

OEA/Ser.L/V/II.
Doc. 81
16 March 2020
Original: Spanish

REPORT No. 71/20
PETITION 1189-09
REPORT ON INADMISSIBILITY

JOSE WILSON ALOMÍA RIASCOS *ET AL.*
COLOMBIA

Electronically approved by the Commission on March 16, 2020.

Cite as: IACHR, Report No. 71/20, Petition 1189-09. Admissibility. José Wilson Alomía Riascos *et al.* Colombia. March 16, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Edison Tobar Vallejo and Harold Andrés Idrobo Vidal
Alleged victims:	Jose Wilson Alomía Riascos and others ¹
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 10 (compensation), 11 (privacy), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ² in relation to its Article 1 (obligation to respect rights) of the American Convention on Human Rights

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	September 24, 2009
Additional information received at the stage of initial review:	March 16 and October 2, 2010; May 17, 2011; May 7, 2012
Notification of the petition to the State:	April 6, 2015
State's first response:	August 5, 2015
Additional observations from the petitioner:	May 25, 2016
Additional observations from the State:	November 29, 2017

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 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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, November 22, 2005
Timeliness of the petition:	No, September 24 2009

¹ Carmen Amada; Luciano, Margarita, Luis Carlos, Fabiola, and Miriam Alomia Riascos; Martha Dely and Teodulo Alomia, and Felipa Riascos.

² Hereinafter "the American Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners denounce purported human rights violations committed against José Wilson Alomia Riascos (hereinafter “the alleged victim” or “Mr. Alomía Riascos”), an Afro-descendant, as he was allegedly deprived of liberty—which was later proven unfair—and subsequently prevented from seeking reparation through domestic remedies.

2. The petitioners indicate that Mr. Alomía Riascos worked as a doorman at a commercial establishment called Discoteca Baco Norte located in the city of Popayán, Cauca Department, until an incident took place there on August 19, 1995, in which a person was murdered. The petitioners state that the perpetrator confessed to the murder forty-eight hours after the incident and that, however, on September 7, 1995, the Fifth Prosecutor’s Office of Popayán District issued an arrest warrant against the alleged victim as well as against other five people connected with the commercial establishment and two eyewitnesses. The petitioners submit that these people were in pretrial custody for six months at the facility in San Isidro, Cauca Department, one of the most dangerous prisons in the country.

3. Mr. Alomía moreover claims that the investigating prosecutor’s office attributed a series of offenses to the alleged victim, such as homicide by omission, aggravated homicide on the ground of position, and concurrent complicity and that ultimately he was formally accused of purported concealment on the ground of being an accessory after the fact. On June 25, 1997, the eighth criminal judge of the Special Circuit of Cali acquitted the alleged victim on considering that the investigating prosecutor abused his function and unlawfully deprived nine persons of their liberty.

4. The petitioners claim the unreasonableness of his pretrial custody because the only perpetrator confessed to the murder. They submit that the alleged victim and his next of kin experienced anguish and uncertainty because the former was held at a facility reputed to be highly dangerous. They further state that following his acquittal and given the authorities’ denial to clarify the facts publicly, Mr. Alomía Riascos and his next of kin were compelled to move to another city since the locals constantly accused him of participating in the murder. They submit that this situation affected his right to a decent life and prevented him from securing a stable job. Likewise, they allege that his standard of living was reduced as a result of the heavy expenditures made to obtain the alleged victim’s liberty.

5. The alleged victim lodged a claim for damages to the Contentious-Administrative Court of Cauca Department to seek reparation for material and moral damage. This claim, along with similar claims filed by three of the other people arrested with the alleged victim, was sent to the Decongestion Court in Cali. Despite the similarity of the four claims, on April 27 and May 11, 2001, respectively, the decongestion court issued different judgments. As to the other three claims, it passed two favorable judgments and one unfavorable judgment. However, as to the claim filed by the alleged victim, the court declined jurisdiction based on formal errors in the filing consisting on: A purported lack of clarity on the subject matter of the claim for damages, and the lack of his identification in the power of attorney (the alleged victim’s next of kin granted a power of attorney that did not meet the authentication requirements), and an error in the writing of the claim, as the attorney was mentioned as a victim.. The petitioners assert that the four claims for damages disclosed the same facts, the same claims, and the same respondents and that a decision on the merits was not issued only regarding the alleged victim’s case, in violation of a prohibition that had been issued by the Constitutional Court regarding the issuance of judgments declining jurisdiction. The petitioners contend that this is an instance of racial discrimination against the alleged victim based on his Afro-descendant background.

