

REPORT No. 68/10¹
PETITION 10.455
ADMISSIBILITY
VALENTÍN BASTO CALDERÓN ET AL.
COLOMBIA
July 12, 2010

I. SUMMARY

1. On August 11, 1989 the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by the Colombian Commission of Jurists (hereinafter “the petitioners”) alleging that on August 21, 1988, with the acquiescence of agents of the Republic of Colombia (hereinafter “the State,” “the Colombian State,” or “Colombia”), persons unknown killed Valentín Basto Calderón and Pedro Vicente Camargo and wounded Carmenza Camargo Sepúlveda (8). The petitioners also alleged the failure to provide judicial clarification of the facts.

2. The petitioners alleged that the State was responsible for violating the rights to life, personal integrity, judicial guarantees, and judicial protection as established in Articles 4, 5, 8, and 25 of the American Convention on American Rights (hereinafter the “Convention” or the “American Convention”) in connection with the duty to guarantee rights pursuant to Article 1(1) of the Convention. For its part, the State alleged that the petition was inadmissible in view of the fact that the petitioners did not exhaust domestic remedies and the complaints do not constitute violations of the American Convention. For their part, the petitioners maintain that the exception to the requirement regarding prior exhaustion of domestic remedies under Article 46(2)(c) of the American Convention is applicable due to the unwarranted delay in the criminal investigation.

3. After analyzing the petitions of the parties and compliance with the prerequisites of Articles 46 and 47 of the American Convention, the Commission decided to declare the complaint admissible for purposes of examining the alleged violation of Articles 4(1), 5, 8(1), and 25 as they relate to Article 1(1) of the American Convention, to notify the parties of the report, to order its publication, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The IACHR recorded the petition under number 10.455 and after the preliminary analysis it proceeded on September 20, 1989 to forward copy of the relevant sections to the State, giving it a period of 90 days to submit information pursuant to Article 34(3) of the Rules of Procedure then in effect. The State submitted its observations on December 20, 1989, which were then forwarded to the petitioners for their observations. On May 14 and October 17, 1990, February 25 and July 8, 1991, and February 11, 1992 the Commission received observations from the petitioners, which were duly forwarded to the State for its observations. On July 17 and December 3, 1990, and April 5 and November 8, 1991 the State submitted written observations, which were duly forwarded to the petitioners for their observations.

5. On October 17, 1996 the Commission sent a communication to the petitioners and the State, making itself available for the purpose of reaching a friendly settlement and asking for their comments in this regard. On November 27, 1996 the State requested an extension, which the IACHR granted. On December 30, 1996 the petitioners submitted a communication indicating they were available for a friendly settlement provided certain conditions were met, which was duly forwarded to the State. On January 2, 1997 a communication was received from the State to the effect that it was not feasible for the moment to initiate the processing of a friendly settlement and on January 3, 1997 a communication was

¹ In accordance with the provisions of Article 17.2 of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the discussion or the decision in this case.

received from the State providing additional information, which was forwarded to the petitioners for their observations.

6. On January 21, 1997 the Commission received a communication from the State informing it that the Office of the Attorney General had expressed its desire to attempt a friendly settlement, which was duly forwarded to the petitioners. On February 19, 1997 the Commission convened the parties for a meeting to deal with matters relating to the friendly settlement process. On March 7, 1997 the IACHR sent a communication to the State asking it to adopt a series of measures to support the work of investigating the facts, the content of which was made known to the petitioners. On September 10, 1997 a communication was received from the State, which was forwarded to the petitioner for its observations. On October 8, 1997 written observations were received from the petitioners, which were forwarded to the State for its information.

7. On August 19, 1998 the Commission repeated its request to the State for information dated March 7, 1997. On September 22, 1998 observations were received from the State. On February 5, 2002 the Commission convened the parties for a hearing to be conducted during the 114th regular session of the IACHR. On July 19, 2002 the IACHR forwarded the documents provided by the State to the petitioners at the hearing held on March 6, 2002. On September 20, 2007, at the request of the petitioners, the IACHR again forwarded the documents provided by the State at the hearing for their observations. On April 2, 2009 the IACHR, pursuant to Article 30(5) of its Rules of Procedure, asked the State and the petitioners for updated information on the matter in question. In response, the State and the petitioners asked for extensions to submit their observations, which were granted by the IACHR.

