

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 48/98; Case 11.403
Session:	Hundredth Regular Session (24 September – 13 October 1998)
Title/Style of Cause:	Carlos Alberto Marín Ramírez v. Colombia
Doc. Type:	Decision
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commissioners: Claudio Grossman, Helio Bicudo, Henry Forde. Commissioner Alvaro Tirado Mejía, a Colombian National, did not participate in the discussion and decision of this Report, as required by Article 19(2)(a) of the Commission's Regulations.
Dated:	29 September 1998
Citation:	Marín Ramírez v. Colombia, Case 11.403, Inter-Am. C.H.R., Report No. 48/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by:	APPLICANT: the Andean Commission of Jurists, Colombian Section
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I. FACTS ALLEGED IN THE COMPLAINT

1. On September 23, 1994 the Andean Commission of Jurists, Colombian Section, (currently the Colombian Commission of Jurists and henceforth "the petitioner") acting on behalf of Mr. Carlos Alberto Marín Ramírez, submitted a complaint before the Inter American Commission of Human Rights (henceforth "the Commission") against the Republic of Colombia (henceforth "the Colombian State " or "the State") alleging denial of justice and the violation of the right to equal protection before the law.

2. The petitioner alleges that the State has violated the right to be heard by a competent tribunal within a reasonable time for the determination of legal rights and duties as established in Articles 8 and 25 of the American Convention on Human Rights (henceforth "the Convention"). The petitioner also maintains that the State has violated Article 2 of the Convention by not adopting the necessary legislative measures to ensure the enjoyment of the rights protected therein. The petitioner finally claims that "the distinction established by the Colombian Council of the State allowing for the review of certain but not all judgments, violates the principle of equal protection before the law" as established in Article 24 of the American Convention.

II. BACKGROUND

3. The petitioner states that Mr. Carlos Alberto Marín Ramírez was a professor (catedrático I escalafonado) at the Francisco José de Caldas District University in Santafé de Bogotá from

July 21, 1981 to January 14, 1983 when the Rector of the above-named institution ordered his exclusion from the payroll.

4. On May 9, 1986, the Administrative Tribunal of Cundinamarca declared the administrative act issued by the Rector of the District University null and void. Nevertheless, this decision rejected Mr. Marín Ramírez's request to be reinstated in his position. The petitioner states that such rejection was the result of an improper interpretation of the rules governing the hiring of professors by the University.

5. Carlos Alberto Marín Ramírez timely appealed the Administrative Tribunal of Cundinamarca's decision before the Second Division of the Council of the State. The Council of State decided to reverse the Administrative Tribunal of Cundinamarca's decision including the declaration of annulment made in the first instance.

6. Carlos Alberto Marín Ramírez appealed this decision before the Plenary of the Council of the State. On October 5, 1990, the Plenary granted the appeal and declared null and void the administrative act but, according to the petitioner, it failed to address the request for reinstatement.

7. As a response and pursuant to Article 185 of the Contentious Administrative Code, Carlos Alberto Marín Ramírez filed a request for special review before the same Tribunal. He requested to be reinstated as a professor at the Francisco José Caldas University.

8. The Plenary of the Council of the State denied his request on August 10, 1993 on the grounds that its decisions are not subject to review. Subsequently, Mr. Marín Ramírez filed a tutela before the Criminal Chamber of the Superior Court of Bogotá which was denied on November 17, 1993. This decision was confirmed by the Constitutional Court on April 27, 1994.

III. PROCESSING BEFORE THE COMMISSION

9. The Commission forwarded the petition to the Colombian State on November 14, 1994. On February 15, 1995, the State requested an extension to present its response which was granted on March 9, 1994. The State presented its observations on March 30, 1995, and they were forwarded to the petitioner on April 7. On June 5, 1995, the petitioner submitted his comments which were forwarded to the Colombian State on June 13, 1995. The State requested an extension to submit its observations. Such extension was granted on September 19, 1995. The State submitted observations on October 5, 1995, which were duly sent to the petitioner on October 20, 1995.

10. On June 5, 1995, the petitioner sent its observations which were forwarded to the Colombian State on June 13. The State was granted an extension to present its observations on September 19, 1995. On October 5, 1995 the State presented its observations and they were transmitted to the petitioner on October 20, 1995.

