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REPORT No. 65/24

CASE 13.156

REPORT ON INADMISSIBILITY

LUZ ELENA SALGADO MEJIA AND FAMILY
COLOMBIA

Approved electronically by the Commission on May 21, 2024.

Cite as: IACHR Report No. 65/24. Case 13.156. Inadmissibility.
Luz Elena Salgado Mejia and family. Colombia. May 21, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Roberto Fernando Paz Salas
Alleged victims:	Luz Elena Salgado Mejia and family ¹
Respondent State:	Colombia ²
Rights invoked:	No articles of the American Convention on Human Rights are specified; ³ however, reference is made to the rights to life, health, social security, dignity and due process

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	March 15, 2006
Notification of the petition to the State:	March 14, 2011
State's first response:	June 14, 2011
Additional observations from the petitioner:	August 25, 2016; April 9, 2018; September 2, 2019; August 6, 2020; and December 23, 2021
Additional observations from the State:	August 5, 2011; August 21, 2018; October 15, 2019, and August 31, 2022
Notification of the possible archiving of the petition:	September 18, 2020
Petitioner's response to the notification regarding the possible archiving of the petition:	December 23, 2021

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 (ratification instrument 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:	Does not apply
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, pursuant to the terms of Section VI
Timeliness of the petition:	No, pursuant to the terms of Section VI

¹ Omar Humberto Marín Quinceno (husband) and Omar Eduardo Marín Salgado (son).

² 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.

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

⁴ The observations presented by each party were duly transmitted to the opposing party. On February 14, 2018, the Commission notified the parties of the decision to defer addressing the admissibility of the case until the merits stage, in accordance with Article 36(3) of its Rules of Procedure and Resolution 1/16 on "measures to reduce the procedural backlog." On August 25, 2023, the petitioner expressed interest in the processing of the petition.

V. FACTS ALLEGED

Position of the petitioner

1. The petitioner alleges that the Colombian State is internationally responsible specifically for the lack of administrative reparation for the death of a newborn girl, allegedly caused by medical negligence on the part of medical personnel of the Social Security Institute.

2. The petition states that on January 11, 1999, Luz Helena Salgado Mejía (hereinafter "Ms. Salgado"), was admitted to the Santa María del Rosario Clinic, located in the municipality of Itagüí, department of Antioquia, of the Social Security Institute (hereinafter "ISS"), where she was treated for 19 days for risk of preterm birth. It indicates that on January 30, 1999, eight months pregnant, doctors at the clinic performed a cesarean section on her and she gave birth to a baby girl. She states that two hours after her birth, the child was placed in an incubator with oxygen and was immediately transferred to the Leon XIII Clinic in Medellín after the medical staff of the Santa María del Rosario Clinic decided that the second clinic had the more sophisticated equipment needed to care for the newborn, particularly ventilators for respiratory support.

3. While the child was being transported in the ambulance, the medical oxygen tank connected to the incubator began to run out. Upon arrival at the Leon XIII Clinic, a nurse connected a new cylinder of medical oxygen to the incubator; however, that cylinder was also empty. The petitioner holds that a doctor at the León XIII Clinic refused to treat the newborn and ordered her to be returned to Itagüí, noting that the doctor refused to treat the child because her shift was over. At approximately 7:00 p.m., the newborn was returned to Clínica Santa María del Rosario and at 10:00 p.m. she died of respiratory arrest.

Contentious-administrative proceeding

4. On April 6, 1999, the girl's relatives filed a lawsuit for direct reparation before the Adversarial Administrative Court of Antioquia, claiming the ISS was administratively liable for the death of the newborn girl named Marín Salgado, alleging a series of failures in the provision of medical services. In a judgment of December 3, 2003, the Ninth Chamber of the Administrative Court of Antioquia rejected the claims in the lawsuit, among other things stating that: "[...] It was the plaintiffs' responsibility to demonstrate the causal link between the damage and the conduct of the hospital. Because they failed to do so, the judgment cannot be favorable to the plaintiff [...]."

i) Cassation appeal.

