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Title/Style of Cause:	Belen-Altavista Massacre v. Colombia
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Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo G. Carozza.
Dated:	5 August 2009
Citation:	Belen-Altavista Massacre v. Colombia, Petition 858-06, Inter-Am. C.H.R., Report No. 71/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: Jose Luis Viveros Abisambra and Nicolas Munoz Gomez
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I. SUMMARY

1. On August 11, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Jose Luis Viveros Abisambra and Nicolas Muñoz Gomez (hereinafter “the petitioners”) alleging that agents of the Republic of Colombia (hereinafter “the State”) are responsible in the deaths of Samir Alonso Flórez, Elkin de Jesús Cano Arenas, Mauricio de Jesus Cañola Lopera, Eduard Andrey Correa Rodriguez, Henry de Jesús Escudero Aguirre, the brothers Oscar Armando Muñoz Arboleda and Jair de Jesus Muñoz Arboleda, German Ovidio Perez Marin, Norbei de Jesus Ramirez Davila, Johnny Alexander Ramirez Lujan, Berley de Jesus Restrepo Galeano, Juan Jose Sanchez Vasco, Jharley Sanchez Ospina, Nelson de Jesus Uribe Peña, Carlos Gonzalo Usma Patiño, Leandro de Jesus Vasquez Ramirez, and the injuries sustained by Yeison Javier Aristizabal and Carlos Andres Peña Ramirez, on June 29, 1996, in the Belen-Altavista district of the city of Medellín, department of Antioquia, and for the failure of its judicial system to clarify the events.

2. The petitioners maintain that the State is responsible for violation of the right to life, the right to humane treatment, the right to a fair trial, the right to honor and dignity, and the right to judicial protection, recognized in articles 4, 5, 8, 11 and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), to the detriment of the 18 above-named persons and their next of kin, thereby violating the obligations set forth in articles 1(1) and 2 of the Convention, namely to respect and ensure the rights protected under the Convention and to adopt the necessary domestic legislative measures. The petitioners invoke the exception allowed under Article 46(2)(c) of the American Convention to the rule requiring prior exhaustion of domestic remedies. For its part, the State alleges that the petitioners’ claims are inadmissible, as

agents of the State bore no responsibility in the events; that the petitioners are attempting to use the IACHR as a higher court; that the criminal proceedings have not been exhausted, and that the claim to the exceptions allowed under Article 46(2) of the American Convention is out of order.

3. After analyzing the parties' positions and compliance with the requirements stipulated in articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible for purposes of examining the alleged violation of articles 2, 4(1), 5(1), 8, 11 and 25 of the American Convention, in conjunction with Article 1(1) thereof. It also decided to notify the parties of the report and to order that it be published in the Commission's annual report.

II. PROCESSING WITH THE COMMISSION

4. The Commission received the petition on August 11, 2006, which was registered as number P858-06. The relevant parts were forwarded to the State on April 14, 2008, in keeping with Article 30(2) of the Rules of Procedure, so that it might submit its response.

5. The State submitted its response on July 17, 2008, which was forwarded to the petitioners on August 7, 2008, so that they might present their observations. On September 4, 2008, the petitioners requested an extension, which was granted. The petitioners sent their observations on November 20, 2008, which were forwarded to the State for its observations. On December 24, 2008, the State requested an extension, which was granted on January 7, 2009. On January 30, 2009, the State submitted its final observations.

III. THE PARTIES' POSITIONS

A. The petitioners

6. The petitioners allege that between late 1995 and early 1996, members of the National Army and the National Police of Colombia carried out intelligence activities in the "Belen-Altavista" district of the city of Medellin[FN1] to identify alleged guerrilla members (urban cells of subversive groups) that supposedly were operating and living there. They allege that the forces of law and order operated clandestinely, under the guise of so-called "Civic Brigades". The latter were staging what were seemingly social activities, where photographic intelligence on the residents of the district was gathered with the idea of putting together an intelligence file. Young people in public establishments were also photographed. They contend that no court order was ever issued allowing these activities to be conducted.

