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REPORT No. 23/19
PETITION 1622-07
REPORT ON ADMISSIBILITY

LUIS ARMANDO CARPIO CAICEDO
COLOMBIA

Approved electronically by the Commission on March 4, 2019.

Cite as: IACHR, Report No. 23/19. Petition 1622-07 Admissibility. Luis Armando Carpio Caicedo. Colombia. March 4, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Luis Armando Carpio Caicedo ¹
Alleged victim:	Luis Armando Carpio Caicedo
Respondent State:	Colombia ²
Rights invoked:	Articles 5 (Humane Treatment), 11 (Privacy), 13 (Freedom of Thought and Expression), 16 (Freedom of Association) and 24 (Equal Protection) of the American Convention on Human Rights, ³ in relation to Article 1.1 (Obligation to Respect Rights), and other international treaties ⁴

II. PROCEDURE BEFORE THE IACHR⁵

Filing of the petition:	December 26, 2007
Additional information received at the stage of initial review:	December 30, 2011
Notification of the petition to the State:	June 10, 2015
State's first response:	July 12, 2017
Additional observations from the petitioner:	November 15, 2017 and January 11, 2019
Additional observations from the State	November 27, 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 (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 8 (Fair Trial), 13 (Freedom of Thought and Expression), 21 (Property) and 25 (Judicial Protection) in relation to Article 1.1 (Obligation to Respect Rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, July 16, 2015
Timeliness of the petition:	Yes, December 26, 2007

¹ Initially the petitioners were Jairo Alberto Campo, Guido Hormaza Ospina, Gerardo Mora Muriel, José Julián Quintero and Athemay Sterling Acosta. However, by written communication dated May 28, 2015 the alleged victim requested that they were removed from the instant petition because he had lost touch with them.

² 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.

³ Hereinafter "American Convention" or "Convention."

⁴ Articles 1, 4, 7, 11, 13, 15 and 21 of the Cartagena Agreement of 1993 on Common Provisions on Copyright and Neighboring Rights; Articles 1, 6, 8, 10, 11, 13 and 14 of the World Intellectual Property Organization Copyright Treaty; and Articles I, II, IV and X Universal Copyright Convention.

⁵ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. Mr. Luis Armando Carpio Caicedo (hereinafter “the petitioner” or “the alleged victim”) claims that authorities in charge of processing a claim for slander that he filed against a third party are liable for a bad faith, unreasonable delay that caused the criminal suit to be barred by the statute of limitations. He likewise claims that the State has not provided him with comprehensive reparation for the illegal censorship of a book of his authorship, which was in force for two years.

2. He indicates that since 1981 he had worked and been part of a trade union at the multinational company “Thomas de la Rue,” later known as “Thomas Greg & Sons S.A.” (hereinafter “the company”). He claims that on August 13, 1996 he was fired from his job because he was accused, by his co-worker Mr. Sánchez, of stealing ammunitions that belonged to the company. He alleges that such accusation was false because it was Mr. Sánchez himself that gave him the ammunitions. Therefore, on July 24, 1997 he lodged a criminal suit against Mr. Sánchez and the company’s regional authorities. In view of this, an investigation was open against Mr. Sánchez. The petitioner also filed a civil claim but, despite its being admitted by a resolution of January 29, 1998, authorities refused to consider the company as the civilly liable third party. The petitioner appealed and the Prosecutor’s Office overturned said resolution and accepted to consider the company as the civilly liable third party. Nevertheless, on March 21, 2000 a preclusion order cancelling the investigation was issued favoring Mr. Sánchez and the company. The petitioner filed another appeal and on August 21, 2001 the 8th Prosecutor’s Office revoked the preclusion order and issued an indictment against Mr. Sánchez. However, on November 16, 2001 the 16th Criminal Court of the Circuit of Cali ruled to close the proceeding on the grounds that the criminal claim was barred by the statute of limitations and to acquit the civilly liable third party.

