

REPORT Nº 05/03
PETITION 0519/01
ADMISSIBILITY
JESÚS MARÍA VALLE JARAMILLO
COLOMBIA
February 20, 2003

I. SUMMARY

1. On August 2, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition submitted by the *Grupo Interdisciplinario por los Derechos Humanos* (hereinafter "the petitioners") in which it alleges that the Republic of Colombia (hereinafter "the State" or "the Colombian State") is responsible for the killing of attorney and human rights defender Jesús María Valle Jaramillo on February 27, 1998, in the city of Medellín, Colombia.

2. The petitioners allege that the State was responsible for the violation of the rights to life, humane treatment, personal liberty, freedom of expression, and judicial protection of Jesús María Valle Jaramillo, enshrined in Articles 4(1), 5, 7, 8, 13, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") to the detriment of the victim and his next-of-kin, as well as the generic obligation to respect and ensure the rights protected in the Convention, set forth at Article 1(1). In response, the Colombian State argued that the claim was inadmissible since it had carried out its obligation to clarify the assassination of Jesús María Valle, and since domestic remedies – in particular in the contentious-administrative jurisdiction—were still pending resolution. The petitioners alleged that the exception to the requirement of prior exhaustion of domestic remedies set forth at Article 46(2)(c) of the American Convention—regarding the unwarranted delay—applies to this case.

3. After analyzing the parties' positions, the Commission concluded that it is competent to decide on the claim presented by the petitioners, and that the case is admissible, in light of Articles 46 and 47 of the American Convention.

II. PROCESSING BY THE COMMISSION

4. On September 25, 2001, the IACHR processed petition No. 0519/2001 in keeping with the provisions of the Rules of Procedure in force since May 1, 2001, and it transmitted the pertinent parts of the complaint to the State, giving it two months to present any observations. On November 23, 2001, the State requested an extension for submitting its response, which was granted by the IACHR on November 27, 2001. On December 17, 2001, the State presented its answer, which was remitted to the petitioners on December 18, 2001, who were given 30 days to present their observations.

5. On March 5, 2002, the IACHR held a hearing on this case, in the context of its 114th session. On May 20, 2002, the petitioners submitted their position, in writing, on admissibility. In addition, they requested that the *Comisión Colombiana de Juristas* be included as co-petitioner. On June 5, 2002, the IACHR forwarded the petitioners' response to the State, and asked that it submit its observations within 30 days. On July 3, 2002, the Colombian State requested a one-month extension, which was duly granted.

6. On July 15, 2002, the IACHR forwarded to the petitioners documentation submitted by the State in the hearing held in the context of the 114th session. On August 15, 2002, the Colombian State submitted its observations. Those observations were sent to the petitioners, who acknowledged receipt of the communication and indicated that they did not wish to present further arguments

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. Jesús María Valle Jaramillo was a lawyer from the department of Antioquia, a university professor, and a civic leader devoted to the defense of human rights. In 1996 and 1997, attorney Valle actively denounced human rights violations committed by the paramilitary groups with the collaboration and acquiescence of members of the National Army in the municipality of Ituango, in northeastern Antioquia.

8. The petitioners indicate that from March 1995 to June 1996, the actors in the armed conflict committed a series of acts of harassment against the civilian population of Ituango, and it was rumored that the Army had drawn up a list of approximately 100 civilians—including Mr. Valle himself—to give direction to the selective executions carried out by paramilitary groups.¹ As it appears from the record, Jesús María Valle alerted several national and departmental authorities regarding the need to adopt measures to protect the civilian population in the municipality of Ituango.²

9. Jesús María Valle reported the situation directly to the Commander of the IV Brigade, and to the then-governor of Antioquia. On July 10, 1997, he denounced through the media, the joint action by troops under the IV Brigade and paramilitary groups, after which he was sued for slander.

