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REPORT No. 313/20
PETITION 420-11
REPORT ON ADMISSIBILITY

JOSÉ EDUARDO UMAÑA MENDOZA
COLOMBIA

Approved electronically by the Commission on August 5, 2020.

Cite as: IACHR, Report No. 313/20, Petition 420-11. Admissibility. José Eduardo Umaña Mendoza. Colombia. August 5, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Federico Andreu-Guzmán and Wilder Tayler
Alleged victim	José Eduardo Umaña Mendoza and family
Respondent State	Colombia
Rights invoked	Articles 4 (right to life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 17 (rights of the family), 22 (movement and residence), and 25 (judicial protection) of the American Convention on Human Rights, ¹ in connection with Article 1.1 thereof

II. PROCEEDINGS BEFORE THE IACHR²

Date of filing	May 31, 2011
Additional information received during initial review	October 21, 2015
Notification of the petition	March 29, 2016
State's first response	August 11, 2016
Additional observations from the petitioner	August 11, 2016 and May 20, 2020

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 ratification instrument done 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), 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 17 (rights of the family), 22 (movement and residence), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 thereof
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF FACTS ALLEGED

1. The petition claims the responsibility of the State of Colombia in relation to the alleged extrajudicial execution of José Eduardo Umaña Mendoza (hereinafter also "the alleged victim") on 18 April 1998 in the city of Bogotá and the failure to investigate the facts. In this regard, the petitioner maintains that the events took place in the context of various threats against the life and integrity of the alleged victim by paramilitary groups and members of the intelligence services as a result of his work as a human rights defender. It also argues that the State has failed to carry out an exhaustive and effective investigation, failing to comply with its obligation to identify, try and punish those involved in the alleged events.

2. The petitioner maintains that the alleged victim was a long-time human rights defender, founder of various non-governmental organizations and recognized for his work nationally and internationally. He claims that as a result of his work the alleged victim was followed by members of the intelligence services even from his student days. It details the threats and attempts on Mr. Umaña Mendoza's life between September

¹ Hereinafter the "American Convention" or "Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

and October 1991 as a result of his work on the Palacios family massacre³; in April 1993⁴; and in 1996. It also alleges that in August 1997 the alleged victim decided to convert his former residence into his office and to move to another part of the city in order to protect his family. In particular, the petitioner alleges that the defence of human rights at both the investigative and litigious levels led the alleged victim to come into contact with members of the State security forces such as the intelligence services of the Army, the Police and the Administrative Department of Security (hereinafter "DAS").

3. The petitioner states that on February 16, 1998, the alleged victim went to the National Office of the Technical Investigation Corps of the Attorney General's Office to denounce the death threats he had received by telephone over the past 15 days⁵. The petitioner claims that this authority offered him protection mechanisms from the DAS and referred his complaint to Anti-Kidnapping Unit's 241th Prosecutor Delegate to the Circuit Criminal Courts; however, the alleged victim declined the offer because of past experiences and the alleged involvement of officials of the same authority in several extrajudicial executions and forced disappearances. Likewise, the petitioner adds that in early March 1998 the alleged victim shared with the National Director of the Technical Investigation Corps information about the links between the Office of the 101st Prosecutor Delegate to the Army and the Army intelligence unit, both of which allegedly involved in the planning of his murder. The petitioner states that days before his death, the alleged victim also communicated with the Attorney General of the Nation and with the Director of the Office of the United Nations High Commissioner for Human Rights in Colombia in order to request protection, after having received a visit from a member of the Army's XX Brigade of Intelligence and Counter-Intelligence Brigade in his office.

4. Specifically, the petitioner argues that at noon on April 18, 1998, a woman accompanied by two men showed up at Mr. Umaña Mendoza's office identifying herself as a journalist and was authorized to enter the building. She describes that once inside, one of the men proceeded to tie up and lock up María Ingrid Pinzón, Mr. Umaña Mendoza's assistant, in another room while the woman and the other man shot the alleged victim three times with a firearm. They then allegedly stole a sum of money from the office and left in a waiting taxi.

