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REPORT No. 215/19

PETITION 804-10

REPORT ON ADMISSIBILITY

EMIR RAMÍREZ LOAIZA AND FAMILY
COLOMBIA

Approved electronically by the Commission on September 11, 2019.

Cite as: IACHR, Report No. 215/17, Petition 804-10. Admissibility. Emir Ramírez Loaiza and Family. Colombia. September 11, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Oscar Dario Villegas Posada
Alleged victim	Emir Ramírez Loaiza and family
Respondent State	Colombia ¹
Rights invoked	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention on Human Rights ² ; Articles 1 (life, liberty and personal security) and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	May 28, 2010
Notification of the petition to the State	May 4, 2016
State's first response	April 26, 2017
Additional observations from the petitioner	March 14, 2018
Additional observations from the State	April 12, 2019

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument made 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), 11 (privacy) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. The petitioner indicates that in the early hours of March 8, 1995, agents of the Technical Investigation Corps of the Attorney General's Office (hereinafter "CTI"), carried out a search of Mr. Emir Ramírez Loaiza's house (hereinafter "the alleged victim") and his family, located in the city of Medellín, Department of Antioquia. He states that the operation's apparent aim was to capture members of a criminal gang; however, they unlawfully entered the alleged victim's home, broke down the door, and without showing a court order, attacked the occupants, including an elderly person and children. He claims that with a lack of professionalism, they fired their weapons indiscriminately, killing the alleged victim. He points out that in the

¹ In accordance with 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 either the discussions or decision in the present case.

² Hereinafter "the American Convention" or "the Convention".

³ Hereinafter "the American Declaration" or "the Declaration".

⁴ The observations submitted by each party were duly transmitted to the opposing party.

operation, a member of the CTI was also killed, and that this fact was used as justification for the alleged victim's death.

2. The petitioner argues that these events were not duly investigated, as it was impossible to verify whether or not the alleged victim had acted in self-defense, and that the responsibility of the CTI agents was not determined, despite the fact that the authorities knew the names of the individuals who participated in the operation. Thus, the petitioner argues that the disciplinary action undertaken by the Departmental Procurator of Antioquia, was archived on October 12, 1997, on the ground that the perpetrator of the act could not be determined. On the other hand, he argues that the Prosecutor's Office initiated a criminal investigation that was provisionally suspended on June 19, 1996, because more than one year had elapsed since the events and that no suspect had been identified. He points out that the criminal proceedings failed, inexplicably, to formally investigate the officials who carried weapons and whose bullets matched those which caused the alleged victim's death.

3. In addition, the petitioner maintains that on March 7, 1997, the alleged victim's next of kin filed a claim with the Administrative Tribunal of Antioquia for direct reparation against the General Prosecutor's Office. On March 13, 2001, the tribunal decided to refrain from ruling on the merits, on the ground that the claimant should have sued the Judicial Branch of the Nation instead of the General Prosecutor. He argues that on April 25, 2001, he filed an appeal against this decision and that on May 23, 2012, the Council of State decided the appeal by denying his claims, and establishing that the agents of the CTI acted in self-defense, and that the damage caused had been solely attributable to the alleged victim.

4. The State maintains that the Commission lacks the competence to rule on violations of the American Declaration, since the events allegedly occurred after the entry into force of the Convention in Colombia. In addition, it points out that in the framework of the investigations carried out by the Public Ministry, the provisional suspension was revoked on March 3, 1998. It argues that on November 15, 2000, the 22nd Specialized Prosecutor's Office of Medellín, issued a new suspension and, consequently, the archiving of the proceedings, on the ground that it was impossible to obtain evidence linking the perpetrator or perpetrators to the investigation. It indicates that the outcome was notified to the parties, without any appeal being filed. It argues that these criminal proceedings, considering their level of complexity, were undertaken fully respecting due process guarantees and the assessment of the existing evidence.

