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**REPORT No. 164/20**  
**PETITION 314-10**  
REPORT ON ADMISSIBILITY

RODRIGO HOYOS LOAIZA AND CONSUELO LIZARRALDE VÉLEZ  
COLOMBIA

Approved electronically by the Commission on July 2, 2020.

**Cite as:** IACHR, Report No. 164/20, Petition 314-10. Admissibility. Rodrigo Hoyos, Consuelo Lizarralde Vélez. Colombia. July 2, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	José Carlos Vinasco Gamboa
Alleged victim	Rodrigo Hoyos Loaiza and Consuelo Lizarralde Vélez
Respondent State	Colombia
Rights invoked	Article 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> in relation to Articles 1.1. (obligation to respect rights) and 2 (domestic legal effects) thereof

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

Date of filing	March 6, 2010
Additional information received during initial review	April 21 and 27, 2010; June 23, 2011; March 30, 2012
Notification of the petition	April 14, 2015
State's first response	December 2, 2015
Additional observations from the petitioner	March 20, 2017 <sup>3</sup>
Additional observations from the State	June 28, 2017

**III. COMPETENCE**

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification 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	Article 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1. (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, November 7, 2009
Timeliness of the petition	Yes, March 6, 2010

**V. SUMMARY OF FACTS ALLEGED**

1. José Carlos Vinasco Gambo (hereinafter “the petitioner”) claims alleged violations of the human rights of Mr. Rodrigo Hoyos Loaiza and Consuelo Lizarralde Vélez (hereinafter “the alleged victims”), whom he says were falsely accused, criminally prosecuted, and twice acquitted in the ordinary jurisdiction. He claims that following an extraordinary appeal for annulment filed by the purported victim of the crime, the acquittal was illegally superseded by a conviction and that having the conviction been issued by the highest tribunal in the country, the alleged victims have been unable to appeal.

2. The petitioner recounts that on September 27, 2002, a private individual (hereinafter “the complainant”) filed a criminal lawsuit against the alleged victims. As a result, these were arrested and subjected to a criminal investigation. He says that on February 12, 2003, the alleged victims were accused of the purported crime of attempted extortion. He submits that on September 30, 2003, the oral hearing was held by the Criminal Court of Manizales Special Circuit and that on October 6, 2003, the Court acquitted the defendants

<sup>1</sup> Hereinafter “Convention” or “American Convention.”

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>3</sup> No additional substantive data has been submitted after this date. However, on February 17, 2020, the IACHR received a request for information on the processing of this petition.

by dismissing all the counts and ordered to investigate the complainant and his sole witness for the possible crime of false testimony. The complainant appealed to a higher court to annul the acquittal. On September 27, 2006, the Criminal Division of the Manizales District Superior Court upheld the trial court's full decision. Allegedly, the complainant challenged the appellate court's decision by filing an appeal for annulment with the Supreme Court of Justice. On November 18, 2008, the Appellate Division of Colombia's Supreme Court of Justice revoked the appealed judgment and issued a new resolution declaring the alleged victims criminally responsible for attempted extortion. Thus, Consuelo Lizarralde and Rodrigo Hoyos were sentenced to 12 years' imprisonment and the payment of 637.5 valid minimum wages and 10 years' imprisonment and the payment of 673.5 valid minimum wages, respectively. They were also sentenced to pay the purported victim of the extortion a sum equivalent to one hundred (100) monthly valid minimum wages for the purported moral injury.

3. The petitioner claims that the Supreme Court's Appellate Division's decision to replace the acquittal for a conviction is unprecedented in the Colombian case law and contrary to this remedy's original purpose of legal review. He believes that the proceeding on the extraordinary appeal was a "third prosecution," which he deems is in violation of the double jeopardy principle. He holds that under article 31 of Colombia's Constitution and Colombian case law, the State's opportunity to review the acquittal was precluded because the Public Prosecutor's Office had not disputed the said acquittal; therefore, the Appellate Division was not competent to revoke the acquittal and issue a conviction based on an extraordinary appeal for annulment submitted only by the purported victim. He underscores that the mere lack of an express prohibition on this aspect does not make this decision lawful because public administration is governed by the principle that "everything which is not allowed is forbidden." He also says that the alleged victims have been deprived of their right to appeal with a court of appeals since the conviction was issued by the highest tribunal in Colombia's criminal jurisdiction.

4. Moreover, the petitioner submits that on April 17, 2009, the alleged victims lodged a petition for a writ of protection of fundamental rights with Cundinamarca's Regional Council of the Judiciary regarding the Supreme Court's resolution. The said Council referred the matter to the competent body, the Supreme Court of Justice's Civil Appellate Division. On May 7, 2009, the Civil Appellate Division found the petition inadmissible on considering that the appealed decision was well-founded and not patently unlawful and that it would have been contrary to law to use the constitutional action to reopen the debate on what had already been decided by the competent judge. On May 19, 2009, the alleged victims filed another petition for a writ of protection of fundamental rights, denied at trial on June 1, 2009. On June 4, 2009, they appealed the denial of their petition for a writ of protection of constitutional rights with the Disciplinary Division of Cundinamarca's Regional Council of the Judiciary. On July 9, 2009, the latter confirmed the denial and referred the proceedings to the Constitutional Court for a final review. On October 2, 2009, the alleged victims' attorney filed a motion requesting that the denial decision be selected for review. However, on November 7, 2009, it was notified that the judgment had not been chosen for a review.

