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REPORT No. 80/19
PETITION 1601-09
REPORT ON ADMISSIBILITY

JULIO ALBERTO MÁRQUEZ AND FAMILY
COLOMBIA

Approved electronically by the Commission on May 23, 2019.

Cite as: IACHR, Report No. 80/17, Petition 1601-09. Admissibility. Julio Alberto Márquez and family. Colombia. May 23, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Óscar Dario Villegas Posada
Alleged victim:	Julio Alberto Márquez and family
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy) and 25 (judicial protection) of the American Convention on Human Rights ² and Articles I (right to life, liberty and personal security) and XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	December 11, 2009
Notification of the petition to the State:	July 26, 2010
State's first response:	December 1, 2010
Additional observations from the petitioner:	January 6, 2011
Additional observations from the State:	March 25, 2011 and April 22, 2019
Notification of the possible archiving of the petition:	March 27, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	May 16, 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 instrument made 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 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 25 (right to judicial protection) of the American Convention on Human Rights, in relation to its Article 1.1
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46.2.c of the IACHR applicable
Timeliness of the petition:	Yes, in the terms of Section VI

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

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

V. FACTS ALLEGED

1. The petitioner alleges that on October 21, 2000, Mr. Julio Alberto Márquez (hereinafter "the alleged victim" or "Mr. Márquez") was murdered by a member of the National Police while asleep on a sidewalk near his home in the Municipality of Carmen de Atrato, Department of Chocó. He indicates that at the time of the events the officer was in uniform and had an officially issued firearm. He also indicates that after extrajudicially executing the alleged victim, the officer tried to shoot a witness who managed to flee the scene. He maintains that on several previous occasions the National Police officer who murdered the alleged victim had detained and threatened him because he was identified as a marijuana user, and that several residents knew of these threats. He argues that the State has failed to punish those responsible, to clarify the events or to provide reparations for the relatives of the alleged victim, who have also suffered reprisals and threats after the execution. He argues that the alleged victim's death occurred as a result of the excessive and disproportionate use of force.

2. In this regard, the petitioner points out that the First Homicide Prosecutor's Office de Quibdó initiated an investigation on November 16, 2000, and that on March 18, 2002, ordered a criminal investigation against Juan Guillermo Pérez Castañeda, a National Police officer accused of the death of the alleged victim. However, in a June 30, 2003, resolution, the Prosecutor in charge ordered the closure of the investigation after submission of the evidence.⁵ On December 2, 2004, a resolution closing the investigation against the individual involved was issued; as well as an order to cancel items of evidence against him, and to archive his case file on December 22, 2004.⁶ On the other hand, Criminal Military Court 135 commenced an investigation but remitted the records to the ordinary criminal jurisdiction.

3. With respect to the disciplinary proceedings, the Internal Disciplinary Control Group of the Chocó Police Department initiated a preliminary investigation against the police officer allegedly involved in the death of the alleged victim. However, by a decision of June 8, 2003, it decided to archive the investigation due to a lack of evidence of culpability. In relation to the contentious administrative proceedings, the petitioner argues in his last response to the IACHR an unjustified delay on the part of the Council of State to issue a decision in the appeal motion filed against the judgment denying his claims.

4. For its part, the State maintains that the petition is inadmissible, dado que opera la fórmula de cuarta instancia en relación con el proceso penal y el proceso ante la jurisdicción contencioso administrativa. With respect to the criminal proceedings, the State argues that the December 22, 2004, decision terminating the criminal investigation exhausting the domestic remedies, and that the petition was filed on December 11, 2009, therefore it argues that exceeds the six month time limit in the Convention. Additionally, the States maintains that although the criminal procedure ended with an inhibitory decision because it failed to corroborate the participation of Juan Guillermo Pérez Castañeda as the material author of the conduct, this decision was duly reasoned, in application of the current procedural regulations. Regarding the administrative process, the State presented updated information on April 22, 2019, stating that on January 27, 2015, the State Council decided to revoke the ruling of the Chocó Administrative Court and declared the Nation responsible - Defense - National Police, for the death of the alleged victim issuing reparation. The State communicates that in the considerations of the ruling, the State Council indicated that, after the evaluation of the indirect testimonies provided to the process, there was sufficient evidence to conclude, by way of indication, that Mr. Marquez's death had been perpetrated by an active member of the National Police. The sentence added that the police agent acted under that conviction, using his status as agent of the State. Because this judicial ruling is enforceable, the procedure before the contentious administrative jurisdiction has been completed.

⁵ In the section on Procedural Processing and Position of the Defendant Entity of Judgment No. 45 of the Contentious-Administrative Court of Chocó of June 8, 2006, it is indicated that "the Public Prosecutor's Office issued a statement indicating that in the proceedings there had been a failure to establish that the Police officer committed the homicide, and that therefore in this case there is a lack of evidence to conclude that responsibility for the crime is attributable to the authorities; thus there is no causal relationship between the damage and the conduct of one of the officers of the defendant entities."

⁶ The petitioner argues that in the investigations carried out no ballistics study was conducted or that a report was requested on the type of weapon that police officers usually carried and a comparative study with the bullets found at the crime scene.

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

5. The Commission has established that whenever an offense is committed allegedly involving state authorities, the State has the obligation to promote criminal proceedings which are the only adequate avenue to clarify the facts and impose appropriate criminal sanctions, in addition to enabling other means of financial compensation. In this respect, with regard to the events in this case, the Commission observes that the criminal investigation into the alleged responsibility of State agents for the death of Mr. Julio Alberto Márquez, was initiated in November 2000 and was ordered to be archived in December 2004. Additionally, it observes that more than 18 years after the events, the State has failed to establish what happened or punish the perpetrators. In view of the foregoing, in the present case, the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies.

6. Regarding the contentious-administrative remedy, the Commission recalls that in a case such as this, it does not constitute an adequate remedy and that therefore it is not necessary to exhaust it for the purposes of admissibility, given that it does not provide comprehensive reparation and justice for the family members.

7. Finally, the petition was filed on December 11, 2009; the alleged events began on October 21, 2000, and their effects continue up to the present. Therefore, in view of the context and characteristics of this case, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement is satisfied. Consequently, the IACHR concludes that the exceptions to the exhaustion of domestic remedies apply, in accordance with the provisions of Article 46.2.c of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

8. 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 alleged extrajudicial execution of Mr. Márquez by National Police officers, the ongoing impunity and lack of effective judicial protection in the judicial proceedings taken, could characterize possible violations of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, in relation to its Article 1.1 to the detriment of the alleged victim and his family members.

9. Concerning the observation about the fourth-instance formula, the Commission recognizes its lack of competence to supervise decisions by domestic courts acting within the sphere of their jurisdiction and in conformity with the principle of due process and judicial safeguards. However, the Commission reiterates that it is competent to find a petition admissible and rule on its merits when it refers to domestic proceedings that may violate the rights guaranteed by the American Convention.

10. With respect to the alleged violations of articles of the American Declaration, the Commission has previously established that, once the Convention enters into force in relation to a State, the Convention and not the Declaration becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and is not a situation of continued violation. In this case, the alleged violations of the Declaration fall within the scope of protection of Articles 4, 5, 8 and 25 of the Convention. Therefore, the Commission will examine these allegations in the light of the Convention.

11. Regarding the claim of an alleged violation of Article 11 (right to privacy) of the American Convention, the Commission observes that the petitioner has failed to offer allegations or sufficient support to allow prima facie consideration of its possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention, in conjunction with its Article 1.1;

2. To find this petition inadmissible in relation to Article 11 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.

Approved by the Inter-American Commission on Human Rights on the 23rd 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.