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REPORT No. 73/20
PETITION 1153-11
REPORT ON ADMISSIBILITY

LUIS ARSENIO BOHÓRQUEZ MONTOYA AND FAMILY
COLOMBIA

Electronically approved by the Commission on March 17, 2020.

Cite as: IACHR, Report No. 73/20. Petition 1153-11. Admissibility. Luis Arsenio Bohórquez Montoya and family. Colombia. March 17, 2020.



I. INFORMATION ABOUT THE PETITION

Petitioner	Germán Ricardo Castellanos Mayorga
Alleged victims	Luis Arsenio Bohórquez Montoya and family
Respondent State	Colombia
Rights invoked	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 9 (freedom from ex post facto laws), 11 (privacy), 17 (family), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Date of filing	August 29, 2011
Additional information received during initial review	August 31, 2011
Notification of the petition	July 5, 2017
State's first response	June 29, 2018
Additional observations from the petitioner	October 5, 2018
Additional observations from the State	June 5, 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 of ratification 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), 13 (freedom of thought and expression), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 thereof
Exhaustion or exception to the exhaustion of remedies	Yes, the exception in Article 46.2.c of the ACHR is applicable
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner claims that on June 24, 1991, Mr. Luis Arsenio Bohórquez Montoya (hereinafter "the alleged victim"), a retired officer of the National Army of Colombia in the rank of Lieutenant Colonel, and his wife were walking in the city of Bogotá when an unidentified individual killed him. The petitioner says that the assailant escaped after shooting the alleged victim twice on the back and that despite being taken to the military hospital, the alleged victim died of hypovolemic shock caused by the gunshot wounds. He submits that the facts reported remain unpunished as the investigation was inadequate to identify the principals and their accomplices.

2. According to the petition, the alleged victim was murdered because of his public complaints against his military superiors in regard to the irregular support that the Army gave to the United Self-Defense Forces of Colombia. The petitioner further claims that the State did not protect the alleged victim in spite of the frequent threats he suffered, which had been reported to the competent authorities.

3. The petitioner claims that Mr. Bohórquez Montoya was Commander of Infantry Battalion No. 3, Barbula, based in the city of Puerto Boyacá, in 1988 and 1989. He asserts that at that time, self-defense

¹ Hereinafter "the American Convention" or "the Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

groups created under Law No. 48 of 1968 became paramilitary groups. He says that Mr. Bohórquez Montoya told the mass media that a difference should be drawn between self-defense groups and paramilitary groups and that the alleged victim's statements had unearthed the fact that the Army created, financed, and supported these groups. He claims that the high-ranking military officers used this situation to blame the alleged victim of all the anomalies in the area of Magdalena Medio.

4. The petitioner stresses that the alleged victim was accused of creating and equipping paramilitary groups, sponsoring hired assassins training centers, and protecting people involved in drug trafficking. He asserts that those accusations were aimed at discrediting the alleged victim so that his complaints about the serious crimes committed in the operational area under the commanding officers of Brigade XIV and the Second Division of the Army would be disregarded.

5. The petitioner says that within the internal investigation pursued against the alleged victim, decree No. 1176 was issued on June 6, 1989, to remove him from office and force his retirement from the army. He indicates that, as a result, Mr. Bohórquez Montoya filed a claim for damages and that the Administrative Court of Cundinamarca, Section Two – Subsection A dismissed it on October 4, 1991, claiming that to obtain the annulment of decree No. 1176, he had to file an appeal for annulment.

6. The petitioner submits that, according to the alleged victim, his discharge from the army was an injustice and those responsible connected with the paramilitary groups were inside the Army. He claims that many times, the alleged victim told the mass media that he had evidence and information showing the involvement of high-ranking military officers in the creation and training of paramilitary groups and the commission of massacres. He underscores that, as a result, the alleged victim was continuously threatened by unidentified people. He submits that those threats from members of the army meant psychological torture to Mr. Bohórquez Montoya. He stresses that twenty days before his death, that is, on June 10, 1991, the alleged victim reiterated his complaints and his being threatened, in an interview published on the VEA magazine. He claims that this situation was reported to the Special Prosecutor for Human Rights of the Attorney General's Office on June 17, 1991; however, this entity failed to protect the alleged victim.

7. According to the petitioner, to date, the alleged victim's murder remains unpunished because the investigation was inadequate to identify the principals and their accomplices. He says that after the alleged victim's death, on June 24, 1991, a criminal complaint was filed to the 82nd Magistrate's Court of Bogotá. He explains that after several dilatory steps, on November 9, 1995, the Special Unit for Preliminary Hearings decided to suspend the investigation because, in over a year, those responsible had not been identified yet.