5. The petitioner alleges that following the alleged victim's death, several people close to him were threatened, including members of his family. Particularly, the petitioner submit that María Ingrid Pinzón was threatened several times by individuals on a motorbike and that she fled Colombia in August 1998. Similarly, Wilson René González and María Cristina Muñoz, who were law students linked with the alleged victim's law practice, left the country on April 20, 1998, after also being followed and harassed. According to the petition, Ana Patricia Hernández Rubio and Camilo Eduardo Umaña Hernández, the alleged victim's wife, and son, left Colombia on August 1, 1998, for Belgium along with Germán Umaña Mendoza, the alleged victim's brother, and his family.

6. The petitioner states that the National Human Rights Unit of the National Directorate of the Prosecutor's Offices of the Attorney General's Office immediately took over the preliminary investigation of the

³ The petitioner describes that Dr. Umaña Mendoza was the victim of death threats through telephone calls and of an attempt on his life on 25 September 1991, when he was leaving his residence in the morning to board a public service taxi. The petitioner explains that the next day, while he was participating in a proceeding to reconstruct the events of the massacre, the alleged victim was photographed on several occasions by members of the army. The petitioner stresses that these events were reported to the Colombian authorities by Amnesty International, the International Council of Voluntary Agencies and the Lawyers Committee for Human Rights, but no progress was made in the investigation. He also claims that on 3 October 1991, the DAS assigned him an escort service and the United States Embassy in Colombia provided him with a bulletproof vest.

⁴ The petitioner states that in April 1993 the alleged victim received further death threats, which he brought to the attention of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as of Amnesty International. In this regard, he argues that in June 1993, the Presidential Advisory Office requested the Office of the Attorney-General to deal with the case of the threats, without any results in the investigation. In particular, it adds that Dr. Umaña Mendoza declined a new offer of DAS escorts.

⁵ The petitioner details that by February 1998 the alleged victim had revealed the results of his investigations into the "cloned" witnesses in the proceedings against the USO trade unionists, as well as the manipulations orchestrated by members of military intelligence, prosecutors and members of the Technical Investigation Corps. The petitioner describes how in February of the previous year Dr. Umaña Mendoza and Dr. Veloza Rodríguez filed a complaint about irregularities ("cloned" witnesses and the failure of the Public Prosecutor's Office agents to appear at secret witness testimony proceedings), with the Attorney General's Office, and with the Delegated Attorney General for Criminal Matters, which had resulted in an investigation (Disciplinary file No. 011-01322-97), which found the use of "cloned" witnesses in the same proceedings and brought disciplinary charges against three regional prosecutors.

alleged extrajudicial execution. The petitioner explains that from May 1998, the Prosecutor in charge ordered several tests, searches and inspections to investigate officers of the XX and XXI Brigades of the Army and their potential connection with officials of the Attorney General's Office and possible links between army intelligence officers and ECOPETROL. In this regard, the petitioner alleges that the evidence was not collected with due care and was treated "with a dusty material" which prevented it from being subjected to technical tests; that photos from an inspection of the aforementioned brigades' résumé books were damaged due to the delay in developing them and their poor conservation; and that certain leads were not explored by the Prosecutor's Office. The petitioner claims that, as part of the preliminary investigation, officers of the XX Brigade of Intelligence and Counter-Intelligence fabricated information to divert the investigation, eventually proven to be false. The petitioner submits that based on the statement made on 22 May 1998 before the Office of the Public Prosecutor by an alleged witness provided by the National Police who had been arrested for aggravated burglary, the investigation was diverted to focus on a group of people, some known common criminals, despite the evidence previously collected and serious leads against members of military intelligence.

7. The petitioner alleges that between September 1998 and January 1999, the Prosecutor's Office issued a decision on preventive detention for the crime of conspiracy to commit a crime against the persons identified by the witness and, inter alia, issued an indictment on 13 November 1999 against the same persons for the crime of conspiracy to commit a crime and murder. In this regard, the petitioner holds that on July 6, 2001, the Sixth Specialized Criminal Court of Bogotá Circuit ruled to acquit all the accused. The petitioner argues that ever since then, the investigation has remained in a preliminary stage, whereas the investigations against certain members of the brigades mentioned above and into the potential paramilitary involvement have not been resumed despite the finding of new evidence.⁶

8. The petitioner also claims that following reports in the press about the alleged involvement and participation of members of the XX Brigade of Intelligence and Counter-Intelligence, the Attorney General announced the opening of investigations against members of the aforementioned army brigade for the murder of the alleged victim and other human rights defenders; and in May 1998, the then President of the Republic ordered the dismantling of the brigade. The petitioner, however, claims that such measure was superficial since the bulk of the powers and files of the XX Brigade were absorbed by the Army Intelligence Center as its successor; and its members were assigned to different military units in the country without any process of purging or investigation.