5. Ms. Salgado appealed the December 3, 2003, judgment. Her appeal was denied in a decision dated June 11, 2004, issued by the Third Section of the Council of State, finding that the lawsuit for direct reparations brought by Ms. Salgado was not eligible for an appeal due to the amount of damages sought.

ii) Writs of protection

6. Parallel to this, on September 17, 2004, Ms. Salgado filed a writ of protection before the Council of State against the December 3, 2003, resolution under case file 2004-01158. In a resolution dated October 28, 2004, the Second Section of the Council of State ruled the writ of protection was inadmissible because it cannot be filed against judicial rulings. On November 25, 2004, the Council of State denied Ms. Salgado's appeal of the resolution, finding that appeals of rulings of inadmissibility of a writ of protection were not provided for under domestic law.

7. In response to this resolution, on January 18, 2005, Mrs. Salgado filed a writ of protection before the Constitutional Court against the aforementioned resolution. In an order dated January 25, 2005, the Criminal Chamber of the Constitutional Court remitted the writ of protection to the Council of State for a ruling. In a decision of March 17, 2005, the Fourth Section of the Council of State rejected the writ of protection as inadmissible, establishing, among other things, the following: "Both the Constitutional Court and this Chamber have repeatedly found that a writ of protection filed against a judgment in a writ of protection is not admissible.

Colombian Constitutional law does not allow this action against decisions of the same nature [...] Writs of protection are subject to eventual review by the Constitutional Court, which is the court of last resort for such actions [...].”

8. Citing this ruling, on June 30, 2005, the Fifth Section of the Adversarial Administrative Chamber of the Council of State upheld the decision under appeal, establishing as follows: “[...] This section has repeatedly found that the judge hearing the writ of protection cannot interfere in a judicial process by amending decisions adopted by the judge hearing the case because it would violate the principles of autonomy and independence of judicial authorities in the issuance of their rulings and judgments, including legal certainty, the essential foundation of society, a doctrine that is reiterated on this occasion [...].”

9. Additionally, the information contained in the file makes clear that Ms. Salgado requested a review of the writ of protection decision before the Constitutional Court. However, by order of August 26, 2005, Selection Chamber Number Eight of the Constitutional Court did not select the writ of protection for review.

Main arguments of the petitioner

10. The petitioner essentially alleges a lack of compensation to the relatives of the newborn girl, arguing that her death was due to a series of incidents of medical negligence on the part of two public hospitals belonging to the Social Security Institute.

Stance of the Colombian State

11. For its part, Colombia confirms the facts established in the petitioner’s brief. It then asks the IACHR to declare the present petition inadmissible because: (i) the petition is time-barred; (ii) the present case involves what it calls a “fourth international instance”; and (iii) the remedies under domestic jurisdiction have not been exhausted.

12. Regarding point (i), Colombia notes that the decision that ended the process initiated in the framework of the suit for direct reparation was the decision issued on June 11, 2004, by the Third Section of the Council of State rejecting the appeal against the first instance judgment. Additionally, with respect to the writ of protection filed by Ms. Salgado, it holds that the ruling concluding that proceeding was issued on June 30, 2005. In this regard, since the petition was filed before the IACHR on March 15, 2006, the State argues that it does not comply with the requirement set forth in Article 46(1)(b) of the American Convention—first, because the petition was filed two months and 14 days after the six-month period provided for in Article 46(1)(b) of the Convention, with respect to the final writ of protection decision; and second, one year, three months and four days after the six-month period provided for in the aforementioned provision of the Convention with respect to the appeal filed against denial of the direct reparation action initiated by Ms. Salgado.

13. Regarding point (ii), it states that the Administrative Court of Antioquia held that, in the action for direct reparations initiated by the parents of the deceased child, they failed to prove the damage allegedly caused to the family by the death of the newborn and the conduct of the public hospital being sued. In this regard, it states that the petitioner is seeking for the IACHR to act as a fourth international instance for the purpose of reviewing the rulings issued within the framework of the contentious-administrative process carried out domestically.

