

**REPORT No. 227/24**

**PETITION 1857-14**

REPORT ON INADMISSIBILITY

LUIS ENRIQUE OCHOA ESTRADA

COLOMBIA

OEA/Ser.L/V/II

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Luis Enrique Ochoa Estrada. Colombia. December 3, 2024.



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**I. INFORMATION ABOUT THE PETITION**

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| **Petitioner:** | Fernando Brito Ruiz |
| **Alleged victim:** | Luis Enrique Ochoa Estrada |
| **Respondent State:** | Colombia[[1]](#footnote-2) |
| **Rights invoked:** | Articles 21 (right to property) and 25 (right to judicial protection) of the American Convention on Human Rights[[2]](#footnote-3); and Articles XVIII (right to justice) and XXIII (right to property) of the American Declaration of the Rights and Duties of Man |

**II. PROCEEDINGS BEFORE THE IACHR[[3]](#footnote-4)**

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| **Filing of the petition:** | December 31, 2014 |
| **Additional information received at the stage of initial review:** | 2 and 19 January, 27 May and 7 December 2015; and December 9, 2019 |
| **Notification of the petition to the State:** | February 11, 2020 |
| **State’s first response:** | January 6, 2021 |
| **Additional observations from the petitioner:** | May 7, 2021 and October 4, 2024 |

**III. COMPETENCE**

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| **Competence *Ratione personae:*** | Yes |
| **Competence *Ratione loci*:** | Yes |
| **Competence *Ratione temporis*:** | Yes |
| **Competence *Ratione materiae*:** | Yes, American Convention (deposit of the 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**

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| **Duplication of procedures and International *res judicata*:** | No |
| **Rights declared admissible** | None |
| **Exhaustion of domestic remedies or applicability of an exception to the rule:** | Yes, on July 7, 2014 |
| **Timeliness of the petition:** | Yes, on December 31, 2014 |

**V. POSITION OF THE PARTIES**

**The petitioner**

1. The petitioner claims the international responsibility of the Colombian State, because it did not obtain effective judicial protection or a prompt and simple remedy against the alleged fraud that his former partner committed against him, since despite having judgments that protected his right to private property, he continued to dissolve the company through the notarization of new public deeds. In addition, he denounces the lack of administrative reparation in his favor, because, negligently, an investigation for fraud against his former partner was closed.
2. The petitioner relates by way of background that in February 1968 Mr. Ochoa, together with another individual, incorporated the company called "*Arcillas de Colombia Arcicol Ltda*." (hereinafter, the "Company"), whose corporate purpose was the exploitation, industrialization and commercialization of a bentonite mine located in the department of Valle del Cauca. It points out that each shareholder owned fifty percent of the company.

*Civil claims*

1. From the information provided by the petitioner, Mr. Ochoa’s former partner, without his consent, dissolved and liquidated the Company's assets on multiple occasions (1979, 1983, and 1987), in response to which Mr. Ochoa filed several lawsuits for nullity before civil proceedings to invalidate the public deeds of dissolution and liquidation. Along these lines, the file contains a copy of the last judgment handed down on October 4, 1994 by the Second Civil Court of the Circuit of Pereira, Risaralda, through which it declared null and void the public deed that dissolved and liquidated the Company. However, in a public deed of December 1, 1994, Mr. Ochoa's former partner, once again, dissolved and liquidated the assets of the Company.

*Criminal proceedings for the crime of fraud*

1. As a result of the foregoing, on May 18, 1997, Mr. Ochoa filed a criminal complaint against his former partner for the crime of fraud, due to the irregularities committed in the process of liquidation of the Company. However, on 18 January 2000, the Office of the Prosecutor No. 12 Delegated to the Criminal Courts of the Pereira Circuit closed the investigation on the grounds that the statute of limitations had expired on the criminal action. This decision was confirmed on 26 February 2000 by the First Delegated Prosecutor's Office before the Superior Court of Risaralda.

*Contentious-administrative proceedings: action for direct reparation*

1. Subsequently, Mr. Ochoa initiated an action for direct reparation against the Judicial Branch, claiming the damages caused against him by the preclusion of the crime of fraud. In a judgment of September 5, 2002, the Administrative Court of Risaralda ordered the payment of the alleged material damages, but reduced the amount requested. Both Mr. Ochoa and the representative of the Judicial Branch appealed that judgment to the Council of State. On January 30, 2013, the Third Section, Subsection C of the aforementioned court revoked the judgment of the first instance, denying in its entirety Mr. Ochoa's claims.
2. Contrary to the foregoing, on June 4, 2013, Mr. Ochoa filed a tutela action before the Council of State. On November 13, 2013, the Contentious Administrative Chamber, Fourth Section of said council denied the requested protection, establishing, among others, the following:

[...] *In short, what exists is a difference in the guardian's criteria in relation to the ruling, a difference that, it is repeated, has no constitutional relevance, insofar as the scope of the rules invoked does not violate the fundamental rights whose protection is requested, that is, the right to due process and access to the administration of justice. that were preserved in the ordinary procedure in question, in addition to the fact that there can be no question of a procedural irregularity, due to the non-evaluation of evidence, that affects the fundamental rights of the guardian.*

1. Mr. Ochoa challenged the denial of tutela and on March 20, 2014, the Contentious Administrative Chamber, Fifth Section of the Council of State confirmed the contested judgment, considering that: "[...] *there is no place to indicate that the decision under attack violates the fundamental rights alleged by the plaintiff, of whom it is noted that what he intends is to reopen the debate given in the instances of the process and defined by the natural judge, so the Chamber will confirm the decision of the first instance that denied the request for constitutional* protection”. The tutela file was sent to the Constitutional Court for possible review. However, by order of 3 June 2014, Selection Chamber No. 4 did not select him for study.
2. In relation to the above, on June 17, 2014, two magistrates of the Constitutional Court filed an insistence on the review of the tutela file, expressly considering the following: "[...] *It is suggested that the Chamber select the present case for its eventual review, while it is necessary to determine whether in this process there was a factual defect due to improper evaluation of the evidence, since apparently there was a failure in the service due to omission in the activity of the prosecutor's office that had the duty to give impetus to the process informally and yet it was made to rest on the complaining* citizen”. However, by order of 25 June 2014, the General Secretariat of the Constitutional Court did not accept the insistence on review.
3. In sum, the petitioner claims that the Colombian judicial authorities violated Mr. Ochoa's right to access to justice and private property, because he did not obtain effective judicial protection or a prompt and simple remedy for the alleged fraud that his former partner committed against him, since, despite having judgments that protected his right to private property, His former partner continued to dissolve the company, through the protocolization of new public deeds. In addition, it claims that Mr. Ochoa litigated before the courts for thirty-six years without having obtained justice. Therefore, the petitioner requests that the IACHR condemn the Colombian State to:

[…] to compensate the VICTIM for the damages suffered, reparation that must include compensation for the property damages suffered, as well as to make recommendations to the Colombian State to introduce substantial improvements in its system of administration of justice, especially so that the established procedures are short and simple, so that the decisions of the judges are effectively complied with and to guarantee effective access to the administration of justice.

**The Colombian State**

1. Colombia confirms the progress of the proceedings before the civil, criminal, contentious-administrative, and constitutional jurisdictions, converging with the meaning of the resolutions established in the petitioner's position.
2. On the other hand, it requests the IACHR to declare this petition inadmissible based on three considerations: (a) untimely filing of the petition; (b) failure to exhaust domestic remedies; and (c) the facts of the petition do not characterize violations of the rights enshrined in the American Convention.
3. With respect to point (a), it states that, according to the petitioner, the last decision issued in the civil proceedings initiated by Mr. Ochoa against his former partner was issued on October 4, 1994, by the Second Civil Court of the Pereira Circuit. In addition, it points out, with respect to the criminal proceedings initiated by Mr. Ochoa, that the last resolution was the one issued on February 26, 2000 by the Office of the First Prosecutor Delegated to the Superior Court of the Judicial District, which confirmed the statute of limitations for the criminal action. In this sense, it considers that the petition was filed 20 years, 2 months and 26 days later with respect to the last judgment issued in the civil jurisdiction; and 14 years, 10 months, and 4 days later in relation to the criminal proceedings, thus failing to comply with the six-month period provided for in Article 46(1)(b) of the American Convention.
4. With respect to point (b), Colombia indicates that Mr. Ochoa had at his disposal, on the date of the facts, the enforcement action before the civil jurisdiction, which constitutes an adequate and effective remedy to request non-compliance with a judicial decision. Likewise, it was able to institute the action of non-contractual civil liability, which is an adequate and effective remedy to request compensation for damages caused by a harmful event, such as the commission of the crime of fraud. Consequently, in Colombia's view, the time requirement provided for in Article 46(1)(a) of the Convention is not met.
5. Finally, in relation to point (c), it argues that:

The petitioner did not notice the reasoning put forward by the Council of State and did not take the trouble to point out why it was a clear violation of the right of access to the administration of justice. Instead, it only took into account that the decision was unfavorable, and includes the passage of time that the contentious-administrative process was taken within its overall calculation of the 36 years that have allegedly passed since William D. Meyers appropriated the part of the company Arcillas de Colombia Ltda. without a final decision having been made. which is false, as was pointed out in the objection of untimely and failure to exhaust domestic remedies.