9. Specifically, it indicates that while the relatives of the alleged victim have continued their fight against impunity, the exceptions to the exhaustion of domestic remedies provided for in Article 46.1 (a) and (c) apply in the present petition. In this sense, he informs that Camilo Umaña Hernández filed his right of petition before the Attorney General on July 21, 2009, requesting information about the process followed to clarify the murder of the alleged victim and the reasons and motives for the inaction in the criminal process. They submit that on August 25, 2009, the Attorney General's Office replied by letter No. 171 that it had been impossible to find evidence revealing the identity of the perpetrators or the motives of the latter. Lastly, the petitioner alleges that the family of the alleged victim, as a civil party to the criminal proceeding, requested the Prosecutor's Office by means of a document filed on August 16, 2016, to declare the murder of Mr. Umaña Mendoza a crime against humanity referring also to the context of systematicity of crimes against human rights defenders. In this regard, the petitioner highlights that the Prosecutor's Office, through the resolution issued on September 27, 2016,

⁶ The petitioner indicates that former paramilitaries have made revealing statements to the Attorney General's Office about the close relations and links between paramilitary structures and units of the Army, the National Police and the Administrative Department of Security; their participation in various crimes; and, in particular, about the alleged extrajudicial execution of José Eduardo Umaña Mendoza and the involvement of members of the intelligence services in the crime. The petitioner points out that although the Attorney General's Office considered the testimony of one of them to be implausible, since he had surrendered to justice and was attempting to obtain some benefits through collaboration, the Attorney General's Office requested the identification of two Majors and, if appropriate, their involvement in the investigation of this case, which is why the Attorney General's Office identified and located Army Lieutenant Colonel Jesús María Clavijo Clavijo and Lieutenant Oscar Conrado Zuluaga Molano at the end of 1999. However, the petitioner argues that the Second Specialized Prosecutor's Office of the National Human Rights and International Humanitarian Law Unit informed the Inter-Church Justice and Peace Commission in a communication dated 14 April 2008 that in the investigation of the murder of the alleged victim, no member of the military forces, local or national public officials, or paramilitaries had been linked to the murder..

decided to categorize the extrajudicial execution of Mr. Umaña as a crime against humanity and declared the criminal action imprescriptible.

10. The State claims a lack of exhaustion of domestic remedies pointing to the criminal action and the direct claim for damages as remedies that, individually and/or jointly, are appropriate and effective to verify and declare the individual criminal responsibility of those responsible for the facts, as well as the eventual State responsibility. Thus, the State submits that since the petitioner refers to the damage caused to the family, the direct claim for damages is the appropriate legal remedy for seeking compensation for unlawful damage caused by state agents, like that referred to in this petition, in accordance with the Inter-American standards. Additionally, the State affirms that it continues to direct its efforts to the investigation, trial, and punishment of those responsible.

11. It argues that an ex officio investigation began on April 18, 1998, with the presentation of several sworn statements and the appointment of the 303rd Prosecutor Delegate to the Circuit Criminal Courts to this investigation. It submits that, accordingly, several people were included in the investigation and held in pretrial detention. It affirms that the investigation of several defendants concluded on October 14, 1999, and that on November 13 of that year and on August 11, 2000, it issued indictments against some of the defendants for the crime of conspiracy to commit a crime and murder for terrorist purposes. It also notes that the investigation against one of the defendants expired, revoking his pretrial detention. The State claims that on July 6, 2001, the Sixth Specialized Criminal Court of Bogotá Circuit decided to acquit five of the accused and, together with the Prosecutor's Office, decided on 11 March 2002 to preclude the investigation against another accused.

