

OAS/Ser.L/V/II
Doc. 166
27 September 2024
Original: Spanish

REPORT No. 158/24
PETITION 677-14
REPORT ON ADMISSIBILITY

JULIO PÁJARO RAMOS
COLOMBIA

Approved electronically by the Commission on September 27, 2024.

Cite as: IACHR, Report No. 158/24, Petition 677-14. Admissibility. Julio Pájaro Ramos.
Colombia. September 27, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Julio Pajaro Ramos
Alleged victim:	Julio Pajaro Ramos
Respondent State:	Colombia ¹
Rights invoked:	The petitioner does not cite specific articles of any inter-American treaty; however, in his petition he expressly invokes the rights to a fair trial, humane treatment, judicial guarantees, compensation, correction or reply, protection of privacy, equal protection, legality, a dignified life, and economic and social stability.

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	May 6, 2014
Additional information received during the initial review stage:	May 14, 2014; August 27, 2020, and November 22, 2021
Notification of the petition to the State:	December 14, 2021
State's first response:	April 5, 2022
Notification of the possible archiving of the petition:	June 31, 2020
Petitioner's response to the notification regarding the possible archiving of the petition:	August 27, 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:	Articles 8 (right to a fair trial), 17(rights of the family), and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on January 30, 2014
Timeliness of the petition:	Yes, on May 6, 2014

¹ In keeping with Article 17.2(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the deliberations or in the decision in this case.

² The observations submitted 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. Julio Pajaro Ramos (hereinafter, “the petitioner”) alleges the international responsibility of the Colombian State for the violation of due process in a paternity challenge, in which he was ordered to pay child support despite having demonstrated that he was not the girl’s biological father.

2. The petitioner states that he was married on November 26, 1999, and that MJPG⁴ (hereinafter “the child”) was born into the marriage on November 15, 2003. He states that his then-spouse filed for divorce, and that the Family Court of Guamo dissolved the marriage on June 2, 2004. On July 11, 2007, he filed an action to contest paternity, since he did not share physical traits with the child and his former spouse prevented him from living with her, causing him to have doubts about his paternity.

3. The petitioner’s lawsuit was referred to the Family Court of Guamo, which ordered a DNA test from the Turbay Institute of Genetics Medical Services. The Institute concluded that the petitioner was not the biological father of the child. Based on the evidence in the case file, the judge ruled on March 11, 2008, that Mr. Julio Pajaro Ramos was not the child’s father and dissolved all filial and legal ties between them.

4. The petitioner’s former spouse challenged this decision in the Superior Court for the District of Ibagué, alleging that the petitioner’s paternity action was time-barred. In a judgment of August 28, 2009, the Civil and Family Chamber of the Superior Court reversed the lower court’s judgment and declared the action time-barred, finding, *inter alia*, the following:

[...] it is noteworthy that, while the child was born in November 2003—from which time the plaintiff had doubts about his paternity, given the things mentioned in the statement of facts of the complaint—the lawsuit was filed on July 11, 2007, when Law 1060 of 2006 had already entered into force. This means that if the plaintiff had always doubted the biological relationship, as he confessed in his lawsuit, the time-bar issue cannot be defined with the superficiality that the lawsuit suggests when, almost certainly with the aim of seeking to have his challenge admitted, he adds that his doubts were reinforced by the mother’s recent behavior.

5. The petitioner challenged this decision, filing an appeal for cassation with the Supreme Court of Justice. The Civil Cassation Chamber of the Supreme Court denied the appeal on July 2, 2010, on the grounds that it failed to comply with the procedural filing requirements. Particularly, it noted that:

The plaintiff fails to cite the substantive law that was violated as a consequence of the alleged error of fact derived from the erroneous expert assessment, as the provision invoked [...] is evidentiary rather than substantive, insofar as it regulates issues related to the mandatory performance of tests, in all proceedings to establish maternity or paternity, that scientifically determine probability to 99.9% or higher [...].

6. On August 29, 2013, the petitioner filed a petition for the protection of constitutional rights (*tutela* action) in the Supreme Court of Justice, challenging the appellate court’s judgment that declared the paternity challenge time-barred. The petitioner alleged the violation of his rights to due process, equality, the administration of justice, legal personality, filiation, dignity, and the free development of his personality, as well as the right to decide as a couple how many children to have. On September 12, 2013, the Civil Cassation Chamber of the Supreme Court denied the *tutela* action for failure to comply with the requirement of immediacy, basing its decision on the Chamber’s own case law, as follows:

[...] The two-month statute of limitations that Article 11 of Decree 2591 of 1991 had established for bringing a *tutela* action was ruled unconstitutional and eliminated by Constitutional Court Judgment C-543 of 1992; nevertheless, it has subsequently been understood that although there is no time limit for bringing the action, in any case, due to the nature, the object of protection, and the purpose of this judicial

⁴ The IACHR is not publishing the identity of the girl because she was a minor at the time of the events.

defense mechanism, the *tutela* action must be filed within a reasonable period, which allows for the immediate protection of the fundamental right referred to in Article 86 of the Constitution.

