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REPORT No. 78/24

PETITION 102-14

INADMISSIBILITY REPORT

JAIRO ENRIQUE MORENO MORENO
COLOMBIA

Approved electronically by the Commission on June 5, 2024.

Cite as: IACHR, Report No. 78/ 24. Petition 102-14. Inadmissibility.
Jairo Enrique Moreno Moreno. Colombia, June 5, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Pedro Moreno Moreno
Alleged victims:	Jairo Enrique Moreno Moreno
Respondent State:	Colombia ¹
Rights invoked:	No articles of the American Convention on Human Rights are specified ² or any other treaty over which the Inter-American Commission has jurisdiction

II. PROCESSING BY THE IACHR³

Filing of the petition:	January 26, 2014
Additional information received during the initial review stage:	October 28 , November 2 and 5; November 16, 2016
Notification of the petition to the State:	June 27, 2022
State's first response:	October 19, 2022
Warning about possible archiving:	July 8, 2020
Petitioner's response to a warning of possible filing:	August 14, 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>:	Not applicable
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, under the terms of Section VI.
Timeliness of the petition:	Not applicable

¹Pursuant 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.

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

³Each 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

Position of the petitioning party

1. The petitioner alleges the international responsibility of the Colombian State for the lack of reparation for the murder of Mr. Jairo Enrique Moreno (hereinafter "Mr. Moreno"), while he was performing his duties as a police officer, alleging that the State authorities failed to provide the necessary measures of prevention and protection for the performance of his police duties.

2. On May 9, 2007, Mr. Moreno was the target of a terrorist attack perpetrated by members of the FARC-EP, while he was carrying out a police operation in the village of San Vicente, municipality of Bolívar, department of Santander. It states that Mr. Moreno died from several injuries caused by the explosion of an explosive device, along with eight other police officers. The petitioner argues that the National Police is responsible for the attack and its consequences, due to the fact that it did not carry out the intelligence tasks needed to successfully execute the operation in which Mr. Moreno participated.

3. From the information provided by the petitioning party -and complemented by the State- it appears that on July 23, 2009, Mr. Moreno's next of kin filed a direct reparation action before the Administrative Court of Santander. However, in a ruling dated August 28, 2009, the aforementioned court rejected the claim due to the expiration of the action, stating that: (i) Mr. Moreno's death occurred on May 9, 2007, the date from which the number of years allowed to file such a suit began; (ii) on April 24, 2009, the plaintiff requested an out-of-court settlement hearing (*conciliación extrajudicial*), which was held on June 2, 2009; (iii) as a consequence of settlement, expiration of the action was delayed by one month and nine days; therefore, on June 19, 2009 the action expired; and (iv) on July 23, 2009, the plaintiffs filed the action, that is, one month and four days after the deadline for its filing.

4. on May 24, 2010, the relatives of Mr. Moreno filed an appeal against this decision before the Council of State, alleging that since the settlement stage was not successful, three more months should have been added to the expiration term, in accordance with the jurisprudence established by the Administrative Court of Cundinamarca, Third Section, Subsection B. However, by judgment of February 7, 2011, the Administrative Contentious Chamber, Third Section, Subsection C of the Council of State, confirmed the appealed judgment, establishing, inter alia, that:

[...] In the present case it is found that the death of the National Police officer JAIRO ENRIQUE MORENO MORENO occurred on May 9, 2007, for which reason the two (2) year term to file the claim for direct reparation runs from May 10, 2007 to May 10, 2009.

However, the request for an out-of-court settlement was filed by the plaintiff on April 24, 2009 (folios 39 to 44 of the main file) and the certificate of failure to reach a settlement was issued on June 2, 2009 (folio 49 of the main file), which means that the expiration term of the direct reparation action was suspended between April 24 and June 2, 2009, both dates inclusive.

Consequently, it is found that between May 10, 2007 and April 23, 2009, one (1) year, eleven (11) months and thirteen (13) days elapsed, with seventeen (17) days remaining for the expiration of the action, from June 3 to 19, 2009.

This means that on July 23, 2009, the date of filing of the claim for direct reparation, the expiration of the action had already occurred and, therefore, it was necessary to reject it, as the a-quo rightly ruled, in a decision that should be confirmed.

Principal allegations of the petitioning party

5. The petitioning party alleges that the lack of administrative reparation in favor of Mr. Moreno's next of kin violated his human rights, arguing that the State is responsible for the death of Mr. Moreno, because it failed to deploy preventive and protective measures to prevent the attack in which he died as an agent of the National Police. Likewise, with respect to the expiration of the protection action, the petitioning

party states that this occurred due to the fact that: " *We are not aware of the laws, but other families who sued for the same facts and rights had their claim for reparations accepted [...]*".

