

OEA/SER.L/V/II
Doc. 187
24 October 2024
Original: Spanish

REPORT No. 178/24
PETITION 1265-14
REPORT ON INADMISSIBILITY

JOSE ANTONIO DURAN ARIZA
COLOMBIA

Approved electronically by the Commission on October 24, 2024.

Cite as: IACHR Report No. 178/24. Petition 1265-14. Inadmissibility.
Jose Antonio Duran Ariza. Colombia. October 24, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jose Antonio Duran Ariza
Alleged victims:	Jose Antonio Duran Ariza
Respondent State:	Colombia ¹
Rights invoked:	The petitioner does not mention specific articles of any inter-American treaty; however, in his petition, he expressly invokes the rights to life, liberty, security and integrity of person, protection of honor, personal reputation, privacy and family life, justice, work and fair remuneration, and property, among others.

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	September 10, 2014.
Additional information received at the review stage:	January 16, 2016.
Notification of the petition to the State:	November 12, 2020.
State's first response:	March 8, 2021.
Notification of the possible archiving of the petition:	August 6, 2020.
Petitioner's response to the notification regarding the possible archiving of the petition:	August 13, 2020.

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 on Human Rights ³ (instrument of ratification deposited 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:	None
Exhaustion of domestic remedies or admissibility of an objection:	Yes, pursuant to the terms of Section VI
Timeliness of the petition:	Yes, pursuant to the terms of Section VI

¹ Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the deliberations nor in the decision in this matter, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

² The observations presented by each party were duly transmitted to the opposing party.

³ Hereinafter "the American Convention" or "the Convention."

V. FACTS ALLEGED

The petitioner

1. Mr. Jose Antonio Duran Ariza (hereinafter, "the petitioner" or "Mr. Duran") alleges that the Colombian State is internationally responsible for the failure to grant him administrative reparation in connection with a criminal proceeding against him as a public official in which he was deprived of his liberty, affecting his personal and professional reputation, despite having been acquitted. He also alleges an unjustified delay in the resolution of the adversarial administrative process brought regarding these facts.

Criminal proceeding

2. Mr. Duran states that in 2000, he was the general manager of the *Caja Nacional de Prevision Social* ("CAJANAL") and, in that same year, he was accused criminally of alleged irregularities in the contracting process for CAJANAL's high-cost illness policy. As a result, the 20th Prosecutor's Office of the Anti-Corruption Unit launched a criminal investigation into his alleged responsibility for the criminal offense of having an illegal interest in contracts.

3. In an order dated December 26, 2000, the aforementioned prosecutor's office ordered Mr. Duran placed in pretrial detention and requested his suspension as director of CAJANAL. Thus, via decree 2814 of December 29, 2000, the Ministry of Labor and Social Security suspended him from his position. Mr. Duran's legal defense challenged this measure, and on March 28, 2001, it was revoked by the National Unit of Prosecutors' Offices Delegated before the Superior District Courts.

4. On May 30, 2001, the 20th Prosecutor's Office before the National Anticorruption Unit once again indicted Mr. Duran for his alleged responsibility in the crime of illicit interest in the execution of contracts, placing him under house arrest. Consequently, in decree 1090 of June 7, 2001, the Ministry of Labor and Social Security again suspended Mr. Duran as general manager of CAJANAL. The petitioner's legal defense challenged this, and on March 28, 2011, the measure was revoked by the National Unit of Prosecutors' Offices Delegated before the Superior District Courts. Via decree 580 of April 3, 2001, Mr. Duran was reinstated to his job.

5. Mr. Duran's legal defense challenged this, and on October 23, 2001, the Prosecutor's Office before the Supreme Court of Justice declared all the proceedings null and void. Lastly, on October 24, 2002, the 20th District Attorney's Office before the National Anticorruption Unit estopped the investigation, establishing that Mr. Duran's responsibility in the commission of the criminal offense of illicit interest in the execution of contracts had not been proven.

Suit for direct reparations

6. On November 23, 2004, Mr. Duran's legal defense filed suit for direct reparation before the Administrative Court of Cundinamarca. In a judgment of March 3, 2011, Subsection A, Section Three of the aforementioned court found the Attorney General's Office administratively liable for unjust deprivation of Mr. Duran's liberty, and it ordered financial compensation for him and his family members.

7. In response, on April 29, 2011, the Attorney General's Office filed an appeal before the Council of State. According to the information provided by the State—which has not been disputed by the petitioner—it appears that in a judgment of May 18, 2017, the Administrative Disputes Chamber, Third Section, Subsection C of the Council of State upheld the finding that the Office of the Attorney General of the Nation was administratively liable for the damages suffered by Mr. Duran as a result of his unjust deprivation of liberty,

ordering the payment of COP 106,616,322, approximately USD\$36,250,⁴ in his favor for loss of earnings and indirect damages; it also ordered moral damages to be paid to Mr. Duran's family members.⁵

8. In sum, the petitioner alleges that the criminal proceedings brought against him, from which he was fully acquitted, affected his honor, good name and life project by diminishing his chances of obtaining employment. In addition, he claims that as of the filing date of the petition (September 10, 2014), the suit for direct reparation that he filed on November 2, 2004, had not yet been resolved, thereby violating his rights to life, liberty, security and integrity of person, protection of honor, personal reputation, privacy and family life, justice, work and fair remuneration, and property, among others.

The Colombian State

9. The State confirms the course of the proceedings before the criminal and adversarial-administrative courts, agreeing on the thrust of the rulings as described by the petitioner. Additionally, it asks the IACHR to declare this petition inadmissible based on three considerations: (a) absence of facts amounting to a violation of the rights enshrined in the American Convention; (b) failure to exhaust domestic remedies; and (c) configuration of the formula of the fourth international instance.