[FN1] The petitioners observe that the "Belen-Altavista" district is located in the northwestern quadrant of the city of Medellín and has historically been one of the most depressed communities in the city. They note further that the district's profound social problems make it the ideal place for lawless armed groups to establish urban cells, which operate there. Original petition received on August 11, 2006.

7. The petitioners observe that at 8:30 p.m. on June 29, 1996, approximately ten men - carrying weapons used solely by the military forces and wearing accessories (vests and bracelets) that were the hallmark of the Prosecution Office's Technical Investigation Corps [Cuerpo Técnico de Investigación – CTI]- came to Belen-Altavista's local bus terminal where they forced all the occupants of a public bus to get off, took a number of people in the vicinity and forced them all to stand in a row, where they questioned them about the whereabouts of alleged guerrilla members who purportedly lived in the area.

8. The petitioners state that when they did not get an answer, and after checking a photographic file and establishing that none of the people they were looking for were there, the armed men opened fire against the people they were holding. They contend that as a result 16 people died and four were seriously injured. The petitioners state that the perpetrators left the scene in three vehicles and threatened that they would be back. When they withdrew, they left behind photographs that the National Army had taken months earlier in their "civic" activities.

9. The petitioners allege that while the massacre was being committed, the Police kept the area cordoned off four blocks away, and that vehicles and journalists were denied access on the grounds that "an arrest is underway up there". The petitioners contend that the Army had been at the scene of the events on the afternoon of the very same day and that there is a military post just three minutes away.[FN2] They note that in the wake of the massacre, no action was taken to catch the perpetrators and that the Army, which patrols the area constantly, did not show up until around 11:00 p.m., by which time there was nothing to be done.

[FN2] The petitioners indicate that ten years after the massacre, on August 10, 2006 the Prosecutor General's Office conducted an on-site inspect in which it was established that the military base was 3 minutes and 11 seconds (1.3 Km.) from where the massacre was committed. Petitioners' observations, received November 20, 2008.

10. The petitioners allege that in their response to the petition the State has tried to portray the victims of the massacre as members of unlawful armed groups, allegedly guerrilla members of the National Liberation Army [Ejército de Liberación Nacional] (ELN). It has done this without producing any evidence. They allege that the victims' next of kin were the targets of social censure and their good name was smeared, all of which compounded the pain of having lost their loved ones under the circumstances that are the subject of the petition.

11. In response to the State's allegation that the massacre "was the climax of a series of clashes between cells of guerillas that were engaged in crime in the area (see infra III. B), the petitioners consider this tantamount to accusing the victims of being involved in criminal activities. They contend that the State's assertion is unfounded, since no court has ever established that those who were killed -while defenseless- were in fact criminals or members of guerrillas. The petitioners consider this a violation of the principle of presumption of innocence and of the right of the affected families to have their dignity recognized.[FN3]

[FN3] The petitioners' observations, received November 20, 2008.

12. As for exhaustion of the remedies under domestic law, the petitioners state that on the very day the events occurred, the Office of the Prosecutor General of the Nation, acting ex officio, launched preliminary investigation No. 265 for the crimes of homicide and battery. They indicate further that later a formal investigation was instituted for the crime of homicide, under Case No. 20,858. The criminal investigation that has been underway for thirteen years is still ongoing. The petitioners allege that ten years after the events took place, testimony was still being taken, and there was no certain prospect in sight that those responsible would be tried and convicted.

13. The petitioners state that in its report of January 8, 1998, the Office of the Prosecutor General of the Nation found that the National Army's Fourth Brigade, headquartered in Medellín, had intelligence reports on file related to alleged members of the "Popular Militias of the E.L.N." supposedly operating in the "Aguas Frías", "Violetas" and "Altavista" districts of Medellín. The petitioners state that in these records, the Office of the Prosecutor General found a photographic album in which various persons were identified, and said that one of them "[...]" is very similar to one left at the scene of the massacre and that is already part of the present photo-reproduction inquiry; according to statements and testimony given by the persons photographed, the pictures were taken by Army personnel".[FN4] The petitioners contend that while evidence in the investigation incriminates agents of the security forces, the persons named as the allegedly guilty parties are the so-called members of the bands and guerillas. They assert that the fact that this investigation is still only in the preliminary phase constitutes an unwarranted delay in the proceeding, which is the condition provided in Article 46(2(c) of the American Convention as grounds for an exception to the rule requiring exhaustion of local remedies.[FN5]

[FN4] Report of the National Division of the Human Rights Group of the Office of the Prosecutor General of the Nation, dated January 8, 1998, file 3, attached to the original petition received on August 11, 2006.