11. On December 18, 1995, the Commission received additional information from the petitioner which was forwarded to the Colombian State on January 24, 1996. The State again requested an extension which was granted on March 19, 1996.

12. On October 11, 1996, the Commission placed itself at the disposal of the parties with the purpose of reaching a friendly settlement according to Article 48(f) of the Convention. On November 13, 1996, the petitioner submitted a proposal for friendly settlement and, a few days later, on November 20, the State expressed that it was not interested in a settlement of this kind.

13. On November 27, 1996, the State submitted its final written response which was forwarded to the petitioner on December 30, 1996. The petitioner submitted additional information on March 4, 1997.

IV. POSITION OF THE PARTIES

A. Position of the petitioner

14. The petitioner argues that the alleged victim made the necessary attempts to have reversed the decision issued by the Administrative Tribunal of Cundinamarca on May 9, 1986 that denied his request to be reinstated in his position. The petitioner considers that such decision was based on an erroneous interpretation of the legal regime governing the hiring of professors at the Francisco José de Caldas District University.[FN1]

[FN1] The Commission notes that the petitioner has not made clear on what grounds the alleged victim was excluded from the payroll.

15. The petitioner maintains that the claims presented in the appeal were ignored both by the Second Division and the Plenary of the Council of the State and, as a result, the victim suffered a clear denial of justice. The alleged victim sought a rectification by requesting the Plenary to review its own decision and by filing a tutela before the Criminal Chamber of the Superior Court of Bogotá and the Constitutional Court. However, such requests were rejected on the ground that they were inadequate to reverse the Plenary Council of the State's decision.

16. The petitioner argues that in this case failure to consider the claims presented by the alleged victim constitutes a violation of the right to judicial protection as established in Articles 8 and 25 of the Convention. Additionally, the petitioner argues that "by making a distinction between decisions that can be reviewed and others that cannot, the Council of the State has violated the principle of equal protection before the law" as established in Article 24 of the Convention.

17. Lastly, the petitioner argues that even if the decisions reached before the domestic courts had been consistent with domestic law, the State would have violated Article 2 of the Convention insofar as it allegedly failed to comply with the duty to adopt the necessary measures to ensure the rights protected by the Treaty.

B. Position of the State

18. The State alleges that Carlos Alberto Marín Ramírez had his claims examined and reviewed by the highest courts in Colombia. Consequently, the idea that domestic courts could have violated Colombian law despite the numerous appeals attempted and decided upon, would mean ignoring the decisions of the instances involved, including the Constitutional Court.

19. In its view, should the Commission find in favor of the petitioner that would not only affect the principle of legal certainty and the independence of the judiciary but it would also place the Commission in the position of acting as a fourth instance, and therefore beyond its mandate. The Colombian State notes that a partially unfavorable judgment cannot be construed as a per se denial of justice, a due process violation.

20. Regarding the alleged violation of Article 24 of the Convention, the Colombian State considers that there is no direct or circumstantial evidence suggesting that Mr. Marín Ramírez has been discriminated against in violation of the right to equality before the law.

21. The State argues that the claims presented by Carlos Alberto Marín Ramírez when he appealed the decision denying his reinstatement were properly addressed in the judgment issued on March 7, 1989 by the Second Division of the Council of the State and by the Plenary of the same body. Even when the tutela was subsequently denied, such denial was duly grounded on the fact that it is not possible to review decisions issued by the Plenary of the Council of the State.

V. ADMISSIBILITY

22. The petition satisfies the formal requirements of admissibility under Article 46 of the Convention as well as those established under Article 47, by virtue of the following:

- a. The petitioner has exhausted the remedies available under Colombian law.
- b. The petition was submitted within the time limit established under Articles 46(b) of the Convention and 38 of the Regulations of the Commission. The decision of the Constitutional Court was notified to the petitioner in June, 1994 and the petition was submitted to the Commission on September 23, 1994.
- c. According to the information available in the case file it can be concluded that the matter is not pending before any other international proceeding.
- d. Lastly, the facts alleged in the petition could, in principle, constitute a colorable claim of violations under the Convention. The claims presented by the petitioner do not appear to be manifestly ill founded.