8. On June 5, 2009 the petitioners asked for another extension, which was granted by the Commission. On July 13 and 17, 2009 updated information was received from the petitioners along with annexes, which were forwarded to the State for its observations. On July 23, 2009 a brief was received from the petitioners supplementing its brief of July 13, 2009, which was forwarded to the State for its observations. On August 19, 2009 the State submitted a brief with its final observations.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners indicate that Valentín Basto Calderón was a peasant leader, President of the National Association of Peasant Land Users (*Asociación Nacional de Usuarios Campesinos - ANUC*) of García Rovira province in the department of Santander, a member of the departmental and national ANUC, and Vice Chairman of the Solidarity and Human Rights Defense Committee of García Rovira. They state that he was also a Council member of the municipality of Cerrito representing the Liberal Party and Vice Chairman of the Cerrito City Council. They state that Pedro Vicente Camargo worked as a farmer in the town of Servitá, municipality of Cerrito, department of Santander and Carmenza Camargo Sepúlveda (8) was his daughter.

10. As background, the petitioners allege that in the years and months prior to his death Valentín Basto had been the target of statements, threats, and harassment due to his work as a peasant leader in the region and his reports on the activities of law enforcement, who were accusing the people of being auxiliaries of illegal armed groups. They allege that the threats and harassment came primarily from members of the police and the national army and that Valentín Basto's relatives and others in the community knew of and had even witnessed such incidents.

11. They allege that between 1986 and the date of his death, Valentín Basto's family had been threatened on various occasions. They allege that members of the national army had even shot at his nephew and brother-in-law. They state that Valentín Basto reported the incident and, as a result, he had received numerous death threats from the army and the national police. In addition, they state that the daughter of Valentín Basto indicated that in the year prior to his death members of the national army would come to his house asking for him every three months. They allege that Valentín Basto had expressed to friends and relatives his fear of leaving his house for fear of being pursued by the army.

12. The petitioners allege that the threats against Valentín Basto were reported publicly to local and national authorities. Specifically, they indicate that on March 20, 1985 Valentín Basto sent a letter to the mayor of Cerrito, a complaint to President Virgilio Barco, and a memorandum to the Office of the Prosecutor together with another member of the council at the time and some twenty people from the town, seeking cooperation on stopping the army's persecution, to which he received no response. They also allege that at a human rights forum held in August 1987, Valentín Basto and his cousin Martín Calderón Jurado,² President of the ANUC of García Rovira, reported the death threats and pointed to persons linked to the police and national army as the perpetrators of those threats.

13. They allege that on February 21, 1988, at approximately 9:00 a.m., two unknown persons parked their car, a yellow Renault, 20 meters from the Police Substation of the municipality of Cerrito and killed Valentín Basto by shooting him 35 times. They indicate that Valentín Basto was 169 meters from the Police Substation from where they would have had a full view of the incident. They indicate that the attack also wounded Carmenza Camargo Sepúlveda (8) and his father, Pedro Camargo, who died at 4:30 p.m. at the health center of the same municipality from the gunshot wounds.

14. They state that after shooting, the perpetrators headed to the car they were driving, shooting into the air. They allege that at the time of the incident members of the national police were nearby in the park and outside the police station. However, none of them reacted to keep the perpetrators from fleeing but took refuge underneath the benches. They state that there was no operation to pursue or any action or call to hem in the perpetrators in the Servitá military base nearby or the neighboring police stations in Concepción, Málaga, and Enciso. They allege that the national army failed to act according to its procedures and to take adequate measures for this purpose, which facilitated the actions of the perpetrators and their flight since they took more than half an hour to reach the location of the incident from their base that was only three and a half kilometers away and asked the populace of Cerrito to "tell us where the guerrilla is or we'll hang you." They also allege that the military checkpoint on the route from Cerrito to Málaga had been lifted.

15. The petitioners state that on February 21, 1988 at 10:05 a.m. the procedure was carried out to remove the body of Valentín Basto and that same day at 4:45 p.m. the procedure was carried out to remove the body of Pedro Camargo as ordered by the local judge and observed by two witnesses. On February 22, 1988, a record was made of the autopsies performed on the bodies of Valentín Basto and Pedro Camargo. They state that on the same day the ANUC reported the death of Valentín Basto to the Office of the Attorney General and sought its intervention to investigate and clarify the facts.