Therefore, the *tutela* action will be inadmissible for failing to observe the principle of immediacy that should govern its use. The purpose of the restriction is to preserve the prompt nature of the *tutela* for the protection of the fundamental rights that are considered violated by an act or omission of the government (Judgment T-797 of September 26, 2002).

7. However, on November 19, 2013, the Labor Cassation Chamber of the Supreme Court upheld the challenged ruling, finding *inter alia* that:

[...] The decision rendered by the Court in the *tutela* action before it offers no grounds for challenge, inasmuch as, with reasonable arguments and within its direct autonomy and judicial independence, it clarified the issue of the time-barring of the action. Hence, the challenged decision is not the result of an arbitrary, capricious, or subjective action of the Court, but of a sound understanding of the specific case and the applicable provisions of law.

8. Finally, in an order dated January 30, 2014, the Constitutional Court's *Tutela* Selection Chamber Number One declined to select the *tutela* file for review.

9. In sum, the petitioner alleges the violation of his rights to a fair trial, to humane treatment, to judicial guarantees, to the right of every person to be compensated in accordance with the law if convicted in a final judgment based on judicial error, to the protection of privacy, to correction or reply, to equal protection, the principle of legality and non-retroactivity, the right to a dignified life, and the right to economic and social stability, because the domestic courts—particularly the judges in the family court, cassation, and *tutela* proceedings—failed to consider the DNA test that proved that he was not the father of the child.

The Colombian State

10. Colombia's response confirms the information provided by Mr. Pajaro Ramos regarding the family court proceedings, as well as the *tutela* and cassation proceedings.

11. The State also reports that on December 15, 2014, the Municipal District Court of Coyaima, Tolima convicted the petitioner of the crime of failure to provide child support. He filed an appeal; however, on February 5, 2014, the Superior Court of Ibagué upheld the appealed judgment. He challenged this decision in a cassation appeal, which was declared abandoned on February 26, 2016. He then filed a petition for review of the rulings issued in the first and second instance by the Municipal District Court of Coyaima and the Superior Court of Ibagué, respectively. However, on June 27, 2018, the Criminal Cassation Chamber of the Supreme Court of Justice ruled the petition for review inadmissible. On this point, the Commission notes that that proceeding is not included in the petitioner's main allegations.

12. The State additionally requests that the IACHR declare this petition inadmissible on the grounds that the petitioner is asking the Commission to act as an international court of fourth instance. It maintains that the petitioner's Convention rights were respected in the paternity challenge proceedings, in which his arguments were examined by the courts at different levels, and that the judicial decisions were well reasoned based on the evidence and in accordance with the applicable law. Therefore, a study of the facts of the case would entail a review of judgments issued by the competent courts based on the evidence provided by the parties and in accordance with the applicable domestic laws.

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

13. This petition concerns the alleged violation of due process in the paternity challenge brought by the petitioner. He claims that the domestic courts failed to consider the results of a paternity test that concluded he was not the child's biological father, which should have disestablished paternity and terminated

his child support obligations. The State does not challenge the exhaustion of domestic remedies or the timeliness of the petition.

14. The Inter-American Commission has established that the appropriate remedies to be exhausted in cases of alleged violations of due process and other human rights during judicial proceedings are, as a general rule, those means available under national procedural law that make it possible to challenge—during the proceedings in question—actions and decisions made in those same proceedings. This refers in particular to the ordinary judicial remedies available, or to extraordinary remedies if filed by the alleged victims to assert their rights. The Commission has also established as a general standard that if the petitioner used these subsequent, additional, or, as the case may be, extraordinary remedies with the reasonable expectation of obtaining a favorable result, then they may be considered remedies validly exhausted for the purposes of complying with the petition admissibility requirements. Furthermore, the IACHR takes into account, as an important indication of the relevance or admissibility of these remedies, that they have been admitted for processing and adjudicated by the respective courts, and not rejected as inadmissible.⁵