6. The alleged victim filed an appeal to the Contentious-Administrative Court in Cauca, which rejected it on August 8, 2001, on considering that the matter had to be decided in a single jurisdiction given its low bill of damages. In view of the denial, he filed a motion for reconsideration, but the contentious court dismissed the motion on September 24, 2001, because its allegations mirrored those in the appeal. The alleged victim filed a complaint; however, the decision on the motion for reconsideration was upheld on May 30, 2002.

7. Unable to file another claim for damages, on December 16, 2002, Mr. Alomía Riascos presented a constitutional appeal to the Council of State to have his fundamental rights protected, namely his rights to

due process, equality before the law, and to a fair trial. The Division for Contentious-Administrative Matters rejected his appeal on January 21, 2003. According to the petitioners, in its judgment, the Division changed its former criterion and ruled that a constitutional appeal was no longer appropriate to challenge judicial resolutions. They argue that this sudden change in criterion to dismiss a remedy deemed appropriate until then is another evidence of discrimination against the alleged victim.

8. They indicate that in February 2003, the alleged victim was notified of the decision on the constitutional appeal but given no copy of the judgment. They allege that this prevented him from challenging the judgment, as it could be challenged within the three days following its notification. They further claim that such a strict deadline failed to consider the circumstances preventing the alleged victim from challenging the decision, such as distance (he had moved to Popayán) or his financial situation to afford travel expenses and the fees of the lawyer. The alleged victim requested copies of the judgment and received them in June 2003. On July 9, 2003, with the copies in hand, he verbally requested the Human Rights Ombudsman of Popayán to insist that the Constitutional Court review the judgment. In August 2003, the Human Rights Ombudsman informed the alleged victim that he (the ombudsman) had not sent the documents because the deadline for filing for review to the Constitutional Court was overdue.

9. Between June and September 2005, Mr. Alomía Riascos returned to Popayán and filed a second constitutional appeal on his own, without legal assistance given his financial situation, before the Decongestion Administrative Court of Cauca. The Council of State dismissed it on November 22, 2005, on considering that it was barred by *res judicata*. Lastly, on October 5, 2009, the alleged victim filed a petition requesting the Constitutional Court to review the denial of his two constitutional appeals. Nevertheless, on July 27, 2010, the court ruled not to consider them for review.

10. The petitioners argue that this violated the alleged victim's right to a fair trial, as the authorities never ruled on the merits of his case even though a judgment declining jurisdiction does not lead to *res judicata*. They further allege that until the date of the facts, there was not an appropriate or effective mechanism in the domestic legal framework to redress the alleged victim or his next of kin, and that only in 2009 did the contentious-administrative jurisprudence begin to develop the possibility of granting measures of satisfaction and guarantees of non-repetition in the context of lawsuits on claims for damages. They highlight that there was no such thing as a lack of exhaustion of domestic remedies by the alleged victim, but that formalities were excessively strict, and the requirements were misinterpreted to dismiss his claim for damages. They submit that the court abused its powers in demanding that the facts subject matter of the claim were included in a power of attorney even though the law did not require so and that the power of attorney was attached to the claim, which did present the facts in detail. They moreover allege that, contrary to the court's statements, the power of attorney given by the alleged victim's next of kin did meet the authentication requirements.

