

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 42/02; Petition 11.995
Session: Hundred and Sixteenth Regular Session (7 – 25 October 2002)
Title/Style of Cause: Mariela Morales Caro, Pablo Antonio Beltran Palomino, Virgilio Hernandez Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernandez Munoz, Yul German Monroy Ramirez, Gabriel Enrique Vesga (or Vega) Fonseca, Benhur Ivan Gusca Castro, Orlando Morales Cardenas, Cesar Augusto Morales Cepeda, Arnulfo Mejia Duarte, Samuel Vargas Paez, Arturo Salgado, Wilson Montilla and Manuel Libardo Diaz Navas v. Colombia
Doc. Type: Decision
Decided by: President: Juan E. Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran de la Puente.
Dated: 9 October 2002
Citation: Morales Caro v. Colombia, Petition 11.995, Inter-Am. C.H.R., Report No. 42/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by: APPLICANT: the Corporacion Colectivo de Abogados “Jose Alvear Restrepo”
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I. SUMMARY

1. On October 8, 1997 the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition presented by the Corporación Colectivo de Abogados “José Alvear Restrepo” (hereinafter “the petitioners”) alleging that on January 18, 1989 a paramilitary group, in coordination with members of the Army, massacred Mariela Morales Caro, Pablo Antonio Beltrán Palomino, Virgilio Hernández Serrano, Carlos Fernando Castillo Zapata, Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga (or Vega) Fonseca, Benhur Iván Gusca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Arnulfo Mejía Duarte, and Samuel Vargas Páez, and attempted to kill Arturo Salgado, Wilson Montilla, and Manuel Libardo Díaz Navas, while they were collecting evidence in their capacity as judicial officers, in the district of La Rochela, in the lower Simacota valley, department of Santander, Republic of Colombia (hereinafter “the State” or “the Colombian State”).

2. The petitioners alleged that the State is responsible for violating the rights to life, humane treatment, and judicial protection enshrined in Articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), and

for breaching the generic obligation to respect and ensure the rights established therein. As for the admissibility of the claim, they considered that the exception to the requirement of prior exhaustion of domestic remedies, based on judicial delay, provided for at Article 46(2)(c) of the American Convention, applies in the instant case.

3. The State, for its part, alleged that the victims' deaths had been duly investigated in the domestic jurisdiction, and that justice had been administered adequately in the first stage of the proceeding. In addition, it noted that part of the investigation remains open due to the complexity of the matter; accordingly, in the State's view domestic remedies have not been exhausted.

4. Based on the analysis of the parties' positions, the Commission concluded that it is competent to decide on the claim presented by the petitioners and that the petition is admissible, in light of Articles 46 and 47 of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

5. On November 3, 1997 the IACHR requested additional information from the petitioners, which was submitted on March 2, 1998. On April 1, 1998 the Commission processed the claim under number 11.995, in keeping with the provisions of the Regulations in force until April 30, 2001 and forwarded the pertinent parts of the complaint to the Colombian State, and granted 90 days to submit information. In the face of the State's prolonged silence, the IACHR reiterated its request for information on December 19, 2000. On January 25, 2001 the State requested an additional time period to comply with the IACHR's request. On February 26, 2001 during its 110th regular session, the Commission held a hearing on the matter, with the participation of both parties.

6. On March 5, 2001 the State finally presented its written response to the original petition, which was sent to the petitioners. On February 14, 2002 the petitioners submitted copies of official documents as part of the evidentiary support for their claim. On March 22, 2002 the IACHR sent the State the list of official documents submitted by the petitioners, and inquired into the necessity and advisability of forwarding to it copies of resolutions issued by its own agencies. On April 1, 2002 the State confirmed its interest in receiving those annexes, which were forwarded to it forthwith.