10. According to the information provided by the petitioners, on February 27, 1998, two men entered the office of Jesús María Valle Jaramillo in the city of Medellín while he was in a meeting with Mr. Fernando Jaramillo Correa, in the presence of his secretary and sister, Ms. Nelly Valle. The men bound the hostages and placed them on the floor, after which they shot Jesús María Valle Jaramillo in the head with a 38 caliber pistol. Attorney Valle died instantly. The petitioners allege that upon their arrival the assailants identified themselves as members of guerrilla groups however, before leaving the premises, they admitted to their connection with State agents by saying: “we do not belong to the *Coordinadora Nacional Guerrillera*; this man was very important to us and to the Army; he had become too involved with the Army.”³

11. The petitioners allege that the animosity of members of the Army towards Jesús María Valle Jaramillo stemmed from his reports relating to grave human rights violations in the municipality of Ituango and, specifically, to Army links to, collaboration with, and tolerance of paramilitary groups. They state that the Office of the Regional Prosecutor (*Fiscalía Regional de Medellín*) concluded that there was compelling evidence that his death had been perpetrated by members of paramilitary groups, under orders of the now-deceased General Alfonso Manosalva Flórez, Commander of the IV Army Brigade.

12. With respect to the admissibility of the claim, the petitioners allege that the requirement of prior exhaustion of domestic remedies provided for at Article 46(1) of the American Convention does not apply, as the case fits within the exception provided for in Article 46(2)(c) thereof. Specifically, they allege that there has been unwarranted delay in the administration of justice with respect to clarifying the facts surrounding the death of Jesús María Valle.

13. As for the proceeding, they indicate that the prosecutorial office in charge, the *Fiscalía Regional de Medellín* established the identity of seven suspects in the investigation and ordered their arrest. On May 21, 1999 it filed formal charges against them for the crimes of aggravated and qualified homicide (*homicidio calificado*), constitution of illegal armed groups, and kidnapping, along with three defendants *in absentia*. The petitioners indicate that the

¹ The information in his reports coincided with the observations made in reports issued by official entities. Evaluative Report 139, File 1144 of the *Procuraduría Departamental de Antioquia*, of October 22, 1996, as well as the reports by the so-called Security Committee of May and June 1996, indicate the paramilitary presence in the zone.

² Among the early warnings sounded and human rights violations reported by Jesús María Valle were the executions and forced displacement that occurred in the *corregimientos* of La Granja and El Aro in mid-1996, in relation to which the IACHR is studying allegations regarding possible state responsibility for violations of the American Convention. See Report 57/00 La Granja, Ituango, *Annual Report of the IACHR 2000*, and Report 75/01 El Aro, Ituango, *Annual Report of the IACHR 2002*.

³ Original petition submitted by the GIDH on August 2, 2001. The utterances by the assailants are extracted literally from the Resolution from the preliminary investigation into the accused in Case No. 26,017, Office of the Attorney General, Fiscalía Delegada ante los Jueces Regionales de Medellín, p. 3.

prosecutors assigned to the case had to drop it and in some cases they were forced to leave the country due to death threats received during the investigation. On March 15, 2001, after a ten-month delay, the judge with jurisdiction in the case rejected the evidence and issued a judgment absolving all of the accused.

14. Petitioners allege that when the claim was submitted to the IACHR, no persons were being held in custody in connection with the investigation. The Office of the Attorney General, for its part, had filed an appeal to have the judgment of acquittal revoked. In view of the fact that no one stands accused or indicted for the death of Jesús María Valle Jaramillo, the petitioners alleged on that occasion that the local courts did not process the case in a timely manner. They also note the lack of disciplinary investigations into the involvement of members of the Army, Police or public officials, and that the period of five years for filing charges was about to expire.

15. In response to the State's argument on the failure to exhaust domestic remedies, the petitioners alleged that while the claim does not come under Article 46(1) of the Convention, it is not because the disciplinary and contentious-administrative investigations are pending resolution, but because four years after the facts, criminal investigations are still pending.⁴ The petitioners consider that the State has not clarified the facts or punished all the persons responsible given that the judgment in which two persons were convicted of the assassination did not clarify the circumstances surrounding the incident, the motives, the identity of the perpetrators, or the relationship between the crime and the threats made to Jesús María Valle Jaramillo prior to his murder, or to his reports of links between members of the Army and the paramilitary groups operating in the area. Accordingly, they consider that the criminal investigation that the State considers concluded has not been an effective remedy under the standards of the inter-American system. Finally, the petitioners argued that administrative and disciplinary remedies are not, under the case-law of the inter-American system, adequate remedies for protecting the rights violated.

16. Furthermore, as regards the State's argument that the "fourth instance" formulation would apply if the IACHR examines the domestic criminal proceeding, the petitioners recognized that the judgment handed down by the local court represents a major stride forward in the administration of justice. Nonetheless, they consider that the motives for the assassination, the totality of co-perpetrators of the assassination, and the persons who planned it have not been determined.⁵ They allege that as it did not produce the results for which it was established, it was not an effective remedy in light of the American Convention.