5. The petitioner stresses that the fact that a petition for a writ of protection of constitutional rights was filed does not mean that the alleged victims were able to appeal their conviction because this is a subsidiary remedy and does not involve a new evidentiary hearing. He says that he does not seek for the Commission to act as a fourth instance of jurisdiction and that his petition is not about the alleged victims' innocence or guilt but the violation of their procedural rights recognized by the American Convention.

6. For its part, the State deems that the instant petition should be declared inadmissible because the alleged facts do not establish human rights violations and the petitioner unlawfully appeals to the Commission as a fourth instance of jurisdiction to review judgments issued by domestic courts under due process. It notes that in the proceeding on the extraordinary appeal with the Supreme Court of Justice, the alleged victims were able to exercise their right to challenge since the Court heard and analyzed their claims before convicting them. It also notes that under Colombian law, the extraordinary appeal for annulment is admissible in relation to acquittals which does not violate any constitutional or conventional guarantee. It explains that a proceeding on an extraordinary appeal for annulment is not an additional criminal proceeding but an extraordinary procedure by means of which the Supreme Court conducts a substantive and procedural

legal review of the previous judgments. Therefore, the State holds that the proceeding on the extraordinary appeal for annulment does not violate the double jeopardy principle.

7. It submits that the petitioner's claims raised internationally have already been addressed and answered by the national courts. As for the purported violation of the right of appeal, the State contends that the Disciplinary Division entertaining the petition for a writ of protection of constitutional rights on appeal concluded that admitting this claim "would violate the right to a final decision that the parties have once all of them have exhausted all the procedural stages established by law." Regarding the preclusion of the Appellate Division's competence to replace the acquittal given the prosecution's not filing an appeal, it claims that the Disciplinary Division ruled that "it is inadmissible, thus, from all points of view, to deprive the civil party of their right to challenge an acquittal with an extraordinary appeal for annulment. And if the civil party has the right to file an extraordinary appeal for annulment against the acquittal, the competence of the Supreme Court of Justice's Criminal Appellate Division cannot be restricted either as the petitioner expects, for this would render the rights recognized to the victims of the criminal conduct ineffective." Moreover, it says that the principle of *non reformatio in peius* is the prohibition that an appellate judge worsens the appellant's situation; therefore, this does not apply to the situation raised by the petitioner. It also claims that Colombia's Constitutional Court has ruled that the right to appeal a conviction issued by an appellate division is ensured by the existence of the extraordinary appeal for review, in addition to the petition for a writ of protection of fundamental rights, which is admissible whenever a judge or a court purportedly adopts a decision contrary to law and in violation of constitutional rights.

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

8. The Commission observes the petitioner's claim that all the legal remedies available at the national level for defending the alleged victims' rights have been exhausted and that the State has not disputed this claim. As in regard to previous petitions,<sup>4</sup> the Commission considers that the exhaustion of domestic remedies concerning this petition took place when the Constitutional Court decided not to select for review the decision adopted on appeal regarding the alleged victims' petition for a writ of protection of constitutional rights. Since that decision was notified on November 7, 2009, and the IACHR received this petition on March 6, 2010, the Commission finds that this petition meets the requirements established in Article 46.1 (a) and (b) of the American Convention.

## **VII. COLORABLE CLAIM**

9. The Commission observes that the instant petition involves the claim that the decision acquitting the alleged victims from the criminal charges against them was superseded by a criminal conviction, after which they have not been afforded access to an effective remedy to challenge that conviction.

10. Given the foregoing and having analyzed the elements of fact and law submitted by the parties, the Commission deems that the petitioners' allegation are not manifestly groundless and must be analyzed at the merits stage. If proven to be true, these may establish violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

11. Lastly, as for the State's claim about the fourth instance of jurisdiction, the Commission notes that by declaring this petition admissible, it does not seek to replace the competence of national judicial authorities but to analyze whether the domestic proceedings have been held pursuant to due process and judicial protection and ensured the alleged victim's access to a fair trial under the American Convention.

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<sup>4</sup> IACHR, Report No. 48/17, Petition 338-07. Admissibility. Luis Fernando Leyva Micota. Colombia. May 25, 2017, par. 10.

## VIII. DECISION

1. To declare the instant petition admissible regarding Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 thereof; and
2. 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 2<sup>nd</sup> day of the month of July, 2020. (Signed): Joel Hernández (dissenting opinion), President; Antonia Urrejola, First Vice President; Flávia Piovesan (dissenting opinion), Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.