation and justice for the family members. Notwithstanding that, in the case at hand the Commission notes that the petitioners also allege specific violations related to the speed of the proceedings in the context of direct compensation. Therefore, given the connection between the two cases, the IACHR takes into account that domestic remedies were exhausted in the contentious-administrative jurisdiction with the judgment of October 26, 2011, issued by the Third Contentious-Administrative Chamber of the Council of State, which found the nation, the Ministry of Defense, and the National Police to be materially responsible for the damages and losses caused to the alleged victims and their family members as a result of the deaths and injuries.

10. Finally, the petition was lodged on November 9, 2009, the alleged acts that are the subject of the petition began on August 14, 1992, and their alleged effects extend to this day. Therefore, in view of the context and characteristics of this case, the Commission finds that the petition was lodged within a reasonable time period and that the admissibility requirement has been met.

VII. ANALYSIS OF COLORABLE CLAIM

11. In view of the elements of fact and law laid out by the parties and the nature of the matter before it, the Commission finds that the alleged injuries and extrajudicial executions of the alleged victims, along with the ongoing impunity and lack of effective judicial protection in the associated judicial proceedings, could constitute possible violations of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights in connection with Articles 1(1) and (2) thereof, to the detriment of the alleged victims and their family members.

12. In terms of the alleged violations of articles of the American Declaration, this Commission has established previously that once the American Convention enters into force in relation to a State, the Convention and not the Declaration becomes the primary source of law applicable by the Commission, as long as the petition refers to the alleged violation of rights that are identical in both instruments and as long as it is not a matter of an ongoing violation. In this case, the alleged violations of the Declaration fall under the sphere of protection of Articles 4, 5, 7, 8, and 25 of the Convention; therefore, the Commission will examine these allegations in the light of the American Convention.

13. With respect to the State's fourth-instance arguments, the Commission recognizes that it is not competent to review judgments handed down by national courts acting within the scope of their jurisdiction and observing due process and judicial guarantees. However, the Commission reiterates that within its mandate it is competent to declare a petition admissible and rule on its merits when the petition refers to domestic proceedings that could be in violation of rights protected by the American Convention.

14. As to the State's argument regarding the petitioner's failure to provide arguments, the Commission notes that there is no specific requirement in its procedural rules that obliges petitioners to articulate all of their legal arguments in their initial petition. Rather, under the Commission's Rules of Procedure a petition must include an account of the act or situation denounced without placing explicit conditions upon the nature or timing of specific legal claims. It is thus up to the Commission, based on the case law of the inter-American system, to determine what provision of the relevant inter-American instruments is applicable and whether it could be established that it has been violated.

⁶ IACHR, Report N° 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão, et all. July 25, 2014, par. 18.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 4, 5, 7, 8, and 25 of the American Convention in connection with Articles 1(1) and 2 thereof; and

2. To notify the parties of this decision; continue with the analysis on the merits of the matter; and publish this decision and include it in the Commission's Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 14th day of the month of July, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.