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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 5/97; Case 11.227
Title/Style of Cause:	Jose Bernardo Diaz et al. v. Colombia
Doc. Type:	Decision
Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman Members: Dr. Oscar Lujan Fappiano, Dean Claudio Grossman, Dr. Jean Joseph Exume. Commissioner Alvaro Tirado Mejia, national of Colombia, did not participate in the discussion and voting on this case, in accordance to Article 19 of the Regulations of the Commission.
Dated:	12 March 1997
Citation:	Diaz v. Colombia, Case 11.227, Inter-Am. C.H.R., Report No. 5/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
Represented by:	APPLICANTS: REINICIAR and the Comision Colombiana de Juristas
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1. The petitioners in this case (REINICIAR and the Comisión Colombiana de Juristas) allege that the Republic of Colombia (the "State", the "Colombian State" or "Colombia") is responsible for violations of the human rights set forth in the American Convention on Human Rights (the "Convention" or the "American Convention") in relation to the persecution of the membership of the Patriotic Union political party. The Inter-American Commission on Human Rights (the "Commission") finds that the case is admissible.

I. BACKGROUND

A. Context

2. The Patriotic Union formed as a political party on May 28, 1985 as a result of peace negotiations between the Revolutionary Armed Forces of Colombia (the "FARC") and the State of Colombia presided by President Belisario Betancur Cuartas. The parties agreed, during those peace negotiations, to the establishment of the Patriotic Union as a political party which would enjoy the guarantees necessary to allow it to function to the same extent as all other political parties. The State further confirmed that it would ensure that the leadership of the FARC would be allowed to participate in political activities.

3. The Patriotic Union was not conceived as a political party in the strictest sense of the term, but more as a political alternative to the traditional power structure that would serve as a vehicle for the various manifestations of civil and popular protest. The Patriotic Union was also

envisioned as the political vehicle of the FARC for possible reassimilation into civilian life. The newly-formed party received immediate support from opposition left-leaning political movements, such as the Communist Party, and quickly obtained significant electoral success in elections in 1986 and 1988.

B. Allegations of the Petitioners

4. The petitioners have alleged that, since the formation of the Patriotic Union, its membership has suffered systematic persecution, manifesting itself in extrajudicial executions, disappearances, unfounded criminal prosecutions, attempted assassinations and threats. The petitioners assert that the persecution of the membership of the Patriotic Union constitutes an attempt to eliminate the party as a political force through violence and intimidation carried out against its members and leaders. The petitioners allege that the acts committed against the members of the Patriotic Union constitute genocide and the violation of the human rights protected in the Convention.

5. The petitioners argue that the State of Colombia is responsible for the human rights violations committed against the Patriotic Union on several grounds. First, they assert that State agents have been involved in crimes committed against members of the Patriotic Union. Second, they claim that the State of Colombia has not fulfilled its duty to ensure the human rights of the members of the Patriotic Union party by failing to act adequately to prevent, investigate and punish the crimes committed against the members of the Patriotic Union.

C. Position of the State

6. The State has argued that the petitioners' claim regarding genocide should not be admitted for decision by this Commission. The State has sought to establish, among other theories, that the facts set forth by the petitioners do not tend to establish genocide, because they do not fit within the definition of that violation.

7. The State has also argued that the claim of the petitioners is inadmissible for failure to meet the technical requirements for the admissibility of a petition set forth in articles 46 and 47 of the Convention and article 32 of the Regulations of the Inter-American Commission on Human Rights (the "Regulations of the Commission"). The State has also argued that the case may not be admitted as presented, because the victims and facts do not demonstrate sufficient connection and have not been adequately individualized. In addition, the State has asserted that the Commission may not admit the case on the grounds that the Commission previously analyzed the facts subject of the petition in a general report relating to the human rights situation in Colombia. The State has finally argued that the petition is inadmissible for failure to meet the requirement of exhaustion of domestic remedies.

II. PROCEEDINGS BEFORE THE COMMISSION

8. Before a formal petition was received in this case, the Commission acted pursuant to article 29 of its Regulations, on October 23, 1992, to request the State of Colombia to implement precautionary measures for the protection of certain leaders of the Patriotic Union party.

9. On December 16, 1993, the petitioners filed a formal petition with the Commission in this case. The Commission opened case 11.227 on February 16, 1994 and sent the pertinent parts of the petition to the State of Colombia for its response.

10. On December 21, 1993, the Commission again acted to request the implementation of precautionary measures by the State of Colombia on behalf of the leadership of the Patriotic Union party. The State responded to the Commission's request for precautionary measures on February 2, 1994.