16. The petitioners state that on February 23, 1988, the day of the funeral and burial of Valentín Basto, the town was militarized and the religious ceremony was about to be suspended. They allege that peasants who were attending the funeral complained about the aggressiveness of law enforcement. They indicate that during the religious ceremony the departmental ANUC delegate, José Manuel Menco Rojas, read a communiqué stating that "as a national peasant organization, we declare the military personnel who did nothing to detain or pursue the murderers to be guilty."

17. They allege that after the religious ceremony, at about 2:30 p.m., the five priests who officiated were detained in the streets of the municipality of Cerrito and subjected to a thorough search by the army and police. They allege that Manuel Menco, who was in the same vehicle as the priests, was interrogated, photographed, and accused of being an agitator and member of illegal armed groups by the soldiers and police under the command of the police commander and army sub-lieutenant. They allege that he was conducted to the barracks, stripped of his clothes, and repeatedly called a member of illegal armed groups by national army personnel. The petitioners allege that at about 4:00 p.m. military and police personnel began shooting for several minutes and in response the population ran to hide. They state that the sub-lieutenant in charge alleged that they were shooting because "we were harassed by a

² The petitioners refer to IACHR. Report No. 32/92, Case 10.454, Martín Calderón Jurado, September 25, 1992.

group and had to defend ourselves.” They indicate that Manuel Menco Manuel was released on February 24, 1988 and the national police gave him an hour to leave town.

18. They allege that one week after the deaths of Valentín Basto and Pedro Camargo, at 11:00 p.m., some members of the national army passed through the town knocking on doors from house to house and shouting “hooray for the death of Valentín,” that Valentín’s brothers should “come out and we’ll finish them off,” and “if Valentín came back to life, we’d kill him again.” They also allege that Valentín Basto’s family members suffered persecution and threats from law enforcement because they belonged to the same family. They indicate that about three or four months later a nephew of Valentín Basto was threatened with a weapon and tied to a tree where he remained for several hours, after which he was transferred to another troop and released. They allege that after this incident he was forced to leave the country and remained in Venezuela for eight years.

19. The petitioners allege that Valentín Basto’s family members were not immediately able to go to the authorities to report his death because they were afraid and that when Valentín Basto’s wife went to the authorities to report the incident she was mistreated by a soldier and prevented from making the report. They state that on February 22, 1988, the Municipal Civil and Criminal Court of Cerrito ordered that an inquiry be opened to investigate the deaths of Valentín Basto and Pedro Camargo. This case is now being handled by Specialized Prosecutor’s Office 67 of the National Human Rights and International Humanitarian Law Unit and is still in the preliminary phase 20 years after it was started.

20. They allege that between 1988 and 1990 various evidentiary proceedings were conducted. They indicate that an order was issued on March 6, 1991 to send the proceedings to the Sectional Public Order Directorate in the city of Cúcuta. They indicate that on October 22, 1991 the Public Order Judge decided to refrain from initiating the investigation in the case because after more than two years since the start of the inquiry there was no information regarding the perpetrators. They state that the Prosecutor appealed to the Higher Public Order Court, which ordered the preliminary investigation to continue. They state that on July 30, 1992, the Regional Prosecutor’s Office of Cúcuta, Evidence Unit, order the provisional suspension of the investigation until new evidence emerged to restart the case. They state that on August 6, 1996, the Regional Prosecutor’s Office of Cúcuta decided to reactivate the investigation because the decision to suspend had overlooked the appellate decision of the Higher Public Order Court, ordered evidence to be processed, and commissioned the Judge of the Civil and Criminal Municipal Court to hear the evidence. In a ruling dated January 10, 1997, the National Directorate of Prosecutor’s Offices ordered the reassignment of the preliminary investigation to the National Unit of Prosecutor’s Offices for Human Rights and International Humanitarian Law.

21. They allege that the National Human Rights and International Humanitarian Law Unit conducted various evidentiary proceedings between 1997 and 1999. They state that the Prosecutor’s Office failed to process various items of evidence, arguing the law enforcement situation in the area. They state that on November 28, 2005 the representative of the Colombian Commission of Jurists was recognized as a civilian party representing the wife and daughter of Valentín Basto. They state that orders were issued to process various items of evidence during 2006, which they allege was not done due to logistical and procedural reasons cited by the judicial police.

