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REPORT No. 174/18
PETITION 1597-07
REPORT ON ADMISSIBILITY

HERNADO ALFREDO LÓPEZ GIL
COLOMBIA

Approved electronically by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 174/18, Petition 1597-07. Admissibility. Hernando Alfredo López Gil. Colombia. December 26, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Hernando Alfredo López Gil
Alleged victim:	Hernando Alfredo López Gil
Respondent State:	Colombia ¹
Rights invoked:	Not specified

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	December 17, 2007
Notification of the petition to the State:	December 9, 2016
State's first response:	January 4, 2018

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 on Human Rights ³ (deposit of ratification instrument on July 31, 1973)

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 5 (humane treatment), 8 (fair trial), 21 (property) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, June 28, 2007
Timeliness of the petition:	Yes, December 17, 2007

V. ALLEGED FACTS

1. Hernando Alberto López Gil (hereinafter “the petitioner or “the alleged victim”) claims that the State of Colombia is responsible for the violation his rights because of an attack by the armed forces, which caused him bodily injury and “moral and financial damage” that have been hard for him to endure. The foregoing is related to a series of irregularities in the ordinary jurisdiction that prevented him from obtaining compensation and the applicable punishment of the persons responsible.

2. He submits that on January 4, 1998, when he was driving his car in the city of Cali toward the city of Buenaventura, a group of marines of Naval Base Buenaventura del Valle stopped him at a military checkpoint. Allegedly the officers gave him confusing signals (to move forward and/or to stop) and then they opened fire on him although there was nothing to indicate that he might pose a threat to public safety. The incident occurred at midday, thus it was clear enough so as to see that the alleged victim was alone and did not constitute a risk or threat. As a result of this attack, Mr. López sustained injuries to his right hand and the loss of a ring finger phalanx.

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not take part in the discussion or the decision on the present matter.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter “American Convention” or “Convention.”

3. The alleged victim was urgently taken to the public hospital E.S.E Buenaventura with an injury to his hand representing a 10 percent disability and 5.85 percent of work incapacity. According to the certificate (dated October 31, 2007) issued by the Regional Board for Disability Assessment, the wound was caused by a high-velocity weapon and has resulted in the following: impairment of wrist arc, thumb and fourth and fifth fingers; amputation of fourth distal phalanx; IPJ injury and ankylosis; right-handedness. The alleged victim indicates that the incident was analyzed by the 102nd Military Investigating Judge and that he testified before him; however he claims that he was denied access to the criminal proceeding on grounds of investigation confidentiality. He informs that the car he was driving then was held at Naval Base Buenaventura, at the disposal of the Public Prosecutor's Office and returned to him a month following the incident.

4. The alleged victim indicates that an investigation was filed for bodily injury at the 21st Prosecutor's Office of Buenaventura, file no. 143232/1998. On June 6, 2006 he filed a petition for information before the National Attorney General's Office (21st Prosecutor's Office) and the National Defense Ministry in order to obtain information on the result of said investigation and submit it in the administrative proceeding on a claim for damages before the Administrative Court. In view of this request, the Prosecutor's Office and the National Army forwarded the petitioner's request to other departments, but there is nothing to indicate that an answer was given.

5. In regard to the administrative action, the petitioner indicates that on September 10, 1998 he lodged a claim for damages before the Administrative Court of Valle del Cauca in order to obtain compensation for moral and material damage arising from his alleged bodily injuries. The claim describes the gunshot injury to his right hand, the consequential damage regarding medical expenses, his rehabilitation and his car. He argues that the impairment of his hand has led to loss of income because such physical impairment has reduced his work capacity.

6. On October 18, 2006 a resolution was issued that dismissed his claim on the grounds that the responsibility attributed to the National Army was not established, among other reasons. The court argued that there was nothing to prove the existence of the military checkpoint, the identification of the persons responsible or the amount and type of the damage he allegedly sustained. The alleged victim presented an appeal alleging failure to undertake fundamental evidentiary procedures such as an examination of local newspaper articles on the incident or of his own testimony given in the proceeding. On March 6, 2007 the appeal was dismissed on grounds of the low amount of damages. On March 23, 2007 the alleged victim filed an action of protection against the Administrative Court's decision, in which he alleged violations of due process and lack of information on the investigation filed at the 21st Prosecutor's Office. On May 17, 2007 the State Council overturned this action on considering that it is not an appropriate remedy to challenge a judicial decision. On June 28, 2007 this ruling was upheld and notified to the alleged victim.