11. The petitioners submitted additional background information in the case on April 6, 1994.

12. The State delivered to the Commission its answer in the case on June 3, 1994. The petitioners provided their rejoinder on August 5, 1994. The response of the petitioners was sent to the State on August 18, 1994.

13. The State requested an extension of time to respond to the rejoinder of the petitioners on September 23, 1994. The Commission granted the extension on September 27, 1994.

14. The State sent to the Commission its response to the petitioners' rejoinder on November 28, 1994. The petitioners responded with their observations on January 6, 1995.

15. On March 17, 1995, the State requested an extension of time to respond to the petitioners' observations of January 6, 1995. The Commission granted the extension requested by letter of March 21, 1995. The State submitted its response to the petitioners' observations on April 5, 1995. On June 14, 1995, the petitioners submitted their observations in relation to the State response of April 5, 1995.

16. The petitioners sent additional information to the Commission on March 29, 1995. This information sought to address specific questions relating to the admissibility of petitions involving groups of victims. On May 2, 1995, the State sent a note to the Commission protesting the fact that information about the March 29 communication of the petitioners, which the State had not received, had been published in the press. The Commission forwarded the communication of the petitioners of March 29 to the State on May 15, 1995. The State responded to the petitioners' communication on July 21, 1995.

17. On December 10, 1996, the Commission received additional information in the case. The Commission forwarded that information to the State on December 19, 1996.

18. On December 19, 1996, the Commission directed notes to each of the parties communicating its decision to place itself at the disposition of the parties in this case for the purposes of seeking a friendly settlement. The Commission requested a response from the parties within 30 days. The petitioners responded on January 24, 1997. They stated their willingness to engage in friendly settlement negotiations if the State agreed to address several issues considered by the petitioners to be crucial to an acceptable friendly settlement. The response of the petitioners was sent to the State on February 6, 1997.

19. The State requested an extension of time to respond to the Commission's offer to place itself at the disposition of the parties for the purposes of seeking a friendly settlement. The Commission granted an extension of 30 days by letter dated February 5, 1997.

20. The Commission convoked hearings in this case on several different occasions. At each of these hearings, representatives of the State and the petitioners appeared before the Commission to argue questions of fact and law pertinent to the case.

III. ANALYSIS OF ADMISSIBILITY

A. The presentation of facts which tend to establish a violation

21. Pursuant to article 47(b) of the Convention, the Commission may find a petition inadmissible when it does not state facts that tend to establish a violation of the rights guaranteed by the Convention. The petitioners allege that extrajudicial executions, disappearances, assassination attempts, false judicial proceedings and threats have been carried out against the members of the Patriotic Union named as victims in this case in an attempt to eliminate the political party. The petitioners ask the Commission to conclude that the acts alleged constitute genocide, interpreting the American Convention in concordance with customary international law and the Convention on the Prevention and Punishment of the Crime of Genocide (the "Convention on Genocide"). They then assert that the genocide implies violations of the specific articles of the American Convention.

22. The Convention on Genocide, which codifies customary international law on genocide,[FN1] defines genocide as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.[FN2]

[FN1] See Reservations to the Convention on Genocide, 1951 ICJ Rep. 15 (Advisory Opinion of 28 May); Restatement of the Law Third, Restatement of the Foreign Relations Law of the United States §702(a) and comment d (1987).

[FN2] Opened for signature 9 Dec. 1948, 78 UNTS 277 (emphasis added).

The State of Colombia has ratified the Convention on Genocide and is bound by that instrument. The Commission has the competence to interpret the American Convention in the light of the Convention on Genocide and customary international law.

Article 29(b) of the Convention provides that the provisions of the Convention shall not be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party." The Court has noted with favor that the Commission has interpreted this provision as providing the Commission with competence to invoke treaties other than the American Convention "regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the inter-American system." I/A Court H.R., "Other Treaties" Subject to the Advisory Jurisdiction of the Court (article 64 American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, pars. 43-44.

23. The petitioners have not alleged facts which would tend to show that the Patriotic Union is a "national, ethnical, racial or religious group." Instead, the petitioners have alleged that the members of the Patriotic Union have been persecuted solely because of their membership in a political group. Although political affiliation may be intertwined with national, ethnic or racial identity under certain circumstances,[FN3] the petitioners have not alleged that such a situation exists in relation to the membership of the Patriotic Union.

[FN3] See Leo Kuper, *Genocide and Mass Killings: Illusions and Reality in The Right to Life in International law* (ed. B.G. Ramcharan 1985) at 118.