III. POSITIONS OF THE PARTIES

A. Petitioner's position

7. The information provided by the petitioners indicates that in the late 1980s a series of gravely violent incidents occurred in the middle Magdalena region, at the hands of private justice organizations acting in complicity with members of the Army.[FN1] Among the acts of violence, special mention can be made of the brutal massacre of 19 merchants who were traveling from the city of Cúcuta, department of Norte de Santander, to the city of Medellín, department of Antioquia, in October 1987.[FN2] Given the nature of the events in question, the 4th and 16th criminal investigative judges of the Judicial District of San Gil, Santander—Mariela Morales Caro and Pablo Antonio Beltrán Palomino—decided to form a judicial commission along

with their respective secretaries, Virgilio Hernández Serrano and Carlos Fernando Castillo Zapata, and eight investigators from the Technical Corps of the Judicial Police—Luis Orlando Hernández Muñoz, Yul Germán Monroy Ramírez, Gabriel Enrique Vesga (or Vega) Fonseca, Benhur Iván Guasca Castro, Orlando Morales Cárdenas, César Augusto Morales Cepeda, Wilson Montilla, and Manuel Libardo Díaz Navas— and to visit the area in two vehicles, with their drivers, Arnulfo Mejía Duarte, and Samuel Vargas Páez.

[FN1] Resolution 011 INT of September 12, 1997, N° 101, Office of the Regional Prosecutor, National Human Rights Unit, Office of the Attorney General.

[FN2] The IACHR examined this matter and declared it admissible in its Report N° 112/99, published in the Annual Report IACHR 1999. The so-called “case of the 19 merchants” was the subject of a confidential report on the merits under Article 50 of the American Convention, and was eventually referred to the jurisdiction of the Inter-American Court of Human Rights in January 2001, where it is awaiting a decision on the merits. See I/A Court H.R., Case of the 19 Merchants, Preliminary Objections, Judgment of June 12, 2002.

8. Based on the information provided by the petitioners, on January 18, 1989 the judicial officers went to the district of La Rochela, in the lower Simacota valley, department of Santander, to interview a series of witnesses. They allege that on reaching the bridge over the Opón river, they were intercepted by a group of approximately 15 armed and uniformed men who claimed to be members of the 33rd Front of the Fuerzas Armadas Revolucionarias de Colombia (FARC). A commander “Ernesto” allegedly interrogated them about why they were in the area, after which he offered to collaborate with them in clarifying the crime involving the 19 merchants. Apparently, one hour later, when they were already in La Rochela, they were intercepted by a second group of approximately 40 armed men who also identified themselves as members of the FARC, and then by a third group of about eight members, under the command of Adolfo de Jesús Baquero Agudelo, alias “Vladimir.” Vladimir allegedly introduced himself as a guerrilla commander, even though he was one of the leaders of the paramilitary or private justice group responsible for the massacre of the 19 merchants.

9. Vladimir allegedly offered to take the judicial officers to the crime scene and alerted them that members of the Army might appear who would endanger their lives or seek to thwart the investigation. Apparently he persuaded them to collaborate in a simulation that consisted in allowing themselves to be secured as though they were being held by the guerrillas in case of any confrontation with the official forces. In this way, the armed men bound the victims by the feet and hands and placed them in the victims’ own vehicles. Once they were defenseless and under the control of the armed group, the victims were taken to the location known as “La Laguna,” where they were shot, then killed with a gunshot wound to the head. Finally, the vehicles were painted with slogans that suggested the involvement of the guerrillas.

10. Miraculously, three of the victims—Arturo Salgado, Wilson Montilla, and Manuel Libardo Díaz Navas—survived the attack, and after pretending to have died, were able to escape. Based on the information provided, the survivors sought help at a military base, where they were ignored; they were ultimately rescued by a journalist from the area.

11. The petitioners allege that what has come to be known as the “La Rochela massacre,” far from being the work of the FARC, was planned and executed by members of the autodefensas of the middle Magdalena region in coordination with members of the Army in order to put a halt to the investigation into the massacre of the 19 merchants, in which they were also involved. The information provided by the petitioners suggests—inter alia—that certain Army officers displayed interest in impeding the work of the judicial officers, that the autodefensas were given information about the routes by which the judicial officers would travel, and that they were certain that the Army would not be providing any escort to the victims, even though the investigators would be visiting a high-risk area.[FN3]

[FN3] Resolution 011 INT of September 12, 1997, N° 101, Office of the Regional Prosecutor, National Human Rights Unit, Office of the Attorney General.