B. Position of the State

17. The State alleges that it has met its obligation to administer justice in relation to the assassination of Jesús María Valle. It further alleges that criminal convictions have been handed down and that the investigations are ongoing. The State also indicates that there has been a disciplinary resolution and that the contentious-administrative proceeding is moving forward.⁶

18. The information provided by the State in its arguments indicates that initially the criminal investigation into the death of Jesús María Valle Jaramillo was carried out by the Fiscalía Regional de Medellín as Case 26,017, and that arrest warrants were issued for Jaime Angulo Osorio, Elkin Dario Granada López, Alexander Vallejo Echeverry, Carlos Alberto Bedoya Marulanda, Omar Tobón Echeverry, and Gilma Patricia Gaviria Palacio. Also listed as suspects were Jorge Eliécer Rodríguez Guzmán, Alvaro Goetz Mesa, Carlos Castaño Gil, and Francisco Antonio Osorio. On May 21, 1999, Messrs. Jaime Alberto Angulo Osorio, Carlos Castaño Gil, and Francisco Antonio Angulo Osorio were indicted, accused of responsibility for the assassination of Jesús María Valle Jaramillo, and co-perpetrators of the crime of forming, directing, and financing armed groups that operate outside the law. At the same time, an

⁴ Communication submitted by the petitioners May 20, 2002.

⁵ Communications submitted by the petitioners on May 20, 2002, and November 18, 2002.

⁶ Note EE.50988 from the Ministry of Foreign Affairs of the Republic of Colombia, of December 17, 2001, and note DDH 30216 from the Ministry of Foreign Affairs of the Republic of Colombia of August 15, 2002.

indictment was issued against Elkin Dario Granada López, Alexander Vallejo Echeverry, Gilma Patricia Gaviria Palacio, Jorge Eliécer Rodríguez Guzmán, and Alvaro Goez Mesa as material co-perpetrators of the crime of homicide, and as co-perpetrators of the crime of belonging to illegal armed groups. In addition, an indictment was handed down against Omar Tobón Echeverry as mastermind (*determinador*) of the crime of aggravated homicide.

19. In March 2001, the Specialized Court of Medellín convicted Alberto Goez Mesa and Jorge Eliécer Rodríguez Guzmán, sentencing them to 40 years of prison as material co-perpetrators of the homicide of Jesús María Valle Jaramillo, and Carlos Castaño Gil to 20 years of imprisonment and payment of a fine, as co-perpetrator of the crime of forming, directing, and financing groups operating outside the law. The other accused were acquitted in the same judgment. The decision was challenged before Criminal Judges of the Specialized Circuit, both by the convicts' public defenders and by the Fiscalía Delegada. On June 25, 2001, the Superior Court of Medellín confirmed the decision below and reduced the sentence imposed on Carlos Castaño Gil from 20 to nine years of imprisonment, and that of Alvaro Mesa Goez and Jorge Eliécer Rodríguez Guzmán from 40 to 25 years of imprisonment, applying the principle of *in dubio pro reo* and the entry into force of the new Criminal Code.

20. When the indictment was issued, it was ordered that the procedural unity of the case be split, and the investigation continued, under Case No. 343431. In the context of these proceedings, the arrest of Nicolás Ángel García Graciano or Fredy Hernández Ramírez or Restrepo was ordered, for the crimes of belonging to illegal armed groups, aggravated homicide, and unaggravated kidnapping of Jesús María Valle Jaramillo and his sister. On March 16, 2000, an indictment was handed down against the persons who, in the course of the investigation, were determined to be suspects. On December 19, 2001, it was ordered that evidence be taken, along with other investigative steps, to determine the responsibility of other persons in the homicide of Jesús María Valle Jaramillo.

21. The State alleges that in the disciplinary realm, on June 13, 2002, the Human Rights Prosecutor's Office (*Procuraduría Delegada para la Defensa de los Derechos Humanos*) archived the preliminary inquiry into the responsibility of State agents in the homicide of Jesús María Valle, for lack of evidence raising suspicions concerning public employees.