24. The definition of genocide provided in the Convention does not include the persecution of political groups, although political groups were mentioned in the original resolution of the General Assembly of the United Nations leading to the preparation of the Convention on Genocide.[FN4] The mass murders of political groups were explicitly excluded from the definition of genocide in the final Convention.[FN5] Even in its more recent application in fora such as the Yugoslavia War Crimes Tribunal, the definition of genocide has not expanded to include persecution of political groups.[FN6]

[FN4] Resolution 96(I) of the General Assembly of the United Nations.

[FN5] See Study on the Prevention and Punishment of the Crime of Genocide prepared by Mr. Nicodeme Ruhashyankiko, Special Rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/416 (1978) at 21; Leo Kuper, *supra* 4, at 118.

[FN6] See Secretary General's Report on Aspects of Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, Article 4, 32 I.L.M. 1163 (1993) (defining genocide as acts of persecution committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group").

25. The Commission concludes that the facts alleged by the petitioners set forth a situation which shares many characteristics with the occurrence of genocide and might be understood in common parlance to constitute genocide. However, the facts alleged do not tend to establish, as a matter of law, that this case falls within the current definition of genocide provided by international law. The Commission therefore shall not analyze the allegation of genocide on the merits.

26. However, the petitioners have alleged facts which tend to establish a pattern and practice of mass political killings and extreme persecution carried out against the membership of the Patriotic Union in an attempt to eliminate the party physically and as a political force. The petitioners attached to their petition a list of 1163 members of the Patriotic Union who were extrajudicially executed between 1985 and 1993. They also provided a list of 123 persons who were forcibly disappeared, a list of 43 persons who survived assassination attempts and a list of 225 persons who were threatened during that same time period. The petitioners have continued to provide lists of numerous Patriotic Union members killed each year. In the hearing held before the Commission in this case in October of 1996, the petitioners presented information indicating that one Patriotic Union activist was assassinated every two days for the period covering January to September, 1996.

27. The petitioners also attached to the original petition a decision of the Colombian Constitutional Court which referenced the "progressive elimination" of the Patriotic Union. That Court decision also notes that, "[T]he simple numbers of deaths and disappearances of [the party's] members and sympathizers between 1985 and 1992 . . . shows in an unquestionable manner the objective dimension of the political persecution carried out against the party." [FN7]

[FN7] Decision of the Constitutional Court of Colombia, Action for Protective Relief ("Tutela"), No. T-439, July 2, 1992 (decision in an action for protection brought by a member of the Patriotic Union - Luis Humberto Rolón Maldonado).

28. The petitioners also included with their petition to the Commission the Report on Cases of Homicide of Members of the Patriotic Union and Hope, Peace and Liberty Political Parties prepared by the Colombian Ombudsman for the People (the "Report of the Ombudsman"). [FN8] That report also constitutes evidence tending to establish a pattern of political persecution against the Patriotic Union. The Report of the Ombudsman verified more than 700 homicides committed against Patriotic Union members during the period between 1985 and 1992. The annex to the Report of the Ombudsman contains numerous press clippings relating to specific massacres and other acts of violence committed against members of the Patriotic Union.

[FN8] The Constitutional Court ordered the preparation of this report in its Decision No. T-439 of July 2, 1992.

29. The Report of the Ombudsman also defines more specifically some of the characteristics of the violence carried out against the members of the Patriotic Union, tending to establish the contours of a pattern of persecution. For example, the report concludes that the greatest numbers of violations of human rights committed against the Patriotic Union coincide with those areas where the Patriotic Union has achieved the greatest electoral support.[FN9] The report also notes that the violence against the Patriotic Union is directed particularly against members of the party who are elected to political office.[FN10] The Report of the Ombudsman also concludes that the greatest violence against the members of the Patriotic Union occurred during periods of electoral activity.[FN11]

[FN9] Report on Cases of Homicide of Members of the Patriotic Union and Hope, Peace and Liberty Political Parties prepared by the Colombian Ombudsman for the People [hereinafter Report of the Ombudsman] at 39.

[FN10] Id. at 38.

[FN11] Id. at 109-10.

30. The petitioners have also set forth before the Commission information tending to prove that Colombian State agents have committed some of the acts of persecution against the party and that the State of Colombia has tolerated the pattern and practice of political persecution against the Patriotic Union.

31. The petitioners have never argued that there exists an affirmative policy of the Colombian State to act in persecution and extermination of the Patriotic Union. However, the petitioners have alleged that members of the armed forces of Colombia have committed some of the acts of persecution carried out against the members of the Patriotic Union. The petitioners indicated, in the lists of members of the Patriotic Union affected by the persecution which were included with the original petition, which actors were allegedly responsible for each act of violence. In a portion of those cases, the petitioners have alleged that members of the police and military committed the abuses. According to the information submitted with the petition of the petitioners, Colombian State entities also found indicia of participation by State officials in some of the cases of violence against the Patriotic Union. Disciplinary proceedings against State officials were initiated in some cases.[FN12]

[FN12] Id. at 70.

