

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No 34/97
Session:	Ninty-Seventh Regular Session (29 September – 17 October 1997)
Title/Style of Cause:	Jorge Enrique Benavides v. Colombia
Doc. Type:	Decision
Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman; Members: Dr. Oscar Lujan Fappiano, Dean Claudio Grossman. Commissioner Alvaro Tirado Mejia, a Colombian national, did not participate in the consideration and vote on this report, pursuant to Article 19(2)(a) of the Commission's Regulations.
Dated:	3 October 1997
Citation:	Enrique Benavides v. Colombia, Inter-Am. C.H.R., Report No. 34/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
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I. BACKGROUND

A. The Petition

1. On September 24, 1996, a petition was presented to the Inter-American Commission on Human Rights (the "Commission") against the Republic of Colombia ("Colombia", the "State," or the "Colombian State"). The petitioner claimed that as a consequence of a notice for a competition conducted by the Supreme Court and the Superior Council of the Judiciary ("Consejo Superior de la Judicatura") to fill the position of judge on the Superior Courts, Family Matters, of Medellin, Antioquia and Buga, which did not result in his nomination, his human rights had been violated.

2. In the petition, the petitioner charges that the following rights protected by the American Convention on Human Rights (the "Convention") had been violated: due process (8 and 25), right to equal protection (24), right to equal access to public service (23.1) and judicial protection (25).

B. Commission Proceedings

3. In a letter dated October 15, 1996, the Commission's Secretariat communicated to the petitioner that it was unable to process his petition because, as of that date, all domestic remedies had not been exhausted.

4. On November 24, 1996, the Secretariat of the Commission received a letter from the petitioner providing additional information and facts regarding his original complaint and requesting reconsideration of the decision not to take up his petition.

5. On July 3, 1997, the Commission received an additional letter from the petitioner in which he indicated that all available domestic remedies had been exhausted since the Council of State had handed down a final ruling on May 15, 1997 in his case. He attached a copy of the decision to the letter. He thus again sought to present his case to the Commission.

6. A letter was received from the petitioner on July 8, 1997, containing additional documentation.

7. On September 10, 1997, a new letter was received from the petitioner requesting a prompt decision in connection with his petition.

II. THE FACTS

8. A merit competition was held on January 23, 1991 in Colombia to select magistrates for the Superior Courts, Family Matters, of Medellin, Antioquia and Buga.

9. The petitioner who at that time, as now, served as a judge for municipal civil matters in Medellin, applied for those open positions. In accordance with the laws and rules in effect on that date in Colombia governing the aforementioned competitions, the Superior Council of the Judiciary, the agency in charge of organizing the competitions to choose judges and magistrates, decided in favor of other applicants who had higher competition scores than the petitioner. It should be noted that the petitioner came in seventh in the competition for the Antioquia Family Court, sixth for that same court in the city of Buga, and ninth in the competition for the Medellin Family Court.

10. Not satisfied with the outcome of that competition, which he considered flawed and arbitrary, the petitioner presented an administrative complaint for the purpose of nullifying the competition. The Council of State, on May 15, 1997, rejected in a final ruling the complaint submitted by the petitioner.

11. The petitioner also filed a suit of legal protection ("tutela") as against the Council of State on certain limited issues resulting from the administrative proceeding which was decided against him by an appellate court, the Superior Court for the Judicial District of Santafe de Bogotá, on October 18, 1994. Additionally, he filed with the Constitutional Court an action requesting that the Court declare unconstitutional certain norms applied by the Council of State in the administrative proceeding.

III. CONSIDERATIONS

A. Admissibility

12. The petition meets the formal requirements of admissibility set out in Article 46 of the Convention:

a) The petitioner has exhausted the remedies under domestic law that are available in accordance with Colombian law considering that the final ruling of May 15, 1997 issued by the Council of State, docket No.8717, Request for Nullity, submitted by the petitioner against the notice of convocation for the magistrate competition, terminated the most appropriate and effective procedure for resolution of the merits of the matter raised in the petition, thereby exhausting domestic remedies.

In connection with the suit filed for protection and the action for unconstitutionality, the Commission is of the opinion that those remedies are extraordinary and collateral in nature and do not go to the basic issues of the violations charged in the petition. These two suits relate only to a fine imposed on the petitioner and his attorney in the administrative proceedings.

b) The petition was presented within the term set by Article 46(b) and article 38 of the Regulations of the Commission.

c) The Commission has not received any information to the effect that the present petition is the subject of any other international proceeding.

d) The petition has complied with all the formal requirements of Article 46(c) of the Convention regarding name, nationality, profession, domicile and signature.

13. However, according to Article 47(b) of the Convention, the Commission may declare inadmissible any petition which does not allege facts which tend to characterize a violation of rights guaranteed in the Convention. Accordingly, the Commission shall proceed to examine whether the facts alleged by the petitioner constitute a violation of the human rights protected by Articles 8.1, 23.1, 24, 25, 46.2, clause c) of the Convention, as charged by the petitioner.

