

OEA/Ser.L/V/II
Doc. 101
29 June 2024
Original: Spanish

REPORT No. 96/24

PETITION 140-14

REPORT ON ADMISSIBILITY

JOEL PEREZ CARDENAS AND FAMILY MEMBERS
COLOMBIA

Adopted electronically by the Commission on June 29, 2024.

Cite as: IACHR, Report No. 96/24. Petition 140-14. Admissibility. Joel Perez Cardenas and family members. Colombia. June 29, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Walter Mondragon Delgado
Alleged victims:	Joel Perez Cardenas and family members ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial/judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCESSING BY THE IACHR⁴

Filing of the petition:	January 16, 2014
Additional information received during the initial review stage:	February 6 and April 16, 2014
Notification of the petition to the State:	October 15, 2020
State's first response:	August 24, 2021
Additional observations from the petitioning party:	October 13, 2021
Warning about possible archiving:	September 21, 2020
petitioning party's response to a warning of possible archiving:	October 06, 2020

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited 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
<i>Rights declared admissible</i>:	Articles 4 (life), 5 (humane treatment), 8 (fair trial/judicial guarantees), and 25 (judicial protection) of the American Convention, taken in conjunction with Article 1(1) thereof (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI.
Timeliness of the petition:	Yes, under the terms of Section VI.

¹ In the initial petition, the following persons are listed as relatives of Mr. Joel Perez Cardenas, without establishing their affinity: 1. Simeon Perez Florez; 2. Domingo Emiliano Perez Cuellar; 3. Yira Yosara Perez Ramirez; 4. Jorge Iván Perez Ramirez; 5. Yessi Katherine Perez Ramirez; 6. Manuela Tatiana Perez Ramirez; and 7. Michely Perez Ramirez.

²Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or decision in this matter.

³ Hereinafter "the American Convention" or "the Convention".

⁴Each party's observations were duly forwarded to the opposing party. In a communication dated September 8, 2016, the petitioning party expressed its interest in the processing of the petition.

V. POSITIONS OF THE PARTIES

1. The petitioning party alleges the international responsibility of the Colombian State for the forced disappearance and subsequent extrajudicial execution of Mr. Joel Perez Cardenas (hereinafter, the "alleged victim" or "Mr. Perez"), perpetrated by elements of the Colombian Army. It also denounces the impunity surrounding these events and the lack of full reparation for family members.

2. The petitioning party notes, by way of context, that Mr. Perez belonged to various civil organizations in the municipality of San Vicente del Caguan, acting mainly as a human rights defender in the region. At the time of his forced disappearance, he was the director of the Association of Community Action Boards (ASOJUNTAS).⁵ He was also a member of the political movement "*Unión Patriótica*", and at the time of his death he belonged to the "*Polo Democrático Alternativo*".

3. The petitioning party states that on December 8, 2008, the alleged victim left his home in the municipality of San Vicente del Caguan heading for the municipality of Puerto Rico, both in the department of Caqueta, to purchase some land, carrying cash. However, on December 10, 2008, they noticed that he had not returned home, so two days later, Mr. Domingo Perez Cuellar -brother of the alleged victim- together with the Ombudsman and a private attorney, reported the alleged forced disappearance of Mr. Perez to the Criminal Investigation Section (SIJIN).

4. On the same day of the complaint, a SIJIN officer informed them that two days earlier they had found an incinerated and decapitated corpse, which was carrying keys. Upon checking the keys against the lock of the alleged victim's home, they confirmed that they belonged to him. On December 13, 2008, Mr. Perez's brother, the Ombudsman, and the family's lawyer went to the scene, where they found Mr. Perez's watch incinerated, remains of his clothes, and the helmet he used to ride his motorcycle. According to reports from people living in the surrounding area, members of the National Army were seen hovering near the scene of the incident, and were stationed in the village of Buenos Aires, twenty minutes from the site. However, the petitioning party states that as of 2014 there were no significant advances in the investigation.

Lawsuit in contentious-administrative proceedings: action for direct reparation

5. In addition, the petitioning party states that on February 24, 2011, the relatives of Mr. Perez filed a direct reparation action against the Ministry of Defense, the National Army, the National Police, and the Administrative Department of Security, requesting full compensation for the disappearance and subsequent death of the alleged victim. However, by order of March 31, 2017, the Administrative Court of Caqueta declared the suit invalid for lack of jurisdiction due to the amount. Subsequently, by order of July 26, 2017, the Third Administrative Court of Florencia-Caqueta admitted the action for direct reparation but dismissed it on June 26, 2018.