[FN5] To support their argument, the petitioners cite the IACHR's admissibility reports No. 86/06 Marino Lopez et al. (Operation Genesis), 5/03 Jesus María Valle Jaramillo, 75/03 Jose Milton Cañas Cano and 3/07 Myriam Eugenia Rua Figueroa. Observations from the petitioners, received November 20, 2008.

14. The petitioners state further that the Attorney General's Office launched a disciplinary investigation[FN6] that uncovered serious irregularities; even so, on March 9, 2001, it decided to close the investigation once and for all, as in its view the matter was nonjusticiable, inasmuch as "the author of a possible disciplinary offense is neither named nor identified". The petitioners state that the arguments given in the decision acknowledge "[...] there is information that is undoubtedly compromising evidence of the conduct of public servants, who in this case were members of the National Army; because of this, the government had to establish whether members of the National Army had in fact taken photographs of the young men in Medellín's Belén Altavista district months before the massacre was perpetrated and, if they did, what were

the reasons why the killers had those photographs in their possession”. It adds that “[...] what has been examined thus far suggests that it is highly likely that the officials who were in charge of the investigation were negligent about the procedural quest for the truth regarding the public servants who were somehow suspect in the facts being investigated [...]”.[FN7]

[FN6] Case 161-00531 [008-06911/96]. Original petition received on August 11, 2006.

[FN7] Decision of the Office of the Attorney General of the Nation, March 9, 2001, at 7 and 11. Original petition received on August 11, 2006.

15. The petitioners observe that in 1997, the next of kin of the deceased victims attempted to bring a collective lawsuit against the State seeking reparations. The suit was classified as number 973393. They point out that on January 26, 2006 the Administrative Tribunal of Antioquia delivered a judgment exonerating the State on the grounds of insufficient evidence in the case.[FN8]

[FN8] Judgment of the Administrative Tribunal of Antioquia, dated January 26, 2006. Original petition received on August 11, 2006.

16. The petitioners state further that in 1998, the injured persons -Yeison Javier Aristizabal and Carlos Andres Peña Ramirez- and their respective families filed a suit in the contentious-administrative jurisdiction seeking reparation. This suit, docketed as number 981056, has not yet been settled. The petitioners allege that this constitutes a violation of the guarantee of access to justice, recognized in the American Convention; it also constitutes the unwarranted delay under Article 46(2)(c) of the Convention. (Based on information supplied to it, it is the Commission’s understanding that subsequent to this allegation, the Fourth Administrative Law Court of the Medellin Circuit delivered a ruling on September 28, 2007, in which it did not support the plaintiffs’ claims of State liability).

17. The petitioners also contend that the contentious administrative proceedings under current Colombian law,[FN9] fail to ensure the right to a double judicial instance in cases where the compensation sought does not reach the established quantum. They argue that this is a violation of Article 8 of the American Convention.

[FN9] The petitioners state that Law 954 of April 27, 2005 (on jurisdiction, court decongestion, efficiency and access to the administration of justice) prescribes that administrative tribunals shall hear suits seeking direct reparations whose amount does not exceed the equivalent of 500 times the current monthly legal minimum wage, which shall be given a single hearing. According to the procedural law in effect, the amount is determined according to the claim being made in the complaint. Original petition received on August 11, 2006.

18. In response to the State's allegation that the petitioners were using the Commission as a court of appeal for the disciplinary and administrative cases (see *infra* III.B), the petitioners' answer that the argument falls short inasmuch as the Commission has already held that such proceedings do not constitute adequate mechanisms, in and of themselves, to address human rights violations or to satisfy the obligation to clarify judicially what happened.[FN10] They contend further that the fourth instance argument cannot be used for some proceedings (the contentious-administrative) while at the same time arguing the failure to exhaust domestic remedies in the case of other proceedings (the criminal case).