22. They allege that on July 22, 2007, the Investigative Unit of the Human Rights and International Humanitarian Law Group of the National Technical Investigations Corps was commissioned to put together the necessary evidentiary proceedings. On September 3, 2008, Specialized Prosecutor’s Office 67 ordered the processing of various items of evidence in order to move ahead with the investigation. They state that Report CTI UNDH-DIH No. 275-9 of June 23, 2009 took account of the proceedings conducted and the conclusions thereof. The petitioners allege that in the criminal investigation the actions taken by the Prosecutor’s Office produced unwarranted delays as well as failures by the army and national police to provide timely responses to requests for evidence.

23. Regarding the disciplinary process, they state that on April 7, 1988, the Solidarity and Human Rights Defense Committee of García Rovira and the priests who conducted the funeral of Valentín Basto submitted a complaint to the Attorney General’s Office and the Presidential Advisory

Office for Human Rights. On June 3, 1988 a Justice Department Commission ordered by the Attorney General issued a report on the proceedings carried out and in its conclusions pointed out that "with respect to the measures ordered by the Cerrito police and the army at the Servitá base, once the peasants' murder had occurred, it was found that in practice they were unpremeditated." They also indicate that the Commission characterized as inexplicable the fact that the military checkpoint had been lifted precisely on that day.

24. They state that on August 23, 1988 the Attorney General ordered that a copy of the proceedings be sent to the Delegate Procurator for the National Police in order to proceed with the preliminary procedures to clarify the measures taken by the Commander of the Police Substation of Cerrito on the day of the incident and the day of burial. In addition, it sent copy of the preliminary proceedings to the Delegate Procurator for the Military Forces to be used in proceeding with the respective preliminary investigation. They state that the Second Delegate Procurator for Human Rights decided to order the archiving of the original file because the investigations were delegated to the competent prosecutor's offices.

25. On November 8, 1988, the Delegate Procurator for the Military Forces concluded that there was no evidence that military personnel committed the murders and thus decided to archive the proceeding. On March 12, 1991, the Delegate Procurator for the National Police issued a single instance ruling against a National Police sergeant and punished him with a ten-day suspension from duty, finding that there was negligence in service and that he participated directly or indirectly with the army to intimidate the population on the day of Valentín Basto's funeral. They state that the sergeant filed an appeal for review and on August 29, 1991 the Delegate Procurator for the National Police decided not to review the order and later archived the proceeding.

26. The petitioners allege that the deaths of Valentín Basto and Pedro Camargo at the hands of persons unknown occurred with the direct cooperation of members of law enforcement based on actions and failures to act, both before and after the incident, and thus allege that the State is responsible for violating the right to life protected in Article 4 of the American Convention as it relates to Article 1(1) of the same Convention, to the detriment of Valentín Basto and Pedro Camargo.

27. The petitioners allege that the State is responsible for violating the right to personal integrity protected in Article 5 of the American Convention as it relates to Article 1(1) of the same Convention, to the detriment of Valentín Basto, given that in the years prior to his death he had been the target of harassment and threats by members of law enforcement and had thus been forced to change his residence. In addition, they allege that the State is responsible for violating the right to personal integrity protected in Article 5 of the American Convention as it relates to Article 1(1) of the same Convention, to the detriment of Carmenza Camargo (8), daughter of Pedro Camargo, who was with her father at the time of his death and was wounded in the attack.

28. The petitioners allege that the failure to provide judicial clarification of the facts that are the subject of the complaint constitutes a violation of the rights to judicial guarantees and judicial protection established in Articles 8.1 and 25 of the American Convention as they relate to Article 1(1) of the same Convention. They allege that the fact that the investigation has lasted for more than 20 years constitutes a violation of the reasonable period of time established in the American Convention. They also allege that in 1997 the State recognized responsibility for violating Article 25 of the American Convention.

29. The petitioners allege that the State is responsible for violating the right to personal integrity protected in Article 5 of the American Convention in relation to Article 1(1) thereof, to the detriment of the relatives of Valentín Basto, Pedro Camargo, and Carmenza Camargo in view of the harassment they suffered, particularly the relatives of Valentín Basto, both before and after his death, as well as the failure to provide judicial clarification of the facts.