6. Against this resolution, Mr. Perez's relatives filed an appeal; however, on November 21, 2019, the Contentious Administrative Court upheld the appealed judgment, establishing, inter alia: "[...] *It should also be noted that the objects that were found at the crime scene were, among other things, belongings of the deceased, latex gloves, and other items that are not for the exclusive use of the Armed Forces, so that, analyzing the evidence from a circumstantial perspective, there is no existence or convergence of facts that would justify inferring the possible responsibility of the State [...]*".

7. The Commission emphasizes that the petitioning party has not provided information or documentation explaining what happened between 2011 and 2017 in relation to the proceedings in the contentious-administrative jurisdiction. Indeed, the information set forth in the paragraphs under this subheading has been extracted from the resolution of the appeal provided by the petitioning party.

⁵ ASOJUNTAS is a second-tier non-profit community organization for voicing civic and social concerns. Accessed at: <https://comunal.mininterior.gov.co/adjuntos/9f9ccaaf-f8a7-43e8-bec0-247bcbe20314.pdf>

Principal allegations of the petitioning party

8. The petitioning party alleges the lack of investigation and punishment for the forced disappearance and subsequent extrajudicial execution of Mr. Joel Perez Cardenas, arguing that these crimes, which it describes as crimes against humanity, were perpetrated by members of the Colombian Army as a result of his work as a human rights defender in the region and because of his political affiliations. In the same vein, it alleges the violation of Articles 4 (life), 8 (judicial guarantees) and 25 (judicial protection), to the detriment of Mr. Perez. It claims that there is an unjustified delay in the criminal investigation of these facts. In addition, it alleges the lack of comprehensive reparation in favor of Mr. Perez's relatives, who have neither been told the truth about what happened nor obtained justice, thus violating Article 5 (personal integrity) to their detriment.

Position of the Colombian State

i) Criminal investigation

9. Colombia delves into details of the criminal investigation into the facts denounced in the petition. It points out that on December 11, 2008, investigation 187536000556200880230 was initiated into the death of Mr. Perez. On the same day of the incident, the ministerial authorities conducted an inspection of the body, and reached three criminal hypotheses: (i) *"it could be a common crime to steal the motorcycle in which Mr. Perez Cardenas was riding; (ii) "due to his social, political, and community leadership capacity, it could be an extrajudicial execution"; and (iii) "due to his social, community and political condition (sic), groups outside the law (FARC, PARAMILITARY) could have ended his life"*.

10. Colombia also indicates that the Sectional Prosecutor's Office took sworn statements from witnesses who came forward voluntarily. On December 11, 2008, it requested the SIJIN to continue with the autopsy and technical inspection of the crime scene. On December 14, the entire village of Buenos Aires was inspected; and on January 26, 2009, the Attorney General's Office conducted a field report in order to identify those responsible. However, since no significant results were obtained in the proceedings, the prosecutor's office suspended the investigation due to the impossibility of identifying the perpetrator of the crime. Likewise, Colombia affirms that the investigation work was complex, and the same prosecutor's office states that: *"[...] investigative units have to be accompanied by the national army given the difficult and critical public order situation in the place where the homicide occurred in order to establish the presence of illegal armed groups."*

11. Likewise, the State indicates that: *"[...] after several field reports and interviews, the Specialized Prosecutor 7 of Florencia, Caqueta ordered the shelving of the file on December 23, 2015 due to the impossibility of finding or establishing the perpetrator. Thus, the Prosecutor's Office, in accordance with the provisions of Article 79 of the Criminal Code, closed the case, which is why it is inactive."*

ii) Proceedings in the contentious-administrative jurisdiction

12. Furthermore, regarding the action for direct reparation, the State confirms the judicial decisions issued both in the first instance by the Third Court of Florencia del Caqueta, and in the second instance by the Administrative Court of Caqueta on November 21, 2019, in connection with the action for direct reparation initiated by Mr. Perez's next of kin.

13. It also states that in a resolution dated October 23, 2013, the Unit for Attention and Integral Reparation to Victims (UARIV) included ten family members of the alleged victim, among them the seven listed in the present petition. In this regard, it emphasizes that the granting of administrative compensation by the UARIV is "special" and "extraordinary", in that it does not require verification of the responsibility of the State for the facts, but is based on *"the duty of solidarity and the circumstances derived from the context of the internal armed conflict that seeks to help those affected by them."*

iii) Considerations regarding the inadmissibility of the petition

14. Colombia requests the IACHR to declare the present petition inadmissible based on two considerations: (a) the alleged facts are manifestly unfounded; and (b) the existence of a fourth international instance.