[FN10] To support their argument, the petitioners cite IACHR Report No. 55/04 Maria Consuelo Ibarguen Rengifo, paragraph 27. Observations received from the petitioners on November 20, 2008.

19. The petitioners therefore argue that the facts described in the petition characterize violations of the right to life, the right to humane treatment, the right to a fair trial, the right to honor and dignity, and the right to judicial protection (upheld in articles 4, 5, 8, 11 and 24 of the American Convention) in conjunction with articles 1 and 2 thereof.

B. The State

20. The State contends that the facts that are the subject of the petition must be regarded in the context of the clashes among criminal gangs in Medellín at the time. It alleges that the death of 16 persons at Medellín's "Belen-Altavista" bus terminal on June 29, 1996 was the climax of a series of clashes between the guerrillas cells that were committing crimes in the area in order to terrorize the population. It said that the gangs collected "vacunas" ['vaccinations', a form of extortive protection money] from the textile businesses, small buses engaged in public transportation, and the owners of the sand businesses. It observes that the police report of the events, dated June 29, 1996, states that "the social problem in the area where the events occurred is one of constant violence, attributable to the guerrillas groups operating in 'Belen-Altavista'; in the part or sector known as Belen-Buenavista, a group has formed known as the 'anti-guerrillas'. The guerrilla and the anti-guerrillas are constantly quarreling." It adds that the police theory is that the murders that are the subject of the petition were retaliation for the killing of three members of the "Los Victorinos" gang on June 27, 1996.

21. As for the characterization of the claims made in the petition, the State's position is that the perpetrators of the Belén-Altavista massacre were not agents of the State, and were not acting under its supervision, protection, tolerance or acquiescence. Given the lack of evidence, it argued, the State cannot be blamed as directly responsible for the facts reported in the petition. It alleges that even when attempting to attribute indirect blame to the State, it must still be shown that the State had prior knowledge of a risk and that it failed to take effective action to prevent it, which is not evident from the facts in this case. The State contends that at the time of the massacre, the violence in Medellín was on a scale that exceeded any reasonable chance the State might have had of preventing the kinds of events that the petitioners reported.[FN11] As for the

petitioners' allegation regarding the harm done to the victims' dignity (see supra III.A), the State contends that it never did anything to portray the victims as criminals.[FN12]

[FN11] To support its argument, the State cites I/A Court H.R., Velasquez Rodriguez Case. Judgment of July 29, 1988, Series C No. 4, paragraphs. 169 and 182, and Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 159, paragraphs 113 and 123 et seq. Note DDH.GOI.No. 36426/1788 from the Ministry of Foreign Affairs of Colombia, dated July 16, 2008.

[FN12] Note DDH.GOI.No. 5213/0151 from the Ministry of Foreign Affairs of Colombia, dated January 29, 2009, p. 2.

22. As for the petitioners' claims of inaction on the part of the authorities in the wake of the massacre (see supra III. A.), the State's contention is that patrols were on the scene moments after the events and took steps to preserve the crime scene, interviewed the wounded in order to establish the whereabouts of the guilty parties and come up with investigation theories. It argues that the petitioners do not have any proof to support their assertions as to the authorities' belated arrival on the crime scene or their supposed inaction.

23. The State reports that two contentious-administrative proceedings were instituted: the action seeking reparation, classified as 973393, seeking compensatory damages for the deceased victims; and the action seeking reparation, classified as 981056, seeking reparations for the victims who sustained injuries. In both cases, the State was exonerated of all blame. The State alleges that the effect of the petitioners' request that the State be found responsible for a violation of the right to life would be to transform the Commission into a court of fourth instance.[FN13] The State argues that the international protection afforded by the Convention's organs of supervision is subsidiary in nature; hence, they cannot act as courts. The State reasons that the Commission can only admit petitions that concern judgments delivered in violation of due process, judgments that are arbitrary or that violate rights guaranteed under the American Convention. The State asserts that the fact that the petitioners did not get a ruling in their favor does not mean (i) that the exception to the rule requiring exhaustion of local remedies applies because justice has been denied, or (ii) that their right to judicial protection, recognized in Article 25 of the American Convention, has been violated.[FN14] The State's position is that the rulings delivered in the contentious-administrative proceedings cannot be disqualified as jurisdictional acts by the organs of the inter-American system, as they followed the law in effect. Summarizing, the State alleges that "in claiming compensation based on a finding of the State's international responsibility," the petitioners are asking the Commission to serve as another instance, specifically by virtue of the fact that "their claims were denied" in the domestic courts.