11. The State, for its part, requests the Commission to declare this petition inadmissible based on Article 47 of the American Convention, as it claims that the petitioner inappropriately seeks that the Commission work as a court of appeals. The State asserts that the domestic system foresees appropriate and effective remedies such as a claim for damages to determine the State's responsibility for the violation of the American Convention and to guarantee full redress of damage caused by the said violation. It recognizes that the alleged victim pursued a claim for damages, the adequate and effective remedy for his case, but contends that he made "serious and unacceptable procedural mistakes (...) that made it impossible to adopt a decision on the merits of the case" and it stresses that the alleged victim did not meet the statutory deadline for amending or clarifying a claim. The administrative court established that the claim did not fulfill two obligatory requirements, namely, the unequivocal identification of the principal and the proxy, and a definite statement of the matters to which the authorization was applicable. According to the State, these requirements are reasonable and not contrary to the rights enshrined in the American Convention. Therefore, it contends that the lack of reparation of the purported damage to the alleged victim was due to negligence from his lawyer and may not be attributed to the State.

12. Likewise, it states that under the legislation in force at the time the claim for damages was filed, the lawsuit had to be decided in a single jurisdiction given the low amount of damages,⁴ except for special remedies. It submits that, according to international standards and the Political Constitution, a double instance of jurisdiction—which should be exceptionally excluded—“is not an integral part of due process when it comes to claims for damages.” It also alleges that the constitutional appeals filed by the alleged victim were rejected because no fundamental right was violated or threatened. As to the allegation of racial discrimination, the State contends that the petitioner did not develop the legal or factual elements necessary to substantiate a purported violation of the right to equal protection. It moreover states that the alleged victim did not exhaust domestic remedies regarding this allegation as he did not raise a purported violation of his right to equality before the law in none of his remedies in the domestic jurisdiction.

13. It recalls that the Commission may only review a domestic judgment when a proceeding has contravened some of the rights contained in the American Convention and that the fact that a domestic remedy does not lead to a favorable outcome for the claimant does not prove, on its own, a violation of their rights. It concludes by stating that this petition concerns three issues already duly resolved by domestic authorities: the amount of damages of lawsuits before the contentious-administrative jurisdiction, the admissibility requirements of constitutional appeals, and *res judicata*. It considers that the petition is based on the petitioner’s mere discontent with the decisions that competent authorities made on these issues and that the Commission is not the appropriate body where to discuss the analysis made by the national courts acting under their judicial and constitutional functions.

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

14. The Commission observes that the petitioners maintain that the alleged victim adequately exhausted the domestic remedies given that his legal actions were rejected based on unreasonable formalities. The State, on its part, argues that the alleged victim attempted the appropriate remedy, the claim for damages, but it alleges that he incurred in serious formal errors that he did not correct in a timely manner and which impeded the issuance of a decision on the merits.

15. The Commission considers that the claim for damages attempted by the alleged victim constituted the appropriate remedy for his complain to be addressed at the domestic level. Once this action was rejected the alleged victim pursued remedy with the constitutional justice through two constitutional actions, the second of which resulted on a resolution issued on November 22, 2005 in which the Council of State concluded that there already *res judicata* on the matter. In the view of the Commission this decision of the Council of State constitutes the final decision with which the exhaustion of domestic remedies requirements established on Article 46.1(a) of the American Convention was met. While after this decision from the Council of State the alleged victim exercised his right of petition in order to make a request to the Constitutional Court for the revision of the decisions that rejected his constitutional actions, the Commission considers that such petition cannot be considered an appropriate formal remedy for the purposes of the analysis of the requirements set for by Article 46 of the American Convention. For these reasons and because the final decision was issued on November 22, 2005 and the petition was presented to the Commission on September 24, 2009, the Commission concludes that the instant petition is inadmissible because it was filed extemporaneously in breach of the requirements set for by Article 46.1(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

16. Attending to its considerations detailed on section VI of this report the Commission will not perform an analysis regarding whether the alleged facts could constitute violations to the American Convention.

⁴ It believes that consideration of the amount of damages to determine the admissibility or inadmissibility of an appeal is an objective, non-discriminatory criterion in line with the principle of reasonableness and proportionality.

VIII. DECISION

1. To declare this petition inadmissible on the grounds of Article 46.1(b) of the American Convention;
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 16th day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.