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REPORT No. 118/20
PETITION 777-08
REPORT ON ADMISSIBILITY

GUSTAVO ALDAZ CASTILLO AND FAMILY
COLOMBIA

Approved electronically by the Commission on April 25, 2020.

Cite as: IACHR, Report No. 118/20, Petition 777-08. Admissibility. Gustavo Aldaz Castillo and family. Colombia. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Miguel Piñeros Rey
Alleged victim	Gustavo Aldaz Castillo and family
Respondent State	Colombia
Rights invoked	Articles 8 (fair trial), 21 (property), 22 (movement and residency) , 24 (equal protection) 25 (judicial protection) and 31 of the American Convention on Human Rights and Articles VIII, (right to residence and movement); XI (right to health/well-being), and XVIII (right to justice/fair trial) of the American Declaration on the Rights and Duties of Man

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition	June 8, 2008
Additional information received during initial review	July 22, 2008; November 7, 2013, June 10, 2014
Notification of the petition	September 28, 2016
State's first response	August 17, 2017
Additional observations from the petitioner	December 1, 2016; March 9, 2017; July 13, 2017; March 1, 2018

III. COMPETENCE

<i>Ratione personae:</i>	Yes and no (see Section VI)
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Partially Yes, American Convention (deposit of instrument 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, 8 (fair trial), 21 (property), and 25 (judicial protection) of the American Convention in connection with Articles 1.1 and 2 thereof.
Exhaustion or exception to the exhaustion of remedies	Yes, in terms of Section VII
Timeliness of the petition	Yes, in terms of Section VII

¹ The observations submitted by each party were duly transmitted to the opposing party.

V. SUMMARY OF ALLEGED FACTS

1. This petition was originally brought on behalf of Gustavo Aldaz Castillo (hereinafter “Mr. Aldaz”) in his personal capacity; “*El Proveedor Mayorista Limitada*”, a limited liability company;² and Mr. Aldaz and five members of his family³ in their capacity as members/owners of *El Proveedor Mayorista Limitada*⁴ (hereinafter referred to as “*El Proveedor Mayorista*” or “the company”). The claims in the petition arise out of the destruction of businesses and properties associated with Mr. Aldaz (and his family) as a result of an armed conflict between FARC⁵ guerillas and the national police and military of Colombia on February 23 and 24, 2000 in the municipality of Mitú, in the Department of Vaupés. According to the record, on such dates, FARC guerrillas carried out an armed attack on a local police station and some members of the civilian population in Mitú. This attack elicited an armed response from police and military forces. According to the petition, the ensuing conflict resulted in extensive damage and destruction to a number of commercial enterprises, including the businesses owned by Mr. Aldaz. The businesses destroyed were *Almacen El Proveedor* (owned by the company) and *Casa Cristal* which was solely owned by Mr. Aldaz in his personal capacity.

2. The petitioner claims that in repelling the attack by FARC, the military and police forces used force that was arbitrary and excessive, and failed to take reasonable or adequate measures to prevent or minimize damage or destruction of these businesses that were unconnected to the conflict. The petitioner also contends that Mitú is a frequent target for FARC; and that the government failed to take any adequate measures to prevent the attack that ultimately led to the destruction of the businesses and to protect the rights of the owners of those businesses and the population of the area. Additionally, petitioners assert that due to the destruction of their businesses and homes the presumed victim and his family had to flee out the area which has a detrimental effect in their wellbeing.

3. By way of background, the petition alleges that in 1997, Mr. Aldaz purchased a plot of land (in Mitú) for the purpose of establishing and running two separate commercial enterprises.⁶ For one of these enterprises, Mr. Aldaz, together with his family established *El Proveedor Mayorista* which owned and operated a business called *Almacen El Proveedor*. This business was involved in the sale of food, commodities, various supermarket products, stationery, electronic equipment, engines, hardware, construction materials, representation or distribution of goods manufactured by national firms including outboard motors, power plants, stationary engines, accessories boats, lubricants and spare parts. According to the petition, the second business was called “*Casa Cristal*” which was solely owned by Mr. Aldaz in his personal capacity. The petition states that this business was engaged mainly in the wholesale trade of liquor and beverages.

