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REPORT No. 155/17

PETITION 1470-08

REPORT ON ADMISSIBILITY

**BEATRIZ ELENA SANMIGUEL BASTIDAS AND FAMILY
COLOMBIA**

Approved by the Commission at its session No. 2110 held on November 30, 2017.
166th Special Period of Sessions.

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PETITION P-1470-08
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 BEATRIZ ELENA SANMIGUEL BASTIDAS AND FAMILY
 COLOMBIA
 NOVEMBER 30, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Oscar Dario Villegas Posada
Alleged victim:	Beatriz Elena Sanmiguel Bastidas and family
State denounced:	Colombia
Rights invoked:	Articles 2 (duty to adopt legal provisions), 5 (personal integrity), 8 (judicial guarantees), 11 (honor and dignity) 25 (judicial protection) of the American Convention on Human Rights ² ; I (life, liberty, security and integrity of the person), V (honor, personal reputation and private and family life), VII (residence and transit) XI (health and welfare) and XVIII (justice) of the American Declaration on the Rights and Duties of Man ³ ; and Article 14 (due process) of the International Covenant on Civil and Political Rights

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	July 1, 2008
Additional information received at the stage of initial review:	September 4, 2009
Date on which the petition was transmitted to the State:	January 22, 2014
Date of the State's first response:	June 23, 2014
Additional observations from the petitioning party:	July 15, 2014 and January 22, 2015
Additional observations from the State:	September 29, 2014

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>:	American Convention (deposit of the instrument dated July 31, 1973) and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ⁵ (instrument deposited on November 15, 1996)

¹ In accordance with the provisions of Article 17.2^a of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate either in the discussions nor the decision in the present matter.

² Hereinafter "the Convention" or "American Convention".

³ Hereinafter "the Declaration" or "the American Declaration".

⁴ The observations presented by each party were duly transmitted to the opposing party.

⁵ Hereinafter the "Convention of Belém do Pará"

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 (judicial guarantees) and 25 (judicial protection) of the Convention, in connection with its Article 1.1; and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. ALLEGED FACTS

1. The petitioner indicates that on June 20, 1993, Beatriz Helena Sanmiguel Bastidas (hereinafter "the alleged victim") was at the Beer Festival in the popular neighborhood number 1 of the city of Medellín, when she was approached by an agent of the National Police, who was carrying out intelligence work dressed in civilian clothes. He alleges that said agent was in a state of drunkenness and invited the alleged victim to dance, who did not agree to his request, at which he became angry and, without any reason, shot her causing her death. After these events, the agent, who was known to the neighbors for his violent conduct, fled the scene threatening those present. The petitioner alleges that the gun used was an officially issued weapon, and that therefore the State is responsible for a violation committed when on official duties.

2. He indicates that due to the above facts, disciplinary, criminal and administrative actions were initiated and that there were violations of due process and judicial guarantees in these proceedings. He adds that there was negligence and a lack of effective investigation by the authorities and that although domestic remedies were exhausted, they were not effective in clarifying the facts and obtaining justice. He argues that the origin of the agent's weapon was not properly investigated, even though statements showed that the agent went directly to the scene of the violation, after carrying out intelligence work, and would not have had time to change the officially issued weapon for another private one. He also indicates that a judicial inspection of the police officers' weapons registers was not carried out; there was no verification whether the weapon had been returned to the police station after his official duties; and testimonies of several eyewitnesses to the events were not taken into account during the criminal proceedings. He also indicates that only the statements taken into account were those of the very same agent who alleged that the weapon had been stolen. For this reason, the Public Ministry in the criminal proceedings issued a warrant for "homicide and illegal possession of a personal defense firearm." The petitioner explains that the negligence of the authorities in charge of the investigation was put forward as a defense in the reparation proceedings and, generally, the investigation was so deficient that it failed to grant an effective criminal, administrative or disciplinary process. Likewise, he alleges that there had been an unjustified delay in the decision of the second instance of the administrative contentious jurisdiction that was issued after more than nine years.