32. The petitioners also set forth facts tending to demonstrate that the State of Colombia tolerates these acts committed by its agents and others through its failure to adequately investigate and sanction the crimes committed against the membership of the Patriotic Union. The petitioners set forth in their petition that almost no sanctions had been imposed in the 1163 cases of extrajudicial execution that they list as having occurred between 1985 and 1993. Similarly, the Report of the Ombudsman found that, in the 717 cases of extrajudicial executions verified in the report, only 10 cases had resulted in a final decision in the criminal courts. Six of

those final decisions resulted in acquittals.[FN13] In relation to the lack of results in the proceedings, the Report of the Ombudsman further notes that, at the time of the preparation of the report, over 40% of the cases had been ongoing for more than four years.[FN14]

[FN13] Id. at 43, 70.

[FN14] Id. at 71.

33. The Report of the Ombudsman concluded that "the guarantees and security which would allow [the Patriotic Union] to carry out its electoral activities, in the same manner as other political groups, have not been granted to this political force and its leadership." [FN15] The Report further concluded that, "it is evident that the weight of the law has not fallen upon those persons or authorities who have violated the fundamental rights [of the members of the Patriotic Union] or who have failed to respect the guarantees due to them." [FN16]

[FN15] Id. at 43.

[FN16] Id.

34. The information provided by the petitioners also tends to establish that the State of Colombia has tolerated the pattern of persecution carried out against the Patriotic Union by failing to act to prevent that persecution. First, the alleged failure to properly investigate and sanction acts committed against the Patriotic Union would also constitute a failure to effectively prevent human rights violations against the Patriotic Union. The impunity created by failure to investigate and sanction creates a situation in which further abuses are likely to occur. The Court has so established in several provisional measures cases in which it ordered the implementation of effective measures to investigate and sanction "as an essential element of the duty of protection." [FN17]

[FN17] Serech and Saquic Case, Provisional Measures, Resolution of the Inter-American Court of Human Rights of June 28, 1996; Vogt Case, Provisional Measures, Resolution of the Inter-American Court of Human Rights of June 27, 1996.

35. The petitioners have alleged that the State has also failed to take other effective measures to prevent the persecution of the Patriotic Union. The information provided by the petitioners tends to establish that the State of Colombia was aware of threats in certain cases and failed to take appropriate action to prevent the consummation of acts carried out against the Patriotic Union. The Report of the Ombudsman concluded that some cases of massacres analyzed in the report were characterized by an absence of guarantees before the violence, despite previous warnings about the danger. [FN18] In cases of violence committed by paramilitary organizations, the Report of the Ombudsman concluded that, "[u]pon occasion the armed forces or the police failed to appear when the violence occurred and failed to confront the paramilitaries." [FN19]

[FN18] Report of the Ombudsman at 127.

[FN19] *Id.* at 28.

36. The Commission thus concludes that the petitioners have set forth facts and information tending to establish a pattern and practice of political persecution carried out against the Patriotic Union with the goal of exterminating that group and tolerance of that practice by the State of Colombia. The Court established, in the Velásquez Rodríguez Case, important jurisprudence relating to the establishment of a claim of human rights violations under the Convention on the basis of a pattern or practice. The Court held that if a practice of grave human rights violations may be shown to have been carried out by the State or at least tolerated by it, and if the violation alleged in a specific case can be linked to that practice, then the violation will be established in the specific case.[FN20]

[FN20] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, par. 126.

37. The petitioners have presented lists of specific victims who have allegedly suffered extrajudicial executions, forced disappearances, assassination attempts and threats as a result of the persecution of the Patriotic Union. The petitioners have provided certification indicating that each of the individual victims was associated with the Patriotic Union.

38. The Commission must therefore determine whether a pattern and practice of persecution of the membership of the Patriotic Union with the involvement or at least with the tolerance of the Colombian State has been established to which these victims would be linked. If so, the individual violations will be established as to the listed victims and would constitute violations of the following rights protected in the Convention: the right to juridical personality (Article 3), the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to freedom of association (Article 16), the right to participate in government (Article 23), and the right to a fair trial and to judicial protection (Articles 8 and 25). The petition is therefore admissible, pursuant to Article 47(b) of the Convention, on the grounds that the petitioners have stated facts which would tend to establish multiple violations of the Convention.

B. Connection between facts and victims

39. The State has argued that the case is inadmissible as presented for failure to establish sufficient connection between the allegations of violations against numerous individuals to allow them to be processed and decided jointly by the Commission. The State argues that the case involves "the aggregation of numerous individual communications not necessarily with any connection." [FN21]

[FN21] Government Response of April 5, 1995.