[FN13] Note DDH.GOI.No. 5213/0151 from the Ministry of Foreign Affairs of Colombia, dated January 29, 2009, p. 14.

[FN14] To support its argument the State cites IACHR, Inadmissibility Report No. 45/04, Luis Guillermo Bedoya de Vivanco, paragraph 34, and the Annual Report for 1993, Chapter III,

Canada. Note DDH.GOI.No. 36426/1788 from the Ministry of Foreign Affairs of Colombia, dated July 16, 2008.

24. In answer to the petitioners' allegation concerning the violation of due process based on the fact that rulings in contentious-administrative cases cannot be appealed to a higher court solely on the grounds of the amount of the award sought or granted (see supra III. A.), the State answered that as Colombian law stipulates, the petitioners were the ones that set the amount sought in that case; hence the State cannot be blamed for the consequences to which the petition refers.

25. The State argues that the disciplinary investigation was closed in observance of the six-month time period (which can be extended by another six months), established in the Single Disciplinary Code in force at the time of the events. Upon conclusion of that six-month period, the Public Prosecutor's Office could order the investigation opened or close the case. It alleges that the constitutional law judge held that the six-month time period did not in any way violate citizens' basic human rights and that it was a reasonable period for compiling evidence and establishing whether the conduct constituted a disciplinary offense and who could be charged. The State asserts that an appeal was filed challenging the closing of the case, and that on March 9, 2001, the Disciplinary Chamber of the Attorney General's Office found irregularities that could no longer be examined, since the deadline set for opening the investigation had already lapsed. The State alleges that it would be incorrect to regard the assessment of the Attorney General's Office as evidence implicating agents of the State in the events in question.

26. The State observes that the criminal process undertaken to identify the material and intellectual authors of the events is still ongoing with the Human Rights and International Humanitarian Law Unit of the Office of the Prosecutor General of the Nation. In answer to the petitioners' allegation of an unwarranted delay in the investigation (see supra III. A.), the State contends that it has complied with its obligation to undertake the investigation on its own initiative, from the moment the events occurred. The State reasons that the Inter-American Court has held that the exception to the rule requiring exhaustion of domestic remedies can only be inferred if (i) the complaint was denied without examining the merits of the case, (ii) the grounds invoked were trivial, or (iii) there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others.[FN15]

[FN15] To support its argument the State cites I/A Court H.R., Godinez Cruz Case. Judgment of January 20, 1989. Series C No 5, paragraphs 70-71. Note No. 36426/1788 from the Ministry of Foreign Affairs of Colombia, July 16, 2008.

27. It alleges that in the instant case, those conditions were not present, which means that the exceptions allowed under Article 46(2) of the American Convention do not apply. It specifically claims to have pursued various lines of investigation, that a number of proceedings and measures were conducted, and that the victims and their next of kin have had the opportunity to participate

and be heard. The State argues that one very important factor to consider is the complexity of the case, given the violence in the area and the death threats made by the guerrilla in pamphlets and which materialized; the nature of the crime and the modus operandi of the outlaw groups, which included tricks to conceal or destroy evidence. It alleges further that the State's duty to investigate is an obligation of means and not outcome.[FN16] Hence, the State argues, a criminal proceeding is still pending into the alleged violations of the right to humane treatment, the right to a fair trial and the right to judicial protection. Therefore, the rule requiring exhaustion of local remedies has still not been fulfilled.

[FN16] To support its argument, the State cites I/A Court H.R. Velasquez Rodriguez Case. Judgment of July 29, 1988. Series C No.4. Note DDH.GOI.No. 5213/0151 from the Ministry of Foreign Affairs of Colombia, January 29, 2009, p. 2.

