

OEA/Ser.L/V/II.
Doc. 76
5 May 2019
Original: Spanish

REPORT No. 67/19
PETITION 1372-09
REPORT ON ADMISSIBILITY

JAIME ENRIQUE GÓMEZ VELÁSQUEZ AND FAMILY
COLOMBIA

Approved electronically by the Commission on May 5, 2019.

Cite as: IACHR, Report No. 67/19, Petition 1372-09. Admissibility. Jaime Enrique Gómez Velásquez and Family. Colombia. May 5, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Comisión Colombiana de Juristas
Alleged victim:	Jaime Enrique Gómez Velásquez and family
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 25 (judicial protection) of the American Convention on Human Rights ² in relation to its Article 1(1) (obligation to respect the rights)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	November 3, 2009
Additional information received at the stage of initial review:	December 23, 2009
Notification of the petition to the State:	May 4, 2011
State's first response:	August 4, 2011
Additional observations from the petitioner:	November 12, 2011, August 19, 2014
Additional observations from the State:	April 4, 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 (deposited instrument of ratification July 31, 1973) and Inter-American Convention on Forced Disappearance of Persons ⁴ (deposit of instrument April 12, 2005)

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 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), 13 (freedom of expression), 16 (freedom of association), 17 (protection of the family), 25 (judicial protection) of the American Convention, in relation to its Article 1(1), and Article 1 of the Inter-American Convention on Forced Disappearance of Persons

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 in either the discussion or decision in the present case.

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

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter "IACFDP."

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception at Article 46(2)(c) of the ACHR applies
Timeliness of the petition:	Yes, in the terms of section VI

V. FACTS ALLEGED

1. This petition refers to the alleged forced disappearance and extrajudicial execution of Jaime Enrique Gómez Velásquez, 55 years of age (hereinafter the alleged victim), who was a trade unionist with the Telephone Company of Bogotá, a member of the City Council of Bogotá, a university professor, and a political adviser to then-Senator Piedad Esneda Córdoba Ruíz, of the political movement Poder Ciudadano.

2. The petitioner alleges that the disappearance of Jaime Enrique Gómez Velásquez took place in a pre-electoral context, in which different attacks and threats were directed against members of the political movement *Poder Ciudadano*. They refer to threats that were made in Soacha by paramilitary groups, as well as in the localities of Neiva and Ciudad Bolívar in Bogotá. They also note that a raid was carried out in Barranquilla at the premises of a sympathizer of the same movement. They further assert that government opponents, human rights defenders, justices of the Supreme Court, and former Senator Piedad Córdoba were being followed and illegally wiretapped by the Administrative Security Department (hereinafter “DAS”: *Departamento Administrativo de Seguridad*). They argue that the name of the alleged victim was on one of the lists to be targeted by the illegal procedures being carried out by the DAS. They specifically note two trips the alleged victim took to Venezuela for work-related reasons, which were subject to investigation by the Judicial Police, Criminal Investigation Section (hereinafter “SIJIN”) and the Unified Action Groups for Personal Liberty (hereinafter “GAULA”).

3. They argue that on March 21, 2006 at approximately 5:00 a.m., the alleged victim left his home to exercise in the vicinity of the hill of Monserrate in the city of Bogotá, as he was accustomed to doing. They note that some witnesses state they had seen him at a place known as Tanques del Silencio, near the Avenida Circunvalar and the School of Carabineros, in the above-mentioned zone, between 6:00 a.m. and 6:30 a.m. They argue that after that time he did not return to his home nor was he seen again. They adduce that on that same day, at about 7:00 p.m., his partner Lelys del Carmen Archila realized he had gone missing and contacted various authorities and family members to begin the search, which began that same night, around the place where the victim was last seen. They indicate that those actions were coordinated by personnel from the GAULA, the Red Cross, Civil Defense, watchmen from the area, as well as friends and family members of the alleged victim. They affirm that search was suspended around 1:00 a.m., given the scant visibility, and resumed at approximately 5:00 a.m. on March 22, 2006, with no results.

4. They note that on March 22, 2006, the alleged victim’s partner made a report to the Office of Missing Persons of the Metropolitan Police of Bogotá (SIJIN-MEBOG), and that she met with the High Commissioner for Peace, who set forth various hypotheses about who might have been responsible for his disappearance, among them opposition political groups, paramilitaries, Army intelligence and/or Police intelligence. They indicate that on March 23, 2006 they lodged a complaint with the Office of the Attorney General. They allege that on those two days they also filed petitions (*derechos de petición*) with the Bureau of Criminal Investigation (*Dirección de Investigación Criminal*) and INTERPOL, the Technical Investigations Corps (*Cuerpo Técnico de Investigación*), and the Office of the President of the Republic, requesting information and an investigation to find the alleged victim.