B. Analysis

14. The examination of the alleged facts leads to the conclusion that they do not constitute a violation of the rights and guarantees invoked by the petitioner. To the contrary, an examination of the main issue of this petition by the Commission would in fact amount to this Commission acting as a fourth, quasi-judicial court, or as an appeals court for domestic law since it is being requested to review a decision reached by a body acting within its competence conferred by law and in conformity with existing law, which decided in favor of the candidate who, in its judgement and applying criteria relating to experience and other qualifications, was best suited for the position. Pursuant to applicable laws, that decision was made public and an opportunity for challenge was provided. The procedure used in deciding the competition was then reviewed and confirmed by the appropriate courts. The petition thus necessarily relates to a problem of internal administration of the judiciary.[FN1]

[FN1] See Report No. 39/96, Case 11.673, Argentina, Annual Report of the Inter-American Commission on Human Rights 1996, pp. 85-87.

15. The petitioner contends that flaws regarding independence and impartiality were involved in the choice of the magistrates by inter alia the selection of one candidate who was not a member of the judicial branch, and accuses the Colombian state of violating the right of due process and equal protection under the law, protected by the Convention.

16. The fact that the petitioner scored lower and lost a competition conducted in conformity with prevailing rules does not constitute a violation of the right to equal protection and due process even if the petitioner considers that the outcome was unjust or incorrect. In this connection and in relation to the right to equal protection, specifically, the Inter-American Court of Human Rights has held:

[T]here would be no discrimination in differences of treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review.[FN2]

[FN2] I/A Court H.R., Advisory Opinion OC-4/84, January 19, 1984, par. 57, cited in Report No. 39/96, p. 84.

17. In addition, in this case, the rules of the competition specifically allowed for the possibility that every person who meets the requirements established by law may participate in the competition, in compliance with the provisions of Article 21, paragraph 2, of Decree No.0052 of 1987 which reviews, amends and implements the Statute on Judicial Service and which states, "every competition shall be open and any person in the judicial field or the service and persons outside of them may participate." In addition, the same rules seek to protect seniority and career service by creating, in the candidate evaluation system, a special item which awards a certain score based on experience and seniority in the judicial branch or as an educator, as can be seen from point 3.2.2 of the notice of convocation for the competition. In that manner, the idea is to strike a balance between equality in access to public positions on one hand and protection of career service on the other, thereby not establishing a case of unjustified discrimination. The petitioner has never alleged that the competition was not carried out in conformity with the relevant norms in place at the time.

18. The petitioner nonetheless asserts that those norms were not compatible with Colombian Constitution. Yet, it can be concluded from the facts alleged that the petitioner had access to the judicial remedies needed to question the legitimacy and constitutionality of the legal regulations governing the competition in the administrative nullification proceeding which he initiated.

19. With respect to the violation of the right to defense and the absence of due process in these proceedings, the petitioner does not mention any facts that would tend to support the allegation of such violation. In this respect, the petitioner had access to an administrative proceeding, a first level court, which yielded an unfavorable ruling. The petitioner appealed to the second level court and obtained an adverse ruling from the Council of State on May 15, 1997. The right to a fair trial was respected, in a proceeding which lasted only an acceptable

period of time[FN3], and the facts of the case do not support the contention that there has been a violation of due process.

[FN3] Report No. 39/96, p. 85.

20. In addition, regarding the petitioner's argument regarding an alleged lack of due process in connection with the fine levied upon him by the Council of State, as part of the preceding that he initiated, from the facts presented it can be concluded that while such a resolution might have been especially strict, it was within the sphere of legal powers of the court and was applied in conformity with the law. It is thus not the responsibility of this Commission to review that decision.

21. The judicial protection that the Convention recognizes covers the right to fair, impartial and prompt proceedings which provide the possibility, but never the guarantee, of a favorable outcome. In itself, a negative outcome arising from a fair ruling does not constitute a violation of the Convention. Consequently, the Commission does not see that the facts as charged would constitute a violation of either Article 8 or Article 25.[FN4]

[FN4] Id.

C. Competence of the Commission: the "fourth instance"

22. The Commission believes that what the petitioner requests is that the Commission should review the competition in which the petitioner was not chosen, and the subsequent decisions of the judicial courts that confirmed the validity of that competition. In this connection, the Commission restates its jurisprudence which held:

The international protection provided by the supervisory bodies of the Convention is of a subsidiary nature. The Preamble to the Convention is clear in this respect when it refers to the reinforcement or complementary nature of the protection provided by the domestic law of the American states.[FN5]

[FN5] Id.

23. That function constitutes the foundation of the so-called "fourth instance formula." The basic premise of this formula is that, "the Commission cannot review the judgements issued by the domestic courts acting within their competence and with due judicial guarantees, unless it considers that a possible violation of the Convention is involved." [FN6]

[FN6] Id., p. 86.

24. In this respect, the following is pointed out:

The Commission is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.[FN7]

[FN7] Id.

IV. CONCLUSIONS

25. The Commission concludes that the petition meets the formal requirements for admissibility under Article 46 of the Convention.

26. Nevertheless, from its examination of the documents presented and the petition itself, the Commission concludes that petition does not allege facts which tend to establish any violation of the American Convention by the Colombian State. in particular the rights to judicial guarantees, equal protection under the law, political rights or judicial protection as against the petitioner.

27. Given the above considerations of fact and of law, the Commission decides that the present petition is inadmissible in conformity with Article 47(b) of the Convention.

28. The Commission decides that this report declaring the inadmissibility of the petition presented be notified to the petitioner and published in its Annual Report to the OAS General Assembly of the OAS.