VI. ANALYSIS ON THE MERITS

23. The Commission will now analyze the merits of the Petitioner's claims as required by Article 50 of the Convention.

A. The alleged violation of the right to judicial protection

24. As already explained, the petitioner alleges that the claims presented in the victim's appeals were not duly considered neither in the decision reached by the Second Division, as a second instance, nor by the Plenary of the Council of the State. The petitioner argues that, as a consequence, the alleged victim was clearly denied justice and Articles 8 and 25 of the Convention were violated. Subsequently, Mr. Marín Ramírez requested a special review by the Plenary Council of the State and filed a tutela before the Criminal division of Superior Court of Bogotá and the Constitutional Court. However, both requests were rejected on the grounds that they did not constitute adequate remedies to seek reversal of a decision by the Plenary of the Council of the State.

25. The claims allegedly ignored by the domestic courts are those relating to the interpretation of Francisco José de Caldas District University's Superior Council Agreement 003 (1973) contemplating the Statute for professors. The victim considers that the University failed to institute the procedure to evaluate the professor's performance and therefore his contract should have been automatically renewed as provided for under Article 20 of the above-mentioned Statute.

26. In its decision of May 9, 1986, the Administrative Tribunal of Cundinamarca considered that despite the fact that the administrative act excluding the petitioner from the payroll was null and void, his contract had expired at the moment of pronouncing judgment and thus it was not subject to automatic renewal. As a consequence, the decision ordered the payment of damages for the consequences of his illegal exclusion but not his reinstatement as a professor.

27. Carlos Alberto Marín Ramírez appealed this decision of the Administrative Tribunal of Cundinamarca for the purpose of having the decision on his nonreinstatement reversed.

28. The Second Division of the Council of the State, however, overruled the first instance decision in its entirety. Therefore, the decision to declare the administrative act null and void was reversed, and Marín Ramírez was not reinstated in his position as professor. Subsequently, the Plenary of the Council of the State reversed the Second Division's second instance decision, and confirmed the May 9, 1986 decision of the Administrative Tribunal of Cundinamarca.

29. The file of the case includes the decision issued by the Plenary of the Council of the State on October 5, 1990 as a supporting document. In that opportunity, the Plenary considered Carlos Alberto Marín Ramírez's appeal on the decision of the Second Division of the Council of the State.

30. The Plenary of the Council of the State considered the arguments presented by Carlos Alberto Marín Ramírez as well as the decisions reached in the first and second instance. Regarding the issue of reinstatement, the Plenary was of the opinion that the interpretation of Statute of professors made by the first instance was according to law. Consequently, it upheld such interpretation and reiterated the grounds of the decision as expressed by the Administrative Tribunal of Cundinamarca in its decision of May 9, 1986. Pages 18 and 19 of the judgment of the Plenary of the Council of the State read as follows:

As a consequence of the above and under the terms of Resolution 1293 of November 22, 1982 (folio 167) the complainant was granted a Professor I grade effective January 1, 1982. Thus the period of permanent employment begins as of that date to which reference is made in paragraph e) of Article 19 of Agreement N 003 of 1973 already referred to. Based on the above, the Court orders the payment to the complainant of all wages as of January 14, 1983, the date on which he was removed from the payroll and for the period of employment of four years, beginning December 31, 1985, in accordance with the relevant rules, and considering that for all legal effects that between the date of his separation (January 14, 1983) and December 31, 1985 there was no resolution regarding continuance. Given the above, all wages, bonuses, gratuities and benefits must be acknowledged and, in general, all emoluments corresponding to the position not received between January 14, 1983 and December 31, 1985 are to be canceled, bearing in mind any adjustments to the remuneration of the position during the period transpired on the dates referred to.

Petition 2.3, also requested that a decrease in grade also be ordered in accordance with the administrative rules of the defendant University based on the point system for the period of service between the complainant's separation and his reinstatement. There was no evidence that the complainant had any right to the promotion requested, this being the reason for which the petition is denied. (Emphasis added).

31. Even though the Plenary of the Council of the State relied on the transcription of grounds expressed by Administrative Tribunal of Cudinamarca, it cannot be concluded that the arguments presented by Mr. Marín Ramírez in his appeal and later in his request for relief were totally ignored. Quite to the contrary, the Plenary of the Council of the State deemed the grounds of the decision issued in the first instance to be according to law and sufficient and therefore it transcribed them in its own decision.