40. The Regulations of the Commission establish that, "[a]ny petition that states different facts that concern more than one person, and that could constitute various violations that are unrelated in time and place shall be separated and processed as separate cases." [FN22] The Commission has not interpreted this provision to require that the facts, victims and violations set forth in a petition strictly coincide in time and place in order to allow processing as a single case.

[FN22] Regulations of the Inter-American Commission on Human Rights, Article 40.

41. Rather, the Commission has processed individual cases dealing with numerous victims who have alleged violations of their human rights occurring at different moments and in different locations so long as all of the victims allege violations arising out of the same treatment. Thus, the Commission may process as a single case the claims of various victims alleging violations arising out of the application of legislation or a pattern or practice to each of the victims, without regard to the time and place in which the victims received this similar treatment. The Commission not only has refused to separate such cases for processing but has also accumulated separate cases with such characteristics into single cases for processing. [FN23]

[FN23] See, e.g., Report No. 24/82 (Chile), March 8, 1982, Annual Report of the Inter-American Commission on Human Rights 1981-1982, OEA/Ser.L/V/II.547, Doc. 6 rev. 1, 20 September 1982 (finding violations of the human rights of 50 individuals who were deported from Chile under emergency legislation).

42. Because the petitioners have set forth facts which tend to demonstrate that the victims in this case suffered violations as a part of an alleged pattern and practice of political persecution against members of the Patriotic Union, there exists the necessary connection between the numerous individuals and facts identified to allow them to be processed together. The case is therefore appropriately admitted in its present form.

C. Individualization of the victims

43. The State has argued, on the other hand, that this case is not admissible as presented, because it relates to a broad phenomenon and therefore is excessively general. The State asserts that the Commission does not have competence to address "generic complaints" but rather may only review cases which have been "adequately individualized." [FN24]

[FN24] Government Response of June 3, 1994; Government Response of November 28, 1994.

44. In support of this argument, the State first cites the technical requirements set forth in Article 32 of the Regulations of the Commission. Article 32(b) provides that a petition addressed to the Commission shall include:

an account of the act or situation that is denounced, specifying the place and date of the alleged violations and, if possible, the name of the victims of such violations as well as that of any official that might have been appraised of the act or situation that was denounced.

45. The lists of victims provided by the petitioners in this case include the names of each victim and the date and place in which that victim allegedly suffered a human rights violation as well as an indication of the group allegedly responsible for the act committed. The petitioners thus provided information adequate to comply with the technical requirements set forth in Article 32(b) of the Regulations of the Commission. The Commission forwarded this information to the State in the form in which it was received from the petitioners.

46. The State next argues that the Commission must refuse to admit the case because of its "collective nature" on the basis of precedent established by the Commission in relation to a set of claims it received regarding grave violations of the rights of labor union activists in Colombia. The claims relating to the labor union activists were apparently presented to the Commission in a manner similar to that used by the petitioners in the present case.

47. The Commission determined that it should not process the set of claims relating to the labor union activists in one case through the individual petition mechanism, finding the group of cases to be "beyond the scope" of that mechanism. The Commission therefore simply provided information and its observations regarding these cases in the Second Report on the Situation of Human Rights in Colombia.[FN25]

[FN25] OEA/Ser.L/V/II.84, Doc. 39 rev., October 14, 1993 at 202 [hereinafter Second Report on Colombia].

48. The Commission, however, did not determine that the claims could not be processed on an individual case basis on the grounds that the petition was generic or collective. Rather, the Commission believed at the time that the large number of victims and claims made the petition inappropriate for processing as a single case under the individual petition system. However, as noted above, the Commission possesses and has exercised the competence to consider numerous individual claims in a single case so long as the claims are adequately connected. There exists no provision in the Convention, in the Statute of the Inter-American Commission on Human Rights or in the Regulations of the Commission which limits the number of individual claims or victims which may be considered in this manner.

49. The Commission opted for the publication of its observations regarding the claims of violations against labor union activists in the special country report relating to Colombia based upon its consideration of the alternative that would be most favorable for the protection of the human rights established in the Convention. The Commission possesses, pursuant to article 41 of

the Convention, a variety of functions and powers. The Commission makes the decision to employ one or more of these functions or powers in relation to a given situation, always considering the overarching function of the Commission to promote respect for and defense of human rights.[FN26] The competence to process individual petitions and to prepare such studies or reports as it considers advisable are among those functions and powers listed in Article 41.