30. Regarding compliance with the requirement on prior exhaustion of domestic remedies as provided in Article 46(1)(a) of the American Convention, the petitioners allege that the exception established in Article 46(2)(c) applies given that the investigation is still in the preliminary phase 20 years

after it was initiated and, as a result, no one has been determined to be criminally responsible. Finally, the petitioners ask the Commission, pursuant to Article 37(3), currently Article 36(3) of its Rules of Procedure, to analyze the admissibility and the merits of this complaint at the same time.

B. Position of the State

31. The State alleges that, due to the death of Valentín Basto and Pedro Camargo, domestic proceedings were conducted in the regular criminal and disciplinary jurisdictions. Regarding the investigation conducted by the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General under case number 168, the State alleges that the investigative work done by competent authorities since the incident occurred has been ongoing and that recent actions such as the taking of testimony in 2009 seek to individually identify and punish those responsible for the deaths of Valentín Basto and Pedro Camargo and the injuries to Carmenza Camargo.

32. Regarding the disciplinary jurisdiction, the State maintains that three investigations were initiated. An investigation was started by the Office of the Delegate Procurator for the Military Forces, which did not find cause to formally open a disciplinary investigation against Fifth Brigade personnel and was archived on November 8, 1988. A proceeding was conducted by the Delegate Procurator for the National Police. It concluded on March 12, 1991 with a disciplinary sanction of ten days of suspension imposed on the Commander of the Police Station in Cerrito for negligence regarding efforts to apprehend the individuals who killed Valentín Basto and Pedro Camargo. Finally, a preliminary investigation was initiated by the Second Delegate Procurator for the Judicial and Administrative Police. It was archived for lack of evidence on June 29, 1990.

33. With respect to the prior exhaustion of domestic remedies requirement, the State alleges that the criminal investigation is an adequate and effective remedy to address the violation of rights established in Articles 4 and 5 of the American Convention and that in the instant case this remedy has not been exhausted. It alleges that the investigation conducted by the competent authorities has been ongoing so that there is no unwarranted delay in the conduct thereof.

34. In this regard, the State analyzes three elements of a reasonable period of time, namely the complexity of the matter, the procedural activity of the interested party, and the conduct of the judicial authorities. Regarding the complexity of the matter, the State asserts that despite the investigative efforts of the Prosecutor's Office since February 22, 1988 it has not been possible to individually identify those allegedly responsible. Regarding the procedural activity of the interested party, the State alleges that the inclusion of a civilian party in 2005 through the representatives of the wife and daughter of Valentín Basto is very important for the State so that the victims or those affected by the events have the power to seek and provide evidence and in this way help to provide the impetus for the domestic process desired by the victims' families. Finally, regarding the conduct of the judicial authorities, the State alleges that the investigation conducted by the National Human Rights Unit of the Attorney General's Office under case number 168 has involved constant procedural activity from the time of the incident until today.

35. In addition, the State alleged that the petitioners did not file the action for direct reparation with the contentious-administrative jurisdiction, which would constitute the suitable remedy for obtaining reparations at the domestic level for injuries caused by omissions or operations attributable to agents of the State. This action has a statute of limitations that runs to two years from the day after the occurrence of the incident that is the subject of the claim. In this respect, the State alleges that the action for direct reparation lapsed in March 1990 and by not filing this action the petitioners tacitly waived their right to obtain reparations at the domestic level. The State maintains that given that the contentious-administrative jurisdiction is achieving standards of comprehensive reparation, that remedy must be exhausted by the alleged victims before having recourse to the Inter-American system, so that in the instant case there is a failure to exhaust domestic remedies.

36. Regarding the alleged recognition of the State's responsibility for violating Article 25 of the American Convention, the State alleges that it has no evidence of that recognition of responsibility.

37. The State also alleges that in their last submission the petitioners are presenting new facts relating to the alleged harassment of Valentín Basto's relatives during his funeral by members of law enforcement, facts to which no reference was made in the initial petition. Accordingly, pursuant to Article 39, currently Article 38 of the IACHR Rules of Procedure, the State asks that the Commission not consider the facts alleged in the petitioner's final submission as a subject of this complaint.

38. The State also alleges that in the instant case there was no lack of due diligence by the State to prevent a violation of human rights in that the allegations regarding threats and harassment against Valentín Basto are based on a communication that he sent to the mayor of Cerrito three years before his death indicating his concern about the threats. In view of the foregoing, the State alleges that the death of Valentín Basto was an unforeseen event and did not afford the State reasonable opportunities to prevent it and thus the complaints do not constitute violations of Articles 4 and 5 of the American Convention.