3. In connection with the disciplinary proceedings, on June 29, 1993, the agent was dismissed from the Police. Subsequently, by order of August 1, 1994, the Metropolitan Police of the Aburrá Valley ordered the cessation of any disciplinary investigation due to lack of evidence on the ground that "having made the corresponding request to a number of judicial authorities, it was established that they lacked information on name of the alleged victim, the date of the homicide, the forensic reports and an endless list of pieces of evidence required for these proceedings." On February 3, 1994, new disciplinary proceedings were initiated before the Metropolitan Procurator of the Aburrá Valley - Permanent Office for the Defense of Human Rights - at the request of the alleged victim's mother. On June 27, 1996, this investigation was again closed, now by application of the principle of *ne bis in idem*, since the previous disciplinary proceedings had been advanced on the basis of the same facts, and all proceedings against the agent were dismissed.

4. With regard to the criminal action, the petitioner indicates that an investigation was initiated on June 23, 1993, and by order of October 30, 1996, the 132 Prosecutor's Office acting before the Criminal Circuit Judges of Medellín decided to issue a preventive detention warrant without benefit of release against the agent for the crimes of homicide and illegal possession of a firearm. On July 27, 1997, the Eleventh Criminal Circuit Court of Medellín issued an acquittal on the ground that the evidence produced was insufficient to disprove the agents' presumption of innocence.

5. Finally, in connection with the contentious administrative jurisdiction, on June 8, 1995, the next of kin of the alleged victim filed an action for direct reparation, and on January 20, 2000, the Administrative Tribunal of Antioquia rejected the claim and ordered the claimants themselves to pay the costs. This decision was appealed on March 6, 2000, and on April 22, 2009, the *Consejo de Estado* issued a ruling rejecting the appeal. In this judgment, it acknowledged as proven that the alleged victim "died as a result of the shot fired by the police agent" but that "at the time of the occurrence of the incident he was not carrying out official duties of a police nature, because once his duties were finished he turned his attention to activities of a private nature." Regarding the weapon used, the *Consejo de Estado* indicated that "no evidence was submitted to demonstrate that the weapon with which the alleged victim was killed was officially issued as it was not proven that the agent was assigned a weapon for the development of his activities *verbi gratia* with the judicial inspection at the [police] station records."

6. The State alleges that the petition must be declared inadmissible because the contentious administrative, criminal and disciplinary proceedings were substantiated in accordance with due process guarantees and that therefore the Commission's review would constitute an application of the formula of the fourth instance. In particular, with regard to the administrative proceedings, the State indicates that "although the tribunal found some evidence that the murder of Beatriz Elena Sanmiguel was carried out by an agent of the National Police, the events did not take place at a moment in which he was carrying out activities connected with his official duties". The State claims as proven that the agent was carrying out strictly personal activities and that the crime was not perpetrated with an officially issued weapon, as the criminal proceedings were advanced to clarify the commission of "homicide and illegal possession of a personal defense firearm." As a consequence, it argues that responsibility cannot be attributed to the State for conduct committed while on official duties, in connection with the facts of the case.

7. Regarding the criminal proceedings, the State argues that the domestic courts decided not to convict the alleged perpetrator based on a comprehensive analysis of the evidence and the conclusion that it was not possible to disprove the presumption of innocence that protects all person subject to trial in light of due process guarantees. Likewise, regarding the disciplinary investigation, the State indicates that it was carried out with due diligence and that there are no grounds that justify reviewing it in an international instance such as the Commission.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. According to the information available, the criminal proceedings carried out for the murder of the alleged victim culminated on July 27, 1997, with an acquittal. At the same time, a disciplinary investigation was initiated, which ended on August 1, 1994, with an order for dismissal. On June 8, 1995, the petitioner filed an action for direct reparation, which was rejected on January 20, 2000. This decision was confirmed by the *Consejo de Estado* on April 22, 2009. The State, for its part, has not presented allegations regarding the exhaustion of domestic remedies.