15. Regarding point (a), Colombia establishes that in the specific case there are no elements indicating that there was a real or immediate risk to Mr. Perez the authorities knew or should have known about and, therefore, the State could not have adopted specific measures of prevention and protection. Along these lines, it argues that the petition is inadmissible under the terms of Article 47(c) of the American Convention.

16. Regarding point (b), related to the fourth instance, it determines that on December 11, 2008, a criminal investigation was initiated into the death of Mr. Perez, as a result of the complaint filed by the brother of the alleged victim. Thus, it specifies that: "[...] *the Specialized Prosecutor's Office 7 of Caqueta initiated a preliminary investigation and ordered the taking of some evidence, including: (i) hearing the sworn statements of all the persons who had knowledge of the facts; (ii) sending an official letter to the corresponding command of the National Army, requesting it to inform whether at the time the facts occurred, any patrol or military unit had an armed confrontation with an irregular group; and (iii) carrying out intelligence work in order to identify and name each of the perpetrators and participants in the facts that occurred.*"

17. The State argues that on December 23, 2015, after an exhaustive investigation, the Third Specialized Prosecutor requested the shelving of the file due to the impossibility of finding or establishing the perpetrator in accordance with Article 79 of the Code of Criminal Procedure. Thus, it concludes that the closing of the criminal investigation into the homicide of Mr. Perez meets the standard of the inter-American system for the Protection of Human Rights; and consequently, a review by its organs would fall under the so-called fourth international instance.

18. In relation to the resolutions issued in the contentious-administrative jurisdiction, it states that on June 26, 2018, the Third Court of Florencia de Caqueta denied the claims of the lawsuit because:

The statements that were collected within the investigation carried out by the Attorney General's Office do not make it possible to determine the possible perpetrator of the homicide of Mr. Perez Cardenas [...], this authority points out that if there was a presence of the National Army, it was due to the information provided by the farmers themselves through a minor, and there are no records of operations, patrols, criminal or disciplinary investigations, or any other document of this nature related to the possible intervention of the defendant in the facts that are the object of the lawsuit.

19. Likewise, it reports that in the appeal judgment issued on November 21, 2019, the Contentious Administrative Court of Caqueta confirmed the first instance judgment, corroborating that in the present case there was no damage attributable to the State caused by the action or omission of its authorities. As a result, it states that all the requests, demands, and requirements made by the petitioning party were duly attended to by the corresponding authorities and that the judicial resolutions respected the guarantees of due process. Therefore, it considers that the petitioning party is appealing to the IACHR in order for it to review the decisions issued by the Colombian authorities.

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

20. To analyze the exhaustion of domestic remedies in this case, the IACHR recalls that, according to its established practice, the first step is to identify the appropriate remedies that should have been exhausted by the petitioning party before resorting to the inter-American system. This implies separating the various

claims formulated in the present petition in order to proceed to examine them one by one.⁶ In this case, the petitioning party has lodged two complaints with the Commission: (i) the lack of a diligent investigation into the disappearance and subsequent homicide of Mr. Perez, arguing that these crimes were perpetrated by members of the National Army; and (ii) the lack of full reparation for these crimes in favor of his next of kin .

21. The IACHR recalls that in cases of serious human rights violations, which are crimes that must be prosecuted *ex officio*, the domestic remedies that must be taken into account for the admissibility of a petition are those related to criminal proceedings, since this is the ideal way to clarify the facts and establish the corresponding criminal sanctions, in addition to making possible other, pecuniary, forms of reparation.⁷ Likewise, the Commission has established that when there are specific elements of impunity in cases of serious human rights violations, as in the present case, the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention is applicable.⁸ This criterion is applicable in a case such as this one, in which the petitioning party's fundamental allegation is the lack of adequate investigation and punishment of violations of the right to life. Furthermore, these are crimes that must be prosecuted *ex officio* and, as a general rule, criminal investigations must be conducted promptly, in order to protect the interests of the victims, preserve the evidence, and also safeguard the rights of anyone considered a suspect in the context of the investigation.⁹

22. In relation to claim (i), the Commission notes that on December 10, 2010 the disappearance of Mr. Perez was reported, and one day later, a criminal investigation of his homicide was initiated. The State maintains that various steps were taken to identify those responsible for the homicide, such as: gathering testimonies from persons who knew about the events; intelligence work to identify those responsible; DNA tests and inspection of the alleged victim's body; among others. However, on December 23, 2015, the Third Specialized Prosecutor's Office closed the investigation due to the impossibility of finding or establishing those responsible.

