

OAS/Ser.L/V/II
Doc. 147
9 September 2024
Original: Spanish

REPORT No. 139/24
PETITION 526-14
ADMISSIBILITY REPORT

SAULO JOSÉ POSADA RADA ET AL.
COLOMBIA

Approved electronically by the Commission on September 9, 2024.

Cite as: IACHR, Report No. 139/24. Petition 526-14. Admissibility. Saulo José Posada Rada et al. Colombia. September 9, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Patricia Elena Fernández Acosta
Alleged victims:	Saulo José Posada Rada, Fabián José Fragozo Pérez, Samuel Elías Ávila Padilla, and relatives ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (a fair trial), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention on Human Rights, ³ in relation to Article 1.1 thereof (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	April 14, 2014
Additional information received at the stage of initial review:	February 24, 2016 and November 18, 2020
Notification of possible archiving:	October 28, 2020
Petitioner's response to notice of possible archiving:	November 4, 2020
Notification to the State:	November 9, 2021
Additional observations of the State:	March 22, 2022

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 deposited July 31, 1973)

IV. DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITION

Duplication of proceedings and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 thereof (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of Article 46.2.c) of the Convention applies, in terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ Pabla del Socorro Rada, Guillermo Rada, Alexandra María Cachin Rada, Reyes Maria Rada Ospina (relatives of Saulo José Posada Rada); Rosalba Ávila Padilla, Angelica Maria Ávila (relatives of Samuel Elías Ávila Padilla); Ana Elena Pérez, Diana Marcela Fontalvo Pérez, Elkin Fragozo Pérez, Juan Rafael Fragozo Pérez, Marieth Fragozo Pérez, Luz Deiris Gómez Mejía (relatives of Fabián José Fragozo Pérez).

² In accordance with the provisions of 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 in the decision on this matter.

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

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

V. POSITIONS OF THE PARTIES

The petitioner

Alleged events

1. The petitioner denounces the arbitrary detention and extrajudicial execution of Saulo José Posada Rada and Fabián José Fragozo Pérez; the arbitrary detention, torture, and extrajudicial execution of Samuel Elías Ávila Padilla; the failure to investigate and punish those responsible; the resulting suffering of their relatives; and the threats endured by them, in addition to unwarranted restrictions on the right to freedom of movement and residence. The petitioner indicates that the extrajudicial execution occurred in the context of the so-called “false positives.”⁵

2. The petitioner relates that on August 19, 2002 Saulo José Posada Rada, a mason and father of three children, left his home in Valledupar at 8:00 a.m. on his way to the public market and did not return. His corpse was found on August 20, 2002 near the city with clothing different from what he was wearing when he left his home. The Army’s La Popa Battalion reported his death as that of a guerilla who fell in combat. However, his family insists that he never belonged to illegal groups, but rather that he was a humble man who had served in the military, but never completed his service since he fled the La Popa Battalion after witnessing numerous acts of corruption. Thereafter he was dedicated to working in civilian life to support his family.

3. The petitioner also mentions that Mrs. Reyes María Rada Ospina, an aunt of Saulo José Posada Rada, was harassed and threatened by two unknown subjects as she has led the efforts to ensure investigation of the death of Saulo José Posada Rada. However, the petitioner does not submit additional information on this matter.

4. In addition, on April 14, 2006 the “Cantera Dos” platoon of the La Popa Battalion detained various inhabitants of the site known as the Arroyo de Agua village, a township of Nueva Flores, municipality of San Diego, Cesar. The platoon accused the detainees of belonging to the guerrillas and of having placed gas cylinders hours earlier against the troops and engaging in combat. The local population heard the accusations and saw how the Army tortured the youth Samuel Elías Ávila Padilla. He was working on a cattle ranch as a day laborer and was working when the army came to his place of work and detained him, beginning to beat and torture him; later, the soldiers shot him several times, causing his death. His family learned what had happened several hours later and, in front of the body, the members of the Army told them that he belonged to the guerrillas and had fallen in combat.