8. The petitioner says that the case had been in the archives until, in July 2009, the 29th Criminal Prosecutor of the Attorney General's Office requested the performance of evidentiary procedures. He submits that, however, on June 17, 2011, the prosecutor's office issued a waiver of prosecution, arguing that the purported accomplices in the murder had died and the principals not been identified. He indicates that this resolution was notified on June 21, 2011.

9. To conclude, the petitioner alleges that on March 10, 1993, the alleged victim's family lodged a complaint in the contentious-administrative jurisdiction, and that Section Three of the Administrative Court of Cundinamarca dismissed it on August 11, 1994, claiming a lack of evidence on a breach of duty or failure to report the threats to the authorities. He says that an appeal was filed later, and that Section Three of the State Council dismissed it on August 14, 1997.

10. The State, for its part, argues that the instant petition raises facts already heard by the competent national courts. As to the criminal case filed on the alleged victim's death, concluded with a waiver of prosecution, it asserts that the State did fulfill its duty to investigate in conformity with the guarantees of due process. Thus, it claims that should the Commission find this petition admissible, it would be working as a court of appeals.

11. Further, it submits that although the petitioner asserts that the alleged victim's next-of-kin appealed to the contentious-administrative jurisdiction, in the databases of the state, no record of a case on the above facts has been found. It says that, therefore, unless the petitioner has submitted a copy of the decisions mentioned, the State considers that a claim for damages was not exhausted.

12. Finally, it asserts that the threats suffered by the alleged victim cannot be considered within the aggravated concept of torture and that such manifestly groundless allegations render this petition inadmissible.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

13. The petitioner asserts that the murder of Mr. Bohórquez Montoya remains unpunished since the investigation did not lead to the clarification of the facts, the punishment of those responsible, or relief measures for the victims. In turn, the State argues that the investigations met the state obligations under the American Convention and that as to relief measures, the petitioning party did not exhaust a claim in contentious-administrative jurisdiction.

14. The Commission has previously established that where a possible violation of the right to life is alleged, the domestic remedies to be considered for admissibility purposes are those regarding the investigation and punishment of those responsible, for in domestic law this is a criminal offense liable to ex officio prosecution. In this case, the Commission observes that over 28 years after the alleged victim's death, the criminal action filed on June 24, 1991, was concluded without a judgment on the merits but with a waiver of prosecution in which neither a punishment was imposed on those responsible nor the facts were clarified. Therefore, the Commission finds that the exception to the requirement of exhaustion of domestic remedies established in Article 46.2.c of the Convention must be applied in this case.

15. Further, as to the claim for damages in the contentious-administrative jurisdiction, the Commission reiterates that this is not adequate for the admissibility study of a complaint of this nature as it does not provide full reparation that includes the clarification of the facts or justice.

16. As a consequence, given the characteristics of this matter, the IACHR considers that the petition was filed within a reasonable time and that the requirement on timeliness is met.

VII. COLORABLE CLAIM

17. In view of the factual and legal elements submitted by the parties and the nature of the matter brought to its attention, the Commission believes that the petitioner's claims are not manifestly groundless but rather meet the requirements for an analysis on the merits. For, if proven to be true, the claims regarding the threats against and ensuing murder of Mr. Luis Arsenio Bohórquez Montoya, as a consequence of his complaints and statements in public about the connection between high-ranking military officers and paramilitary groups; the alleged failure to protect his life and physical integrity, and the lack of effective judicial protection on these facts may constitute violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 thereof, to the detriment of the alleged victim and his next-of-kin.

18. As to the claim about a possible violation of Articles 7 (personal liberty), 9 (freedom from ex post facto laws), and 17 (family) of the American Convention, the Commission observes that the petitioner did not submit enough supporting evidence to prima facie establish their possible violation.

19. To conclude, regarding the State's claims about a court of fourth instance of jurisdiction, the Commission recognizes its lack of competence to review judgments passed by national courts acting within the scope of their jurisdiction and in conformity with due process and judicial guarantees. Nonetheless, it reiterates that, under its mandate, the Commission is competent to declare a petition admissible and rule on the merits when it concerns a domestic proceeding that may be contrary to the rights protected by the American Convention.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 4, 5, 8, 11, 13, and 25 of the American Convention in accordance with Article 1.1 thereof;

2. To declare this petition inadmissible with regard to Articles 7, 9, and 17 of the 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 17th day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Edgar Stuardo Ralón Orellana, Commissioners.