23. Regarding the alleged lack of due investigation and punishment of the facts denounced, it appears from the file that the facts occurred in December 2008, and the investigation was shelved on December 23, 2015, without investigations by the Third Specialized Prosecutor's Office continuing in an informal and diligent manner since then. Thus, the IACHR notes that more than fifteen years have elapsed and it has still not been possible to clarify the facts and identify, prosecute, and punish those responsible for the murder of Mr. Joel Perez Cardenas. Consequently, in the case of crimes that must be investigated *ex officio*, and given the indications of impunity present in the case, the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention¹⁰ and Article 31(2)(c) of its Rules of Procedure is applicable.

⁶ For illustrative purposes, the following IACHR admissibility reports may be consulted: Report No. 117/19, Petition 833-11. Admissibility. Workers released from Boa-Fé Caru Farm. Brazil. June 7, 2019, paras. 11, 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcántara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19ff. and Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, par. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26, 27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15- 16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 19ff. Report No. 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 19ff. or Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and their families. Colombia. June 7, 2019, paras. 20 et seq.

⁷ IACHR, Report No. 131/21. Petition 784-10. Admissibility. Wilson Mario Taborda Cardona and family. Colombia. May 13, 2021, par. 12.

⁸ See, for example, IACHR, Report No. 129/ 21. Petition 894-09. Admissibility. Alcira Perez Melgar and others. Peru. June 14, 2021, par. 9; IACHR, Report No. 240/20. Petition 399-11. Admissibility. Over José Quila and others (Rejoya Massacre). Colombia. September 6, 2020, par. 12; Report No. 129/18 (Petition 1256-07), Admissibility. Cornelio Antonio Isaza Arango et al. (El Retiro Sawmills Massacre), Colombia, November 20, 2018; and Report No. 104/18, Petition 221/08, Admissibility. Delis Palacio Herrón and others (Bojayá Massacre), Colombia, September 20, 2018.

⁹ IACHR, Report No. 278/21. Petition 1234-18. Admissibility. Ángel Eduardo Gahona López. Nicaragua. October 9, 2021, par. 12.

¹⁰ IACHR, Report No. 129/21. Petition 894-09. Admissibility. Alcira Perez Melgar and others. Peru. June 14, 2021, par. 9; IACHR, Report No. 240/20. Petition 399-11. Admissibility. Over José Quila and others (Rejoya Massacre). Colombia. September 6, 2020, par. 12; Report No. 129/18, Petition 1256-07, Admissibility. Cornelio Antonio Isaza Arango et al. (El Retiro Sawmills Massacre), Colombia, November 20, 2018; and Report No. 104/18, Petition 221/08, Admissibility. Delis Palacio Herrón and others (Bojayá Massacre), Colombia, September 20, 2018.

24. Regarding the time frame for the submission of the petition, the IACHR notes that the events that are the subject of this complaint occurred in 2008, but to date there has been no investigation with clear results and the perpetrators have not been identified. Considering that the petition was lodged on January 16, 2014, and that the consequences of the alleged facts, in terms of the alleged failure to investigate and punish the disappearance of Mr. Perez, would appear to persist to this day, the IACHR considers that this part of the petition was lodged within a reasonable time in terms of Article 32.2 of its Rules of Procedure.

25. In relation to the foregoing, the Commission first reiterates, as it has consistently done, that Article 46(2) of the Convention, by its nature and purpose, is a norm that is applicable in its own right, irrespective of the substantive norms of the American Convention. Therefore, establishing whether or not the exceptions to the rule of exhaustion of domestic remedies provided in said provision are applicable to a case requires an examination prior to and separate from the analysis of the merits of the case, since it depends on a different standard of assessment from that used to establish whether or not there has been a violation of Articles 8 and 25 of the Convention. The Commission has also stressed that there are no conventional or regulatory provisions that specifically regulate the period of time that constitutes 'unwarranted delay', so that the Commission needs to evaluate on a case-by-case basis to rule whether the time taken was warranted.¹¹ In this assessment, the Commission considers a number of factors, such as the time elapsed since the crime was committed.¹² The Inter-American Court has established as a guiding principle for the analysis of possible unwarranted delay as an exception to the rule of exhaustion of domestic remedies, that "*The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.*"¹³ In other words, in the Commission's opinion, the complementary nature of the international protection provided for in the American Convention also implies that the intervention of the organs of the inter-American system must be timely so that it may have some kind of useful effect in the protection of the rights of the alleged victims.