5. According to the allegation, this family faced threats and continuous violence and other family members were also murdered under suspicious circumstances. In this regard, on October 19, 2007, Samuel Elías Ávila Padilla’s brother, Tomás Antonio Ávila Padilla, a soldier in the Army, allegedly died in combat between two platoons of the same Army in Carmen de Bolívar. On July 28, 2012, another brother, José Gregorio Ávila Padilla, was murdered by an alleged criminal in Codazzi, Cesar, while working as a motorbike taxi driver. The petitioner mentions that José Gregorio Ávila Padilla had been threatened on two occasions by members of the Army for denouncing the events in which his brother, Samuel Elías, lost his life. In addition, Rosalba Ávila Padilla was threatened by an alleged friend of the family who was apparently present on site when Samuel Elías Ávila Padilla was killed. The petitioner does not present more details regarding these events.

6. On July 8, 2008, Fabián José Fragozo Pérez was found dead on the La Montaña ranch, in La Jagua del Pilar, south of Guajira, and reported as a guerilla fallen in combat. Of humble origins, he was working as a bricklaying assistant, although at the time he had been offered work as a motorbike taxi driver in Valledupar. On the day of his death, he left during the afternoon with someone who was going to help him with a supposed new job, but he never returned from that meeting. That night, they notified his relatives that the

⁵ In Colombia, the term “false positives” refers to a series of extrajudicial executions of civilians by the State security forces that are later presented as combat casualties. In this regard, see: IACHR, Truth, Justice and Reparations: Fourth Report on the Situation of Human Rights In Colombia, December 31, 2013, paragraphs 21, 122 et seq.

Army had killed him in combat, in the area around a municipality in the south of the Guajira department. His relatives believe that Fabián José Fragozo Pérez could have been deceived by the person who contacted him allegedly for the new job and that the Army perversely promotes the capture of citizens so as to later report false positives in order to show results to the government.

On the domestic proceedings

7. The petitioner reports that in the case of Samuel Elías Ávila Padilla the investigation was referred from military criminal justice to the regular system of justice after it was established that the events did not pertain to military service. The petitioner also points out that during the proceeding, the relatives received threats, and two of them, his brothers Tomás Antonio Ávila Padilla and Gregorio Ávila Padilla, were murdered. However, it does not present more details on these deaths.

8. Regarding the death of Saulo José Posada Rada, the petitioner mentions that the death was investigated by the Human Rights and International Humanitarian Law Unit, and is currently in the charge of that unit's Office of the Prosecutor No. 65.

9. For its part, the investigation into the death of Fabián José Fragozo Pérez was undertaken at first by the Second Sectional Prosecutor's Office of San Juan, Guajira and was later forwarded to Prosecutor's Office No. 63 of the Human Rights and International Humanitarian Law Unit. However, Examining Court 98 of Military Criminal Justice of the township of Buena Vista, Guajira, had conducted another investigation regarding the same events.

10. The petitioner relates as facts common to the three investigations that: (a) the scene was not cordoned off nor was care taken to preserve and identify all the evidentiary elements and indicia; (b) the investigative reports did not list the soldiers who were present or their weapons, nor did they describe in detail the condition of the scenes of the crimes; (c) the investigations did not include firing tests nor were the soldiers' weapons requested; (d) procedures at the scenes of the crimes were carried out by judicial police in the company of military personnel; and (e) references to witnesses are limited and contain no relevant information regarding witnesses.

11. The petitioner believes that the actions carried out against Saulo José Posada Rada, Samuel Elías Ávila Padilla, and Fabián José Fragozo Pérez constitute violations of their rights to personal liberty, life, and humane treatment, directly attributable to soldiers from northern Cesar belonging to the 10th Armored Brigade and the La Popa Battalion, attached to the Army's first division; and that the judicial authorities violated their relatives' rights to judicial guarantees and judicial protection, due to the delay and an alleged lack of due diligence in the investigation and punishment of those responsible.

12. In addition, the petitioner maintains that the two sisters of Samuel Elías Ávila Padilla requested a study on protection from the victims' protection unit of the Office of the General Prosecutor of the Nation; and the aunt of Saulo José Posada Rada sought protection from the National Police headquartered in Valledupar. However, it does not indicate the dates of the applications nor does it provide the name of the aunt of Mr. Posada Rada. It mentions these facts as contextual information for maintaining that the constant presence of military personnel and paramilitaries in the area constitutes a risk factor that violates the right to freedom of movement and residence of the alleged victims and their relatives.

