

OEA/Ser.L/V/II.164
Doc. 127
7 September 2017
Original: English

REPORT No. 106/17
PETITION 272-07
ADMISSIBILITY REPORT

LUIS HORACIO PATIÑO AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2098 held on September 7, 2017
164th Extraordinary Period of Sessions

Cite as: IACHR, Report No. 106/17. Petition 272-07. Admissibility. Luis Horacio Patiño and Family. Colombia. September 7, 2017.



Organization of
American States

PREPORT No. 106/ 17¹
PETITION 272-07
 ADMISSIBILITY REPORT
 LUIS HORACIO PATIÑO AND FAMILY
 COLOMBIA
 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Libardo Preciado Camargo y Libardo Preciado Niño
Alleged victims:	Luis Horacio Patiño y familia
State denounced:	Colombia
Rights invoked:	Articles 4 (Life,) 5 (Personal Integrity) and 25 (Judicial Protection) of the American Convention on Human Rights, ² The American Declaration of the Rights and Duties of Man, Inter-American Convention to Prevent and Punish Torture, Protocol to the American Convention to Abolish the Death Penalty and other international treaties. ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	March 7, 2007
Additional information received during the review phase:	November 14, 2011
Date on which the petition was transmitted to the State:	February 1, 2012
Date of the State's first response:	June 25, 2012
Date of additional observations from the petitioning party:	July 19, 2012; June 28, 2016
Date of additional observations from the State:	October 10, 2012

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (deposit of instrument of ratification on July 31, 1973) and Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification on January 19, 1999)

¹ In accordance with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the deliberations or decision in this matter.

² Hereinafter "Convention" or "American Convention."

³ Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

⁴ The observations submitted by each party were duly forwarded to the opposing party.

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (Life), 5 (Personal Integrity), 8 (Fair Trial) and 25 (Judicial Protection) in connection with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies:	Yes, exception provided for at Article 46(2)(c) of the American Convention
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners state that on October 1, 1992, Luis Horacio Patiño was convicted of the crime of homicide and sentenced to thirteen years and four months in prison in the National Penitentiary of “El Barne,” located in the Municipality of Combita of the Department of Boyaca, where he entered in good health on July 6, 1993. They explain that due to altercations with the prison guards, the alleged victim was sanctioned and secluded in a punishment cell on January 17, 1996. They allege that while he was fulfilling this punishment that same night, continuous screams of pain were heard from his cell, which motivated other inmates to request help from the prison guards. Nevertheless, none of the members of the *Instituto Nacional Penitenciario y Carcelario* (National Penitentiary and Prison Institute – INPEC) came to the location, ignoring the inmates’ desperate calls for help. The next day, on January 18, 1996, the alleged victim was found dead in his cell exhibiting signs of violence; the legal autopsy determined that the cause of death was a secondary endocranial hypertension to a blunt cranio-encephalic trauma. His next of kin suspect that these injuries were caused by a beating perpetrated by the guards in the isolation cell.

2. They state that, because of the facts, a disciplinary investigation was initiated with the objective of determining the responsibility of the police agents, but the investigation was archived by INPEC on May 13, 1996, after considering that there was no negligence evidenced in the actions of its personnel in the prison during the events. This, despite the consistent statements of other inmates holding that they tirelessly requested help for the alleged victim. In addition, they highlight that the criminal investigation initiated *ex officio* for the crime of homicide on January 18, 1996, did not conclude with a substantive decision since the case was archived provisionally in the prior stage by the Prosecutor’s Office on September 12, 1997, without clarifying the events. They explain that, despite re-opening the case in 2012, the Prosecutor’s Office decided again to provisionally archive it on November 18, 2015, arguing that it was not possible to determine the identity of the custodians that verified the health condition of the alleged victim and that they could not discard the possibility that Luis Horacio Patiño could have inflicted the injuries on himself that ultimately caused his death. Consequently, they state that there is absolute impunity, since the persons responsible for the death of the alleged victim have not been sanctioned.

3. They add that the family of the alleged victim submitted a direct reparations claim that was denied on February 14, 2005, by the Administrative Court of Boyaca, arguing that even though there was a failure of penitentiary surveillance that would generate a reparation responsibility for the State, the plaintiffs could not access it because they had not verified their relationship to the alleged victim. The latter, since the victim was registered as Luis Horacio Agudelo Patiño in the penitentiary records and his civil birth records had not been submitted to demonstrate the relationship to his mother and maternal brothers. The family appealed this judgment, arguing judicial omission for failure to request additional proof if there was any doubt of filiation, and attached the civil birth record of the alleged victim. This appeal was rejected by the State Council on November 4, 2005, considering that the amount of reparation requested at the time did not

reach the minimum legal amount and, consequently, it was a process of single instance not subject to appeal. Faced with this decision, they state having filed an appeal that was dismissed by the State Council through a resolution on March 16, 2006, and notified to the petitioners on September 8, 2006.