22. As for the determination of State responsibility in the contentious-administrative jurisdiction, the process for direct reparations, begun March 16, 2000, by María Magdalena Valle Jaramillo before the Administrative Tribunal of Antioquia, against the national government, the Ministry of Defense, the National Army, the National Police, the Ministry of Interior, the *Departamento Administrativo de Seguridad* (DAS), the department of Antioquia, and the municipal government of Medellín, is in the evidence phase.

23. Based on this information, the State considers that it is discharging its obligation to investigate, prosecute, and punish the persons responsible for the crime within a reasonable period of time. It alleges that the petitioner's claim in relation to the alleged failure to clarify the facts of the crime is based on a disagreement over the outcome of the judicial proceeding, and that therefore it should be dismissed by the IACHR, for if it were to hear the matter, it would be acting as a fourth instance.

24. The State also alleges that the petition is inadmissible for failure to meet the requirement of prior exhaustion of domestic remedies, given that the contentious-administrative proceeding is pending resolution, and the criminal investigation has yet to draw to a close. It alleges that the exceptions to this requirement are not applicable, given that there has been no unwarranted delay in the proceedings in this matter.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

25. The petitioners are authorized, in principle, by Article 44 of the American Convention to submit complaints to the IACHR. The petition states as the alleged victims individuals in

respect of whom the Colombian State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a State Party to the American Convention since July 31, 1973, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

26. The Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected in the American Convention that are said to have taken place in the territory of a State party to that treaty. The IACHR is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention had already entered into force for the State as of the date that the facts alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies and time period for lodging a petition

27. The State argues that it has carried out its obligation to administer justice, leading to two convictions in relation to the assassination of Jesús María Valle. It further argues that the petitioners' claim breaches the requirement set forth at Article 46(1) of the American Convention on the prior exhaustion of domestic remedies. Specifically, it considers that the petitioners must exhaust the contentious-administrative jurisdiction and await the resolution of the criminal proceeding still pending. The petitioners, for their part, allege that the proceeding that took place and concluded in relation to three civilians has not clarified the assassination of Jesús María Valle, and that there has been unwarranted delay in the conclusion of the criminal investigation, and that they are not under an obligation to exhaust the contentious-administrative jurisdiction before recurring to the Commission.

28. Second, a clarification is in order as to which domestic remedies must be exhausted in the instant case. The Inter-American Court has indicated that only those remedies adequate for making reparations for the violations allegedly committed need be exhausted. Adequate remedies are those:

which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.⁷

The case-law of the Commission recognizes that whenever a crime is committed that can be prosecuted *sua sponte*, the State is under the obligation to promote and give impetus to the criminal proceedings to their ultimate consequences⁸ and that, in those cases, it is the adequate way to clarify the facts, prosecute the persons responsible, and establish the corresponding criminal sanctions, in addition to making possible other forms of reparation, such as pecuniary compensation. The Commission considers that the facts alleged by the petitioners in the instant case involve violations of fundamental rights, which, in the domestic legislation, makes them crimes that can be prosecuted *sua sponte* by the State, and therefore, it is this proceeding, at the impetus of the State itself, that should be considered for the purpose of determining the admissibility of the claim.

29. The State considers that the contentious-administrative remedy available under the domestic legislation must also be exhausted in order to trigger the jurisdiction of the Commission. Nonetheless, the IACHR has established in similar cases that the contentious-administrative jurisdiction is exclusively a mechanism for supervising the administrative activity of the State aimed at securing compensation for damages caused by abuse of

⁷ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 64.

⁸ Report No. 52/97, Case 11,218, *Arges Sequeira Mangas*, Annual Report of the IACHR 1997, paras. 96 and 97. See also Report No. 55/97, para. 392. Report 57/00 *La Granja, Ituango*, Annual Report of the IACHR 2000, para. 40.

authority.⁹ In general, this proceeding does not constitute an adequate mechanism, on its own, for making reparation in cases of human rights violations, thus it need not be exhausted in a case such as this, when there is another means for securing both reparation for the damages and the prosecution and punishment required.¹⁰

30. As regards the exception to the requirement of prior exhaustion of domestic remedies, invoked by the petitioners, Article 46(2) of the Convention provides that this requirement is not applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

31. As already indicated, and as arises from the information provided by both parties, five years after the assassination of Jesús María Valle, the investigation into the case has not concluded, nor have the arrest warrants been executed, this being a manifestation of delay. As a general rule, a criminal investigation should be carried out promptly in order to protect the interests of the victims, to preserve the evidence and even to safeguard the rights of all persons who, in the context of an investigation, may be considered suspect. As the Inter-American Court has indicated, while all criminal investigations should meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead international action on behalf of the victims to come to a halt or to be delayed to the point of being useless.¹¹