4. The petition alleges that Mr. Aldaz sought redress primarily by means of (a) criminal complaint to the *Fiscalía General de La Nación*⁷ (National Prosecutor General); and (b) an action for reparation before the *Tribunal Contenciosa Administrativa del Meta*⁸ which was ultimately resolved on appeal to the *Consejo de Estado* (Council of State). With respect to the criminal complaint – this was initiated by Mr. Aldaz on April 14, 2000 on his own behalf (in respect of the destruction of *Casa Cristal*) and also on behalf *El Proveedor Mayorista*. The petition alleges that an investigation was initiated by one of the FGN’s offices in Mitú,

² In Spanish “una sociedad”.

³ These family members are: Teresa Gracia Olarte (wife of Mr. Aldaz), Benazir Aldaz Gracias (child of Mr. Aldaz), Valeria Aldaz Gracias (child of Mr. Aldaz), Romelia Castillo Patiño (mother of Mr. Aldaz) and Jose Omar Aldaz (brother of Mr. Aldaz). Apart from being a member/partner of the company, Mr. Aldaz also functioned as its manager.

⁴ Shortly after filing the petition, the petitioner submitted a corrigendum requesting the deletion of “*El Proveedor Mayorista Limitada*” as an alleged victim, on the ground that it is a juridical (and not a natural) person, and therefore lacks legal standing before the IACHR. However, the petitioner asked that Mr. Aldaz and his family continue to be processed as alleged victims, in their capacity as natural persons and as members/owners of *El Proveedor Mayorista Limitada*.

⁵ Fuerzas Armadas de Revolucionarias de Colombia (Armed Revolutionary Forces of Colombia).

⁶ According to the record, these businesses were established and managed on the same property, but at different locations (on the property).

⁷ Hereinafter referred to “the FGN”.

⁸ Contentious Administrative Tribunal of Meta.

but was subsequently transferred to another office of the FGN in Villavicencio.⁹ The petitioner complains that after more than seven years, the FGN has failed to complete an investigation that (a) clarifies the facts that led to the destruction of the businesses, or (b) identifies the persons (criminally) responsible for the destruction.

5. With respect to the litigation, the petition alleges that (a) in 2001 Mr. Aldaz filed an action for reparation against the State of Colombia before the Tribunal Contenciosa Administrativa del Meta; (b) this suit was filed in the name Mr. Aldaz (in his personal capacity¹⁰) and on behalf of El Proveedor Mayorista; (c) this action was dismissed by the Tribunal on September 20, 2005, following which Mr. Aldaz appealed to the Consejo de Estado; (d) on June 26, 2014 the Consejo de Estado reversed the decision of the Tribunal Contenciosa Administrativa del Meta, issuing a judgment in favour of Mr. Aldaz and El Proveedor Mayorista, that found the State responsible for the destruction of the businesses and their properties. However, the Consejo de Estado remitted the case to the Tribunal Contencioso Administrativo del Meta for an assessment of damages.¹¹ The petitioner alleges that, to date, this process remains uncompleted.

6. The State challenges the admissibility of the petition primarily on the following grounds: (a) lack of jurisdiction *ratione personae* on the part of the IACHR to entertain a petition that involves a juridical person; (b) lack of jurisdiction *ratione materiae* on the part of the IACHR to entertain alleged violations of the American Declaration; (c) adjudication of the petition by the Commission would be a violation of the fourth instance formula. In relation to the first ground, the State contends that El Proveedor Mayorista is a juridical person, and therefore not amenable to the jurisdiction of the IACHR, *ratione personae*. As regards the second ground, the State contends that the alleged violations of the American Declaration fall outside of the jurisdiction of the IACHR *ratione materiae*, given that the State has ratified the American Convention. In relation to the third ground, the State submits that the alleged violations of the American Convention have been addressed by domestic tribunals, and that any further consideration by the IACHR of these alleged violations would violate the fourth instance doctrine. In this respect, the State emphasizes that (a) the Consejo de Estado ultimately issued a ruling in favour of Mr. Aldaz; and (b) the assessment of damages ordered by the Consejo de Estado is still ongoing. In relation to the criminal complaint made by Mr. Aldaz, the State submits that in 2004, the FGN halted the investigation because the period for investigating had elapsed. Nevertheless, the State claims that the FGN sent a copy of its investigation file to the Tribunal Contencioso Administrativo del Meta to be taken into account in the action for reparation.

