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REPORT No. 110/17
PETITION 802-07
REPORT ON ADMISSIBILITY

LEONARDO VANEGAS AND FAMILY
COLOMBIA

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

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 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	German Ospina Muñoz
Alleged victims:	Leonardo Vanegas and family
State denounced:	Colombia
Rights invoked:	Articles 4 (Life,) 5 (Humane Treatment,) 8 (Fair Trial,) 10 (Compensation,) 11 (Privacy) and 25 (Judicial Protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	June 14, 2007
Date on which the petition was transmitted to the State:	September 26, 2011
Date of the State's first response:	January 10, 2012
Additional observations from the petitioning party:	March 2, 2012
Additional observations from the State:	September 3, 2012
Date of warning about possible archive:	March 16, 2017
Date on which the petitioning party responded to the warning about possible archive:	May 25, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materia</i>:	Yes; American Convention (deposit of instrument of ratification on July 31, 1973)

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 Convention

¹ In keeping 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 The observations submitted by each party were duly forwarded to the opposing party.

Exhaustion of domestic remedies:	Yes, exception in Article 46.2(c) of the ACHR applies
Timeliness of the petition:	Yes, as set forth in Section VI

V. ALLEGED FACTS

1. The petitioner indicates that Leonardo Vanegas was serving a sentence at the *Cárcel del Distrito Judicial de Tuluá* (Prison of the Judicial District of Tuluá), Cauca Valley. He died on July 1, 2001 after falling from the roof of the prison. The petitioner claims that the alleged victim was forced to take refuge on the roof after prison guards launched tear gas to try to quell a fight between guerrillas and paramilitaries taking place on Patio 3. The tear gas was dispersed indiscriminately, even on persons who were not present where the fight was taking place, including the alleged victim (Patio 2.) The gas was discharged in an enclosed and overcrowded space, causing panic among and suffocation of the inmates of Patio 2, who, to avoid the effects of the gas climbed the wall and sought shelter and air on the roof of the prison kitchen. The roof collapsed wounding five wounded inmates and causing the death of Leonardo Vanegas due to a cranio-encephalic fracture.

2. The petitioner states that the Tuluá Sectional Unit of the Public Prosecutor's Office launched an *ex officio* preliminary investigation, which was carried out in less than seven months. In said investigation, two initial statements were heard and an autopsy was performed on the alleged victim. The petitioner alleges that on January 24, 2002, the Prosecutor's office decided not to launch a criminal investigation and to close the inquiry. This was based on the failure to identify those responsible within a six-month timeframe, even though the order to take all necessary steps to clarify the events had not been complied with.

3. The petitioner indicates that on November 28, 2001 a Direct Damages Compensation Action was lodged before the Cauca Valley's Contentious-Administrative Court. The Action requested that the National Prison Institute (*INPEC*) be held administratively responsible for the death of Leonardo Vanegas based on the failure to protect his safety while in custody of the State authority. Therefore, it requested compensation for moral and material damages suffered by the relatives of the alleged victim. The petitioner claims that, even though the *INPEC* did not respond to the Action, the Court denied the claims by rejecting the administrative responsibility on the basis of the exception of "exclusive fault of the victim". The Court considered that the alleged victim's actions had been reckless as, instead of voluntarily climbing on the roof, the alleged victim should have used escape routes to the showers or other mechanisms that are normally present in all prisons, following the guards' orders.

4. The petitioner alleges that the Court arbitrarily assessed the evidence, did not weigh the responsibility of the prison authorities - who kept guerrilla and paramilitary members in the same space within the prison - and nor did it weigh the disproportionate use of tear gas. He adds that the existence of emergency protocols was not proven, nor the existence of orders given by the guards during the collapse, nor evidence about the maintenance *status* of the prison, especially its roof. The petitioner asserts that the Court required that the alleged victim, who was at risk, had used non-existent escape routes in compliance with orders that were allegedly given, with the sole object of blaming the alleged victim for his own death and to exonerate the State authority. In short, he claims that the fulfilment of State obligations of safety and protection of persons deprived of their liberty, which in this case entailed preventing, deterring or ending the fight while protecting inmates at the same time, was not analyzed; instead, the Court blamed the alleged victim without any evidence.

5. He states that both the representatives of the alleged victim's family as well as the Legal Attorney appealed the decision and the same Contentious-Administrative Court rejected the appeal arguing that the amount requested as reparation did not reach the minimum required by law to allow for a second instance. The petitioner denounces that the qualification of the proceeding as a single instance is a due process violation. He points out that later a petition seeking constitutional protection (*tutela*) was lodged, requesting the annulment of the judgement of the first instance Court for violations of due process and equality. The Second Chamber of the Contentious-Administrative Court of the Council of State rejected the petition's admissibility stating that the Constitution "does not allow constitutional protection petitions with

regards to judicial orders,” a decision subsequently confirmed by the Fourth Chamber of the Council of State and then sent to the Constitutional Court for possible review. The petitioner claims that once the relatives of the alleged victim were deprived of any recourse to review the first instance decision, they expressly requested that the Constitutional Court review the decision rendered by the Second Chamber of the Council of State. On December 14, 2006, the Constitutional Court published the decision of the Selection Chamber not to review.