7. The State alleges that the petition must be declared inadmissible by virtue of Article 47.b of the Convention since the facts do not establish violations of said international instrument but represent the petitioner's dissatisfaction with domestic resolutions. The State argues that, through these claims, the alleged victim seeks to have the IACHR work as a court of fourth instance. It affirms that given the petitioner's intention to obtain compensation, his claim for damages would be appropriate to obtain reparation for the alleged violation of his rights, and that this aspect was settled in a single-instance proceeding by a final resolution of the Administrative Court of Valle del Cauca in accordance with the guarantees of due process.

8. The State asserts that in each stage of the administrative action the necessary support material was carefully collected and that there was even an ex officio collection of additional evidence. It indicates that the Administrative Court ordered, ex officio, to undertake evidentiary procedures to clarify the facts and requested the National Defense Ministry a copy of the report undertaken in relation to the military checkpoint of January 4, 1998. Said request was made twice but the Brigade claimed that the complainant's vague description of the facts made it impossible to gather information on the events. The State indicates that the administrative court acted diligently and according to the guarantees of due process.

9. At the same time, the State submits that the petition to the IACHR is inadmissible under Article 47.c of the Convention because the petitioner did not fulfill the obligation of burden of proof in relation to the alleged loss of the criminal case file. The State does not submit any other observation on the criminal action or the administrative or criminal investigation procedures. It claims that the admissibility of a petition is subject to the existence of grounds and evidence that seriously prove that an alleged violation was duly substantiated. It further submits that the lack of such elements, under Article 47.c of the Convention, inevitably leads to the inadmissibility of the instant petition.

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

10. The petitioner claims that he filed an investigation before the 21 Prosecutor's Office of Buenaventura, file no. 143232-1997 but that it became lost and that he was not notified of any resolution. Subsequently, he lodged a claim for damages in the administrative jurisdiction. As the claim was rejected, he lodged an appeal, which was dismissed. On March 23, 2007 he presented an action of protection before the State Council for the alleged violation of due process on the grounds that the court, not having provided measures to determine the existence of the military checkpoint, the seriousness of the damage and the result of the criminal investigation, failed to act diligently. On June 28, 2007 the State Council allegedly notified the petitioner of its resolution to dismiss said action on considering that such remedy is inappropriate in relation to judicial decisions. The State deems that the petitioner exhausted the remedies of the administrative trial and it does not submit any observations on the timeliness of the instant petition.

11. In the instant case the Commission notes that the alleged facts concern the purported responsibility of the State for offenses against life and humane treatment and that this type of offense must be investigated *ex officio* and diligently by state authorities. The Commission again notes that in the case of an offense subject to prosecution *ex officio*, the State is obligated to institute and pursue criminal proceedings and that, in such cases, this is the appropriate means to clarify the facts, prosecute the parties responsible and impose the applicable penalties in addition to enabling other types of compensation.⁴ Given the characteristics of the instant petition, the Commission believes that the exception set forth in Article 46.2.c of the American Convention is applicable to this case.⁵

12. As for the requirement of timeliness, the Commission observes that the alleged acts took place on January 4, 1998, that the petitioner indicates that the investigation was open in the military jurisdiction and the 21st Prosecutor's Office and that the effects of such actions, such as the alleged failure to investigate and punish those responsible as well as the consequences on the alleged victim's health, appear to persist to date. Therefore, considering that the instant petition was filed on December 17, 2007, the Inter-American Commission deems that the petition was presented within a reasonable time, under the terms of Article 32.2 of the IACHR Rules and in accordance with Article 46.2 of the American Convention.⁶

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the legal and factual elements presented by the parties and considering the nature of the matter brought to its attention, the IACHR believes that the alleged injuries caused to the alleged victim as well as the lack of investigation and reparation, if proven, could establish violations of the rights protected through Articles 5 (humane treatment), 8 (fair trial), 21 (property) and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1 (obligation to respect rights) thereof.

14. With respect to the State's observations on the establishment of a court of fourth instance, the Commission observes that in declaring this petition admissible it does not seek to overstep the authority of domestic courts. In the merits stage, the Commission will analyze whether the domestic proceedings

⁴ IACHR, Report No. 74/16. Petition 568-06. Admissibility. H.O.V.T. and others. Guatemala. December 6, 2016, par. 39.

⁵ IACHR, Report No. 18/17. Admissibility. Ana Luisa Ontiveros López. Mexico. January 27, 2017, pars. 6 and 7.

⁶ IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo *et al.* Chile. September 7, 2017, par. 12.

conformed to 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 5, 8, 21 and 25 of the American Convention, in connection with Article 1.1 thereof;

2. 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.

Approved by the Inter-American Commission on Human Rights on the 26th day of the month of December, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.