5. On the other hand, the State argues that proceedings in the contentious-administrative jurisdiction respected judicial guarantees, and thus the Council of State found that the CTI agents acted in self-defense and no compensation was to be awarded to the alleged victim's next of kin. In that sense, it points out that the internal decisions taken by the competent bodies were adequate and suitable for the petitioner's requirements. It claims that by examining this case the Inter-American System would act outside its competence, as an appeal court, evaluating the assessments made by the Colombian authorities.

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

6. The petitioner argues that Mr. Ramírez Loaiza's death has not been clarified because the criminal proceedings were ineffective, due to their failure to determine the truth of the events or the responsibility of the perpetrators. The State argues that it took all available measures to comply with its duty to investigate; however, insufficient elements were found for compliance with the requirements demanded by domestic legislation to continue with the investigation.

7. In situations such as the present, which include allegations of violations of the right to life and humane treatment, the domestic remedies that must be taken into account for the purposes of the admissibility of the petition are those related to the investigation and criminal punishment of those responsible for these events, which in domestic legislation are offenses subject to *ex officio* prosecution. The Commission notes that, with respect to Emir Ramírez Loaiza's murder, the criminal investigation, which had been suspended in 1996, reopened in 1998 and was archived in 2000, was carried out without reaching a precise clarification of the events or identification of those responsible. This is evident from the impunity of

the situation denounced, lack of clarification of the events that occurred and the absence of convictions. Therefore, the Commission concludes that, in this case, the exception to the exhaustion of domestic remedies set out in Article 46.2.c of the Convention applies, with the caveat that the causes and effects that have prevented the exhaustion of domestic remedies in the present case will be assessed, where relevant, in the report adopted by the Commission on the merits of the dispute, in order to verify whether they actually constitute violations of the Convention.

8. In addition, with respect to the reparation proceedings before the contentious-administrative jurisdiction, the Commission has repeatedly held that this avenue is not an appropriate remedy for analyzing the admissibility of a claim of the present nature, as it fails to provide comprehensive reparation including clarification and justice for family members. Notwithstanding the foregoing, although in the present case the criminal proceedings are the appropriate remedy for the investigation of the events, the Commission notes that the petitioner also alleges specific violations in the context of the claim for direct reparation. Therefore, given the connection between the two proceedings, the Commission takes the view that in the contentious-administrative jurisdiction, domestic remedies were exhausted with the decision adopted by the Council of State on May 23, 2012.

9. With regard to timeliness for submission, having acknowledged the exception set out in Article 46.2.c of the Convention, the Commission concludes that the petition has been submitted within a reasonable period of time on the basis of Article 32.2 of its Rules of Procedure. This last determination derives from the fact that although the alleged events in the claim date from March 8, 1995, and the petition was received on May 28, 2010, the effects of the alleged events extend up to the present, such as the absence of identification and punishment of those responsible, and the lack of reparation for the victims.

VII. ANALYSIS OF COLORABLE CLAIM

10. In view of the factual and legal elements presented, as well as the nature and context of the matter brought to its attention, the IACHR considers that, if proven, the alleged killing of Mr. Emir Ramírez Loaiza by CTI agents, the alleged illegal search of his home, as well as the lack of investigation and punishment of those responsible, and the absence of reparation for his relatives, could characterize violations of the rights protected in Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1.

11. The Inter-American Commission has previously established 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, provided that the petition refers to the alleged violation of identical rights in both instruments and there is no situation of continuous violation. In this case, the IACHR notes that the petitioner's allegations as to the right to life, liberty, and personal security enshrined in Article I, as well as the right to a fair trial, established in Article XVIII of the Declaration, are specifically protected by the Convention. Therefore, based on the allegations, the Inter-American Commission will at the merits stage assess the possible impact on the rights enshrined in the Convention.

12. Finally, with respect to the State's fourth instance argument, the Commission observes that by admitting this petition it does not intend to supplant the jurisdiction of the domestic judicial authorities; however, at the merits stage of the present petition, the Commission will assess whether the domestic judicial proceedings complied with due process guarantees and judicial protection, and offered guarantees of access to justice for the alleged victims under the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 11 and 25 of the American Convention, in relation to its Article 1.1;

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 11th day of the month of September, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, and Flávia Piovesan, Commissioners.