15. The information provided by the parties shows that, on July 11, 2007, Mr. Pajaro Ramos filed an action to contest paternity. In a judgment of March 11, 2008, the Family Court of Guamo, based on a DNA test establishing that the petitioner was not the child's biological father, dissolved all filial and legal ties between them. The petitioner's former spouse challenged this decision on the grounds that the action was time-barred; and in a decision of August 29, 2009, the Civil and Family Chamber of the Superior Court for the District of Ibagué reversed the lower court's judgment and declared the action time-barred. In response, the petitioner filed an appeal for cassation, which was denied on July 2, 2010, by the Civil Cassation Chamber of the Supreme Court. He then filed a *tutela* action, but in a judgment of November 19, 2013, the Labor Cassation Chamber of the Supreme Court, having examined the merits of the petitioner's claims, upheld the appellate decision issued by the Civil and Family Chamber of the Superior Court for the District of Ibagué. Finally, as stated in its order of January 30, 2014, Selection Chamber Number One of the Constitutional Court declined to select the file for review.

16. In view of the foregoing, the IACHR considers that the decision that exhausted domestic remedies was the denial of review issued on January 30, 2014, by the Constitutional Court; therefore, the Commission concludes that the exhaustion requirement under Article 46.1(a) of the American Convention has been met.

17. Regarding the filing deadline for the petition, the Commission notes that the Constitutional Court's order declining to review of the *tutela* proceedings is dated January 30, 2014, and that this petition was filed on May 6, 2014. Therefore, the Commission also concludes that the requirements of Article 46.1(b) of the Convention have been met.

VII. ANALYSIS OF COLORABLE CLAIM

18. First, the Commission reiterates that the standard for evaluating these requirements differs from that used to decide on the merits of a petition; the Commission must make a *prima facie* assessment at this stage to determine whether the petition establishes the basis for a possible or potential violation of a right guaranteed by the Convention, but not to establish whether such violation actually exists. This determination as to whether the petition establishes a colorable claim of violations of the American Convention is a preliminary analysis, not a prejudgment of the merits of the case. For purposes of admissibility, the Commission must decide whether the alleged facts may constitute a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order” under Article 47(c) of the American Convention.

19. The Commission notes that, as established in the above sections, the petition is based fundamentally on the alleged violation of the petitioner's due process guarantees, among other rights. He

⁵ 8 IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 17; IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alexander Santillán Hermoza. Peru. April 15, 2016, paras. 25-26.

contends that the appellate judge ruled that his paternity challenge was time-barred—without considering that a DNA test concluded that he was not the biological father of the child—because the action was filed almost four years after the petitioner began to have suspicions about the child’s true paternity; that is, the time of her birth.

20. The Commission notes that the Civil and Family Chamber of the Superior Court for the District of Ibagué affirmed the decision that the action was time-barred based on Article 216 of Law 1060 of 2006,⁶ since the statute of limitations for challenging paternity began to run when the petitioner began to have suspicions, which, he stated in his complaint, was when the child was born in 2003. And because the action was filed in 2007, it was filed after the expiration of the 140-day statute of limitations provided for in the above-cited law. This deadline is unreasonable given that the petitioner’s suspicions about his paternity arose over time as his daughter grew older, and he realized as her features became more defined that she did not physically resemble him. This suspicion could only be corroborated years later with the court-ordered DNA test performed in 2007. In other words, *prima facie*, the State would be putting a procedural formality before the material truth.

21. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission finds that the petitioner’s allegations are not manifestly groundless and require a study of the merits, since the alleged facts, if corroborated as true—particularly that the appellate court ruled that the paternity challenge was time-barred based on the petitioner’s mere suspicions about his legitimate biological relationship with the child and not on impartial criteria, such as the DNA test that was ordered by the trial court judge, which disproved any biological match—could constitute violations of Articles 8 (right to a fair trial), 17 (rights of the family), and 25 (right to judicial protection) to the detriment of Mr. Julio Pajaro Ramos, as described in this report.

22. The Commission also recalls that the case law of the Inter-American Court has established that *“the family relationships and the biological aspects of the history of an individual, particularly a child, constitute a fundamental element of his or her identity, so that any act or omission of the State that has an effect on the said components can constitute a violation of the right to identity.”*⁷

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 17, and 25 of the American Convention, in conjunction with Article 1.1 thereof.

2. To notify the parties of this decision; to proceed to 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 27th day of the month of September, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁶ The spouse or permanent partner and the mother may contest the paternity of the child born during the marriage or in force of the de facto marital union, within one hundred (140) days following the day in which they became aware that he or she is not the biological father or mother.

⁷ I/A Court H.R., *Case of Fornerón and daughter v. Argentina*. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 242, para. 113.