28. For all the foregoing reasons, the State is requesting that the Commission adjudge and declare that the present petition is inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

29. The petitioners are entitled under Article 44 of the American Convention to lodge complaints with the IACHR on behalf of the alleged victims. With regard to the State, Colombia has been a State party to the American Convention since July 31, 1973, when it deposited the respective instrument of ratification. Therefore, the Commission has competence *ratione personae* to take up the petition. The Commission also has competence *ratione temporis* inasmuch as the American Convention was already in force for the State on the date the events alleged in the petition were said to have occurred.

30. The Commission has competence *ratione loci* to take up the petition insofar as it alleges violations of rights protected in the American Convention said to have occurred within the territory of Colombia, a State party to that treaty. Finally, the Commission has competence *ratione materiae* because the petitioners are alleging violations of rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

31. Article 46(1)(a) of the American Convention provides that for a complaint lodged with the Inter-American Commission alleging a violation of the American Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

32. Article 46(2) of the American Convention provides that the prior exhaustion rule does not apply when:

- a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

According to the Rules of Procedure of both the Commission and the Inter-American Court, whenever a State alleges a failure to exhaust domestic remedies, it must demonstrate that there are remedies that remain to be exhausted and that they are “adequate,” which means that the function of those remedies within the legal system is suitable to address an infringement of a legal right.[FN17]

[FN17] I/A Court H.R. Velasquez Rodriguez Case. Judgment of July 29, 1988, paragraph 64.

33. In the instant case, the State is alleging that the petition does not satisfy the requirement under Article 46(1)(a) of the American Convention, i.e., that the remedies under domestic law have been pursued and exhausted, inasmuch as an investigation is still ongoing. It alleges further that the exceptions allowed under Article 46(2)(c) of the American Convention do not apply, since the evidence shows that the petitioners have had access to the process, and that there has been no unwarranted delay. The petitioners, for their part, allege that there has been an unwarranted delay in the process and that remedies under domestic law have been ineffective, thus allowing application of the exceptions provided for in Article 46(2)(c) of the American Convention.

34. First, the domestic remedies that must be exhausted in the present case must be established. The Inter-American Court has written that only those remedies that are suitable to address the violations allegedly committed need be exhausted. Adequate domestic remedies are defined as follows:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN18]

[FN18] I/A Court H.R. Velasquez Rodriguez Case. Judgment of July 29, 1988, paragraph 63.

35. In earlier cases the Commission has held that whenever an offense has been committed that is subject to prosecution *ex officio*, the State has a duty to pursue and drive the criminal case up to its final consequences;^[FN19] in such cases, this is the proper avenue to pursue to solve the facts, prosecute those responsible and establish the corresponding punishment; it also makes possible other forms of reparation of a pecuniary nature. The Commission considers that the facts that the petitioners in the present case are claiming involve the alleged violation of such basic rights as the right to life and the right to humane treatment, which under domestic law are crimes that the State must prosecute on its own initiative. Therefore, it is this State-driven process that the Commission must consider for purposes of deciding whether the petition is admissible.

[FN19] Report No.52/97, Case 11,218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paragraphs 96 and 97. See also Report No. 55/97, paragraph 392. Report No. 62/00, Case 11.727, Hernando Osorio Correa, Annual Report of the IACHR for 2000, paragraph 24.

36. In the instant case, the criminal investigation is still only in the preliminary phase, 13 years after the events occurred. The State, for its part, has not reported any significant headway in the investigation, apart from certain procedural matters. This implies an unwarranted delay, in the meaning of Article 46(2)(c) of the American Convention. Therefore, the petitioners are exempt from the rule requiring exhaustion of local remedies before turning to the inter-American system for protection.

37. The Commission observes that as a general rule, a criminal investigation must be done swiftly in order to protect the victims' interests, preserve the evidence and even safeguard the rights of any person who may become a suspect during the course of the investigation. As the Inter-American Court has written, while every criminal investigation has a number of legal requirements that must be met, the rule of prior exhaustion of domestic remedies must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.^[FN20] As the Court has held, an effective remedy is one that is capable of producing the result for which it was designed.^[FN21]

[FN20] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987, paragraph 93.

[FN21] I/A Court H.R. Velasquez Rodriguez Case. Judgment of July 29, 1988, paragraph 66.

