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REPORT No. 254/20
PETITION 632-09
REPORT ON ADMISSIBILITY

RAMIRO ANTONIO HERNÁNDEZ BADILLO AND FAMILY
COLOMBIA

Approved electronically by the Commission on September 21, 2020.

Cite as: IACHR, Report No. 254/20. Petition 632-09. Admissibility. Ramiro Antonio Hernández Badillo and Family. Colombia. September 21, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Dorca González Pérez
Alleged victim	Ramiro Antonio Hernández Badillo and Family
Respondent State	Colombia
Rights invoked	Articles 4 (life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ¹ and other international instruments ²

II. PROCEEDINGS BEFORE THE IACHR³

Date of filing	May 19, 2009
Additional information received during initial review	August 25, 2009 and April 2, 2015
Notification of the petition	April 21, 2015
State's first response	September 10, 2015

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) and 25 (judicial protection) of the American Convention, in relation to Article 1 (obligation to respect rights) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section IV
Timeliness of the petition	Yes, under the terms of section IV

V. SUMMARY OF FACTS ALLEGED

1. The petitioner claims that the State of Colombia violated the human rights of Ramiro Hernández Badillo and his family ("the alleged victim"), for he was murdered while working as a public defender in a region controlled by a paramilitary group.

2. On July 4, 2001, the alleged victim traveled to the town of Plato, Magdalena, to work in a public hearing. The petitioner recounts that when the public hearing was over, Mr. Hernández Badillo went to Plato's police station seeking protection for his return trip to the town of Tenerife, where he lived. The alleged victim's request was due to advice he received from one of his closest friends, a member of the police, who told him to stay vigilant because, given his work as a public defender, he had become a military target of the paramilitary group United Self-defense Forces of Colombia (AUC). In response to Mr. Hernández Badillo's request, the Commander of the police station said that it was impossible for them to provide him with those safety measures since that station did not have enough officers to escort him. Therefore, the alleged victim decided to return to his house using the public transport. However, once his bus was on the route that connected both towns, members of a paramilitary group operating in that region stopped it, found the alleged victim, forced him off of the bus, and took him with them, letting the other passengers continue their journey to Tenerife. A few hours later, the police found the alleged victim's dead body with signs of gunshots.

¹ Hereinafter "American Convention" or "Convention."

² Article 3 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights.

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

3. The petitioner claims that Mr. Hernández Badillo was the only professional in the household, made up of his wife, their three children, his mother, and seven brothers. To date, his household has sustained damage because the alleged victim was the breadwinner and the moral support of his family. The petitioner asserts that the alleged victim's relatives were unable to file a criminal complaint regarding his death, given the national context of violence and for fear of reprisals, considering that this paramilitary group was led by Salvatore Mancuso, who exerted political and social power over the department of Magdalena.

4. Accordingly, the legal representative of the alleged victim's family filed a claim for damages against Colombia-the National Police, with the Second Administrative Trial Court of Santa Marta, which sentenced the accused entity on May 30, 2007. Although this decision was not appealed, because the matter exceeded the minimum bill of damages, it was referred to the Contentious-Administrative Court of Magdalena for its opinion, and on March 14, 2008, the latter revoked the Trial Court's judgment. Therefore, the petitioner filed a constitutional remedy. The Second Division of the Council of State entertained it and found it inadmissible on August 21, 2008. This decision assumed that the petitioner could have filed other remedies to assert the rights invoked in the constitutional remedy, like a direct claim for damages against the Contentious-Administrative Court of Magdalena for judicial error. To the petitioner, this was tantamount to recognizing the existence of factual errors detrimental to the claimants. Subsequently, the petitioner challenged this decision. On November 12, 2008, the Fourth Division of the Council of State upheld the previous resolution.

5. In addition, the petitioner requested the Ombudsman to present a mechanism of reconsideration. However, this official simply said that under record 04 of 2009, it was impossible to file that mechanism to the Constitutional Court since the circumstances of the case did not relate to the grounds established in the legislation. Thus, he denied the request. Further, in relation to the criminal process, the Second Special Prosecutor's Office of Santa Marta filed a criminal investigation, which remains in the preliminary stage despite the time elapsed since the murder of Mr. Hernández Badillo.