10. With respect to point (a), it argues that the adversarial-administrative jurisdiction examined the damages caused to Mr. Duran and his family members as a result of his unjust deprivation of liberty, declaring the State administratively responsible for these facts. Along these lines, considering that the petitioner and his family members were awarded pecuniary reparation by a court of law, it concludes that the petition is now groundless, and therefore, should be declared inadmissible.

11. Regarding point (b), Colombia argues that the petition is inadmissible due to failure to exhaust domestic remedies, and points out that the petitioner: "[...] (i) did not properly exhaust the suit for direct reparation by failing to appeal the trial court decision; and (ii) did not exhaust the suit for constitutional protection remedy should it believe the decisions adopted in the process the adversarial-administrative courts to have violated his rights under the Convention."

12. Finally, with respect to point (c), it asks that this petition be declared inadmissible on the basis of Article 47(b) of the American Convention on amounting to a so-called "formula of the fourth international instance," arguing that the petitioner is seeking for the IACHR to review the decisions issued by the domestic judges within the sphere of their competence and in observance of all judicial guarantees, and from which no violation of his rights under international law can be inferred, meaning he merely disagrees with the rulings.

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

13. The Commission notes that the object of the petition is reparations for the harm suffered by Mr. Duran and his next of kin as a result of the criminal proceedings brought against him for the crime of illicit interest in the execution of contracts, which deprived him of his liberty for 238 days and affected his reputation.

14. Along these lines, the Commission notes that on November 23, 2004, the petitioner filed suit for direct reparation. Then in a judgment of March 3, 2011, Subsection A, Section Three of the aforementioned court found the Attorney General's Office administratively liable for the unjust deprivation of Mr. Duran's liberty and ordered financial compensation for him and his family members. In response, on April 29, 2011, the Attorney General's Office filed an appeal before the Council of State. In a judgment of May 18, 2017, the Administrative Disputes Chamber, Third Section, Subsection C of the Council of State upheld the finding that Office of the Attorney General of the Nation was administratively liable for the damages suffered by Mr. Duran

⁴ In this regard, see as a reference: <https://www.banrep.gov.co/es/estadisticas/trm>

⁵ The following family members of Mr. Duran are listed as beneficiaries of the administrative remedy granted at the State level: 1. Lola Olga Padilla Muñoz (spouse); 2. Jose Antonio Duran Padilla (son); 3. Andres Daniel Duran Padilla (son); 4. Laura Duran Padilla (daughter) and 5. Bertha Ariza de Duran (mother).

as a result of his unjust deprivation of liberty, ordering the payment of a sum of money to the petitioner for loss of earnings and indirect damages; it also ordered moral damages to be paid to Mr. Duran's family members.

15. In view of this, the Commission considers that the appropriate remedy for this claim to be addressed at the domestic level was the suit for direct reparation, with respect to which the final decision was issued on May 18, 2017, by the Administrative Chamber, Third Section, Subsection C of the Council of State. Colombia, for its part, calls into question the failure to exhaust domestic remedies in the adversarial-administrative process, arguing that the petitioner could have filed suit for constitutional protection to address, before domestic courts, any violation of his fundamental rights as a result of that appeal sentence.

16. The IACHR therefore finds that that domestic remedies were exhausted with the appeal judgment issued on May 18, 2017, within the adversarial-administrative process, with which the State's administrative responsibility was upheld; therefore, the Commission concludes that the requirement set forth in Article 46(1)(a) of the American Convention is met.

17. Regarding the deadline for submission, given that the decision was adopted while the admissibility of this petition was under review, the Commission finds that this matter also complies with the requirement set forth in Article 46(1)(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

18. First, the Commission reiterates that the level of conviction of the admissibility stage is different from what is required when deciding on the merits of a complaint; at this stage, the IACHR must perform a summary *prima facie* evaluation—not to establish the existence of a violation, but to examine if the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention. Determining the colorable claim of the violations of the American Convention involves a summary analysis, which does not imply a prejudgment or advance opinion on the merits of a matter. For purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, as provided for in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c) of the American Convention.

19. In this case, the Commission observes that the petitioner's central claim focuses on alleging a failure to provide pecuniary reparation to Mr. Duran and his family members for the harm caused by the criminal proceeding brought against him as general director of CAJANAL for his alleged responsibility for the criminal offense of illicit interest in the execution of contracts. In this regard, the Commission notes that in 2017, the Council of State established that the Office of the Attorney General of the Nation was administratively responsible and ordered it to make pecuniary reparations to Mr. Duran and his family members for these facts. In this regard, the Commission notes that the petitioner has not alleged any failure to comply with that judgment.

20. The Commission recalls that according to the case law of the Inter-American Court of Human Rights, in application of the principle of complementarity, State responsibility under the Convention can only be demanded at the international level after the State has had the opportunity to recognize, if applicable, a violation of a right, and to redress the damage caused via its own means. Thus, when the State halts a human rights violation and issues reparations to the victims of such violations, it is not appropriate to find it internationally responsible for those violations.⁶

21. In this case, the IACHR finds that the Colombian State issued administrative reparations to Mr. Duran and his next of kin through the appeal ruling issued in the adversarial-administrative process, a matter that has not been disputed by the petitioner, as it is reparations that are the subject matter of this petition.

⁶ Inter-American Court of Human Rights. *Case Urrutia Laubreaux v. Chile*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2020. Series C No. 409, para. 90.

Therefore, the Commission finds that the subject matter of this petition does not fundamentally persist based on Article 47(b) of the American Convention.

VIII. DECISION

1. To declare this petition inadmissible.
2. To notify the parties of this decision; 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 24th day of the month of October, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.