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REPORT No. 45/18
PETITION 1494-07
REPORT ON ADMISSIBILITY

JOHN JAIRO RESTREPO *ET AL.*
COLOMBIA

Approved by the Commission at its session No. 2126 held on May 4, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 45/18, Petition 1494-07. Admissibility. Restrepo *et al.*. Colombia.
May 4, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Rubén Darío Rico Guerra and José Gabriel Restrepo García
Alleged victims:	John Jairo Restrepo <i>et al.</i> ¹
State denounced:	Colombia ²
Rights invoked:	Articles 8 (Fair Trial), 9 (Freedom from <i>Ex Post Facto</i> Laws), 10 (Compensation) and 25 (Judicial Protection) of the American Convention on Human Rights, ³ in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	November 19, 2007
Additional information received at the stage of initial review:	October 19, 2010
Notification of the petition to the State:	January 31, 2012
State's first response:	June 26, 2012
Additional observations from the petitioner:	November 22, 2012
Additional observations from the State:	March 3, 2015
Notification of the possible archiving of the petition:	May 26, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	June 1, 2017

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 ratification instrument on July 31, 1973)

¹ Francisco Luis Restrepo González, Amanda del Socorro Restrepo Ospina, Luis Mery Restrepo Ospina, Jesús Restrepo Ospina, Albeiro de Jesús Restrepo Ospina and Juan Carlos Restrepo Ospina.

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

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

IV. 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 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, in the light of Article 7 (Personal Liberty) and in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of said treaty
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; June 15, 2007
Timeliness of the petition:	Yes; November 19, 2007

V. ALLEGED FACTS

1. As background information, the petitioners indicate that early in the morning of August 15, 1997 10 people were killed in a mass murder in the district of La Argentina del Retiro de Antioquia, a case also known as “the massacre of the sawyers.” They moreover indicate that John Jairo Restrepo (the “alleged victim”) then worked as the supervisor of the “*Convivir*” group in the municipality of El Paso, which also operated in the municipalities of Rionegro, El Retiro and Antioquia. They assert that “*Convivir*” is a type of civilian association financed by the private sector and entitled by the State to undertake certain security functions in the area where it is settled.

2. They submit that the judiciary police of Medellín filed a report to the Prosecutor’s Office that was based on the witness statements of people living in the city where the events took place and according to which three members of *Convivir* were seen with firearms along with strangers two days before the mass murder occurred. Based on said information, on September 18, 1997 the police searched *Convivir*’s headquarters in El Retiro, where it found several people, including the alleged victim, and seized one pistol and two revolvers. On January 2, 1998, the Regional Prosecutor’s Office, headquartered in Medellín, filed a preliminary investigation and two days later ordered to arrest the alleged victim and the people present during the search. They assert that the alleged victim was arrested on January 10, 1998. On February 18, 1998, the Prosecutor’s Office charged the alleged victim with alleged participation in illegal armed groups or death squads in combination (and jointly indictable) with aggravated mass murder, without entitlement to release on bail. On that same date, a warrant was issued for his detention at Bellavista Prison in Medellín, in which he was held in pretrial detention for three years, until December 12, 2000.

3. They assert that on February 5, 1999 the Regional Prosecutor’s Office of Medellín announced the charges against the alleged victim. On March 1, 1999, the alleged victim submitted an appeal against said accusation and the expert study of the weapons seized. In that remedy, he stated that although the defense had at first acknowledged the existence of circumstances that justified pretrial detention—thus it did not impugn said decision—, eventually those circumstances did not result in evidence sufficient for the Prosecutor’s Office to file proceedings against the alleged victim. On August 17, 1999, the Prosecutor’s Office appointed before the Superior District Court of Santa Fe de Bogotá confirmed the charges through its special decongestion chamber.

4. They indicate that the proceedings were heard by the First Criminal Judge of Medellín’s Circuit and that during the public hearing, on December 12, 2000, the Special Prosecutor said, “what firstly was established as enough evidence to arrest them is no longer conclusive evidence that leads to their conviction [...] those appearing can see that I do not uphold the charges because they were not part of the search.” For its part, the Attorney General’s representative declared, “it is not only regrettable but also bewildering to attend this hearing; for we learn that four people have been held in pretrial detention for over two years and a half and that the State has not been able to establish their liability for the events taking place

back on August 14, 1997." On the same date, the First Criminal Judge announced the acquittal of the alleged victim and the other detainees, granting their release from prison.

5. On December 6, 2002, the alleged victim presented a claim for damages against the Superior Council of the Judiciary and the Attorney General's Office of Colombia, by which he demanded compensation for his unlawful deprivation of liberty and the resulting financial damage to him and his family. However, on May 23, 2006 the Tribunal rejected the claim on the grounds that there was no proof that the Prosecutor's Office's decision was arbitrary or unlawful. On August 14, 2006, the alleged victim filed an appeal before the Council of State's Third Section, which on September 25, 2006 ruled the appeal out of order because it was a single-instance-of-jurisdiction procedure in view of the bill of damages, in accordance with Law 446 of 1998 in force at the time that the claim was filed.