6. For its part, the State contends that according to the information submitted by the National Defense Ministry, the kidnap and murder of Mr. Hernández Badillo was reported by José Alberto Moreno Hoyos, the driver of the bus where the alleged victim had traveled. The State also asserts that according to the complaint filed by Mr. Moreno Hoyos, Mr. Hernández Badillo was kidnapped on July 4, 2001, when traveling to Tenerife on a public bus driven by Mr. Moreno Hoyos. According to the State, the public bus was intercepted by several armed individuals that stepped down from a van; they were masked and in plain clothes. They seized Mr. Hernández Badillo, so Mr. Moreno Hoyos came to the police station to report Mr. Hernández Badillo's kidnap. According to the State, the police ran an operation to determine the whereabouts of the alleged victim, and at 8:25 p.m. of that same day, he was found dead with gunshot wounds on the head.

7. The State contends that there is no material evidence to conclude that the victim or his relatives had asked the National Police for protection. Nonetheless, the State asserts that an ex officio criminal proceeding was filed and that this is still in progress owing to the armed conflict in the country. The initial inquiries conducted by the Office of the Prosecutor General considered the possibility that the crime might have been committed by the United Self-Defense Forces of Colombia (AUC). However, given the difficulty of collecting evidence for prosecuting those responsible, on March 15, 2004, the prosecutor in charge resolved to file the proceedings in the archives, issuing a waiver of prosecution. Later, in May 2015, an order was issued to annul the waiver of prosecution and resume the preliminary investigation so that tests could be performed to identify and individualize the principals. To the State, the situation mentioned above reveals the petitioner's lack of exhaustion of domestic remedies concerning the criminal process.

8. The State submits that the criminal investigation is highly complex because the dynamics of illegal groups were aimed at concealing the crimes perpetrated by those guerrillas, which has made it difficult to conduct a successful and effective investigation. The State moreover stresses that when the facts took place, the towns of Plato and Tenerife were considered high-risk areas, given the presence of several illegal armed groups in that region.

9. The State claims that owing to the above-mentioned factors, no progress has been made in the clarification of the circumstances leading to the death of Mr. Hernández Badillo and that, therefore, the Office

of the Prosecutor General ordered that additional tests be conducted to identify the perpetrators. As a result, the State argues that it is not appropriate to allege an unreasonable delay in the decisions concerning the criminal process because the State has acted promptly. Given this situation, there is nothing to establish a violation of the rights protected by the Convention that may be attributable to the State because the petitioner has not submitted enough evidence to associate the actions of the State with the kidnap and subsequent homicide of Mr. Hernández Badillo. Secondly, to the State, these crimes are attributable to illegal armed groups that are not and were not state agents; thus, having the crimes been committed by third parties, the State cannot be held responsible. The State rules out the possibility of being held internationally responsible, given that there is nothing to prove tolerance, acquiescence, or support on the part of state agents with regard to these human rights violations.

10. It also claims that the purported collusion between the illegal self-defense groups and the public security forces cannot be considered an evident fact. Moreover, it argues that the petitioner has not proved that Mr. Hernández Badillo's kidnap and murder have been a result of the latter's office as public defender. Similarly, regarding the purported violation of the rights embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, it submits that the Commission is not competent to decide on such violation.