12. As for the investigation into the facts by the judicial authorities, the petitioners note that on June 29, 1990 the Second Public Order Judge of Pasto convicted and sentenced Alonso de Jesús Baquero Agudelo (Vladimir), Julián Jaimes or Julio Rivera Jaimes, Héctor Rivera Jaimes, and Ricardo Antonio Ríos Avendaño to 30 years in prison for aggravated homicide for terrorist purposes, manufacture and trafficking in arms and munitions for exclusive use of the Armed Forces, discharging firearms, and use of explosives. In addition, Norberto de Jesús Martínez Sierra, Rafael Pombo, and Anselmo Martínez were convicted and sentenced to 13 years and four months imprisonment as perpetrators of the crime of aggravated conspiracy to commit criminal acts for terrorist purposes. Jesús Emilio Jácome Vergara and Germán Vergara García were convicted and sentenced to ten years in prison as perpetrators of the crime of conspiracy to commit criminal acts for terrorist purposes. As regards the members of the Army implicated, the information provided indicated that the Second Public Order Judge of Pasto convicted and sentenced Sgt. Otoniel Hernández Arciniegas and Lt. Luis Enrique Andrade to five years imprisonment for the crime of terrorist acts in the same judgment of June 29, 1990. In this proceeding, 17 of the persons initially investigated were acquitted.

13. The petitioners note that on appeal, the Superior Public Order Court reduced or overturned some of the sentences imposed. Specifically, the sentence imposed on Sgt. Otoniel Hernández Arciniegas was reduced to one-year imprisonment for the crime of aiding and abetting; the investigation into the involvement of Lt. Luis Enrique Andrade was sent to the military criminal courts. In addition, the convictions of Norberto de Jesús Martínez Sierra, Rafael Pombo, and Anselmo Martínez were overturned and that entire proceeding was declared null and void. The Public Order Court ordered that the investigation be continued to identify and prosecute other participants.

14. The petitioners further indicate that after assuming the investigation on July 28, 1996 the National Human Rights Unit of the Office of the Attorney General took the free and voluntary statement given by Alonso de Jesús Baquero Agudelo, alias Vladimir, who revealed details about the massacre of the 19 merchants and the massacre of the judicial officers who sought to clarify the first massacre, at the cost of their own lives; the links of the direct perpetrators of both

massacres to Army members who for years maintained control of the region[FN4]; and the motivations, related to the effort to halt the initiative to clarify the deaths of the 19 merchants. The petitioners allege that, even though the authorities have the information needed to identify and prosecute the members of the Army implicated in the matter—including high-ranking officers—the investigation has not progressed effectively.[FN5]

[FN4] The judicial resolutions in the file of this matter refer to the participation of Gen. Faruk Yanine Díaz and Gen. Carlos Gil Colorado, Col. Fajardo Cifuentes, and Maj. Oscar de Jesús Echandía Sánchez, among others.

[FN5] Communication from the petitioners, March 2, 1998.

15. Based on these allegations, the petitioners request that the Commission declare the State responsible for violations of the victims' rights to life, humane treatment, and judicial protection, in conjunction with the generic obligation to respect and ensure enjoyment of the rights protected in the American Convention, enshrined at Articles 4, 5, 8 and 25 thereof. In addition, in view of the State's prolonged silence during the proceeding before the IACHR (see supra paragraph 5), they ask that the presumption provided for at Article 39 of the Commission's Rules of Procedure be applied. That provision states: "The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion." [FN6]

[FN6] When the petition was forwarded to the State, the Regulations in force until April 30, 2001 were applicable. These established at Article 42: "The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion." Basic Documents Pertaining to Human Rights in the Inter-American System (Updated to May 1999), OEA/Ser.L/V/II.97 Doc. 31 rev. 5.