14. Regarding point (iii), the State argues that the petitioner did not exhaust the internal remedies provided for domestically. First, it notes that the petitioners did not exhaust the criminal action for the death of the newborn, and therefore, the Colombian State has not had an opportunity to establish the truth of what happened and identify those allegedly responsible. Second, it indicates that the petitioners had the option of going before the National Medical Ethics Court to initiate a proceeding against the doctors involved in the alleged medical negligence perpetrated to the detriment of the newborn.

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

15. In this case, the IACHR observes that the central object of the petition is the lack of economic reparation for the next of kin of the newborn surnamed Marín Salgado. The petitioner argues that her death was caused by a series of incidents of medical negligence committed by medical personnel of two clinics belonging to the *Instituto de Seguros Sociales* (Social Security Institute).

16. In this regard, the case file indicates that the girl's relatives filed a lawsuit for direct reparation alleging that the Colombian Social Security Institute was responsible for her death. They also filed two writs of protection. These appeals were resolved by the Colombian courts as follows:

Legal action	Judicial Body	Ruling	Date
<i>Suit for direct reparations</i>			
Judgment in lawsuit for direct reparation	Ninth Chamber of the Administrative Court of Antioquia	Suit denied	December 3, 2003
Appeal of judgment	Third Section of the Council of State	Processing of the appeal denied on the grounds of amount	June 11, 2004.
<i>Writ of protection against judgment of December 3, 2003</i>			
Judgment in writ of protection	Second Section of the Council of State	Inadmissible	October 28, 2004
Appeal of judgment	Council of State.	Remedy denied	November 25, 2004.
<i>Writ of protection against judgment of November 25, 2004</i>			
Judgment in writ of protection	Fourth Section of the Council of State	Inadmissible	March 17, 2005.
Appeal of judgment	Fifth Section of the Contentious-Administrative Chamber of the Council of State	Judgment upheld	June 30, 2005.
Review of writ of protection	Selection Chamber Number Eight of the Constitutional Court	Not selected	August 26, 2005

17. For its part, the State has argued that the petitioners did not exhaust criminal proceedings with respect to medical negligence that allegedly caused the death of the newborn girl. However, as has been established throughout this report, the IACHR notes that the central object of the petition concerns the lack of administrative reparation to the girl's relatives and alleges that the judicial decisions issued within the framework of the contentious-administrative and writ of protection proceedings violated their human rights by failing to grant them these reparations. In this regard, the State has not indicated—nor is it indicated anywhere in the case file—that following the writ of protection launched in the contentious-administrative process, there were any additional remedies that had not been exhausted that would have been suitable for the relatives of the deceased child to seek administrative reparations for her death domestically. Consequently, the Commission concludes that this petition complies with the requirement established in Article 46(1)(a) of the American Convention.

18. With respect to the deadline for filing the petition, the Commission observes that the petitioner has not given the notification date of the decision by the Constitutional Court to not select his request for review, nor has he provided copies thereof, in contravention of the minimum procedural burden required of him under Article 28 of the Rules of Procedure of the IACHR. Therefore, for the purposes of calculating the filing deadline pursuant to Article 46(1)(b), the Commission will use the order issued on August 26, 2005, as this is the latest date available to the IACHR based on the information provided by both parties to this petition. Thus, considering that the petition was received by the Executive Secretariat of the Inter-American Commission on March 15, 2006, it is concluded that the petition is time-barred and therefore fails to meet the six-month deadline expressly provided for in Article 46(1)(b) of the Convention.

19. Furthermore, the Commission notes that the petitioner does not, in his petition or in any subsequent communication, argue for any exception to the duty to exhaust domestic remedies provided for in Article 46(2) of the American Convention.

VII. 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 21st day of the month of May, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.