

OEA/Ser.L/V/II.  
Doc. 109  
5 September 2018  
Original: Spanish

**REPORT No. 96/18**  
**PETITION 1293-07**  
REPORT ON ADMISSIBILITY

BENEDESMO PALACIOS MOSQUERA  
COLOMBIA

Approved electronically by the Commission on September 5, 2018.

**Cite as:** IACHR, Report No. 96/18, Petition 1293-07. Admissibility. Benedesmo Palacios Mosquera. Colombia. September 5, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Álvaro Cuesta Simanca
<b>Alleged victim:</b>	Benedesmo Palacios Mosquera
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	September 28, 2007
<b>Additional information received at the stage of initial review:</b>	June 23, 2011 and August 29, 2014
<b>Notification of the petition to the State:</b>	November 9, 2016
<b>State's first response:</b>	June 28, 2017
<b>Additional observations from the petitioner:</b>	August 28, 2017

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of ratification instrument on January 19, 1999)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, March 29, 2007
<b>Timeliness of the petition:</b>	Yes, September 28, 2007

<sup>1</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not partake in the discussion or the decision on this matter.

<sup>2</sup> Hereinafter "Convention" or "American Convention."

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petitioner claims that the State of Colombia is internationally responsible for the violation of the rights to effective legal protection and due process, to the detriment of Mr. Benedesmo Palacios Mosquera (hereinafter “the alleged victim” or “Mr. Palacios”), in view of its lack of payment of salaries and benefits corresponding to the alleged victim’s work for two months at a state body. In this regard, he alleges the retroactive application of unfavorable case law regarding the type of remedy to be filed, and the application of a law establishing that his case was to be settled through a single-instance proceeding, even though said law was not in force when the initial complaint was filed.

2. The petitioner indicates that the alleged victim worked at the Office of the Regional Autonomous Environmental Authority of Chocó (hereinafter “CODECHOCÓ”) as an extension technician in the city of Quibdó, department of Chocó, from May 2001 to July 2003. On July 7, 2003 he presented a document in writing before the administrative authority of CODECHOCÓ to request the payment of his salaries for January and February that year, as well as vacation pay, Christmas bonus, health-care and pension benefits, severance pay and interest on severance pay, among other benefits applicable in view of the other months worked. However, by a resolution notified on July 24, 2003, CODECHOCÓ refused to pay the alleged victim a salary for January and February and the requested benefits, by claiming that in the contracts for services it was established that these contracts did not constitute an employment contract or involve the recognition or payment of benefits or sums other than the one agreed for the contracted services.

3. Mr. Palacios filed a complaint before the Administrative Court of Chocó to obtain the annulment of the judgment from CODECHOCÓ because he considered that the contracts he signed met the requirements of an employment contract, thus he demanded that CODECHOCÓ be sentenced to pay the requested salaries and benefits. However, on December 1, 2005 the Court ruled against the alleged victim’s claims because it considered, on the one hand, that he should have filed an action of contract instead of an action for annulment and restoration of rights. According to the petitioner, the court’s decision was based on the State Council’s jurisprudence subsequent to the alleged victim’s complaint, under which the appropriate remedy was an action of contract. On the other hand, the court concluded that the contracts for services entered with Mr. Palacios did not involve the requested benefits because these are excluded from such contracts that do not meet the requirements of appointment and tenure, necessary for public office. Likewise, the court found that the legal requirements needed for the service contracts of January and February to be effective were not met hence there were no legal transactions between the State and the alleged victim in those months.