3. The petitioner challenged the abovementioned decision to close the proceeding on grounds of statute of limitations, before the Superior Court of the Judicial District of Cali who confirmed the decision on September 5, 2002 concluding that “it has been fully demonstrated that the actions attributed to Mr. Mario Antonio Sánchez establish an offense of slander and this is barred by the statute of limitations”. Considering this resolution, the petitioner lodged an administrative claim for damages against the State, the National Council of the Judiciary and the National Attorney General’s Office, to seek compensation for damage caused by a miscarriage of justice. On January 16, 2006 the claim was fully dismissed. Later, he appealed this decision before the Council of State, who upheld the decision on May 13, 2015. The State Council justified its decision by arguing that, because it was uncertain that the criminal proceeding would have led to a punishment of Mr. Sánchez, the damage claimed by the petitioner was also uncertain thus not subject to compensation. The petitioner moreover presented, around the time of the events, criminal complaints against the 44th and 41th public prosecutors of Cali, which were closed.

4. The petitioner alleges that his right to honor and privacy was violated by an act of defamation, which also ruined his life project and led him to a situation of financial precariousness that has harmed his physical and mental integrity. Claims that the State, through its judicial officials, has denied him the restoration of his right and the compensation warranted for the damages arising from said harm. He considers that the State, through the decision of the Superior Court of the District of Cali, recognized that an offense had been committed against him and that the barring by statute of limitations of the criminal action caused him damages and the loss of the opportunity to obtain civil damages from the defendants. He highlights that certainty of outcome is not a requirement for the configuration of loss of opportunity as a form of illicit harm, because of which the State must compensate him for the loss of opportunity even if the results the criminal proceeding could have had if it had continued are unknown. Argues that the judicial authorities had already irreversibly exonerated the company from legal liability, because of which is not valid to argue that he should have independently gone to the civil jurisdiction after the criminal became barred.

5. He argues that the delay that led to the termination of the criminal action was an unreasonable act of bad faith on the part of competent authorities, stressing that the person at that time holding the office of national attorney general had been the company’s legal advisor for several years. integrity. Also alleges that the process was plagued by irregularities, among others, the fact that the 41th Prosecutor took almost two years to receive four testimonies. Points out that he warned several authorities

about the irregularities that were happening in the process but none of them intervened. He highlights that, in response to one of his letters, the Sectional Director of Prosecutors replied to him in May 10, 1999 stating that “once observed the expiration of the instruction term we would urge the prosecutor to speed up the process”. He considers that this is evidence that, two years before the action was barred, it was already known that the statute of limitation term would be set to expire”.

6. Furthermore, in 2002 the petitioner published his book *“La Corrupción de la Justicia en Colombia – Proponen Robo al Estado”* (hereinafter “the book”), where he denounced alleged irregularities in the Colombian judicial system particularly regarding cases where the company’s interests were involved, including the abovementioned case. Its first edition of five thousand copies was released on April 15, 2002. Chapter VIII focuses on Ms. Elizabeth Alcalá Jiménez and purported acts of corruption allegedly committed by her when she was the 41st prosecutor of Cali, in the context of the proceeding on the petitioner’s claim against Mr. Sánchez and the company. On April 25, 2002 Ms. Alcalá Jiménez presented a constitutional claim against the petitioner to obtain protection of her right to privacy, which the 30th Municipal Court of Cali admitted on the following day.

7. On April 29, 2002 said court issued a provisional measure of protection ordering the immediate suspension of the display, distribution, sale and circulation of the book. On May 10, 2002 said court issued provisional judgment no. 0.33-Rad 2002-0104-00 in favor of the claimant to order: “to immediately suspend the display, circulation and sale of the book”; “to seize all the copies of said book that are on sale in the territory of Colombia” and “to prohibit the defendant, Luis Armando Carpio Caicedo, to reedit o reprint his book.