38. As for the other remedies exhausted and which the State mentions to support its claim that the Commission is being used as a higher court, the Commission has previously stated that the decisions issued in disciplinary and contentious-administrative proceedings do not satisfy the requirements established in the Convention. Disciplinary jurisdiction is not an adequate forum in which to prosecute and punish human rights violations and redress their consequences. For its part, the contentious-administrative jurisdiction is a review mechanism of the State's administrative activity; the only damages and injuries that can be obtained are for abuse of

authority. Therefore, in a case such as the present one, these remedies need not be exhausted before turning to the Inter-American system; this refutes the allegation that the Commission is being used as a court of fourth instance.

39. In the present case the criminal investigation is in preliminary stage 13 years after the facts occurred. On its part, the State has not informed about significant steps in the investigation besides certain proceedings, which implies undue delay under article 46.2.c of the American Convention and therefore the petitioners should be exempt to exhaust domestic remedies before resorting to the Inter-American system seeking for protection.

2. Time period for lodging the petition

40. The Convention provides that in order for a petition to be admitted, it must be submitted within a six-month period counting from the date on which the party alleging a violation of his rights was notified of a final judgment at the domestic level. In the petition sub examine, the Commission has established that the exception that Article 46(2)(c) of the American Convention allows to the rule requiring exhaustion of local remedies does apply. Article 32 of the Commission's Rules of Procedure states that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

41. In the instant case, the petition was received on August 11, 2006 and the facts that were the subject of the petition occurred on June 29, 1996; its effects in terms of the alleged failure on the part of the administration of justice to produce any outcome continue into the present. Hence, given the context and the characteristics of the present case, and the fact that those responsible for the facts have still not been identified and punished, the Commission finds that the petition was lodged within a reasonable time period and the admissibility requirement pertaining to the time period for presentation of the complaint is deemed to have been satisfied.

3. Duplication of proceedings

42. Nothing in the case records suggests that the subject of the petition is pending in another international proceeding for settlement or that it replicates a petition already examined by this or another international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are deemed to have been satisfied.

4. Characterization of the facts alleged

43. Given the arguments of fact and of law made by the parties and the nature of the matter before it, the Commission finds that the petitioners' allegations regarding the extent of the alleged responsibility of the State in the facts that are the subject of the petition could characterize possible violations of the rights to life, to humane treatment, to a fair trial and to judicial protection, guaranteed in articles 4(1) and 5(1) of the Convention, in conjunction with Article 1(1) thereof, to the detriment of the 18 alleged victims, and articles 8(1) and 25 of the

Convention, to the detriment of the alleged victims' next of kin. It is not apparent that these aspects of the complaint are manifestly groundless or obviously out of order. Therefore, the Commission deems that the requirements set forth in articles 47(b) and (c) of the American Convention have been satisfied.

44. As for the petitioners' claim of an alleged violation of articles 2 and 8 of the American Convention, when Law 954 of 2005 (providing a sole instance to review claims seeking compensation below a minimum quantum) was invoked before the contentious - administrative jurisdiction seeking reparations, the Commission observes that the allegations made require an analysis of the merits, since they raise questions relating to the protection of those rights in the American Convention.

45. Finally, the Commission considers that the petitioners have not presented basic elements to ground their claim concerning violation of the right to honor and dignity, protected under Article 11 of the American Convention, by virtue of the fact that the alleged victims were portrayed as members of ELN guerrillas, which in turn had consequences for those who survived the events in this case and the next of kin of the alleged victims.

V. CONCLUSIONS

46. The Commission concludes that it is competent to examine the petitioners' claims with respect to the alleged violation of articles 2, 4(1), 5(1), 8, 11 and 25 of the American Convention, in conjunction with Article 1(1) thereof, and that the claims are admissible under the requirements set forth in articles 46 and 47 of the American Convention. . It also concludes that the claim concerning the alleged violation of article 11 of the American Convention is inadmissible.

47. Based on the arguments of fact and of law set forth herein, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible with respect to articles 2, 4(1), 5(1), 8, 11 and 25 of the American Convention, in conjunction with Article 1(1) thereof.
2. To notify the Colombian State and the petitioners of this decision.
3. To proceed with its analysis of the merits.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of the month of August 2009. (Signed) Luz Patrica Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.