The Colombian State

13. The State reports in general terms that the criminal action before the Special Jurisdiction for Peace (JEP) is the appropriate remedy for achieving clarification of what happened and the prosecution of those responsible. As regards the phenomenon of extrajudicial executions of persons presented as guerrillas who were combat casualties, with the initial report of 2,248 people murdered in this way between 1998 and 2014, on July 12, 2018 the JEP decided to open case 03 on "Deaths illegitimately presented as combat casualties by agents of the State."

14. Later, through Ruling 033 of February 12, 2021, the Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct (SRVRDHC) of the JEP published the internal prioritization strategy of Case 03. It explained that available sources of information and the methodology made it possible to identify six critical territories for starting clarification of the phenomenon, putting together the following subsidiary cases: Antioquia, Meta, Costa Caribe, Norte de Santander, Huila, and Casanare.

15. With regard to the Costa Caribe subsidiary case, the SRVRDHC indicated in Ruling 033 of February 12, 2021, that analysis and cross-checking of available information made it possible to provide evidence that the First Division of the National Army presented the largest number of deaths illegitimately presented as combat casualties between 2002 and 2005. Most of these deaths were concentrated in the north of the department of Cesar and the south of the department of La Guajira, where the “La Popa” Artillery Battalion No. 2 and the Juan José Rondón Mechanized Group had jurisdiction, respectively. The Chamber for Recognition believed that a quantitative and qualitative perspective merited prioritizing events related to the two aforementioned military units between 2002 and 2005.

16. More specifically, the State indicates that the events relating to the death of Saulo José Posada Rada are currently being analyzed by the JEP in the internal prioritization carried out by the SRVRDHC under Case 03 on “Deaths illegitimately presented as combat casualties by agents of the State.” Regarding the events related to the death of Samuel Elías Ávila Padilla and Fabián José Fragozo Pérez, it points out that they may ultimately be prioritized by the SRVRDHC at a later stage. Thus, the State believes that the petition is inadmissible as the proceeding before the JEP has not yet concluded.

17. It also argues that the action for direct reparations is the suitable remedy with respect to determining the State’s responsibility for violations of rights under the Convention. With regard to the specific case, it indicates that the relatives of Saulo José Posada Rada went to the administrative jurisdiction in 2018, and a final decision is still pending from the judge in the first instance.

18. It also indicates that the relatives of Samuel Elías Ávila Padilla went to the administrative jurisdiction on February 22, 2017. In this proceeding, the Second Administrative Court of the Valledupar Circuit dismissed the petitioners’ claims on June 21, 2019, after deeming that sufficient evidence does not exist to attribute to the State the responsibility for wrongful harm in the death of Samuel Ávila Padilla. His relatives did not appeal this decision. The State argues that, considering that the remedy of appeal was available and within the reach of the relatives of the alleged victim but was not exhausted, the grounds for inadmissibility relating to the failure to exhaust domestic remedies is applicable. It also maintains that the petition is inadmissible in accordance with Article 47(b) of the Convention, in that it involves the fourth instance formula given that the judicial decision that dismissed the suit filed by the relatives of Samuel Elías Ávila Padilla was well-founded and respected the due process guarantees.

19. The State also indicates that in 2019 the relatives of Fabián José Fragozo Pérez filed for direct reparations. However, the application was rejected because it was submitted belatedly as more than two years had passed since the events occurred. The State holds that this provides the grounds for inadmissibility relating to the failure to exhaust domestic remedies, due to improper exhaustion of the action seeking direct reparations.

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

20. The Commission identifies the following primary claims in the petition: i) the arbitrary detention and extrajudicial execution of Saulo José Posada Rada and Fabián José Fragozo Pérez, the arbitrary detention, torture, and extrajudicial execution of Samuel Elías Ávila Padilla, the failure to investigate and punish those responsible, and the resulting suffering of his relatives; ii) the threats endured by the relatives as part of the context of unjustified limitations on the right of movement and residence.