16. As regards compliance with the admissibility requirements set forth at Article 46(1)(a) of the American Convention, the petitioners allege that the exception to the requirement of prior exhaustion of domestic remedies provided for at Article 46(2)(c) is applicable, based on the unwarranted delay in the investigation.[FN7] They allege that there are direct perpetrators and persons who planned the massacre who have not been duly investigated and prosecuted, and that the proceeding was at a standstill for six years and has not advanced effectively.

[FN7] Complaint submitted by the petitioners on October 8, 1997.

B. The State's position

17. In its communication of March 5, 2001, the State alleges that the facts that are the subject matter in this case have been duly clarified by the judicial authorities. It notes that while it is true that the judicial investigation into the assassination of the victims continues and has extended for more than 12 years, this should not be considered by the IACHR as an unjustified delay, since the investigation has advanced in a profound and decided manner with a view to clarifying the case completely.[FN8] It alleges that this matter cannot be considered using the same standards as in other cases, in view of a number of special circumstances.[FN9]

[FN8] Note EE 0485 of the General Directorate for Special Matters, Ministry of Foreign Affairs, Republic of Colombia, March 5, 2001.

[FN9] Id.

18. The State indicates that Courts 14 and 15 of Criminal Investigation of Barrancabermeja performed the official procedure of removal of the bodies on January 18, 1989, and forwarded the results to the investigative unit specially created to investigate and clarify the facts in the massacre. Later, the investigation was forwarded to the First Public Order Court of Pasto, which on July 29, 1990 convicted and sentenced Alonso de Jesús Baquero Agudelo (Vladimir), Julián Jaimés or Julio Rivera, Héctor Rivera Jaimés, and Ricardo Ríos Avendaño to 30 years in prison for the crimes of conspiracy to commit criminal acts, shooting firearms, use of explosives against vehicles, manufacture and trafficking of arms and munitions for exclusive use of the Armed Forces, and aggravated homicide for terrorist purposes. Also convicted were Norberto de Jesús Martínez Sierra, Rafael Pombo, and Anselmo Martínez, who were declared in absentia and sentenced to ten years and four months imprisonment for the crime of conspiracy to commit criminal acts. Mr. Jesús Emilio Jácome Vergara and Mr. German Vergara were also convicted to ten years imprisonment for the same offence. In the same judgment, also convicted were First Army Sgt. Otoniel Hernández Arciniegas and Army Lt. Luis Enrique Andrade Ortiz, to a penalty of five years imprisonment for responsibility for the crime of aiding and abetting terrorist activities.

19. On appeal, the Superior Public Order Court modified[FN10] and overturned some of the judgments imposed. Specifically, the conviction of Sgt. Otoniel Hernández Arciniegas was reduced to one year of arresto for the crime of aiding and abetting; the investigation into the involvement of Lt. Luis Enrique Andrade was remitted to the military criminal courts. In addition, the judgment issued against Norberto de Jesús Martínez Sierra, Rafael Pombo, and Anselmo Martínez was overturned and the entire proceeding was declared null and void. Later, the Superior Public Order Court, on a motion for cassation, referred the proceeding to the Supreme Court of Justice, which vacated it. The State also reported that, by internal decision of the National Army, Lt. Luis Enrique Andrade and Sgt. Otoniel Hernández were discharged.

[FN10] Alonso de Jesús Baquero Agudelo and Julián Jaimés were convicted on charges of conspiracy to commit criminal acts, kidnapping, homicide, attempted homicide, possession of

arms for the exclusive use of the military and police forces and possession of uniforms for official use, and burglary. Héctor Rivera Jaimes and Ricardo Ríos Avendaño were convicted and sentenced to the maximum of 14 years and eight months imprisonment for the crime of conspiracy to commit criminal acts.