5. They state that on March 24, 2006, the Urgent Search Mechanism (*Mecanismo de Búsqueda Urgente*, hereinafter “MBU”) was activated, but that it proved ineffective and did not act swiftly in searching for the alleged victim. In this respect, they specify that it was not until three days after it was installed that information was sought from different entities. They argue that on April 3, 2006, the Office of the Attorney General reported that phone calls were made and some interviews were conducted with family members. They state that this shows that at that moment key actions had not been taken, such as going to the place where the disappearance occurred, or taking the testimony of the persons who were in the habit of walking in

that sector. They also report that there was no coordination among the institutions that were investigating the disappearance to avoid duplication of effort.

6. They state that on the morning of April 23, 2006, passersby in the area near the *Tanques del Silencio* found the dismembered body of the alleged victim. They allege that the place had already been inspected on March 21 and 22, 2006. They note that the official act of removing the remains and the collection of evidence was performed by the SIJIN, without the presence of the Office of the Attorney General, which is the competent authority to perform such procedures, and that the remains were delivered to the National Institute of Legal Medicine and Forensic Sciences (hereinafter "INMLCF"), during nighttime hours. They state that the officials did not collect all the probative elements, for on April 24 and 25, 2006, in the context of the criminal investigation, new remains of the alleged victim's corpse were found. For that reason they assert that the state agents did not conduct an exhaustive investigation of the scene, as was their duty.

7. They report that also on April 24, 2006, the then-director of INMLCF, without having performed the autopsy, stated on a radio program that the alleged victim's death was not a homicide. The then-President of the Republic said the same thing on May 5, 2006. They indicate that several communication media, among them the newspaper *El Tiempo* and *Cambio* magazine, began to orchestrate a campaign to discredit the alleged victim, blaming him for acts of corruption, and stated that it was a case of a self-disappearance.

8. Petitioner notes that on April 27, 2006, the investigations that were being carried out by the Office of the Attorney General and the SIJIN were joined and assigned to the 25th Prosecutor of the Unit on Human Rights and International Humanitarian law. They argue that the family members have played an active role in the context of the criminal investigation, trying to provide information about the disappearance. It indicates that in meetings held May 30, 2006, with the prosecutor and the investigators assigned to the case, the hypotheses stated by the High Commissioner for Peace were conveyed to them, however, they say, these were never investigated.

9. They note that the report of the Colombian Interdisciplinary Team for Forensic Work and Psychological Assistance (*Equipo Colombiano Interdisciplinario de Trabajo Forense y Asistencia Psicológica*) established, on May 8, 2006, the incompatibility of the case with an accidental death or suicide. They indicate that along the same lines, the INMLCF determined, on October 30, 2006, that the death of the alleged victim was caused by blunt cranioencephalic and facial trauma, which would discard the hypothesis of a suicide. They indicate that in December 2007 they asked the Office of the Attorney General to request a forensic entomological exam, which was obtained two years later, in July 2009, and whose results were precarious. They also state that on October 14, 2008, comprehensive expert evidence was sought from the INMLCF, which did not comply with the existing protocols and which, accordingly, did not help clarify the facts or contribute relevant data to establish a viable thesis of responsibility. They indicate that on September 25, 2008, they asked the 48th Prosecutor in charge of the investigation to take various steps to try to move the investigation along and find a thesis regarding responsibility, without any result.

10. They say that one paramilitary detained at the Cómbita prison in the department of Boyacá made contact with the alleged victim's family members, saying he had witnessed the facts. They note that this information was passed on to the Office of the Attorney General on May 8, 2007, to be considered in the investigation. Nonetheless, they do not know what actions ensued or results were obtained. In addition, they indicate that by briefs dated October 29, 2010, and May 26, 2010, they asked the 48th Prosecutor to investigate whether the alleged victim was being followed by the DAS, so as to establish that the facts had to do with political persecution. Nonetheless, they specify that those requests were not answered.

11. They maintain that they have not had full and effective access to the record; specifically they indicate that on September 17, 2008, the 48th Prosecutor, in charge of the case, refused to issue copies. They adduce that despite having intervened diligently in the investigation, trying to move it along, there was an unwarranted delay in the criminal trial insofar as more than five years after the facts there is no information about those presumed to have been responsible and the hypothesis of an accidental death continues to be

investigated, which is incompatible with the above-noted forensic conclusions; no thesis of responsibility has been established, and the investigation continues in the preliminary inquiry phase.

12. They state that the action for direct reparation in the contentious-administrative jurisdiction is not appropriate, as it is limited to one form of reparation, compensation for material and/or moral harm, but it does not encompass the other modalities of reparation recognized by international law, such as restitution, rehabilitation, satisfaction, and guarantees of non-repetition, thus it does not constitute a suitable remedy that needs to be exhausted.