32. Reference should also be made to the allegation that the State is carrying out its obligation, under the Convention, to seriously investigate the assassination within a reasonable period of time. In this sense, it should be noted that the judicial conviction of three civilians for the assassination, including the leader of the AUC, Carlos Castaño, is a significant element in considering the operation of the domestic mechanisms in this matter. Nonetheless, beyond their formal significance, the Commission must consider the extent to which these convictions constitute an effective remedy. In this regard, the IACHR notes that those convicted *in absentia* have not been detained, that the State has not presented any specific information on the efforts made in this regard, and that from the context, which is publicly known, it appears that there is little prospect of giving substantive content to those convictions and thereby offering an effective remedy.¹²

33. In addition, one must consider the context in which the investigation has been undertaken, which, one would presume, affects its effectiveness as a remedy for the judicial clarification of the facts. The threats against the prosecutors in charge of the investigation, which drove them into exile, show that the prospects for an effective judicial investigation are far from those of a remedy that necessarily must be exhausted prior to recurring to international protection for human rights.

34. Therefore, given the characteristics and the context of the instant case, the Commission considers that the exception at Article 46(2)(c) of the American Convention applies in this case, as do certain considerations with respect to the prospects for the remedies available to be effective; accordingly, the requirements of prior exhaustion of domestic remedies and the six-month time for submitting the petition are not applicable.

⁹ Report No. 15/95, Annual Report of the IACHR 1995, para. 71; Report No. 61/99, Annual Report of the IACHR 1999, para. 51.

¹⁰ Report No. 5/98, Case 11.019, Alvaro Moreno Moreno, Annual Report of the IACHR 1997, para. 63.

¹¹ I/A Court H.R., *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, para. 93.

¹² See also Report No. 55/97, para. 392. Report 57/00 La Granja, Ituango, Annual Report of the IACHR 2000, para. 40.

35. It need only be noted, in addition, that invoking the exceptions to the prior exhaustion rule, provided for at Article 46(2) of the Convention, is closely linked to the determination of possible violations of certain rights set forth in the Convention, such as the guarantees of access to justice. Nonetheless, Article 46(2), by its nature and purpose, is a rule whose content is autonomous from the substantive provisions of the Convention. Accordingly, the determination as to whether the exceptions to the prior exhaustion rule set forth as subsection (a), (b), and (c) of that provision apply to the case in question must be made prior to and apart from the analysis of the merits, for it depends on a different standard of appreciation from that used to determine whether there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and the effects that impeded the exhaustion of domestic remedies will be analyzed, as pertinent, in the Report adopted by the Commission on the merits of the case, so as to determine whether they constitute violations of the American Convention.

2. Duplication of proceedings and *res judicata*

36. It does not appear from the record that the subject matter of the petition is pending before another international procedure, or that it reproduces a petition already examined by this or any other international body. Accordingly, the requirements established in Articles 46(1)(c) and 47(d) of the Convention are deemed to have been satisfied.

3. Characterization of the facts alleged

37. The Commission considers that the petitioners' allegations regarding the alleged violation of the rights to life, humane treatment, personal liberty, and judicial protection owed the victims and their next-of-kin, if true, tend to establish a violation of the rights guaranteed at Articles 4, 5, 7, 8, and 25, in relation to Article 1(1) of the Convention. With respect to the alleged violation of Article 13 of the American Convention, the Commission finds that it has not been specifically supported by the petitioners.

V. CONCLUSIONS

38. The Commission concludes that the case is admissible, and that it is competent to examine the petitioners' claim of alleged violations of Articles 4, 5, 7, 8, and 25, in conjunction with Article 1(1) of the Convention, in keeping with the requirements established in Articles 46 and 47 of the American Convention.

39. Based on the arguments of law and fact set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the instant case admissible, in relation to Articles 1(1), 4, 5, 7, 8, and 25 of the American Convention.
2. To give notice of this decision to the State and the petitioner.
3. To initiate the processing of this case on the merits.
4. To publish this decision and include it in its Annual Report, to be submitted to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., February 20, 2003. (Signed): Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners: Robert K. Goldman, Clare Kamau Roberts, Julio Prado Vallejo, and Susana Villarán.