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REPORT No. 91/20
PETITION 227-09
ADMISSIBILITY REPORT

DARIO GÓMEZ CARTAGENA AND FAMILY
COLOMBIA

Approved electronically by the Commission on April 4, 2020.

Cite as: IACHR. Report No.91/20. Petition 1276-08. Admissibility. Dario Gómez Cartagena and family. Colombia. April 4, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Roberto Fernando Paz Salas
Alleged victim	Dario Gómez Cartagena and family
Respondent State	Colombia ¹
Rights invoked	Articles 4 (life), 8 (judicial guarantees) and article 25 (judicial protection) of the American Convention on Human Rights ² and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	March 3, 2009
Additional information received during initial review	January 6, 2011
Notification of the petition	September 28, 2011
State's first response	January 11, 2012
Additional observations from the petitioner	February 7 and June 21 2012; April 10, 2013
Additional observations from the State	March 21 and September 28, 2012; September 19, 2014

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 (personal integrity), 8 (judicial guarantees), and 25 (judicial protection of the American Convention on Human Rights in relation to article 1.1 and 2
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner points out that the district of Nutibara, belonging to the Municipality of Frontino, Department of Antioquia, was abandoned by the public force after the attack of an illegal armed group in December 1998. He refers that, since then, the population was left unprotected against guerrilla and paramilitary groups. He describes that in the absence of authorities, civilians in general and shop owners in particular, were extorted by guerrillas, and at the same time by paramilitaries, who threatened to kill them if they paid the taxes demanded by the guerilla members. He argues that given this situation of constant risk, they repeatedly requested the presence of the public force, without receiving any response.

2. In this context of state neglect and extreme risk in the area, he describes that on May 16, 1999, a group of paramilitaries entered the town and that Mr. Darío Gómez Cartagena (hereinafter "the alleged victim") was violently removed from his shop into the street, where he was shot directly in the head resulting in his death in front of a passersby.

¹ Based on article 17.2.a of the Rules of procedure of the Commission, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the debate or decision of this matter.

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

³ The petitioner contends that articles 6, 7 and 10.1 of the International Covenant on Civil and Political Rights.

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

3. The petitioner alleges that the investigation of the facts carried out by the Prosecutor's Office Delegated section of Antioquia was suspended and temporarily achieved on November 29, 1999, indicating that the individualization and identification of the authors could not be achieved and that there was no new evidence that would allow to continue the process or to issue an inhibitory resolution. He points out that because of this, no one was convicted for the death of the alleged victim, perpetuating a situation of impunity.

4. The petitioner affirms that on May 6, 2001, the next of kin of the alleged victim filed a claim for direct reparation, which was rejected on December 5, 2007 by the Seventh Decision Chamber of the Administrative Litigation Court of Antioquia. This decision is based on the argument that "if the reasons why the police had withdrawn from the municipality are taken into account, the strategies of the public force to fulfill their duty in a difficult situation and the relativity of the concept of service failure, it was concluded that the defendant state institutions did not were responsible for the death of the alleged victim". He mentions that they filed an appeal against this judgment before the Third Section of the Contentious Administrative Chamber of the State Council, which was dismissed on May 30, 2008 because the amount of the claim did not allow it to be reviewed by a higher court. He indicates that they were notified of such decision on October 1, 2008.

5. For its part, the State maintains that the criminal investigation was carried out in compliance with all judicial guarantees, which does not necessarily imply that there is an obligation to find a responsible at all costs, since this could reach the dangerous absurdity of sacrificing the innocence of someone with the sole purpose of fulfilling an international obligation. In addition, in relation to the demand for direct reparation, he points out that the relatives of the alleged victim were allowed access to justice and the court analyzed the case properly by making a substantive decision. Thus, he affirms that both processes were handed and resolved in compliance with the legal provisions and that the petitioner intends to use the Inter-American System as a court of appeal or fourth instance.