4. On December 13, 2005 Mr. Palacios appealed this decision before the Administrative Court of Chocó, claiming that its decision should have been based on the case-law criterion in force at the time his complaint was filed. On March 14, 2006 the court dismissed this remedy because, given the low amount in controversy, it was to be settled through a single instance proceeding in accordance with Law No. 954, enacted on April 28, 2005 and Law No. 446 of 1998. To appeal this resolution, on March 23, 2006 the petitioner filed an appeal for reversal and a complaint before the same court, requesting the non-application of the provisions of Law No. 446 and Law No. 954 providing for single-instance administrative proceedings, because he deemed this concept unconstitutional. Nevertheless, in its decision of August 18, 2006 the Administrative Court of Chocó determined that no violations were committed in resolving the matter through a single-instance proceeding because Law No. 446 of 1998, also in force then, was consistent with Article 699 of the Code of Civil Procedure, under which remedies are governed by the laws in force when they are filed.

5. In his appeal of complaint, apart from presenting the arguments filed in the action for reversal, Mr. Palacios alleged that the Administrative Court of Chocó is liable for unwarranted delay because more than 12 months passed before it issued its judgment of December 1, 2005, although it could have done so before Law No. 954 was issued in April that year.

6. Later, by a resolution of February 1, 2007, the State Council upheld the decision to dismiss the appeal lodged on December 13, 2005, due to the amount in controversy in accordance with Law No. 954. This court also considered that article 164 of Law No. 446 of 1998 establishes that cases to be resolved

through single-instance proceedings cannot be challenged unless an appeal has been filed prior to the date said law became effective. It also ruled that the same article establishes that a remedy filed in relation to administrative proceedings—in this case, appeals—will be subject to the law in force at time said remedy is filed. As for the alleged unconstitutionality of the legal criteria providing for single-instance proceedings, the State Council established that the Constitutional Court, by sentence C-474 of June 14, 2006, upheld the lawfulness of single-instance administrative proceedings provided for by laws nos. 446 and 954 respectively, considering that this is a reasonable measure that meets the constitutional norms in force, and based on an objective criterion that is the bill of damages.

7. For its part, the State of Colombia alleges that the Administrative Court of Chocó and the State Council ruled in conformity with the law, and that if the instant petition is declared admissible, the principles of subsidiarity and complementarity will be infringed in view of the establishment of a body of fourth instance. It claims that the Commission is entitled to review domestic judgments whenever a violation of the Convention is involved, and that the fair, unfair or unfavorable type of judgment does not constitute a violation in itself. Therefore, it requests that this petition be declared inadmissible.

8. In regard to the alleged changes in jurisprudence, the State affirms that the petitioner failed to duly demonstrate said changes because he referred to several cases where the State Council ruled to admit actions for annulment and restoration of rights but did not indicate those basic elements apparently leading to the application of said precedents to his case. The State argues that the petitioner's claims were aimed at obtaining the annulment of the administrative resolution denying the payment of salaries plus benefits, and that, consequently, the judge was not entitled to decide on that proceeding, otherwise the judge would have ruled contrary to the free disposition principle, which means that the judge is limited to decide based on the facts and arguments put forward by each of the parties to a case. Likewise, the State claims that the application of different jurisprudence during a proceeding does not violate guarantees because it is a legal action underway that will be resolved in accordance with the interpretation in force at the time a judgment is issued. It also submits that changes in jurisprudence are lawful in every legal framework.

9. Moreover it asserts that the petitioner should have disproved the nature of a contract for services because this cannot include the benefits he requested. Lastly, it alleges that there was no misapplication of Law No. 954, for procedural norms must be immediately applied and the right to file an appeal can be limited when it is reasonable from the point of view of procedural economy, the matter at issue is not serious enough or the bill of damages is low.

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

10. According to the information available on the case file, there appears that, in order to challenge the dismissal of the action for annulment from the Administrative Court of Chocó, the alleged victim filed an appeal before the same court on December 13, 2005, rejected on March 14, 2006 on the grounds that it was a case with a low bill of damages hence a case to be settled through a single-instance proceeding. In view of this, the alleged victim lodged an action for annulment and a complaint on March 23, 2006. By a resolution of August 18 that year, the court dismissed the action for annulment and admitted the complaint. On February 1, 2007, the State Council, the highest administrative court of Colombia, dismissed this remedy, upholding thus the decision of March 14, 2006, a decision notified to the petitioner on March 29, 2007.