VI. RATIONE PERSONAE

7. It is undisputed between the parties that *El Proveedor Mayorista* is a juridical person. In this regard, “The Commission has consistently and invariably held in its jurisprudence the inadmissibility of petitions filed by business entities or cases in which the domestic remedies were exhausted by such entities and not by the person appearing as petitioners before the Commission. Such is the situation in the instant case, where the alleged victim invokes that condition as proprietor of an artificial person in the name of which domestic remedies were exhausted. The petitioner recognizes that an artificial person is a juridical instrument to engage in economic activities. One of the reasons for the creation of artificial persons is to separate their assets from those of the physical persons that constitute them. Just as the laws of Peru and of all the other countries in the hemisphere draw a distinction between artificial persons and human, physical, or natural persons, so too are the laws to which they are subject different.”¹²

⁹ According to the petitioner, this office was attached to a criminal court (*Los Jueces Penales del Circuito Especializados de Villavicencio*).

¹⁰ Relating primarily to *Casa Cristal*, the business owned by Mr. Aldaz in his personal capacity.

¹¹ In Spanish “Liquidación de Perjuicios”.

¹² IACHR, Report No. 40/05, Petition 12.139. Inadmissibility. José Luis Forzanni Ballardó. Peru. March 9, 2005, para. 35. [See also, IACHR, Report No. 83/05, Petition 644-00. Inadmissibility. Carlos Alberto López Urquía. Honduras. October 24, 2005, para. 42.]

8. Accordingly, having regard for Article 44 of the American Convention and Article 23 of the Commission's Rules of Procedure, the IACHR has no jurisdiction to consider alleged violations committed against *El Proveedor Mayorista*, especially given that the domestic remedies were exhausted under its name.

9. With respect to the claims made by Mr. Aldaz as a natural person (in his individual capacity) the Commission does consider he does enjoy legal standing under Article 44 of the Convention, and that accordingly, the Commission may exercise jurisdiction *ratione personae* in this regard.

VII. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. Having regard for the preceding analysis on *ratione personae*, the Commission will now confine its analysis of exhaustion of domestic remedies and timeliness to the claims relating to Mr. Aldaz in his personal capacity.¹³

11. The petitioner argues that almost two decades following the events that gave rise to Mr. Aldaz's claims, the State has failed to comply with its investigative obligations or to conclude the litigation regarding the claim for reparation. Given these circumstances, the petitioner contends that there has been undue delay which warrants an exception to the requirement of exhaustion of domestic remedies pursuant to Article 46.2.c of the Convention. On the other hand, the State contends that Mr. Aldaz's complaints have been adequately addressed by the domestic authorities of Colombia, and that any review by the Commission would be an infringement of the fourth instance doctrine.

12. The Commission considers that in situations such as the one proposed, the domestic remedies that must be taken into account for purposes of admissibility of the petition are those related to the criminal investigation. Such an investigation is the remedy suitable for establishing the facts, prosecuting the persons responsible, and imposing the appropriate punishment, in addition to enabling other forms of compensation. In this regard, the Commission notes that the criminal investigation was suspended in 2004 by the State without any tangible measures taken to identify, prosecute, and punish those responsible for the destruction of the business owned by Mr. Aldaz. Given the absence of a conclusive criminal investigation and the delay in judicial proceedings, the Commission considers that in the present case the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies.

VII. COLORABLE CLAIM

13. The IACHR considers that in the light of the factual and legal arguments set out by the parties, the instant petition is not manifestly groundless and that a report on the merits is required to determine the claims regarding the purported lack of diligent investigation and the delay in concluding the action for reparation (made by Mr. Aldaz in his personal capacity) could establish violations of the rights protected by Articles 8 (fair trial), 21 (property), and 25 (judicial protection) of the American Convention in connection with Articles 1.1 and 2 thereof. As for the claims made pursuant to Articles 22 (movement and residency), 24 (equal protection) and 31 (recognition of other rights) the Commission considers that the petitioner has not supplied any material to establish *prima facie* violations of these provisions with respect to Mr. Aldaz.

14. As for the claim about the alleged violation of Articles VIII (right to residence and movement); XI (right to health/well-being); and XVIII (right to justice/fair trial) of the American Declaration, the Commission reiterates that once the Convention comes into force in relation to a State, it is this, not the Declaration, that becomes the primary source of law to be applied by the Commission provided that the petition concerns alleged violations of substantially identical rights set forth both instruments.

¹³ These claims relate to the destruction of the business "Casa Cristal" which was owned by Mr. Aldaz in his personal capacity.

VIII. DECISION

1. To find the instant petition admissible (in relation to the claims made by Mr. Aldaz in his personal capacity) in relation to Articles 8, 21, and 25 of the American Convention on Human Rights, in connection with Articles 1.1 and 2 thereof;

2. To find the instant petition inadmissible in connection with Articles 22, 24 and 31 of the American 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 25th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.