11. Finally, regarding the administrative proceeding, the State contends that should the Commission find the instant petition admissible, the Commission would work as a court of appeals; for the petitioner did file domestic remedies allowing them to obtain reparation for the damage sustained as a result of Mr. Hernández Badillo's death. Therefore, in the State's opinion, the damages proceeding filed with the Second Administrative Court for Santa Marta Circuit that was then reviewed by the Contentious-Administrative Court of Magdalena demonstrates that the petitioner did present domestic remedies. The State asserts that the said claim was adjudicated reasonably and in accordance with the law; therefore, it cannot be said to have been decided in an arbitrary way. The State submits that it was some people's testimonies that were used as evidence to file a complaint against the National Police for breach of duty. Nonetheless, the Contentious-Administrative Court of Magdalena deemed it odd that, despite the closeness that each and every one of the witnesses had claimed to have had with Mr. Hernández Badillo, none of them knew why he allegedly came to the police station. This Court found it equally odd that they had not asked Mr. Hernández Badillo about his coming to this police station. These aspects raised doubts about the witness statements. Besides, the State claims that in the documentary evidence, there is no record of Mr. Hernández Badillo's request for safety measures. The State considers that the foregoing proved that the homicide of the alleged victim had not been a result of a breach of duty on the part of the police and that, accordingly, the Court revoked the trial court's judgment.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The State claims that the domestic remedies have not been exhausted regarding the criminal process as the preliminary investigation is still in progress. It explains that this has been a complex task because the modus operandi of criminal groups has hindered the individualization of those responsible and the collection of evidence. The IACHR notes that, after the bus driver had filed a police report, the State undertook an ex officio criminal investigation in 2001 on the kidnap and murder of Mr. Hernández Badillo and that this is in the preliminary stage. Further, concerning the State's claim about the complexity of the matter, the Commission has established that in order to determine whether a criminal investigation has been carried out promptly, a number of factors must be taken into account, such as the time elapsed since the crime was committed, whether the investigation has moved beyond the preliminary stage, and the measures adopted by the authorities regarding the complexity of the case.⁴ For the purpose of the instant analysis, the Commission notes that it has been over 18 years since the crimes were committed and that, yet, in its reply, the State does not refer to any measure it has taken to move the investigation forward despite the complexity of the matter at issue. Accordingly, the IACHR concludes that the exception to the prior exhaustion of domestic remedies must be applied in relation to the criminal action, in accordance with Article 46.2.c of the Convention.

⁴ IACHR, Report No. 50/08. Petition 298-07. Admissibility. Néstor José Uzcátegui *et al.* Venezuela. July 24, 2008, par. 42.

13. As for the damages proceeding filed in the contentious-administrative jurisdiction, the Commission reiterates that this remedy is not adequate for the admissibility study of a complaint of this nature⁵ because it is not suitable for providing full reparation and justice for the family members. Notwithstanding the foregoing, although in the instant case a criminal proceeding is the appropriate remedy for an investigation into the facts, the Commission observes that the petitioner also alleges specific violations committed in the context of the damages proceeding, like the lengthy development of the process. Thus, given the connection between the two processes, the Commission considers that in the contentious-administrative jurisdiction, the domestic remedies were exhausted with the decision issued on November 12, 2008, by the Fourth Division of the Council of State.

14. To conclude, given the characteristics of the matter, the IACHR considers that the petition was filed within a reasonable time and that the requirement of timeliness has been met.

VII. COLORABLE CLAIM

15. The Commission observes that the instant petition involves claims regarding the State's breach of duty to protect Mr. Hernández Badillo's life during his work as a public defender and the lack of progress in the criminal investigation on the homicide of the latter. It also involves claims regarding the lack of judicial guarantees for Mr. Hernández Badillo's relatives during the damages proceeding and the lack of compensation for his relatives.

16. As for the international responsibility of the State, the Commission has established that an unlawful behavior contrary to human rights that in principle is not attributable to a State, because it was committed by a third party or because those responsible were not identified, may lead to the State's being held internationally responsible not because of that crime in itself but because of the State's lack of due diligence in preventing that violation or in addressing it under the terms of the Convention. Accordingly, the Commission has established that, as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence, and also safeguard the rights of anyone deemed a suspect in the framework of the investigation.⁶ Lastly, as for the claims regarding the lack of judicial guarantees in the administrative damages proceeding, when human rights violations occur, it is vital that the State seeks to remedy the violated rights and, if applicable, compensate for the damage caused by those violations, regardless of the civil remedies that may have been filed.

17. In view of these considerations and having analyzed the legal and factual elements submitted by the parties, the Commission deems that the petitioner's claims are not manifestly groundless and require a substantive analysis. If proven to be true, the facts alleged may establish violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof.

18. As for the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the Commission is not competent to determine violations of the norms of these treaties, notwithstanding it may consider them to interpret the rules of the American Convention during the analysis of the merits of this case, under Article 29 of the said Convention.

19. Regarding the State's claim about the fourth-instance formula, the Commission reiterates that, under its mandate, the IACHR is competent to declare a petition admissible when this concerns domestic proceedings that may be contrary to the rights protected by the American Convention.

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

⁶ IACHR, Report No. 44/18, Petition 840-07. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, par. 11.

VIII. DECISION

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

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 21st day of the month of September, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.