[FN26] See I/A Court H.R., International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (articles 1 and 2 of the American Convention on Human Rights), Advisory Opinion OC-14/94 of December 9, 1994, par. 43. -----

50. Taking into account the nature of the set of claims of violations against labor union members and the fact that the Commission received the complaint in the context of an on-site visit to Colombia, the Commission decided to publish the information about the set of claims in the special country report resulting out of the on-site visit rather than to process the case through the individual petition mechanism. This decision does not constitute a precedent which precludes the processing of the present case through the individual petition system.

D. Exhaustion of domestic remedies and the period for submission of a petition to the Commission

51. The State has argued that the present case is inadmissible, pursuant to Article 46(1)(a) of the Convention for lack of compliance with the requirement of exhaustion of domestic remedies. The State also argues that the case is inadmissible, pursuant to Article 46(1)(b) of the Convention, for failure to file the petition with the Commission within the appropriate time period.

52. The State reiterates, in relation to the question of exhaustion of domestic remedies, its argument that the petition filed in this case does not meet the technical requirements for admissibility, because it does not adequately specify the details of the individual violations alleged. The State asserts that, as a result, compliance with the requirement of exhaustion of domestic remedies cannot be determined. Therefore, according to the State, the petition does not include "information on whether the remedies under domestic law have been exhausted or whether it has been impossible to do so," as required by Article 32(d) of the Regulations of the Commission.

53. As the Commission previously noted, the petitioners did provide lists of the violations alleged including the necessary details, including the names of the victims and the date and place of each alleged violation. The Commission forwarded that information to the State. The State therefore possesses information which would allow it to determine the status of domestic proceedings which have been initiated. In fact, the Report of the Ombudsman included information about the proceedings initiated in many individual cases.

54. Even more importantly, the petition and other briefs submitted by the petitioners contain important information regarding the overall ineffectiveness of domestic remedies in addressing

the crimes committed against the Patriotic Union. This information is of utmost importance in guiding the Commission in its decision on the question of exhaustion of domestic remedies, without reference to individual attempts to exhaust domestic remedies. The State received this information presented by the petitioners regarding domestic remedies. The technical requirements for admission have therefore been met, and the Commission concludes that the State was not placed at a procedural disadvantage in arguing the question of exhaustion of domestic remedies.

55. The State argues, as a substantive matter, that the applicable domestic remedies have not been exhausted in this case and that no exception to the requirement of exhaustion has been established. Pursuant to Article 46(1)(a) of the Convention, the Commission may not find a case admissible unless "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." Article 46(2) sets forth several exceptions to the requirement of exhaustion of domestic remedies where effective remedies do not exist or where access to effective remedies has been unavailable or has been delayed as a matter of law or fact. The jurisprudence of the Court has established that, "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective." [FN27]

[FN27] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of 26 June 1987. Series C No. 1, par. 88 (emphasis added).

56. The State asserts that the criminal judicial system of Colombia provides for suitable remedies for the violations alleged by the petitioners. The State notes, for example, that the Colombian Penal Code criminalizes homicide and provides for an increased penalty in cases of homicide of public officials, politicians and candidates for election. [FN28]

[FN28] See, e.g., Response of Government of June 3, 1994.

57. The petitioners have argued that the State has not discharged its burden of demonstrating that adequate and effective domestic remedies exist to address the persecution of the Patriotic Union and that those remedies have not been exhausted. They therefore argue that an exception to the requirement of exhaustion of domestic remedies applies, and that it was therefore unnecessary to demonstrate that the victims listed in this case attempted to exhaust domestic remedies.

58. The petitioners first assert that adequate domestic remedies do not exist, because Colombian legislation does not establish the crime of genocide. They argue that there exists no domestic remedy to address the genocide which they allege forms the subject of this case.

59. The Commission has concluded that the facts and violations alleged in this case do not, as a matter of law, constitute genocide. The failure of Colombian law to criminalize genocide thus

does not imply the nonexistence of a domestic remedy to address the violations at issue in this case.

60. However, the petitioners submitted further information to establish the ineffectiveness of the domestic remedies provided for under domestic law and the resulting application of an exception to exhaustion. As set forth above, the petitioners offered evidence with their petition showing that, at the time of the submission of the petition, only ten criminal cases initiated in relation to the violence against the Patriotic Union had been resolved and almost none had resulted in the sanction of those responsible.[FN29] The State has never alleged that this information was inaccurate. During the processing of this case, the petitioners have continued to provide the Commission with additional lists of members of the Patriotic Union who have been extrajudicially executed or who have been subjected to other persecution. The State has still not offered any information regarding the successful investigation or prosecution of any of the grave incidents of persecution against the members of the Patriotic Union.[FN30]

[FN29] See Report of the Ombudsman at 43, 70.