32. Judicial decisions must be based on factual and legal grounds. In general terms, such decisions must explain the reasons for declaring a complaint admissible, or inadmissible as well as those behind a decision to accept or reject, either totally or in part, the claim filed by the petitioner. However, the requirements or elements to be satisfied by each judicial decision must be established by domestic law and taken into account by the competent courts.

33. Even if the plain transcription of the lower court's reasoning was deemed insufficient to satisfy the appellate court's duty to give grounds for its decisions, it could not, per se, constitute a violation of the right to judicial protection under Articles 8 and 25 of the Convention.

34. The issue of whether the grounds given in a decision are adequate and sufficient is one to be decided within the domestic jurisdiction of each State. Therefore, the Commission cannot review a State party's procedural rules or practices regarding the formal requirements of rendering a judgment and whether the higher courts can reject a claim on appeal by transcribing the lower court's reasoning.

35. Should aspects such as this one be subject to review in every case, the mechanisms for the international protection of human rights would become a "fourth instance." The basic

premise of this formula is that the Commission cannot review the judgments 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.[FN2]

[FN2] Report N° 39/96, Argentina, Annual Report of the IACHR 1996, p. 76 ff.

36. 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.[FN3]

[FN3] Ibidem.

37. This concept has also been clarified by the European Commission of Human Rights in numerous decisions. This body has stated:

The Commission therefore finds that the regional court based its judgment on the assessment of the evidence it had before it and drew its conclusions therefrom. Whether these conclusions involved an error of fact or law is an issue which the Commission cannot determine as it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention.[FN4]

[FN4] Euro Com. HR Application No. 23953/94, (1995) Decisions and Reports 82-A, p. 254.

38. The European Commission on Human Rights also stated along the same lines:

Insofar as the applicants complain of errors of fact and law committed by the Brussels Court of Appeal, the Commission recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts.[FN5]

[FN5] Euro Com. HR Application No. 10785/84, (1986) Decisions and Reports, 48-A, para. 150.

39. Consequently, this Commission is not competent to examine whether the decision of the Plenary of the Council of the State grounded on a transcription of the reasoning of the judgment pronounced in first instance satisfies the formal requirements of a judgment. As stated above, such determination can only be undertaken by the domestic courts of each State. A decision to the contrary would entail disregarding the fourth instance doctrine as adopted in the Inter-American system.

40. In like manner, it is not for the Commission to review whether the provisions of Agreement 003 of 1973 and the Statute of Professors as issued by the Superior Council of the Francisco José de Caldas District University have been adequately interpreted. Such determination was duly required from the competent organs of domestic jurisdiction and, to that effect, all remedies attempted were fully exhausted.

41. The issue of whether a high court decision adopted according to law has been sufficiently or adequately grounded cannot be deemed to constitute a denial of justice in terms of Articles 8 and 25 of the Convention. Particularly when, as understood by the competent organs, the Plenary of the Council of the State rejected the claim presented by the alleged victim as appellant by transcribing the reasoning upheld. The Commission is not competent to examine such aspects, since it would entail acting as an independent higher court in relation to the decision reached in the domestic jurisdiction.

42. The right to judicial protection as enshrined in the Convention includes the right to a fair, impartial and speedy trial necessary to achieve, but never to require, a favorable outcome. This guarantee as provided for in the Convention does not encompass the obligation to ground appellate judicial decisions beyond the reasonable requirements of fact and law provided by domestic law or to afford an inexhaustible chain of remedies. A negative outcome resulting from a fair trial does not, per se, constitute a violation of the Convention. Therefore, the Commission finds no violation of Articles 8 and 25 in this case.

B. The alleged violation of the duty to adopt the necessary measures to protect the rights established by the Convention

43. Carlos Alberto Marín Ramírez was denied a special review by the Plenary of the Council of the State and, subsequently, a tutela filed before the Criminal Division of the Superior Court of Bogotá and the Constitutional Court on the grounds that these remedies sought to challenge a decision that could not be reviewed. The Commission also notes that such denials of the relief sought do not constitute a violation of the judicial guarantees established in the Convention nor can they be deemed a failure by the State to adopt all necessary measures to guarantee the rights established by the Convention as required under Article 2.