9. The Commission observes that the petitioner alleges a number of irregularities and omissions during the initial phase of the investigation that prejudiced the criminal proceedings, rendering them utterly deficient. In particular, the petitioner alleges that the lines of investigation followed by the respective authorities were not directed towards the comprehensive clarification of the facts in the case. In this regard, from the available documentation it appears that the petitioner drew up a list of evidence that was not ordered and produced. The Commission considers that the duty of the State to conduct an *ex officio* investigation with all the legal means at its disposal in the present case is derived from possible criminal conduct representing a prosecutable offense, but also because this conduct may have constituted an extra

judicial execution.⁶ In this regard, the IACHR recalls that in situations such as this, the domestic remedies to be taken into account for the purposes of admissibility of the petition are those related to the criminal investigation and punishment of those responsible for said events, which are reflected in domestic legislation as crimes prosecuted *ex officio*. In the present case, the Commission notes that, more than 23 years after the alleged victim's death, there has been no trial and punishment of those responsible for her death.

10. In light of the allegations and information presented at this initial stage in the proceedings and to the effect of the analysis of the requirement of exhaustion of domestic remedies, the Commission concludes that the criminal investigation and proceedings failed to provide an adequate mechanism in this case and, therefore, the exception enshrined in Article 46.2 a) of the American Convention, applies. Regarding the filing period, since the petition before the IACHR was received on December 18, 2008, and the effects of the alleged denial of justice which constitutes the subject matter of this claim would extend to the present day, and in light of the context and characteristics of this case, the Commission considers that this admissibility requirement must be considered satisfied.

VII. COLORABLE CLAIM

11. In view of the factual and legal elements submitted by the parties and the nature of the matter brought to its attention, the Commission considers that the petitioner's allegations regarding the scope of the alleged state responsibility for a lack of due diligence in the criminal investigation; the failure to establish accountability and sanctions for the murder of the alleged victim perpetrated, according to the petitioners, with an officially issued weapon; the alleged violations of due process in the various proceedings and the unwarranted delay in the administrative procedure lasting more than 9 years, could be characterized as possible violations of the rights recognized in Articles 4 (life) with respect to the alleged deceased victim, and of Articles 5 (personal integrity), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in connection with its Article 1.1 regarding the alleged victim's next of kin; and Article 7 of the Convention of Belém do Pará. On the other hand, regarding the claim on the alleged violation of Article 11 (honor and dignity) of the Convention, the Commission notes that the petitioner does not offer arguments or support for this claim, so it is not appropriate to declare it admissible.

12. With regard to the allegations of violations of the American Declaration, in accordance with the provisions of the Statute of the Commission and Article 23 of its Rules of Procedure, the Commission has, in principle, competence *ratione materiae* to examine violations of human rights enshrined in the said Declaration. However, the IACHR has previously established that once the American Convention enters into force in relation to a State, it is this instrument – and not the Declaration – that becomes the specific source of law to be applied by the Inter-American Commission, provided that the petition alleges violations of substantially identical rights enshrined in the two instruments.⁷ In the present petition, Articles I (life), V (honor, personal reputation and private and family life) and XVIII (justice) of the American Declaration enshrine rights substantially identical to those protected in the American Convention. In this regard, the Commission will analyze these allegations in the light of the American Convention. In relation to the alleged violation of Articles VII (residence and transit) and XI (health), the Commission observes that the petitioners do not offer arguments or sufficient support for these claims, so it is not appropriate to declare them admissible.

13. Finally, regarding the alleged violation of Article 14 of the International Covenant on Civil and Political Rights, the Commission lacks competence in this respect, without prejudice to the fact that it may refer to this Treaty as a guideline for the interpretation of Convention obligations, in light of the what is established in Article 29 of the American Convention.

⁶ IACHR, Report No. 22/09, Petition 908-04, (Admissibility), Igmair Alexander Landaeta Mejías, Venezuela, March 20, 2009, para.45.

⁷ IACHR, Report No. 47/10 (Admissibility), Massacre Estadero “El Aracatazzo”, Colombia, March 18, 2010, para. 43.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 of American Convention, in relation to its Article 1.1; as well as in relation to Article 7 of the Convention of Belém do Pará;
2. To find the instant petition inadmissible in relation to Article 11 of American Convention and Articles VII and XI of the American Declaration;
3. To notify the parties of this decision;
4. To continue with the analysis on 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.

Done and signed in the city of Washington, D.C., on the 30th day of the month of November, 2017.
(Signed): 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.