20. On February 18, 1992 the case was referred to the Public Order Office of Cali, and on April 12, 1996 the Regional Court of Cali ordered that the investigation be continued, in keeping with the judgment of the Superior Court. On July 28, 1996, the investigation was assumed by the National Human Rights Unit of the Office of the Attorney General. On September 12, 1997 the National Human Rights Unit issued an indictment of Maj. Oscar de Jesús Echandía Sánchez as the person allegedly responsible for the crimes of aggravated homicide for terrorist purposes, and attempted aggravated homicide, to the detriment of the victims. Nonetheless, on February 18, 1998, the Office of the Regional Prosecutor precluded the investigation. On November 30, 1997, the Office of the Regional Prosecutor-Delegate before the Supreme Court of Justice, issued a restraining order against Congressman Tiberio Villarreal Ramos, who was said to be one of the planners of the massacre.

21. According to the information provided by the State, on January 7, 1999 the then-Terrorism Unit of the Office of the Regional Prosecutor of Bogotá issued an indictment against Messrs. Nelson Lesmes Leguizamón and Marcelino Panesso Ocampo, as alleged planners of the homicide of 13 of the victims, and of the attempted homicide of the three surviving victims. On October 15, 1999 the Prosecutorial Unit before the Superior Court of the Judicial District of Bogotá affirmed the indictment of Nelson Lesmes Leguizamón, who later died. On February 1, 2000 the investigation was referred to the Specialized Criminal Circuit Courts of Bucaramanga to initiate the trial stage against Marcelino Panesso. On December 28, 2000 the Office of the Attorney General ordered that the investigation into the rest of the accused be heard by a specialized prosecutor from the National Technical Investigation Unit (CTI).[FN11]

[FN11]Id.

22. As regards the dynamics of the process, the State alleges that in the first stages, justice was administered in a prompt and lawful fashion. It indicates that the investigation is ongoing thanks to the elements incorporated from the statements by Alonso de Jesús Baquero Agudelo, alias Vladimir, and that therefore the reasonableness of the time transpired must be weighed vis-à-vis the appearance of new evidence that allowed the investigation to continue. At the same time, the State suggests that considering that the statement given by Baquero Agudelo was compensated for by procedural benefits related to the serving of his sentence (see supra, paragraph 18), his assertions are questionable. It alleges that this factor has prolonged the effective conclusion of the proceeding. It highlights that the investigation in question involves dismantling a criminal organization of the self-defense groups and the difficulties this entails. In addition, it points out that the activity by the civil party to the proceeding has been limited, and that this factor has not helped clarify the matter.

23. As regards the activity of the disciplinary jurisdiction, the State indicates that on February 6, 1991 the Office of the Procurator Delegate for the Military Forces initiated a formal investigation and laid charges against Maj. Oscar Robayo Valencia, Lt. Luis Enrique Andrade Ortiz, and Sgt. Otoniel Hernández Arciniegas. Nonetheless, on June 7, 1994, a prescription of the disciplinary action was declared. In addition, the State indicated that the next-of-kin of several of the victims had brought proceedings before the contentious-administrative jurisdiction, that the State had been ordered to pay compensation, and that it had been duly paid.[FN12]

[FN12] Information provided by the State in the hearing held during the 112th session.

24. The State concludes in its communication of March 5, 2001 that for these reasons, it should be considered that the petition does not satisfy the requirement of prior exhaustion of domestic remedies provided for in Article 46(1)(a) of the American Convention. In addition, it considers that the procedural history of the case justifies extending the time of the investigation.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

25. The petitioners are authorized, in principle, by Article 44 of the American Convention to submit complaints to the IACHR. The petition identifies as the alleged victims individual persons with respect to whom Colombia undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a State Party to the American Convention since July 31, 1973, when the instrument of ratification was deposited. Accordingly, the Commission is competent *ratione personae* to examine the petition.