6. The alleged victim submitted an appeal for review against the denial of his previous appeal and on November 23, 2006 the Fifth Chamber rejected it. On December 5 of the same year, the alleged victim presented a complaint and on March 26, 2007 the Third Section of the Administrative Law Court rejected it based on Law 954 of April 27, 2005 (on competence, decongestion, efficiency and access to justice), under which administrative courts must hear claims for damages in single instance of jurisdiction provided that these are not above the current 500 lawful monthly minimum wages. This judgment was notified on June 15, 2007.

7. Moreover, the petitioners indicate that since the alleged victim is the single breadwinner in the household, his family faced financial needs while he was in prison. In addition, they affirm that due to the false accusations against the alleged victim, both his and his family's social life and reputation in their community was damaged, causing serious moral damage to them.

8. For its part, the State rejects the petitioners' allegations because it considers them partial, and requests the Commission to establish the facts based on what has been duly proved in the domestic judicial procedures. Likewise, it requests that the petition be declared inadmissible on the grounds that the facts alleged do not establish the human rights violations claimed by the alleged victim; for the domestic courts made in due course the corresponding decisions in accordance with the law and the principle of due process. It moreover indicates that the Commission cannot work as a fourth-instance body, because the IACHR is a subsidiary organ not entitled to review decisions made by national judicial authorities acting within their jurisdiction and in conformity with the due judicial safeguards.

9. The State asserts that the alleged victim's arrest and detention were not arbitrary but based on conclusive evidence according to which he was to be held as a suspect, and that this took place within the framework of the criminal proceedings then under way. It alleges that it fulfilled its duty to duly investigate the reported facts, fully abiding by the procedural rights and other judicial safeguards. The State also affirms that at this stage of the procedure before the Commission, the IACHR must undertake only a *prima facie* assessment; that is to say, a brief analysis without a prejudgment or an opinion on the merits of the case. In this regard, the State asserts that the Colombian legislation foresees remedies to seek compensation when damage is proved, such as the claim for damages that the alleged victim filed and whose amount was established by a competent court. As a result, the State claims having fulfilled its obligation to ensure access to justice and to provide simple and effective remedies through the domestic legal framework.

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

10. The IACHR notes that the parties do not controvert the exhaustion of domestic remedies. From the information available in the case file, the Commission notes that the criminal proceedings finished on December 12, 2000 with the final acquittal of the alleged victim, which made the matter *res judicata*. As to the administrative lawsuit, on March 26, 2007 the Council of State overturned the complaint filed against the Fifth Chamber's denial of an appeal for review. In this regard, the Commission believes that the instant petition meets the requirement set forth in Article 46.1.a of the Convention.

11. With respect to the requirement concerning the timeliness of the petition, the Commission believes that the allegations regarding the criminal proceedings are untimely under Article 46.1.b of the Convention, because said proceedings finished almost 10 years before the petition was filed before the Commission. As to the facts regarding the alleged denial of justice in view of the lack of compensation, the IACHR concludes that these allegations meet the requirement established in Article 46.1.b of the American Convention because the alleged victim was notified of the final decision on the administrative lawsuit on June 15, 2007 and because the petition was submitted to the IACHR on November 19, 2007.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law presented by the petitioners, the Commission believes that the alleged facts concerning the alleged victim's lack of compensation in light of the damages caused by the allegedly unlawful pretrial detention for almost three years and for the lack of reparation in a procedure of single instance of jurisdiction⁵ could establish violations of the rights enshrined in Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, analyzed in the light of Article 7 (Personal Liberty) and in relation to Articles 1.1 and 2.⁶ In this regard, the IACHR will analyze the facts concerning the criminal proceedings filed against the alleged victim as relevant and necessary background for a correct understanding and assessment of the subsequent facts.

13. Moreover, as to the alleged violations of Articles 9 (Freedom from *Ex Post Facto* Laws) and 10 (Compensation) of the Convention, the Commission notes that the petitioners do not present allegations or proof to establish said violations.

14. Lastly, as to the State's observation about the establishment of a fourth-instance body, the Commission notes that by declaring this petition admissible, it does not seek to replace the domestic authorities' competence. The Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victim's right of access to justice under the terms of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in light of its Article 7 and in connection with its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to Articles 9 and 10 of the American Convention; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and 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 Santo Domingo, Dominican Republic on the 4th day of the month of May, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, y Flávia Piovesan, Commissioners.

⁵ IACHR, Report No. 108/17, Petition 562-08, Pedro Herber Rodríguez Cárdenas, Colombia, September 7, 2017, par. 16.

⁶ IACHR, Report on the Use of Pretrial Detention in the Americas, par. 218.