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

1. In the present case, the Commission observes that the main object of the petition is the lack of judicial protection of Mr. Ochoa in the course of proceedings before the civil, criminal, administrative, and constitutional jurisdictions, which were not effective in protecting his right to private property or in making administrative reparations, due to alleged negligence committed in the context of the criminal proceedings for the crime of fraud against his former partner.
2. The Inter-American Commission has established that the appropriate remedies to be exhausted in cases in which violations of procedural guarantees and other human rights are alleged in the course of judicial proceedings are, as a general rule, those means provided by national procedural legislation that make it possible to attack, in the course of the process itself in question, the actions and decisions adopted in the course of the same, particularly, the ordinary judicial remedies to which there are appropriate, or the extraordinary ones if these were filed by the alleged victims to assert their rights. In addition, the Commission has established as a general criterion that if the petitioner used these subsequent, additional, or extraordinary remedies with the reasonable expectation of obtaining a favorable result, then they may be considered as validly exhausted remedies for purposes of meeting the requirements for admissibility of the petition. In addition, the IACHR takes into consideration, as an important indication of the relevance or admissibility of these remedies, that they have been admitted for processing and decided by the respective courts, and not rejected as inadmissible[[4]](#footnote-5).
3. From the information contained in the file, Mr. Ochoa initiated several lawsuits before the civil jurisdiction in order to invalidate the public deeds registered by his former partner, through which he dissolved and liquidated the assets of the Company without his consent. These claims were resolved in favor of Mr. Ochoa by the competent civil courts, withdrawing the aforementioned public deeds, the last one being the one issued on October 4, 1994 by the Second Civil Court of the Circuit of Pereira, Risaralda. However, his former partner again dissolved and liquidated the Company. Consequently, on May 18, 1997, Mr. Ochoa filed a criminal complaint against his former partner for the crime of fraud. However, on 18 January 2000, the Office of the Prosecutor No. 12 Delegated to the Criminal Courts of the Pereira Circuit closed the investigation on the grounds that the statute of limitations had expired on the criminal action. Mr. Ochoa appealed that resolution; however, this was confirmed on February 26, 2000 by the First Delegate Prosecutor's Office before the Superior Court of Risaralda.
4. Subsequently, Mr. Ochoa initiated an action for direct reparation against the Judicial Branch, claiming the damages caused against him by the preclusion of the criminal investigation. In a judgment of September 5, 2002, the Administrative Court of Risaralda ordered the payment of the alleged material damages, but reduced the amount requested. Both Mr. Ochoa and the representative of the Judicial Branch appealed that judgment to the Council of State. However, on January 30, 2013, the Third Section, Subsection C of the aforementioned court, revoked the judgment of the first instance, denying the claims in their entirety.
5. Contrary to the foregoing, on June 4, 2013, Mr. Ochoa filed a tutela action, but on November 13, 2013, the Administrative Litigation Chamber, Fourth Section of the Council of State denied it. Mr. Ochoa challenged the denial of tutela and on March 20, 2014, the Contentious Administrative Chamber, Fifth Section of the Council of State confirmed the contested judgment. This sentence was sent to the Constitutional Court for possible review; however, despite submitting a request for insistence, in an order of June 25, 2014, the General Secretariat of the Constitutional Court did not select it for study.
6. The State, for its part, alleges that domestic remedies have not been exhausted, because Mr. Ochoa did not file an enforcement action before the civil courts, arguing that it is an adequate and effective remedy to request non-compliance with a judicial decision. In addition, it alleges that it was also able to institute the action for non-contractual civil liability, considering that it is an adequate and effective remedy to request compensation for damages caused by a harmful event, such as the commission of the crime of fraud.
7. In this regard, the Commission points out that although Mr. Ochoa initiated various judicial proceedings before different jurisdictions (civil, criminal, administrative, and constitutional), these have as their starting point the alleged fraud committed against him by his former partner, which consists of the recurrent unilateral dissolution of the Company, violating his right to private property, and that, Despite having favorable judgments in the civil proceedings that annulled the public deeds of dissolution and liquidation, his former partner continued to carry out this unilateral action.
8. Along these lines, considering these processes as a whole, the IACHR concludes that domestic remedies were exhausted with the order of June 25, 2014, with which the General Secretariat of the Constitutional Court did not select the tutela file for review, thus complying with the requirement set forth in Article 46(1)(b) of the American Convention.
9. With respect to the deadline for filing the petition, taking into account that the order of non-selection was notified to him on July 7, 2014, as stated in an official letter issued by that same secretariat; and that the petition was received by the Executive Secretariat of the IACHR on December 31, 2014, the Commission also concludes that the provisions of Article 46(1)(b) of the Convention have been complied with.