8. The petitioner challenged this judgement before the 12th Criminal Court of the Circuit of Cali, which upheld the judgment on June 18, 2002. In view of this, he filed an appeal for review before the Constitutional Court, whose 7th Review Chamber issued resolution T-213/2004 of March 8, 2004 revoking the decisions of the trial and appeal courts and denying the constitutional protection sought by Ms. Alcalá Jiménez. Among other things, the Chamber concluded: that the book had been censored without a prior attribution of liability; that it is lawful that citizens criticize and judge the performance of state bodies; and that the opinions expressed by the petitioner in his book constitute a legitimate exercise of freedom of expression. The petitioner deems that his right to equal treatment was infringed because of the celerity in the issuance of a measure of constitutional protection for the prosecutor compared to the time it took him to have his remedies processed before obtaining the annulment of said judgment.

9. Based on the decision of 7th Review Chamber the petitioner lodged a claim for damages against the State, the Judiciary and others which was rejected on November 28, 2008. However, he appealed this denial before the State Council where the Third section issued a decision on July 16, 2015 revoking the lower court’s judgment by declaring the Judiciary’s liability for miscarriage of justice to the detriment of the petitioner and making the Judiciary pay 43.5 current minimum monthly salaries to the petitioner. The Administrative Chamber considered that such was the appropriate amount of compensation, as it was close to the amount of 28,189,350 pesos⁶ corresponding to the percentage (50 per cent) that the petitioner would have earned had he sold the totality of the 1,413 copies of his book that remained unsold at the time the book was censored, out of the five thousand copies of its first edition. The Chamber deemed that there was no evidence of moral consequential damage and, as it did not find proof of recklessness or bad faith, it decided not to order the payment of legal costs.

10. The petitioner claims that, through resolution T-213/2004 of the Constitutional Court’s 7th Review Chamber, the State has recognized the violation of his right to freedom of expression and that, yet, he has not received comprehensive reparation for the unlawful censorship of his book. He believes that the payment of 43.5 lawful minimum salaries ordered by the State Council is not a comprehensive reparation measure, among other reasons, because: (1) The amount of lost profits was miscalculated in that it fails to consider the additional copies that could have been printed and sold had the reprint of book not been

⁶ Approximately 10,275.37 dollars according to the average exchange rate in 2015.

unlawfully banned for more than two years⁷; (2) Moral damage—which is intrinsic to the violation of freedom of expression and hence does not require additional evidence—was not recognized; (3) Consequential damages consisting in the legal expenses that he had to cover in the context of the proceeding were not recognized; (4) The Chamber failed to order the update of the value of the sentence and the payment of default or legal interests, which was necessary due to the time elapsed from the date the censorship was imposed until reparation was ordered.

11. For its part, the State indicates that the petition is inadmissible because the petitioner inappropriately seeks to have the Commission work as a court of fourth instance to review the final judgments issued by the domestic courts. Regarding his direct reparation action for the barring of the criminal action, indicates that due process was followed and duly motivated decisions were issued concluding that the petitioner had failed to prove that there was an unjustified delay of the proceedings or to demonstrate the certainty of alleged damage, as well as the fact that he had had the opportunity to access the desired reparations through other remedies such as the ordinary civil action for non-contractual liability. Hence, it considers that there are no grounds for the international review of the decisions.

12. As to the alleged lack of due reparation for the infringement of his right to freedom of expression, it considers that the petitioner requests an illegitimate review of the decisions by the Seventh Chamber of the Constitutional Court and the Third Section of the Council of State. It claims that through these judgments it “protected his right to freedom of thought and expression, by providing comprehensive, timely and appropriate reparation for the damage he faced when his work ‘La Corrupción en Colombia – Proponen Robo al Estado’ was out of sale as a result of the precautionary measure awarded in the constitutional proceeding.”