[FN30] In relation to this point, the Commission notes that the State has the nonderogable and nondelegable duty to prosecute public action crimes ("delitos de acción pública"), crimes for which the State has exclusive power to prosecute, in order to preserve public order and ensure the right to justice. In those cases, therefore, the victim and his family members cannot be required to exhaust domestic remedies. The State, through its prosecutorial and judicial bodies, must apply the criminal laws, initiating and moving a case forward through its various procedural stages to completion.

61. The Court has made clear that "the mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate" the inexistence of effective remedies.[FN31] However, the jurisprudence of the Court also suggests that, when a state is faced with numerous alleged violations and strong indicators that those violations fall into a pattern of political persecution, the domestic remedy employed may be assumed to be ineffective if some minimal proportion of success is not achieved.[FN32] The Colombian State's failure to successfully conclude criminal proceedings in cases involving the Patriotic Union suggests that the remedy provided by the domestic criminal justice system of Colombia is ineffective.

[FN31] Velásquez Rodríguez Case, Sentence of July 29, 1988, par. 67.

[FN32] See *id.*, pars. 76-77.

62. Other evidence in the record corroborates the ineffectiveness of the domestic criminal proceedings as a remedy in the case of persecution of members of the Patriotic Union. In a hearing before the Commission held on October 8, 1996, the General Director of the Colombian Office of the Prosecutor, Dr. Armando Sarmiento Mantilla, gave testimony regarding the criminal investigations carried out in relation to the persecution of the membership of the

Patriotic Union. He stated that the Office of the Prosecutor did not have competence to investigate the crimes committed against the members of the Patriotic Union as a group, because the acts of violence were committed in various departments of Colombia by different actors. He stated that the lack of connection between the cases therefore precluded any form of joint investigation. The inability or refusal of the Office of the Prosecutor to investigate these cases in a systematic manner, despite the evidence indicating that they fall into a pattern of persecution, necessarily hinders the effectiveness of the remedy of criminal prosecution in the present case.

63. The Court has established that domestic remedies need not be attempted where they exist in law but not in fact, as shown by a pattern of ineffectiveness of those remedies.[FN33] The petitioners have provided significant evidence establishing an exception to exhaustion based on a pattern of ineffectiveness of domestic remedies in addressing the violations committed against the Patriotic Union. The State has had an opportunity to refute that evidence and has failed to do so. The State has provided no evidence to demonstrate the effectiveness of the legally available domestic remedies.

[FN33] See *id.*, pars. 66, 68, 76-79.

64. The Court has established that, under these circumstances, an objection to admissibility by a State on the grounds of failure to exhaust domestic remedies may be rejected.[FN34] The Commission therefore does not accept the State's objection to admissibility on the grounds of failure to exhaust domestic remedies. The Commission expressly reserves its decision on the substantive issues relating to judicial remedies, which decision may be guided by the presentation of further evidence on those issues during the analysis of this case on the merits.

[FN34] See *id.*, pars. 68, 76-81.

65. Because domestic remedies have not been exhausted, the requirement set forth in Article 46(1)(b) of the Convention that the petition be filed within a period of six months following the date of the notification of the final ruling in the domestic proceedings does not apply. The Commission therefore rejects the State's contention that the petition does not meet the technical requirements for admission because it does not provide information which would allow a determination regarding the six-month deadline.

66. The provision regarding time limits applicable in the present case is that found in Article 38(2) of the Regulations of the Commission. That provision establishes that, "the deadline for presentation of a petition to the Commission shall be within a reasonable period of time . . . as from the date on which the alleged violation of rights has occurred."

67. The original petition in the case addressed alleged violations committed against the members of the Patriotic Union between 1985 and 1993. The petition was filed on December 16, 1993. The Commission considers that the petition was filed within a reasonable time frame after

the occurrence of the alleged violations, taking into account that all the violations are allegedly linked by a pattern of persecution against the members of the Patriotic Union.

E. Previous reference to the violations alleged in the present case

68. The State has argued that the Commission must declare this case inadmissible, because it previously addressed the allegations regarding the political persecution carried out against members of the Patriotic Union. The Commission discussed the information it had received regarding the systematic assassinations carried out against the Patriotic Union in its Second Report on the Situation of Human Rights in Colombia.[FN35]

[FN35] Second Report on Colombia at 162.

69. Neither the Convention nor the Regulations of the Commission require that the Commission declare the inadmissibility of a case where the subject of the case has previously been addressed in a general report. In fact, Article 19(2)(b) of the Regulations of the Commission specifically provides, in relevant part, that members of the Commission may not discuss or decide a matter submitted to the Commission only "if previously they have participated in any capacity in a decision concerning the same facts" (emphasis added). The discussion of specific facts in a general country report does not constitute a "decision" on those facts as would a final report on an individual petition which denounced the same or similar facts.

