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REPORT No. 136/24

PETITION 917-14

ADMISSIBILITY REPORT

JUAN ESTEBAN CASTAÑO SALDARRIAGA
COLOMBIA

Approved electronically by the Commission on September 9, 2024.

Cite as: IACHR Report No. 136/24. Petition 917-14. Admissibility.
Juan Esteban Castaño Saldarriaga. Colombia. September 9, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Gloria Saldarriaga Ochoa
Alleged victim:	Juan Esteban Castaño Saldarriaga
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	June 27, 2014
Additional information received at the review stage:	April 19, 2017, and December 4, 2018
Notification of the petition to the State:	December 17, 2021
State's first response:	June 24, 2022
Additional comments from the petitioner:	August 4, 2022
Notification of the possible archiving of the petition:	September 13, 2021
Petitioner's response to the notification regarding the possible archiving of the petition:	September 13, 2021

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 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), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, read in conjunction with its Article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, pursuant to the terms of Section VI
Timeliness of the petition:	Yes, pursuant to the terms of Section VI

¹ Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the deliberations nor in the decision in this matter, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

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

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

V. FACTS ALLEGED

The petitioner

1. The petitioner alleges that her son's death as a result of an explosion remains in impunity, since the Office of the Public Prosecutor closed the investigation without identifying those responsible or establishing whether the police were at fault.

2. The petitioner indicates that her son worked as a patrol officer for the National Police in the municipality of Túquerres, department of Nariño, and that on June 25, 2011, upon receiving a phone call, he went to a bar to perform a security check, as a fight had supposedly taken place there. However, upon entering, an explosive detonated, killing him. She states that subsequent proceedings determined that Mr. Castaño Saldarriaga died when shrapnel struck him in the heart because he did not have a bulletproof vest, and that those possibly responsible for what happened were members of the FARC.

3. She indicates that on June 26, 2011, the 28th Local Prosecutor's Office of Túquerres began an investigation for the crime of aggravated homicide in connection with these facts. However, after carrying out a series of procedures, on December 9, 2019, the prosecutor's office ordered the file of the case closed on the following grounds:

To date, and due to a lack of specific information on the possible perpetrators of or participants in the criminal conduct, [...], it has not been possible to fully identify the perpetrator(s) of and/or participant(s) in the criminal conduct and refute the active subject existing presumption, since no related and circumstantial information has ever turned up. Therefore, it is impossible and fruitless for the Office of the Public Prosecutor to continue with the corresponding investigation; likewise, the time that has elapsed since the act was committed cannot be ignored, as it makes it more difficult to obtain the respective information, for which reason, this Prosecutor's Office [...] will proceed to close the file on the proceedings on the grounds of "impossibility of determining the perpetrator."

4. Based on these factual considerations, the petitioner alleges that the criminal investigation suffered from inconsistencies and omissions. She specifically highlights that the Office of the Public Prosecutor never investigated the possible criminal responsibility of the commander of the Túquerres police station, despite indications that he allowed the alleged victim to be attacked by guerrilla groups. Furthermore, the possibility that evidence was manipulated by the National Police—specifically, changes in logbook and call logs from the day of the alleged victim's death—was also not taken into consideration. In the petitioner's opinion, this evidence was key to establishing institutional responsibility.

5. The petitioner indicates that in 2013, she also filed suit for direct reparations, requesting compensation for the death of her son. However, on January 15, 2016, the Fifth Administrative Court of Pasto denied the claims of the lawsuit. The victim's family appealed the decision, and on February 26, 2020, the Administrative Court of Nariño overturned it and declared the State responsible for the death of Mr. Castaño Saldarriaga, finding that it was the State that was responsible for the fact that the alleged victim had not had a bulletproof vest while doing his work. It consequently ordered the payment of compensation.

The Colombian State

6. The State responds that the facts alleged in the petition do not constitute violations of the rights recognized in the American Convention. It argues that the petitioner seeks for the Commission to act as a fourth judicial instance and review the factual and legal assessments made by domestic judges and courts acting within their competence.

7. It notes that the Administrative Court of Nariño has already addressed the claims of the alleged victim and awarded compensation based on a well-founded judgment and after a process that complied with all judicial guarantees. Consequently, the State argues that the petition only raises issues that have already been resolved at the domestic level and should therefore be declared inadmissible.

8. Finally, it notes that the Office of the Public Prosecutor launched an investigation into the death of the alleged victim as soon as it became aware of it. After taking the corresponding investigative steps, it moved to suspend the investigation and close the file on the process, indicating that the evidence did not make it possible to identify those responsible for the facts, despite the efforts made by the various authorities of the Judicial Police. In the State's opinion, these actions demonstrate that the decision to close the file on the case complies with the standards of the inter-American human rights system regarding the obligation to investigate, prosecute and, if applicable, punish those responsible for a criminal act. It argues that a review of this decision by the IACHR would be inappropriate, since it would be acting as a court of appeal.