6. It indicates that the petition was filed outside the deadline established by the American Convention, as the process in the administrative contentious jurisdiction was decided on May 30, 2008 and notified on July 2, 2008, and the decision to suspend the Criminal investigation was issued on November 29, 1999.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner maintains that the facts up to now remain in impunity, and also refers that regarding reparation process in administrative contentious tribunals, the domestic remedies were exhausted with the rejection of the appeal issued on May 30, 2008. The State in turn affirms that the petition is extemporaneous.

8. The Commission reiterates that, in situations related to possible violations of the right to life, 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 punishment of those responsible, which are known in domestic legislation as crimes investigated *ex officio*⁵. In the present case, the Commission observes that, according to the information provided, regarding the violent death of the alleged victim carried out by paramilitaries, the Prosecutor's Office Delegated section of Antioquia initiated a criminal investigation that was suspended on November 29, 1999, without determining the responsibility of the authors until this date. To pretend that the petitioners assume these responsibilities would not only be inconsistent with the jurisprudence of the system but would also impose an unequal burden on those who, in general, lack the means and the aptitude to discharge those responsibilities. Based on this, the IACHR concludes that in this case the exception to the exhaustion of domestic remedies provided for in article 46.2.c of the Convention applies.

9. Regarding to the proceedings before the administrative contentious jurisdiction, the IACHR recalls that, for the purposes of determining the admissibility of a claim of the nature of the present, it does not constitute the appropriate route or its exhaustion is necessary, since it is not adequate for provide comprehensive reparation and justice to family members. Notwithstanding the foregoing, although in the present case the criminal process is the ideal remedy for the investigation of the facts, it is observed that the petitioner also alleges specific violations in the context of the demand for direct reparation. Therefore, given the link between the two processes, the Commission takes into account that in the contentious administrative jurisdiction, the domestic remedies were exhausted with the decision of May 30, 2008 assumed by the Third

⁵ IACHR, Report No. 47/10, Admissibility Masacre Estadero "El Aracatazzo", Colombia, March 28, 2010, par. 47

Section of the Contentious Administrative Chamber of the State Council, which rejected the appeal by which the petitioner sought to question the impossibility of appealing a sentence because of the amount. The IACHR considers that this situation falls within the case of exception to the exhaustion of domestic remedies provided for in Article 46.2.a of the American Convention.

10. Therefore, due to the characteristics of the case, the IACHR considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the submission period are satisfied.

VII. COLORABLE CLAIM

11. Based on the factual and legal arguments presented by the parties, and the nature of the subject matter, the Commission considers that the fact presented by the petitioners are not manifestly unfounded and in the merits stage the Commission will have to analyze whether the State's knowledge of the situation of risk in the area where the alleged victim used to live; the withdrawal of the public forces in said area; the subsequent death of Mr. Gómez Cartagena allegedly committed by members of paramilitary groups; the lack of effective judicial protection over these facts and the impossibility of his relatives to appeal a decision on reparations based on the amount of the sum could amount to possible violation of articles 4 (right to life), article 5 (personal integrity), article 8 (judicial guarantees), and article 25 (judicial protection) of the American Convention on Human Rights to the detriment of the mentioned persons and their relatives in relation to article 1.1 (obligation to respect) and 2 (obligation to adopt domestic legislation)

12. On the other hand, in relation to the International Covenant on Civil and Political Rights, the Commission has no competence to establish violations of the rules of said treaty, though it may take it into account as part of its interpretative exercise of norms of the American Convention at the merits stage of this case, under the terms of article 29 of the Convention.

13. With respect to the State's allegations regarding the fourth instance formula, the Commission recognizes that it is not competent to review the decisions handed down by national courts that act in the sphere of their jurisdiction and apply due process and judicial guarantees. However, it reiterates that within the framework of its mandate it is competent to declare a petition admissible and to rule on the merits when it refers to internal processes that could violate rights guaranteed by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, and 25 of the American Convention, in accordance with articles 1.1 and 2;

2. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 4th day of the month of April, 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 Stuardo Ralón Orellana, Commissioners.