26. In relation to claim (ii), regarding the lack of recognition of compensation in the contentious-administrative proceedings, the Commission notes that a lawsuit for direct reparation was filed domestically, which was denied on June 26, 2018, by the Third Administrative Court of Florencia, Caqueta. Against this, the relatives of Mr. Perez filed an appeal, which was denied on November 21, 2019 by the Administrative Court of Caqueta, which ruled that there were no grounds for inferring a possible responsibility of the State for the murder of Mr. Perez.

27. In light of the above, the Commission concludes that the requirements established in Articles 46.1.a) and 46.1.b) were clearly fulfilled, given this last decision of 2019, which was, moreover, subsequent to the filing of the present petition in 2014.

28. The Colombian State does not question either the exhaustion of domestic remedies or the deadline for submission.

VII. ANALYSIS OF THE PLAUSIBILITY (COLORABLE CLAIM) OF THE PARTIES' POSITIONS

29. The point raised in this petition is the lack of diligent investigation of the extrajudicial execution of Mr. Joel Perez Cardenas, together with the lack of full reparation for his next of kin identified in this report. The State has responded with two main arguments; the first, that it considers the complaint to be a fourth instance; and the second, that the petition is manifestly unfounded, since there is no proof that the facts of the complaint were perpetrated by state agents or in collusion with them.

30. Regarding the possible attribution of responsibility of the Colombian State in the execution of the alleged victim, the Commission takes note of the arguments raised by both parties and considers that this is a controversial point in the litigation that will have to be elucidated in the merits stage of the present case.

¹¹IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, par. 68.

¹²IACHR, Report No. 50/08, Petition 298-07. Admissibility. Néstor José Uzcátegui and others. Venezuela. July 24, 2008, par. 42.

¹³Inter-American Court of Human Rights, Velasquez Rodríguez v. Honduras, Preliminary Objections, Judgment of June 26, 1987, par. 93.

Accordingly, the facts alleged by the petitioning party, considered as a whole, require an analysis of the merits in order to determine the possible existence of a breach of the Colombian State's treaty obligations.¹⁴

31. Furthermore, as the Commission has previously pointed out, acts of violence and other attacks against human rights defenders not only affect the guarantees proper to every human being, but undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenseless. The Commission also calls to mind that the work of human rights defenders is essential for the construction of a solid, durable democratic society, and rights defenders play a leading role in the process of pursuing the full attainment of the rule of law and the strengthening of democracy.

32. Regarding the State's arguments concerning the fourth instance, the Inter-American Commission reiterates that, for admissibility purposes, it must decide whether, pursuant to Article 47.b) of the American Convention, the facts alleged could characterize a violation of rights, or whether the petition is, under paragraph (c) of that Article, "manifestly groundless or obviously out of order." The criterion used to evaluate those requirements differs from that used to pronounce on the merits of a petition. Likewise, within the framework of its mandate, Commission is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. That is to say that, based on the aforementioned conventional norms, in keeping with Article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention.¹⁵

33. In conclusion, the Commission considers that the facts denounced in the petition, specifically the alleged extrajudicial execution of the alleged victim, are not manifestly unfounded, and if true, could constitute violations of the rights established in Articles 4 (life), 5 (personal integrity), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to its Article 1(1) (obligation to respect rights) to the detriment of Mr. Joel Perez Cardenas and his duly identified next of kin, in the terms of this report.

VIII. DECISION

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

2. To notify the parties of this decision; to proceed to the analysis of the merits; and publish this decision and include it in its Annual Report to the General Assembly.

Approved by the Inter-American Commission on Human Rights on the 29th day of the month of June, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

¹⁴ See, for example, IACHR, Report No. 292/22. Petition 866-08. Admissibility. Francisco Javier Pastrana Beltrán et al. Colombia. October 19, 2022 par. 68; IACHR, Report No. 341/23. Petition 2032-13. Admissibility. Jorge Iván Guerrero Murillo and family members. Colombia. December 29, 2023, par. 16.

¹⁵ See, for example, IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, par. 12.