11. The Commission observes that, although the legislation then effective set forth that the instant case was to be resolved through a single-instance proceeding in view of the amount in controversy hence no remedies were admitted against it, all the same the petitioner filed actions for annulment and complaints, eventually dismissed. In view of this and considering that the petition to the IACHR was presented on September 28, 2007 and that the State did not controvert the requirements of prior exhaustion of domestic remedies or timeliness of the petition, the Commission finds that this petition meets the admissibility requirements provided for in Article 46.1 paragraphs (a) and (b) of the Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

12. In the instant case, based on the arguments and the information submitted by the parties, the Commission observes that the claims on the merits put forward by the petitioner concern the purported lack of payment, to the alleged victim, of the salaries and benefits corresponding to two months worked at a state body. With respect to this, the IACHR notes that the administrative and judicial authorities established that the service contracts between the alleged victim and the State, in view of its legal nature, did not involve the benefits demanded by him and that in January and February there were no legal transactions between the alleged victim and the State. Likewise, as for the petitioner's claim that the Administrative Court of Chocó should have ruled based on the case-law criterion in force at the time the complaint was filed instead of considering the law in force at the date of issue of the judgment, the Commission observes that the court, despite considering that the judicial jurisdiction was inappropriate, analyzed the merits of the case, dismissing the alleged victim's claims.

13. The IACHR remarks that deciding on the merits of the instant petition would mean to overstep the domestic courts' interpretation of the legal nature of a service contract entered with a state body pursuant to the rules applicable. Given the lack of elements that *prima facie* indicate that administrative and judicial authorities adopted decisions that were either arbitrary or contrary in relation to the rights enshrined in the American Convention, the facts presented in the instant petition do not tend to establish a violation of said treaty.<sup>4</sup> By virtue of the complementary nature of the international protection provided by the inter-American system, "the Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated."<sup>5</sup>

14. Without prejudice to the foregoing, as for the claim regarding the alleged impossibility to challenge the judgment from the Administrative Court of Chocó in view of the amount in controversy and the consequent lack of judicial protection, the Commission, based on its jurisprudence, finds that these allegations are proven, they may constitute violations of Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of Mr. Benedesmo Palacios Mosquera.<sup>6</sup>

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25, in connection with Articles 1.1 and 2 of the American Convention to the detriment of Mr. Benedesmo Palacios Mosquera; and

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 5<sup>th</sup> day of the month of September, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño,

<sup>4</sup>IACHR, Report No. 27/12, Petition 12.222. Inadmissibility. Unified Water and Sewer Service Workers' Union of Arequipa. Peru, March 20, 2012, par. 30.

<sup>5</sup>IACHR, Report No. 66/14, Petition 1180-03, Inadmissibility, Germán Cristino Granados Caballero, Honduras, July 25, 2014, par. 36.

<sup>6</sup>In previous cases, the Inter-American Commission has admitted petitions concerning the alleged lack of a mechanism for reviewing administrative actions in Colombia based on the amount in controversy. IACHR, Report No. 86/18, Petitions 550-07 and 1357-08, Luz Dary Roncancio Torres *et al.*, Colombia, July 16, 2018, par. 28; IACHR, Report No. 107/17, Petition 535-07, Vitelio Capera Cruz. Colombia, September 7, 2017, par. 11; IACHR, Report No. 106/17. Petition 272-07. Admissibility. Luis Horacio Patiño and Family. Colombia. September 7, 2017, par. 9; IACHR, Report No. 71/09, Petition 858-06, Belén – Altavista Massacre. Colombia. August 5, 2009, par. 44; and IACHR, Report No. 69/09, Petition 1385-06, Rubén Darío Arroyave Gallego, August 5, 2009, par. 37.

First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.