12. Moreover, the State submits that on March 19, 2011, the civil action filed on behalf of Mrs. Mendoza Rincón de Umaña was admitted, following which various requests have been admitted and may continue to be presented as part of the investigation. In this regard, it asserts that on June 5, 2014, a resolution was issued to take into account the representatives of the civil party, given that they are once again willing to participate in the proceedings thanks to the protection measures implemented by the national government. The State alleges that on May 12, 2015, it took the statement of Mr. Diego Fernando Murillo Bejarano, alias El Berna, and on March 19, 2016, an analysis of the case was ordered in context and comparative analysis between the investigation carried out for the murder of Eduardo Umaña and that followed by the murder of Jaime Garzón Forero.

13. Finally, with respect to the petitioner's allegation of an ineffective investigation, the State argues that it is insufficient only to refer to the procedural stage of the process and, on the contrary, the petitioner should prove that it is due to defects, negligence, or omissions in the development of the investigations. It states that the procedural stage does not per se characterize an unjustified delay and although the investigation is still at a preliminary stage, the process has made significant progress. The State argues that the investigation and acquittal of the persons initially involved cannot be considered a violation of the right to judicial protection but a natural and possible outcome of the investigative and judicial activity.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

14. The Commission has established that in case of an offense involving the violation of the rights to life and humane treatment, the State must, at its own initiative, promote and further an ordinary criminal action, for this is the adequate means to clarify the facts, determine the applicable criminal penalties, and enable other means of pecuniary reparation.⁷ Along these lines, 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.⁸

15. With respect to the facts alleged in this petition, the Commission observes that the National Unit of Human Rights of the National Office of the Prosecutorial Offices of the Attorney General's Office has

⁷ IACHR, Report No. 78/16. Petition 1170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016, par. 31.

⁸ IACHR, Report No. 44/18, Petition 840-07. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, par. 11.

conducted a criminal investigation since April 1998. In this regard, the Commission considers the efforts made by the State in the criminal investigation directing its efforts to the prosecution and punishment of those responsible, including the resolution issued on September 27, 2016 by the Attorney General's Office in which it decided to categorize the alleged victim's murder as a crime against humanity and declared the criminal action imprescriptible. Nonetheless, the Commission notes that according to information presented by the parties, the criminal investigation is still in its preliminary stage after 22 years of the alleged facts, following the acquittal of July 6, 2001, by the Sixth Criminal Court of the Specialized Circuit of Bogotá. In view of the foregoing, the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention applies in the instant case.

16. Furthermore, regarding the claim for damages in the contentious-administrative venue, the Commission reiterates that in order to determine the admissibility of a claim such as the one at hand, an action for direct redress is not a suitable mechanism and need not be exhausted, in that it is not appropriate for securing comprehensive redress and justice for the next-of-kin.⁹

17. The Commission observes that it received the petition on May 31, 2011. Given the context and the characteristics of the instant case, the Commission finds that the petition, having been presented within a reasonable time, the admissibility requirement of timeliness has been met.

VII. COLORABLE CLAIM

18. The Commission notes that the instant petition includes allegations regarding the alleged extrajudicial execution of José Eduardo Umaña Mendoza as a result of his work as a human rights defender, in the context of different persistent threats and attempts on his life and integrity; a lack of effective judicial protection and investigation into these facts; inadequate investigative practices, and the forced displacement of the alleged victim's family. In view of these considerations and having analyzed the legal and factual elements presented by the parties, the Commission deems that the allegations by the petitioning party are not manifestly groundless and require an analysis of the merits. If proven to be true, the facts alleged here may constitute violations of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), 17 (rights of the family), 22 (freedom of movement and residence), and 25 (right to judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof, to the detriment of José Eduardo Umaña and his family.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 7, 8, 13, 17, 22, and 25 of the American Convention, in connection with Article 1.1 thereof; and

2. To notify the parties of this decision; to proceed 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 5th day of the month of August, 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 Stuardo Ralón Orellana, Commissioners.

⁹ IACHR, Report No. 40/18, Petition 607-07. Admissibility. Nelson Enrique Giraldo Ramírez and Family. Colombia. May 4, 2018, par. 15.