26. The Commission is competent *ratione loci* to take cognizance of the petition insofar as it alleges violations of rights protected in the American Convention in the territory of a State party to that treaty. The IACHR is competent *ratione temporis* since the obligation to respect and ensure the rights protected in the American Convention was already in force for the State at the date when the incidents are alleged to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility Requirements

a. Exhaustion of domestic remedies and time period for submitting the petition

27. The State alleges that the petition does not satisfy the requirement of prior exhaustion of domestic remedies provided for at Article 46(1)(a) of the American Convention. This assertion appears in its communication of March 5, 2001 submitted approximately three years after the processing of this matter began, on April 1, 1998. The petitioners, for their part, allege that the exception to the prior exhaustion requirement set forth at Article 46(2)(c) applies, due to the

unwarranted delay in the investigation and to the indicia of impunity surrounding this matter. In this sense, the State alleges that the time invested in clarifying the violations denounced is reasonable in view of the complexity of the matter and the way in which the evidence was produced in this case.

28. Article 46(1)(a) of the American Convention requires the prior exhaustion of domestic remedies, in keeping with the general principles of international law. In this regard, the case-law of the Inter-American Court of Human Rights indicates that the rule of prior exhaustion of domestic remedies is designed to benefit the State, and therefore the State can waive this objection, expressly or tacitly. It follows that in order that it not be presumed that the State has tacitly waived this objection, it must be expressly and timely invoked in the first stages of the proceeding before the Commission.[FN13] Based on the case-law of the Inter-American Court, the mere submission of information on progress in domestic judicial proceedings is not equivalent to expressly invoking the requirement of prior exhaustion of domestic remedies.[FN14]

[FN13] I/A Court H.R., Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996 para. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996 para. 40; Castillo Petruzzi Case, Preliminary Objections, Judgment of September 4, 1998 para. 56; Mayagna (Sumo) Community of Awas Tingni, Preliminary Objections, Judgment of February 1, 2000 para. 54.

[FN14] I/A Court H.R., Mayagna (Sumo) Community of Awas Tingni, Preliminary Objections, Judgment of February 1, 2000 paras. 55 and 56.

29. In the instant case, the Commission notes that the State did not object to the failure to exhaust domestic remedies at the first procedural opportunity available; it was not until its brief of March 5, 2001 that it expressly raised the failure to abide by Article 46(1)(a). In light of the case-law described and the late invoking of the failure to exhaust domestic remedies as grounds of inadmissibility, the State is considered to have tacitly waived this objection.

30. Without prejudice to the application of the rules regarding a tacit waiver, and given the characteristics of the case, the IACHR takes this opportunity to set forth a series of considerations with regard to the parties' allegations in relation to Article 46(2) of the Convention, in light of the principle by which a state that invokes the requirement in question must identify the domestic remedies to be exhausted and show that they are effective.[FN15]

[FN15] I/A Court H.R., Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996 para. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996 para. 40; Cantoral Benavides Case, Preliminary Objections, Judgment of September 3, 1998 para. 31; Durand and Ugarte Case, Preliminary Objections, Judgment of May 28, 1999 para. 33.

31. The information submitted by the parties indicates that while a series of convictions were handed down on July 29, 1990 several of them were reduced or overturned; as regards one of the persons convicted, the case was referred to the military criminal jurisdiction. Even though in 1992 the Public Order Court ordered that the investigation continue to identify and prosecute other participants, the case remained at a virtual standstill until 1997, when it was transferred to the National Human Rights Unit. The Commission notes that despite the advances in collecting evidence and in moving on to the trial phase against two civilians, there has been no further progress in prosecuting the state agents allegedly involved in the massacre.

32. As indicated supra, the investigation referring to the alleged participation of a member of the Army—specifically Lt. Luis Enrique Andrade—was referred to the military criminal courts. In this respect, it should be noted that the Commission has repeatedly held that the military jurisdiction is not an appropriate forum and therefore does not offer an adequate remedy to investigate, prosecute, and punish violations of human rights enshrined in the American Convention, allegedly committed by members of the official forces, or with their collaboration or acquiescence.[FN16] The State also indicated that the activity of the civilian party in the proceeding had been scant and that this element had contributed to the prompt clarification of the facts, which would be another reason for considering the period transpired as reasonable. The IACHR has noted, in similar cases, that whenever a crime is committed that can be prosecuted at the state's initiative, the state has the obligation to move the criminal proceeding forward to its ultimate consequences.[FN17] Accordingly, the victims or their next-of-kin cannot be required to assume the task of exhausting domestic remedies when this is a duty of the state.