39. Finally, the State asks that the petition be declared inadmissible due to the failure to comply with the prior exhaustion of domestic remedies requirement, the absence of grounds for the exception to the requirement as provided in Article 46(2)(c) of the American Convention, and the fact that the complaints do not constitute violations of the American Convention because they are the responsibility of third parties. It asks the Commission not to consider the petitioners' request to join the admissibility and merits stages and to consider the State's request to delimit the facts covered by this petition.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

40. In principle, Article 44 of the American Convention empowers the petitioners to submit petitions to the Commission. The petition identifies as alleged victims individuals whose rights under the American Convention the Colombian State agreed to respect and guarantee. Regarding the State, the Commission points out that Colombia has been a State Party to the American Convention since July 31, 1973, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

41. In addition, the Commission is competent *ratione loci* to hear the petition in that it alleges violations of rights protected by the American Convention that occurred within the territory of Colombia, a State Party to that convention. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date when the events alleged in the petition occurred. Finally, the Commission is competent *ratione materiae* because the petition reports possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

42. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in accordance with generally recognized principles of international law as a requirement for the admission of petitions regarding the alleged violation of the American Convention.

43. Article 46(2) of the Convention provides that the requirement for prior exhaustion of domestic remedies is not applicable 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 an unwarranted delay in rendering a final judgment under the aforementioned remedies.

As the Inter-American Court has established, whenever a State alleges the failure to exhaust domestic remedies by the petitioners it has the burden of demonstrating that the remedies that have not been exhausted are “suitable” for addressing the alleged violation, that is, that the function of these remedies within the domestic legal system is suitable for protecting the legal right infringed.³

44. In the instant case, the State alleges that the petition does not satisfy the prior exhaustion of domestic remedies requirement under Article 46(1)(a) of the American Convention because a preliminary investigation is currently under way in Specialized Prosecutor’s Office 67 of the Human Rights Unit and has been procedurally active constantly from the time of the incident until today. In addition, the State alleges that the petitioners did not file the action for direct reparation with the contentious-administrative jurisdiction, which would have represented the suitable remedy for obtaining reparations at the domestic level for the injuries caused by omissions or operations attributable to agents of the State. For their part, the petitioners allege that since more than 20 years have passed since the investigation was initiated, this preliminary stage has not been effective in punishing those responsible.

45. In view of the allegations of the parties, it is appropriate first to clarify which domestic remedies should be exhausted in a case like this, in the light of the jurisprudence of the inter-American system. The precedents established by the Commission indicate that whenever a crime that can be prosecuted *ex officio* is committed, the State has the obligation to set in motion and pursue the criminal process⁴ and that, in such cases, this is the suitable route for clarifying the facts, judging those responsible, and establishing the respective criminal penalties, in addition to making other monetary means of reparation possible. The Commission notes that the facts presented by the petitioners with respect to the deaths of Valentín Basto and Pedro Camargo and the injuries to Carmenza Camargo are, according to Colombian law, criminal conduct to be prosecuted *ex officio* and that the investigation and trial of those crimes must be pursued by the State.

46. According to the information provided, more than 20 years have passed since the events that are the subject of this petition occurred and the criminal investigation of the deaths and injuries being conducted by Specialized Prosecutor’s Office 67 of the National Human Rights and International Humanitarian Law Unit continues in the preliminary stage, so that no one has been assigned criminal responsibility. In this regard, the Commission notes that the information provided by the State does not explain or justify why so much time has elapsed and that the State has not indicated what measures are under way that could bring the process to a conclusion.

47. As expressed by the Inter-American Court, although any criminal investigation must comply with a series of legal requirements, the rule on prior exhaustion of domestic remedies should not lead to a halt or delay that would render international action in support of the victims ineffective.⁵ Therefore, given the characteristics of the instant case and the time that has passed since the events that are the subject of the petition, the Commission considers to be applicable the exception provided under Article 46(2)(c) of the American Convention based on delays in the conduct of the domestic criminal process, so that the exhaustion of domestic remedies requirement need not be met.

³ Article 31(3) of the Commission’s Rules of Procedure. See also I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, paragraph 64.

⁴ CIDH, Report No. 99/09, Petition 12.335, *Gustavo Giraldo Villamizar Durán*, Colombia, October, 29, 2009, para. 33.