21. Regarding the first issue, the suitable remedy that must be exhausted at the domestic level is the criminal route, through the *ex officio* and diligent conduct of investigations that determine those

responsible for the violation of the right to life and submit them to prosecution and punishment in accordance with the American Convention;⁶ this burden must be assumed by the State as its own legal duty and not as a matter to be managed by private interests or that depend on the initiative of such interests or their submission of evidence.⁷

22. According to the information provided by the parties, the IACHR observes that the deaths of Saulo José Posada Rada, Samuel Elías Ávila Padilla, and Fabián José Fragozo Pérez occurred on August 19, 2002, April 14, 2006, and July 8, 2008, respectively. According to the petitioner, the death of Samuel Elías Ávila Padilla was investigated by the military criminal jurisdiction while the deaths of the other two alleged victims were investigated by the ordinary criminal jurisdiction. The petitioner does not present specific details on the investigations, such as the starting dates and dates of relevant actions or proceedings. However, it emphasizes that none of the investigations produced concrete results. For its part, the State reports that the events related to the death of Saulo José Posada Rada are the subject of analysis by the JEP under Case 03 on “Deaths illegitimately presented as combat casualties by agents of the State.” As for the events related to the death of Samuel Elías Ávila Padilla and Fabián José Fragozo Pérez, it points out that they may ultimately be prioritized by the JEP at a later stage.

23. Along these lines, the Commission estimates that more than 15 years have passed since the death of Fabián José Fragozo Pérez, more than 16 years have passed since the death of Samuel Elías Ávila Padilla, and more than 20 years have passed since the death of Saulo José Posada Rada, without any substantive progress having been achieved in the investigation and punishment of those responsible. In fact, the State itself recognizes that the proceedings before the JEP are still ongoing, without providing any reasonably accurate view regarding their conclusion. Bearing this in mind, the Commission believes that for the purposes of analyzing the exhaustion of domestic remedies, there is an unwarranted delay in the adoption of a final decision at the domestic level, so that the exception provided in Article 46.2.c) of the American Convention is applicable.

24. In this regard, the Commission reiterates first, as it has done consistently, that Article 46.2 of the Convention, due to its nature and purpose, is a provision with autonomous content vis-à-vis the substantive provisions of the American Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be carried out prior to and separate from the analysis of the merits of the case, as it depends on a different standard of evaluation than that used to determine whether Articles 8 and 25 of the Convention were violated. The IACHR has also pointed out that there are no provisions in the Convention or the Rules of Procedure that specifically govern the length of time that constitutes unwarranted delay, so that the Commission does a case-by-case evaluation to determine whether that delay exists.⁸ Along these lines, the Inter-American Court has established as a guiding principle for analysis of possible unwarranted delay as an exception to the rule of the exhaustion of domestic remedies, that “*the rule of prior exhaustion of domestic remedies must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.*”⁹ In other words, in the Commission’s view, 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 is timely so that it can have some kind of useful effect in the protection of the rights of alleged victims.

⁶ IACHR, Report No. 13/22, Petition 1332-11. Admissibility. Orlando Hernández Ramírez and relatives. Colombia. February 9, 2022, paragraph 7; IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, paragraph 10; IACHR, Report No. 70/14, Petition 1453-06. Admissibility. Maicon de Souza Silva, Renato da Silva Paixão et al., July 25, 2014, paragraph 18; Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto et al, Peru, January 27, 2012, paragraph 24; IACHR, Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al., Peru, September 7, 2017, paragraphs 3, 9-11.

⁷ IACHR, Report No. 13/22, Petition 1332-11. Admissibility. Orlando Hernández Ramírez and relatives. Colombia. February 9, 2022, paragraph 7; IACHR, Report No. 159/17, Petitions 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, paragraph 14.

⁸ IACHR, Report No. 14/08, Petitions 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, paragraph 68.

⁹ Inter-American Court of Human Rights, Velásquez Rodríguez v. Honduras, Preliminary objections, judgment of June 26, 1987, paragraph. 93.