[FN16] IACHR, Third Report on the Human Rights Situation in Colombia (1999), p. 175; Second Report on the Situation of Human Rights in Colombia (1993), p. 246; Report on the Situation of Human Rights in Brazil (1997), pp. 40-42. In addition, the Inter-American Court has recently confirmed that the military justice system is an adequate forum for trying members of the military only for crimes or offenses which by their very nature assail legal interests particular to the military order. Durand and Ugarte Case, Judgment of August 16, 2000 para. 117.

[FN17] Report N° 62/00, Case 11.727, Annual Report IACHR, para. 24.

33. The Commission considers that, as a general rule, a criminal investigation should be carried out promptly to protect the interests of the victims, preserve the evidence, and even safeguard the rights of any person who, in the context of the investigation, may be considered a suspect. As the Inter-American Court has indicated, while every criminal investigation must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead to a situation in which international action on behalf of the victims is brought to a standstill or delayed until it is rendered useless. In the present case, the Commission considers that the judicial remedies invoked by the State must be examined in the terms of the exceptions to the prior exhaustion requirement provided for at Article 46(2)(a) and (c) of the American Convention.

34. Finally, the IACHR would like to note that its considerations with respect of judicial delay, the ineffectiveness of the domestic proceedings, and the inadequacy of the remedies pursued in the investigation are grounded in the notion raised by the State itself, that the clarification of the La Rochela massacre is of special significance, in a sense unlike other matters pending before the IACHR or before the domestic courts. In effect, the powerful symbolism of the assassination of judicial officers as they were performing their duties does not escape the IACHR; far from justifying more than ten years of discontinuous efforts to bring the persons responsible –both private persons and state agents– to justice, this case cries out for the effectiveness that is needed to restore the confidence of the very members of the judiciary and society as a whole in the judicial system.

35. Therefore, given the characteristics of the instant case, the Commission considers that the exceptions provided for at Article 46(2)(a) and (c) of the American Convention apply, and therefore the requirement regarding the prior exhaustion of domestic remedies is not applicable. Nor does the six-month term provided for at Article 46(1)(b) of the Convention apply, as the petition was submitted without the reasonable time referred to in Article 32(2) of the Commission's Rules of Procedure for those cases in which there was no firm judgment prior to the lodging of the petition.

b. Duplication of procedures and res judicata

36. It does not appear from the file that the subject matter of the petition is pending before any other procedure for international settlement, or that it is substantially the same as a petition already examined by this or any other international body. Therefore, the requirements set forth at Articles 46(1)(c) and 47(d) of the Convention have been met.

c. Characterization of the facts alleged

37. The Commission considers that the petitioners' allegations of violations of the right to life, the right to humane treatment, and the right to judicial protection tend to establish violations of the rights of the victims and their next-of-kin, enshrined in Articles 4, 5, 8, and 25, in relation to Article 1(1), of the American Convention, in view of the elements that indicate that the investigation of the case is inconclusive and that the persons responsible have been prosecuted only in part.

V. CONCLUSIONS

38. The Commission concludes that the case is admissible and that it is competent to examine the claim submitted by the petitioners on the alleged violation of Articles 4, 5, 8, and 25, in relation to Article 1(1), of the Convention, in keeping with the requirements established in Articles 46 and 47 of the American Convention.

39. Based on the arguments of fact and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible in relation to the alleged violations of Articles 4, 5, 8, 25, and 1(1) of the American Convention.
2. To give notice of this decision to the Colombian State and to the petitioner.
3. To begin the merits phase.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 9, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; and Commissioners Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán de la Puente.