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

9. The Commission notes that the petitioner's central claim is essentially the failure to identify and punish those responsible for the death of the alleged victim. Therefore, the Commission recalls that, in situations that may involve violations of the right to life, which are prosecutable *ex officio*, the domestic remedies that must be taken into account for the admissibility of a petition are those related to the criminal proceeding, as it is the most appropriate method for solving the crime, punishing those responsible, and laying the groundwork for redress of a pecuniary nature.⁴

10. Based on this, the Commission notes that although the Office of the Public Prosecutor launched an investigation, on December 9, 2019, it suspended it and ordered the case closed on the grounds that it was impossible to identify those responsible. Thus, the IACHR notes that more than a decade has passed without establishing the facts or identifying, prosecuting, and punishing those responsible for the murder of Mr. Castaño Sadarriaga. Therefore, in the case of crimes that must be investigated *ex officio*, as in the present case, where there are indications of impunity due to suspension of the criminal action, as well as specific allegations of serious omissions in the investigations, the IACHR has established that the exception to the exhaustion of domestic remedies applies, pursuant to Article 46(2)(c) of the American Convention⁵ and 31(2)(c) of the Rules of Procedure. Likewise, given that the Office of the Public Prosecutor's order was issued while this case's admissibility was still under review, the Commission finds that it was filed within a reasonable period of time, pursuant to the terms of Article 32(2) of its Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

11. First, the Commission reiterates that the level of conviction of the admissibility stage is different from what is required when deciding on the merits of a complaint; at this stage, the IACHR must perform a summary *prima facie* evaluation—not to establish the existence of a violation, but to examine if the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention. Determining the colorable claim of the violations of the American Convention involves a summary analysis, which does not imply a prejudgment or advance opinion on the merits of a matter. For purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, as provided for in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c) of the American Convention.

⁴ IACHR Report No. 159/17, Petition 712-08, Admissibility, Sebastián Larroza Velázquez and family, Paraguay, November 30, 2017, para. 14; IACHR, Report No. 108/19, Petition 81-09, Admissibility, Anael Fidel Sanjuanelo Polo and family, Colombia, July 0028, 2019, para. 17-19.

⁵ IACHR Report No. 129/21, Petition 894-09, Admissibility, Alcira Pérez Melgar *et al.* Peru, June 14, 2021, para. 9; IACHR Report 240/20, Petition 399-11, Admissibility, Over José Quila *et al.* (Rejoja Massacre), Colombia, September 6, 2020, para. 12; Report 129/18, Petition 1256/07, Admissibility, Cornelio Antonio Isaza Arango *et al.* (Massacre of the El Retiro Sawmills), Colombia, November 20, 2018; and Report 104/18, Petition 221/08, Admissibility, Delis Palacio Herrón *et al.* (Bojayá Massacre), Colombia, September 20, 2018.

12. In this case, the Commission notes that, according to the petitioner, the Office of the Public Prosecutor failed to take a series of steps and did not adequately investigate the possible responsibility of police authorities. In this regard, although the State provides some details on the actions taken by the prosecutor in charge of the case, it does not provide information that would make it possible to know precisely what measures were taken to establish the facts and, centrally, identify whether members of the National Police were complicit.

13. In view of these considerations, and upon examination of the elements of fact and law set forth by the parties, the Commission concludes that the petitioners' allegations are not manifestly groundless and must be examined on their merits, as should the facts alleged be corroborated, they could amount to violations of articles 4 (right to life), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, to the detriment of the alleged victim.

14. Finally, and with respect to the "fourth instance formula" argument, the Commission stresses the complementary nature of the inter-American system and emphasizes that, as indicated by the Inter-American Court, in order for a "higher court" exception to proceed, it must be found to apply for review of "the decision of the domestic court, based on its incorrect assessment of the evidence, the facts or domestic law without, in turn, alleging that such decision was a violation of international treaties [...]"⁶ In this case, the Commission finds that, as indicated by the Inter-American Court, "it is up to the Court to ascertain whether or not the State, in the steps effectively taken at domestic level, violated its international obligations stemming from those Inter-American instruments that grant authority to the Court."⁷ Likewise, it must examine "whether or not the actions of the judicial bodies constitute a violation of the State's international obligations, [which] may lead the Court to examine the corresponding domestic proceedings in order to establish their compatibility with the American Convention."⁸ In this sense, analysis of whether the State violated the American Convention is a matter to be decided in the merits of this case.

VIII. DECISION

1. To declare this petition admissible with respect to articles 4, 8, and 25 of the American Convention.

2. To notify the parties of this decision; continue with analysis of the merits of the matter; and 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.

⁶ Inter-American Court. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 18.

⁷ Inter-American Court. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.

⁸ Inter-American Court. *Case of Palma Mendoza et al. Ecuador*. Preliminary Objection and Merits. Judgment of September 3, 2012. Series C No. 247, para. 18; Inter-American Court. *Rosadio Villavicencio v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 14, 2019. Series C No. 388, para. 24; Inter-American Court. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.