70. Article 41 of the Convention grants the Commission the power:

...

c. to prepare such studies or reports as it considers advisable in the performance of its duties;

...

f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention.

These two powers of the Commission are granted and implemented independently. The Commission's invocation of one of these powers should not and does not preclude the use of the other.

71. The State appears to suggest that the Commission improperly included the information regarding the Patriotic Union in the Second Report on the Situation of Human Rights in Colombia, because the Commission did not follow the procedure for individual petitions set forth in the Convention and in the Regulations of the Commission.[FN36] Because the Commission's competence to prepare general reports is independent from its power to process individual petitions, the procedures for the processing of individual petitions need not be applied in the preparation of general reports. In any case, the existence of a procedural flaw in regards to the preparation of the general report would affect only the validity of that report. It would not affect the admissibility of the present case under the individual petition system.

[FN36] See Government Response of June 3, 1994.

72. The processing of a case pursuant to the individual petition procedure is more structured than the preparation of a general report, which serves an informative rather than adjudicatory purpose. In processing an individual petition, the Commission must follow the procedures set forth in Articles 44 through 51 of the Convention. The Commission must engage in a careful analysis of the case so that it may reach conclusions of fact and law, pursuant to Articles 50 and 51 of the Convention.

73. Thus, the Commission set forth general conclusions in the Second Report on the Situation of Human Rights in Colombia in relation to the information it received regarding the Patriotic Union. Independently and pursuant to the individual petition system, it carefully considered the relevant questions of law and evidence presented in order to prepare this admissibility report. As a result, the conclusions of the Commission in this report differ slightly from the general information presented in the Second Report on the Situation of Human Rights in Colombia. For example, the Commission suggested in the general report on Colombia that the information it received indicated that genocide was being carried out against the Patriotic Union. Upon legal analysis, the Commission has concluded that the information it has received in the context of the individual petition process does not tend to establish the crime of genocide, as a matter of law. It therefore cannot be said that the information relating to the Patriotic Union included in the general country report constituted a prejudgment with regard to the decisions to be taken by the Commission in the case pursuant to the individual petition process.

74. The Commission further considers that it must be able to include information on specific human rights situations in its general reports on the human rights situations in the member states of the Organization of American States. The Commission must have the ability to include this information even where the situation involves a previously opened or potential future case under the individual petition system. Otherwise, the Commission would be forced to exclude from its general reports on countries the consideration of entire segments of the human rights panorama in those countries.

75. In the present case, the Commission published its Second Report on the Situation of Human Rights in Colombia before it received the petition which triggered the processing of this case under the individual petition system. The Commission could not ignore in its report the information it received relating to allegations of serious political persecution and violence against the Patriotic Union on the grounds that a petition might later be filed. Nor could its inclusion of this material imply a decision not to treat the situation subsequently under the individual petition system.

76. As a final consideration, the Commission notes that it has regularly admitted and decided cases pursuant to the individual petition system while also deciding to include information about the subject of the case in general reports.[FN37] Lack of objection has converted these repeated decisions of the Commission into a practice accepted by the member states of the Organization

of American States. The Court has also indicated that the Commission may publish information on a human rights situation in general reports while also deciding, or even sending to the Court, an individual case involving that same situation.[FN38] The Commission does not accept the State's objection to admissibility on the grounds that the Commission has previously analyzed this case.

[FN37] To name just a few examples, the Commission reported generally on the Myrna Mack case in Guatemala before formally finding that case admissible pursuant to the individual petition system and, similarly, reported on the case relating to the massacre at the Honduras and La Negra farms in Colombia before deciding and publishing its final decision in that case pursuant to the individual petition system. See Report 10/96, Case 10.636 (Guatemala) (admissibility report), Annual Report of the Inter-American Commission on Human Rights 1995, OEA/Ser.L/V/II.91, Doc. 7 rev., February 28, 1996; Fourth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993 at 22; Report 2/94, Case 10.912 (Colombia), Annual Report of the Inter-American Commission on Human Rights 1993, OEA/Ser.L/V/II.85, Doc. 9 rev., February 11, 1994; Second Report on Colombia at 143.

[FN38] See I/A Court H.R., Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991. Series C No. 12, par. 33.

Based on the foregoing,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

77. To declare admissible the present case.
78. To send this report on admissibility to the State of Colombia and to the petitioners.
79. To continue with the analysis of the relevant issues as they have been defined in this report in order to make a determination on the merits of the case.
80. To publish this report in the Annual Report to the General Assembly of the OAS.