13. The State deems that resolution T-213/2004 establishes reparation for the violation of Article 13 of the Convention committed to the detriment of the petitioner and that it is also a guarantee of human rights protection in Colombia in the future due to the importance attributed to the case law in its jurisdiction and the grounds of the sentence, which establishes that Article 13 of the Convention does not allow prior censorship or restrictions on freedom of expression unless these are based on previously existing laws. As for the judgment of July 16, 2015 it alleges that the decision was made after a thorough analysis of the evidence, including the elements submitted by the parties, and that the reparation granted corresponds to the facts established in the case and the petitioner’s concrete claims. It also submits that the petitioner did not demonstrate consequential damages or non-material damages.

14. Finally, it maintains that no violations to due process or to any other conventional right have been proven that could demerit the validity of this decision, not sufficing the petitioner’s dissatisfaction with the valuing of the damages. Further argues that the petitioner has received reasonable reparation in relation to his lost profit.

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

15. With respect to the petitioner’s claim for compensation for the loss of opportunity arising from judicial authorities’ alleged unwarranted delay which in turn led to the termination of the criminal action in the proceeding on his claim against Mr. Sánchez and the company, the Commission notes that the last decision is the sentence issued by the Council of State on May 13, 2015.

⁷ The petitioner argues that the Constitutional Tribunal failed to duly assess the evidence presented during the proceedings regarding how many copies could have been print and sold during the time the book was censored.

16. Concerning the petitioner's claim to obtain comprehensive reparation for the purportedly unlawful censorship of his book, the Commission observes that the last relevant decision is the resolution of the Third Section of the Council of State issued on July 16, 2015.

17. The State does not controvert the prior exhaustion of domestic remedies nor indicate remedies that the petitioner may file in the national jurisdiction to have his claims resolved. In view of this and considering the information in the case file, the Commission concludes that the instant petition meets the requirement of exhaustion of domestic remedies in accordance with Article 46.1(a) of the American Convention.

18. In addition, since the decisions that exhausted domestic remedies date from May 13 and July 16, 2015 respectively, and the instant petition was received by the Commission on December 26, 2007, the latter fulfills the requirement set forth in Article 46.1(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

19. The Commission considers that, proven the facts alleged by the petitioner concerning that he has not received comprehensive reparation for the infringement on his freedom of expression; that an unjustified delay by the authorities lead to the barring by statute of limitations of the criminal action in the proceedings pertaining the petitioner's claim against Mr. Sánchez, and that there was an unreasonable delay in the processing of the petitioner's subsequent claim for damages; if proven, could establish violations of Articles 8 (Fair Trial), Articles 13 (Freedom of Expression), 21 (Property), and 25 (Judicial Protection) of the American Convention in relation to Article 1.1 (Obligation to Respect Rights) thereof.

20. The Commission observes that the State maintains that the infringement on the petitioner's freedom of expression has already been comprehensively repaired by the domestic judicial authorities, with which the petitioner disagrees. In this regard, the Commission recalls that it has previously established that the State's acknowledgment of responsibility and adoption of measures of reparation do not prevent the admissibility of a petition.⁸

21. In regard to the petitioner's allegation concerning Articles 5 (Humane Treatment), 11 (Privacy), 16 (Freedom of Association) and 24 (Equal Protection), the Commission observes that the petitioner has not submitted arguments or evidence sufficient to conclude *prima facie* a possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 13, 21 and 25 of the American Convention in connection with Article 1.1 thereof;

2. To find the instant petition inadmissible in relation to Articles 5, 11, 16 and 24 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 4th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, and Flávia Piovesan, Commissioners.

⁸ IACHR, Report No. 48/08. Admissibility. Mirey Trueba Arciniega. Mexico. July 24, 2008, par. 56; IACHR, Report No. 55/08. Admissibility. Workers dismissed from *Empresa Nacional de Puertos S.A.* (ENAPU). Peru. July 24, 2008, par. 46.