⁵ I.A Court H.R., *Velásquez Rodríguez Case. Preliminary Objections*. Judgment of June 26, 1987. Series C, No. 1, paragraph 93.

48. Regarding the proceedings before the disciplinary jurisdiction and the contentious-administrative jurisdiction, the Commission has repeatedly maintained⁶ that such venues do not constitute suitable remedies for purposes of analyze the admissibility of a petition like that now before the Commission. The disciplinary jurisdiction does not constitute an adequate venue for adjudicating, punishing, and providing reparations for the consequences of human rights violations.

49. The invocation of the exceptions to the rule of prior exhaustion of domestic remedies as provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights established in the Convention, such as guarantees on access to justice. However, given its nature and purpose, Article 46(2) is a rule with autonomous content *vis á vis* the substantive rules of the Convention. Therefore, the determination as to whether the exceptions to the rule on prior exhaustion of domestic remedies are applicable to the case in question must be made prior to and separate from the analysis of the merits of the case, in that it depends on a standard of assessment different from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be made clear that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report to be adopted by the Commission regarding the merits of the dispute, in order to determine whether there are violations of the American Convention.

2. Deadline for submitting the petition

50. The American Convention establishes that in order for a petition to be admitted by the Commission it must have been submitted within six months of the date when the alleged injured party was notified of the final decision. In the petition under review, the IACHR has established the applicability of the exceptions to the rule of prior exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure establishes that in cases in which the exceptions to prior exhaustion of domestic remedies are applicable, the petition must be submitted within a reasonable period of time in the judgment of the Commission. For this purpose, the Commission must consider the date on which the alleged violations of rights occurred and the circumstances of each case.

51. In the instant case, the petition was received on August 11, 1988, the events covered in the complaint occurred on August 21, 1988, and their alleged effects in terms of the alleged failure to administer justice continue to the present. Therefore, in view of the context and characteristics of the instant case, as well as the fact that the investigation is still in the preliminary investigation stage, the Commission feels that the petition was submitted within a reasonable period of time and that the admissibility requirement relating to the deadline for submission should be considered satisfied.

3. Duplication of proceedings and international *res judicata*

52. The file does not indicate that the subject of the petition is pending in any other international proceeding or that it reproduces a petition already examined by this or any other international body. Therefore, it is appropriate to deem the requirements established in Articles 46(1)(c) and 47(d) of the Convention to have been met.

⁶ IACHR. Report No. 74/07 (Admissibility). José Antonio Romero Cruz *et al.* v. Colombia. October 15, 2007, para. 34.

4. Characterization of the alleged facts

53. In view of the factual and legal arguments presented by the parties and the nature of the issue before it, the Commission feels that the allegations made by the petitioners regarding the scope of the alleged responsibility of the State with respect to the deaths of Valentín Basto Calderón and Pedro Vicente Camargo and its failure to provide judicial clarification could represent possible violations of the rights to life, judicial guarantees, and judicial protection protected under Articles 4(1), 8(1), and 25 as they relate to Article 1(1) of the American Convention.

54. The Commission also believes that the allegations made by the petitioners regarding the scope of the alleged liability of the State for the injuries to Carmenza Camargo and its failure to produce judicial clarification could constitute possible violations of the rights to personal integrity, judicial guarantees, and judicial protection established by Articles 5, 8(1), and 25 as they relate to Article 1(1) of the American Convention.

55. Regarding the alleged threats and harassment against Valentín Basto Calderón by members of law enforcement, the Commission notes that the allegations made by the petitioners require an analysis of the merits under the standards of Article 5 as it relates to Article 1(1) of the American Convention. The Commission will also consider in the merits phase the alleged violation of Article 5 of the American Convention to the detriment of the relatives of the alleged victims.

V. CONCLUSIONS

56. The Commission concludes that it is competent to examine the complaints submitted by the petitioners regarding the alleged violation of Articles 4(1), 5, 8(1), and 25 as they relate to Article 1(1) of the American Convention and that they are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

57. Based on the factual and legal arguments set forth above and without thereby prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to Articles 4(1), 5, 8(1), and 25 as they relate to Article 1(1) of the Convention.
2. To notify the Colombian State and the petitioners of this decision.
3. To continue with analysis of the merits of the case.
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 12th day of the month of July, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Luz Patricia Mejía Guerrero, members of the Commission.