**VII. ANALYSIS OF COLORABLE CLAIM**

1. First, the Commission reiterates that the criterion for evaluating the admissibility phase differs from that used to rule on the merits of a petition; at this stage, the IACHR must carry out a *prima facie* evaluation to determine whether the petition establishes the basis for the possible or potential violation of a right guaranteed by the Convention. but not to establish the existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis, which does not imply prejudging the merits of the case. For purposes of admissibility, the Commission must decide whether the alleged facts can establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "manifestly out of order," in accordance with Article 47(c) of the American Convention.
2. In the instant case, the Commission observes that the petitioner's main claim centers on the lack of judicial protection and violation of the right to private property due to the alleged fraudulent acts committed by Mr. Ochoa's former partner, who on multiple occasions dissolved and liquidated the Company without his consent. In this regard, the Commission notes that the civil courts ruled on several occasions in favor of Mr. Ochoa, annulling the various public deeds of dissolution and liquidation; however, his former partner continued to notarize public deeds with which he dissolved and liquidated the company's assets. In view of this, he filed a lawsuit for fraud, which was barred. Considering that this preclusion was due to the negligent action of the prosecutor's office in charge of the investigation, Mr. Ochoa initiated an action for direct reparation, which in the first instance was ruled in his favor, but in a second instance he denied his claims.
3. Subsequently, he filed an action for protection, which was denied in the first instance on the grounds that the preclusion of the investigation by the prosecutor's office in charge of the investigation did not violate Mr. Ochoa's fundamental rights, a criterion that was confirmed in a second instance by the Administrative Litigation Chamber, Fifth Section of the Council of State. considering that: "[...] *there is no place to indicate that the decision under attack violates the fundamental rights alleged by the plaintiff, of whom it is noted that what he intends is to reopen the debate given in the instances of the process and defined by the natural judge, so the Chamber will confirm the decision of the first instance that denied the request for constitutional protection*."
4. As is clear from the petitioner's own statement, his intention is to seek that the IACHR, as an instance of international law, review the actions and evidence presented in the judicial proceedings initiated by the petitioner before different jurisdictions, particularly the contentious-administrative and constitutional jurisdictions. In this regard, the Commission reiterates that the evaluation of the evidence, the interpretation of the law, and the pertinent procedure, among others, correspond to the exercise of the function of domestic jurisdiction, which cannot be replaced by the IACHR.[[5]](#footnote-6) The mere disagreement of the petitioners with the interpretation that the domestic courts have made of the pertinent legal norms is not sufficient to establish violations of the Convention. Thus, the function of the Commission is to ensure compliance with the obligations assumed by the States Parties to the American Convention, but it cannot act as an appellate court to examine alleged errors of law or fact that may have been committed by domestic courts that have acted within the limits of their jurisdiction[[6]](#footnote-7).
5. Therefore, the Commission concludes, as it has done in other precedents similar to the present one[[7]](#footnote-8), that such an allegation is inadmissible on the basis of Article 47(b) of the American Convention, since the facts presented do not indicate, not even *prima facie*, possible violations of the Convention.

**VIII. DECISION**

1. To find the instant petition inadmissible.
2. To notify the parties of this decision; 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 3rd day of the month of December, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

1. Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the debate or decision in this case. [↑](#footnote-ref-2)
2. Hereinafter, "the American Convention" or "the Convention." [↑](#footnote-ref-3)
3. The observations submitted by each party were duly transmitted to the opposing party. [↑](#footnote-ref-4)
4. 8 IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 17; and IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alexsander Santillán Hermoza. Peru. 15 April 2016, paras. 25 and 26. [↑](#footnote-ref-5)
5. IACHR, Report No. 193/21. Petition 1833-12. Inadmissibility. Alfonso Rafael López Lara. Colombia. September 7, 2021, para. 25; IACHR, Report No. 345/21. Petition 739-10. Inadmissibility. Héctor Eladio Maury Arguello and others. Colombia. November 22, 2021, para. 33. [↑](#footnote-ref-6)
6. IACHR, Report Nº 70/08, (Admissibility), Petition 12.242, Pediatric Clinic of the Lake Region, Brazil, October 16, 2008, para. 47. [↑](#footnote-ref-7)
7. IACHR, Report No. 428/21. Petition 419-12. Inadmissibility. Wilder González Ocampo and family. Colombia. December 19, 2021; and IACHR, Report No. 365/21. Petition 125-12. Inadmissibility. Relatives of José Ancizar Ferreira Cedeño. Colombia. December 2, 2021. [↑](#footnote-ref-8)