Position of the Colombian State

6. Colombia, for its part, complements the information provided by the petitioning party and adds that as a result of the events that led to the death of Mr. Moreno and other police officers, a criminal proceeding was initiated that culminated in the arrest and punishment of two individuals, as follows:

[...] the First Prosecutor's Office of the Specialized Unit of San Gil, attached to the Santander Sectional Office, conducted the investigation under File No. 688616000158200700116 for the homicide of National Police agents Jairo Enrique Moreno Moreno, [...] and others.

The Attorney General's Office points out that in the investigation a methodological program was developed and various tests were ordered, which allowed the indictment to be issued on September 2, 2009, and a preventive detention measure was ordered against the accused Sergio Edwin Jerez Castañeda and Carlos Iván Peña Orjuela, for the crimes of aggravated conspiracy to commit a crime and terrorism.

Likewise, Edwin Andrés Dávila Martínez was charged with the crime of manufacture, trafficking and carrying of weapons for the private use of the armed forces, in which, upon presentation of the indictment, the charges were separated, and the investigation was filed under the number 680016000000201400049. On May 27, 2014, the Second Criminal Court of the Specialized Circuit of Bucaramanga issued a conviction.

Regarding the defendant Germán González Aguilar, it is indicated that the First Criminal Court of the Specialized Circuit of Vélez, Santander, issued a conviction, due to the separation of charges, under File No. 680016000000201000302, on November 18, 2015, for the crime of rebellion.

7. The State affirms, as established by the petitioning party itself, that the central object of the petition is the lack of economic reparations for the death of Mr. Moreno in favor of his next of kin. Colombia then requests the IACHR to declare the present petition inadmissible because: (a) the petition was filed extemporaneously; (b) the facts alleged in the petition are manifestly unfounded; and (c) domestic remedies were improperly exhausted.

8. In relation to point (a), it argues that the last decision issued internally, in the framework of the action for direct reparation, was the one issued on February 7, 2011 by the Contentious Administrative Chamber, Third Section, Subsection C of the Council of State. Thus, considering that the petition was filed before the IACHR on January 26, 2014, it argues that it was filed outside the six-month period provided for in Article 46(1)(b) of the Convention, in fact, two years, nineteen months, and eleven days later.

9. Regarding point (b), Colombia establishes that in the specific case there are no elements indicating that there was a real or immediate risk to Mr. Moreno that the authorities knew or should have known about and, therefore, the State did not have the possibility of adopting 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.

10. Finally, with respect to point (c), Colombia establishes that the action for direct reparation constitutes an adequate and effective remedy for the recognition of the State's possible responsibility for human rights violations and the provision of the necessary measures for comprehensive reparation. These measures involve, among others, the recognition of compensation, the adoption of rehabilitation measures, satisfaction, and guarantees of non-repetition. However, it alleges that the petitioner improperly exhausted this remedy by filing it extemporaneously, as has been established in the preceding paragraphs. In this regard, it alleges that the petition is inadmissible under Article 46(1)(a) of the American Convention.

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

11. In the present case, the central object of the petition is specifically the lack of economic reparation in favor of the family members of Mr. Jairo Enrique Moreno Moreno, arguing that his death in the line of duty was the result of the lack of prevention and protection by the state entities.

12. In this regard, it appears from the file that Mr. Moreno's relatives filed a lawsuit for direct reparation claiming the responsibility of the Ministry of National Defense and the National Police for his death. However, by order of August 28, 2009, the Administrative Court of Santander rejected the claim on the grounds that the action had lapsed. Mr. Moreno's relatives filed an appeal against that ruling. However, on February 7, 2011, the Administrative Chamber, Third Section, Subsection C of the Council of State upheld the appealed decision. The State, in turn, alleges that domestic remedies were not duly exhausted and that the petition was filed extemporaneously.

13. Accordingly, as established by the domestic judicial bodies, detailed in the section *above*, the Commission concludes that the petitioner did not duly comply with the requirement of timely exhaustion of domestic remedies. It considers, moreover, that the domestic remedies pursued have been rejected on reasonable and non-arbitrary procedural grounds, such as that the remedies listed above were not filed within the time limits established by domestic law.⁴ Therefore, compliance with the requirement set forth in Article 46(1)(a) of the American Convention cannot be deemed to have been met.

14. Apart from this, the Commission notes that the last judicial decision adopted in the domestic jurisdiction is dated February 7, 2011, and the present petition was received at the IACHR on January 26, 2014, almost three years later. Nor, therefore, does the petition comply with the deadline requirement established in Article 46(1)(b) of the American Convention.

VII. DECISION

1. To declare the present petition inadmissible.
2. To notify the parties of this decision, 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 June, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁴ See, for example, IACHR, Report No. 61/23. Petition 996-10. Inadmissibility. Juan Carlos Castro Porras. Costa Rica. May 10, 2023, par. 15. Report No. 90/03, Petition 0581-1999. Inadmissibility. Gustavo Trujillo González. Peru. October 22, 2003, par. 32.