25. As to the reasonableness of the period within which this petition was lodged, in accordance with Article 32.2 of its Rules of Procedure, the IACHR concludes that it complies with this requirement, in that the initial events occurred between 2002 and 2008; the petition was lodged in 2014; and the effects of the alleged violations in terms of the alleged impunity would remain to this day.

26. With regard to the second point, the petitioner does not provide concrete information regarding the domestic remedies the relatives would have accessed regarding the alleged threats endured and the alleged unjustified limitations on the right to freedom of movement and residence. Neither does it specify the dates of the applications for protection, or other relevant data relating to the alleged restrictions on the right to freedom of movement and residence. This lack of minimum information thus prevents the Commission from analyzing possible compliance with the requirement established in Article 46.1.a) of the Convention.

27. Similarly, and according to the information included in the petition file, the Commission does not have evidence establishing compliance with the requirement of the exhaustion of domestic remedies in the proceedings initiated by the relatives of the victims before the administrative jurisdiction. In these cases, the State filed in due time and form its challenge regarding compliance with this requirement, providing specific information that in principle would show that in these proceedings the domestic judicial remedies had not been fully exhausted. Moreover, given the petitioner's lack of a response at the time this report was adopted, the IACHR does not have information with which to establish compliance with the requirement under Article 46.1.a) of the Convention with regard to these three proceedings. Therefore, actions in these proceedings is also outside the factual framework of this case. Nonetheless, the IACHR reiterates that the State's obligation to provide economic compensation to the relatives of the victims, in the context of this case, will depend on the determination of international responsibility that is made in the merits stage, independently of action at the domestic level in administrative proceedings on direct reparations.

VII. ANALYSIS OF COLORABLE CLAIM

28. For the purposes of admissibility, the Commission must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," in accordance with paragraph (c) of that article. The criterion for evaluating these requirements is different from that used to rule on the merits of a petition. In addition, within the framework of its mandate, it is competent to declare a petition admissible when it refers to domestic proceedings that could be in violation of rights guaranteed by the American Convention. In other words, according to the cited provisions of the Convention, consistent with Article 34 of its Rules of Procedure, the analysis of admissibility focuses on the verification of such requirements, which refer to the existence of facts that, if true, could constitute *prima facie* violations of the American Convention.

29. This petition is not manifestly groundless in relation to the possible violations of the right to life due to State action or omission. The State's international responsibility for human rights violations may be triggered, for example, by the State's failure to protect people from armed groups that have victimized the alleged victims.¹⁰ In the analysis of the merits, the IACHR will establish the proven facts and, if applicable, the potential existence of the State's international responsibility.

30. The IACHR notes that a controversy persists regarding the submission of the case to the JEP and whether that jurisdiction is able to provide a suitable and effective remedy for investigating and redressing human rights violations resulting from the alleged extrajudicial executions, in accordance with international standards on the right of access to justice and the punishment of international crimes. On this issue, the Commission will defer its analysis to the merits stage and will admit the articles invoked relating to extrajudicial execution and handling of the criminal proceeding.

¹⁰ See: IAHR, Report No. 78/23. Petition 1376-12. Admissibility. Oscar Andrés Bedoya Arango et al. Colombia. June 7, 2023, paragraph. 23; International Law Commission. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. United Nations, 2001, pp. 43-5.

31. In view of these considerations and after examining the factual and legal evidence presented by the parties, the Commission believes that the petitioner's allegations are not manifestly groundless and require an in-depth study as the facts alleged, if corroborated as true, could characterize violations of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention, in relation to Article 1.1, thereof to the detriment of Saulo José Posada Rada, Samuel Elías Ávila Padilla, and Fabián José Fragozo Pérez and their relatives, in the terms of this report.

32. Finally, the Commission observes that the State provides information on economic compensation paid to the relatives. In this regard, the Commission takes due note of this fact and will take it into consideration in the merits stage of this matter.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 4, 5, 7, 8, 11, and 25 of the American Convention in connection with Article 1.1 thereof.

2. To notify the parties of this decision; to continue with analysis of the merits of the case; 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 9th day of the month of September, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.