13. Finally, they note that from the outset of the investigation the family members of the alleged victim have been the target of harassment. They state that in the context of the interrogations they were pressured by the SIJIN and the GAULA, and it was apparent that these agencies had information on the trips to Venezuela made by the alleged victim. Moreover, they argue that his daughter Diana Marcela Gómez Correal has received threats and has been followed. They note that since the disappearance of Mr. Gómez Velásquez, unknown vehicles sporadically linger in front of her home. They indicate that in March 2008 she was the target of harassment by the paramilitary group Águilas Negras. Because of that she had to leave the country in May 2008, returning later for short periods. They note that since July 2009, and during these temporary stays, Ms. Gómez Correal has measures of protection from the Ministry of Interior's Human Rights Protection Program.

14. The State argues, in relation to the context, that it cannot be used to determine the international responsibility of the State. Hence it argues that the pre-electoral context had no impact whatsoever on the case, nor the incidents mentioned that allegedly occurred in Soacha, Neiva, and Ciudad Bolívar, which should have been reported to the competent authorities. With respect to illegal tracking of the movements of Senator Piedad Córdoba, they indicate that these facts are not related to this petition.

15. The State indicates that upon learning of the alleged victim's disappearance the authorities took several actions, noting in particular the activation of the MBU on March 23, 2006, the interinstitutional meeting to coordinate the search, and the creation of a specific group to conduct it. It also says that the vicinity of the place where the disappearance occurred was investigated to search for witnesses, and search efforts were made at hospitals and police stations. It recognizes that the inspection of the corpse is done by the SIJIN, not the Office of the Attorney General, but indicates that the determination of the cause of death corresponds to the judicial investigation. Accordingly, it adduces that in the course of the investigation the hypothesis of accidental death is still considered along with that of homicide, as the cause of death of the alleged victim. It establishes that there is no evidence of the participation of state agents in the facts, noting that the petitioners do not produce evidence in support of that argument. With respect to access to the record, it argues that from the outset of the investigation efforts have been made to allow the alleged victims access to the process; they have participated in it through several working meetings, and it argues that the record is available to the victims.

16. The State asserts failure to exhaust domestic remedies, for at present the criminal proceeding is under way, in the preliminary inquiry phase, and it is necessary to allow the Office of the Attorney General to continue with the investigation. It also says that the petitioners have not instituted any proceeding before the contentious-administrative jurisdiction.

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

17. The Commission has established that every time that acts are committed that entail a violation of the right to life and the right to humane treatment, the State has the obligation to promote and give impetus to the criminal justice process, and establish the corresponding criminal sanctions, in addition to making possible other forms of reparation, monetary in nature. In this regard, with respect to the facts stated, the Commission observes that a criminal complaint was filed for the alleged disappearance and subsequent death of Mr. Gómez Velásquez on March 22, 2006, and that more than 12 years after the facts the criminal investigation is still in the preliminary inquiry phase, and that the persons responsible have yet to be

punished. In view of the foregoing, the exception to the prior exhaustion rule set out at Article 46(2)(c) of the American Convention applies.

18. In view of the failure to exhaust alleged by the State in relation to the contentious-administrative remedy, the Commission recalls that in a claim such as this, for purposes of admissibility the action for reparation does not constitute a suitable jurisdiction and need not be exhausted, considering that it is not adequate for providing full reparation and justice to the family members.

19. As regards the time for filing, the Commission observes that the petition was filed on November 3, 2009; the facts took place on March 22, 2006; and their effects extend to the present day. In view of the context and characteristics of the instant case the Commission considers that the petition was filed within a reasonable time, thus it meets that admissibility requirement.

VII. ANALYSIS OF COLORABLE CLAIM

20. In view of the arguments of fact and law stated by the parties and the nature of the matter, the Commission considers that the alleged disappearance and subsequent death of Mr. Jaime Enrique Gómez Velásquez, due to his status as a political adviser, the alleged illegal tracking to which he was subjected, the campaign to discredit him, the alleged denial of access to the judicial record, and the lack of judicial protection; as well as the alleged threats and harassment against his family members, tend to establish violations of the rights enshrined in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), 13 (freedom of expression), 16 (freedom of association), 17 (protection for the family), and 25 (judicial protection) of the American Convention, in relation to its Article 1(1); as well as Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the alleged victim and his family members.

VIII. DECISION

1. To find this petition admissible in relation to Articles 4, 5, 7, 8, 11, 13, 16, 17, and 25 of the American Convention in relation to its Article 1(1) and Article I of the Inter-American Convention on Forced Disappearance of Persons.

2. To notify the parties of this decision; to proceed to analyze 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 5th day of the month of May, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, and Flávia Piovesan, Commissioners.