44. It is for each State's domestic law to define the instances and remedies to be invoked when challenging the decisions adopted by the high courts for the purpose of ensuring basic principles such as res judicata and legal certainty. Thus, provided that the principle of double jeopardy has been respected, the State is free to determine whether or not a decision, say, of a Superior Court of Justice, should be reconsidered by that same instance or by any other court. By

way of example, the Constitution (Article 201) and the Organic Law on Amparo and Constitutional Rights and Guarantees (Article 6, para. 6) of Venezuela do not permit any remedy against the decisions of the Supreme Court of Justice. In contrast, in Colombia Article 40 of Decree N° 2591 on the remedy of tutela, contemplates the possibility of invoking such remedy against the Supreme Court of Justice and the Council of the State's decisions.[FN6]

[FN6] It must be noted that Article 40 of the above-mentioned Decree N° 2591 has been declared unconstitutional for violating principles such as res judicata and legal certainty. See, decision of the Constitutional Court dated October 1, 1992.

45. The Plenary of the Council of the State and the Constitutional Court of Colombia decided that the decisions of the Plenary, as opposed to the decisions of the Divisions of the Council, were not subject to review in order to safeguard the principles of legal certainty and res judicata. The Commission considers that such determination cannot be deemed a violation of the right to judicial protection enshrined in Articles 8 and 25 of the Convention.

C. The alleged violation of the principle of equal protection under the law

46. The petitioner also alleges that the State violated Carlos Alberto Marín Ramírez's right to equal protection before the law, as defined under Article 24 of the Convention, given the fact that some decisions of the Colombian Council of the State could be reviewed and others not.

47. Article 24 of the Convention states:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

48. The purpose of this fundamental guarantee is to ensure that persons subject to the jurisdiction of a State party to the Convention are afforded equal treatment under similar circumstances. However, States are entitled to treat certain situations differently. Not all differences are impermissible, and States could violate Article 24 of the Convention by establishing differential treatments without objective or reasonable justification.

49. The Inter-American Court has confirmed this interpretation when stating the grounds on which to base a claim of discrimination. The Court has maintained that:

Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in 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.[FN7]

[FN7] I/A Court HR Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84 of January 19, 1984, Series A No. 4, par. 57

50. Consequently, States may establish reasonable differences in view of different situations. As a result, they may categorize certain groups of individuals with a legitimate purpose as long as the classifications has a reasonable connection with the purpose of the rule in question. Thus, by way of example, States are not considered to discriminate against their citizens by establishing rules on the minimum age for granting drivers' licenses. Such differentiation satisfies a legitimate purpose (traffic safety) and it is related to the object of the rule.

51. In the instant case, the petitioner claims that the alleged unequal treatment arose when the victim was allowed to seek review of some decisions (those issued by the Divisions of the Council of the State) but it was denied review of other decisions (those issued by Plenary of the Council of the State).

52. In this regard, the Commission emphasizes once more that such differentiation is part of the legislative policy of each State, for ensuring respect for the principles of *res judicata* and legal certainty. Thus, the Colombian State is entitled both to provide mechanisms to review decisions issued in certain instances and to deny the appeal of decisions from the highest courts. Such alternatives--common to all Latin American legal systems--are in accordance with the principle of hierarchy within the Judiciary.

53. An altogether different situation would arise if the Colombian legal system contemplated a mechanism to review the Plenary of the Council of the State's decisions relating to certain citizens (e.g., rich people, nationals, whites, etc.) while denying such possibility to other citizens for reasons unrelated to purpose sought. The petitioner, however, has not produced direct or circumstantial evidence indicating that that has been the case here.

54. Based on the foregoing analysis and the allowance of proof on the claimed violation of the right to equal protection of the law, the Commission concludes that in the instant case there has been no violation of Article 24 of the Convention.

VII. CONCLUSION

55. The Commission concludes that the case is admissible according to the requirements set forth in Articles 46 and 47 of the Convention.

56. However, based on the information available and the evidence produced by the parties, the Commission concludes that the claims filed by the petitioner do not establish a violation of the right to judicial protection, as established in Articles 8 and 25 of the Convention, or of the right of equality before the law, as enshrined in Article 24 of the Treaty.

Based on the foregoing consideration of fact and law

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To conclude that in the instant case there are no violations of Articles 2, 8, 24 and 25 of the American Convention.
2. To send this Report to the Colombian State and to the petitioner and to publish it in its Annual Report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 13 day of the month of April 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners, Carlos Ayala, Jean Joseph Exumé.and Henry Forde.