4. For its part, the State holds that the petition is inadmissible because it was filed after the six-month period provided in the American Convention. Thus, it states that the judgment that resolved the appeal issued by the State Council, was notified to the petitioners on March 28, 2006, and the petition was filed before the IACHR on March 7, 2007. In addition, the State maintains that the acts denounced do not represent human rights violations because these were known by domestic jurisdictional authorities. In this regard, it states that the administrative proceedings of direct reparation concluded with unfavorable outcomes that do not constitute nor do they imply a human rights violation.

5. Likewise, the State refers to the framework of criminal investigations. In 1997, the Office of the Attorney General determined to provisionally archive the record, because the investigation period had passed without determining any elements in relation to the persons responsible for the death of the alleged victim. Nevertheless, due to the proceedings undertaken by the District Prosecutor, it states that in 2012 the proceedings were reopened and assigned to the Prosecutor Delegated 17 before the Criminal Judges of the Circuit to determine the circumstances of and responsibilities for the acts. Therefore, the State alleges that there is an ongoing proceeding and that the petitioners still have recourse to adequate domestic remedies. Additionally, it holds that there is no undue delay given the complexity of the case at hand.

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

6. The petitioners maintain in relation to the process initiated before the contentious-administrative jurisdiction that the decision issued by the State Council confirming the inadmissibility of the appeal was notified on September 8, 2006 and, therefore, the petition before the IACHR was filed within the prescribed period. In relation to the criminal proceeding, they highlight that the authorities provisionally archived the case in 1997, and that in 2012 they reopened it and, without any results, on November 18, 2015 they decided, a second time, to provisionally archive it, with more than twenty years having passed without the State sanctioning the responsible persons, and the results in an excessive, undue delay of justice and justifies an exception to the rule of exhaustion of domestic remedies. The State states that, after the reopening of the criminal investigation in 2002, the petitioners have adequate domestic remedies, and that there is no undue delay due to the complexity of the case at hand.

7. The Commission observes, in situations related to possible violations to the right to life, that the domestic remedies that must be considered with regards to the admissibility of a petition are those related to investigation and sanctioning of the responsible persons, which translates in the domestic legislation to crimes that can be punished *ex officio*. With regards to the proceedings before the contentious-administrative jurisdiction, and according to the information provided, the Commission reiterates that, for the objective of determining the admissibility of a complaint of the nature of the case at hand, it does not constitute an ideal mechanism and nor does it result necessary to exhaust the remedies, because it is not adequate to provide integral reparation and justice to the family.⁵ Without prejudice of the aforementioned, the IACHR will analyze the development and conclusions of said proceedings in an eventual merits report. Having addressed the above, the IACHR concludes that in the case at hand the exception to the exhaustion of domestic remedies provided in Article 46(2)(c) of the American Convention applies.

8. On the other hand, the petition filed before the Commission was received on March 7, 2007, and the alleged facts that are the subject matter of the complaint occurred since January 17, 1996, and their effects in relation to the alleged denial of justice extend to the present time. Therefore, in light of the context and the characteristics of the present case, the Commission considers that the petition was filed within a reasonable term and that the timeliness requirement of admissibility should be considered satisfied.

⁵ IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio De La Hoz Montero and Family. Colombia. December 6, 2016, para. 32.

VII. COLORABLE CLAIM

9. In light of the elements of fact and of law presented by the parties and the nature of the subject matter under its consideration, the Commission considers that the possible acts of violence and alleged torture committed against a person deprived of liberty by State agents, the omission to attend the call for help and the later death of the alleged victim within prison premises under circumstances that allegedly relate to a blunt cranial encephalic trauma, the lack of a fair trial for his next of kin in the criminal investigation proceedings and the impossibility to appeal for a direct reparation judgment from the judicial courts because of the minimum amount,⁶ could characterize possible violations of Articles 4 (Right to Life), 5 (Right to Personal Integrity), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in conjunction with its Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects), and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, due to the alleged failure to investigate, in prejudice of the alleged victim and his family.

10. The Inter-American Commission has set forth that, once the American Convention enters into force in relation to a State, the Convention and not the Declaration becomes a primary source of applicable law by the Commission, as long as the petition refers to the alleged violation of identical rights in both instruments and it is not related to a situation of continuous violation. In the present case, the IACHR notes that the rights alleged by the petitioners are protected specifically by the American Convention. In relation to the claim about the alleged violation of the Protocol to the American Convention to Abolish the Death Penalty; the Commission observes that the petitioners have not offered allegations or evidence that allows the Commission to consider *prima facie* its possible violation.

11. On the other hand, in relation to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, its Second Optional Protocol and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Commission lacks competence to determine violations of the norms of these treaties, even though it can take them into consideration as provided in Article 29 of the American Convention when the Commission interprets and applies it.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8 and 25, in accordance with Articles 1(1) and 2 of the American Convention; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To notify the parties of this decision;

3. To continue with the analysis of the merits; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Mexico, on the 7th day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.

⁶ In previous cases, the Inter-American Commission has admitted petitions related to the alleged lack of a review instance of the administrative actions in Colombia, based in the established quantum. IACHR, Report No. 71/09, Petition 858-06, Belen-Altavista Massacre. Colombia. August 5, 2009, para. 44; and IACHR, Report No. 69/09, Petition 1385-06, Rubén Darío Arroyave Gallego, August 5, 2009, para. 37.