6. The State alleges that the events that originated this petition do not characterize a breach of rights protected by the American Convention. It argues that the petitioner does not provide enough evidence to modify what was proven in the contentious-administrative internal decision. The State claims that the petitioner intends to get a new decision from the IACHR with regard to events already tried by national courts. It adds that the request is extemporaneous as the six-month term should be counted from the moment the order that declared the appeals inadmissible was notified, i.e., February 16, 2006, as the appeal is the remedy that satisfies the requirements of the IACHR and should be the one that is considered an effective remedy rather than the request for review before the Constitutional Court. In this regard, the State requests that the Commission declare the petition inadmissible on the basis of extemporaneous submission, a failure to contain facts that characterize a violation of rights, and, in processing it, the Commission would be acting as a fourth instance.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner claims that the preliminary investigation into the death of Leonardo Vanegas while he was in State custody was closed on January 24, 2002, without a criminal investigation ever being carried out. He adds that the Direct Damages Compensation Action was rejected, as were other remedies invoked against said rejection. The petitioner indicates that the last decision was made known by the Selection Chamber of the Constitutional Court on December 14, 2006, and considered this date to be the date that domestic remedies were exhausted. For its part, the State contests the petitioner’s allegations, stating that relevant date should be that of the appeal inadmissibility decision on February 16, 2006.

8. With regards to the proceedings that were launched to investigate the alleged victim’s death, the IACHR recalls that the State’s has the duty *ex officio* and without delay to launch a serious, impartial, and effective investigation which must be conducted within a reasonable time and not as a mere formality. This is a guarantee of the right to life of those deprived of liberty when their deaths occurred in State custody and applies even in cases of natural death or suicide. It is for the State to clarify the circumstances in which the death occurred as a legal duty and not as a management of specific interests that depends on such interests’ initiatives.⁴ This duty of the State arises from the general duty to observe and ensure rights set forth in Article 1(1) of the American Convention, as well as the substantive duties established at Articles 4(1), 8 and 25 of that treaty.⁵

9. The Commission notes that in this case the Prosecutor’s Office launched an *ex officio* preliminary investigation for the presumed crime of murder, but it declined to initiate a criminal investigation, instead ordering the closure of the investigation due to a failure to identify those responsible for the crime. Hence, sixteen years after the death of the alleged victim, the events and responsibilities have not been clarified. In view of this circumstance, the Commission considers that the exception contained in Article 46(2)(c) applies, with the caveat that the causes and effects that have impeded the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the report that the Commission adopts on the merits, where it will determine whether there has been any violation of the Convention. The petition was lodged on June 14, 2007; the alleged victim died on July 1, 2001; on January 24, 2002, the preliminary investigation was closed and the effects of the alleged denial of justice continue to date. In light of the above

⁴ See, *inter alia*, IACHR, Report No. 38/17, Petition 1241-08. Admissibility. Omar Ernesto Vásquez Agudelo and Family. Colombia. May 18, para. 12.

⁵ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, OEA/SER/LK/V/II, Doc. 64, para. 271.

the Commission considers that the petition was submitted within a reasonable time and considers that the requirement of Article 32(2) of the IACHR's Rules of Procedure is met.

10. While the Commission considers that the Contentious-Administrative process does not constitute a suitable remedy in cases of this nature, and it is thus unnecessary to exhaust it for purposes of the admissibility stage, given that the petitioner expressly alleges violations within the framework of the direct Compensation Action, the Commission notes that on February 3, 2006, the same Court dismissed the Action and declared the appeal inadmissible. Subsequently, the Council of State rejected in first and second instance the petition seeking constitutional protection (*tutela*) and on December 14, 2006, the Constitutional Court rejected the request for revision. Therefore, the Commission concludes that this aspect of the petition's remedies was exhausted in compliance with Articles 46(1)(a) of the Convention and 31(1) of the Rules of Procedure. Also, as the petition was received on June 14, 2007, within the time frame of six months counted from the final decision from the Constitutional Court that exhausted domestic remedies, it complies with the requirement established in Articles 46(1)(b) of the Convention and 32(1) of the Rules.

VII. COLORABLE CLAIM

11. The IACHR believes that, if proved, the alleged responsibility of the State for the death of the alleged victim as well as the lack of investigation and reparation, could characterize violations of the Rights set forth in Articles 4 (Life,) 5 (Humane Treatment,) 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention in relation to Articles 1(1) and 2 of the Convention to the detriment of Leonardo Vanegas and his family, respectively.

12. As for the claim of the petitioner about the alleged violation of Article 10 (Right to Compensation) of the Convention, given that this provision refers to the right to compensation following a conviction due to a judicial error, the Commission considers that it does not correspond to declare this claim admissible. Regarding the allegations of the petitioner about a breach of Article 11 (Privacy,) the Commission notes that the petitioner *prima facie* has not offered grounds that allow for considering this possible violation.

13. Lastly, regarding the State's allegation about fourth instance, the Commission notes that admitting this petition is not intended to supplant the jurisdiction of any domestic judicial authority. Instead it will analyze at the merits stage of the present case if the domestic proceedings met with the guarantees of due process and judicial protection in accordance with the rights protected by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention, in accordance with Articles 1(1) and 2 of the same treaty to the detriment of Leonardo Vanegas and his family;

2. To find the instant petition inadmissible in relation to Articles 10 and 11 of the American Convention;

3. To notify the parties of this decision;

4. To continue with analysis of the merits; and

5. 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 México, on the 7 day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarette 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.