

OEA/Ser.L/V/II.154
Doc. 9
24 March 2015
Original: Spanish

REPORT No. 15/15
PETITION 374-05
ADMISSIBILITY REPORT

MEMBERS OF THE TRADE UNION OF WORKERS OF THE
NATIONAL FEDERATION OF COFFEE GROWERS OF COLOMBIA

COLOMBIA

Approved by the Commission at meeting No. 2022 held on March 24, 2015
154 regular session.

Cite as: IACHR, Report No. 15/15, Petition 374-05. Admissibility. Members of the Trade Union
of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015.



REPORT No. 15/15
PETITION 374-05
ADMISSIBILITY REPORT
MEMBERS OF THE TRADE UNION OF WORKERS OF THE NATIONAL FEDERATION OF
COFFEE GROWERS OF COLOMBIA
COLOMBIA
MARCH 24, 2015

I. SUMMARY

1. On March 31, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Alberto León Gómez Zuluaga (hereinafter “the petitioner”), together with the Trade Union of Workers of the National Federation of Coffee Growers of Colombia (hereinafter “SINTRAFEC”) and a group of persons alleged to be aggrieved parties. The petition contends that the Republic of Colombia (hereinafter “the State” or “the Colombian State”) is responsible for violations of articles 2 (the obligation to adopt domestic legislative measures), 8 (judicial guarantees), 16 (freedom of association) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Article 8 (trade union rights) of the Protocol of San Salvador (hereinafter “the Protocol”), to the detriment of the members of the Bucaramanga Regional Committee of SINTRAFEC and the members elected to serve on its Executive Board, whose registration was cancelled by a decision of the Council of State.

2. The petitioner contends that the State is responsible for violation of trade union rights, the right to freedom of association, the right to due process and the right to judicial guarantees, to the detriment of Pablo Enrique Reyes Socha, Solangel Celis Serrano, José Antonio Martínez Chía, Jaime Moreno Fletcher, Pedro Leonardo Rosas and María de Jesús Pineda, elected to serve on the Executive Board of the Bucaramanga Regional Committee of SINTRAFEC, and violation of trade union rights to the detriment of Pablo Emilio Chía Bueno, Alicia Cotes de Pedraza, Omaira Díaz de Moreno, Bárbara Gómez de Gamboa, Isidro Gómez León, Humberto Rendón Ardila, Aquileo Téllez Castillo and José de Jesús Villar Araque, members of the Bucaramanga Regional Committee of SINTRAFEC who elected the aforementioned persons to serve on the Regional Committee’s Executive Board and whose rights to participate in trade union activities, to assemble in a Regional General Assembly and to elect their representatives were violated. Henceforth the Commission will refer to both groups as “the alleged victims”.

3. The State, for its part, maintains that the facts recounted in the petition were resolved in a sole-instance ruling delivered by the Council of State. It further contends that in the Council of State’s proceedings the rights to due process and judicial guarantees were observed and that the decision is not a violation of trade union rights or the right to freedom of association. It adds that the law invoked to cancel the registration of the Executive Committee of the Bucaramanga Regional Committee of SINTRAFEC was challenged in a case brought to the Supreme Court, which held that it was enforceable; it was also challenged in a case brought to the Constitutional Court, which confirmed the Supreme Court’s ruling and upheld the law’s constitutionality. The State also asserts that the facts recounted in the petition no longer persist, since while registration of the Executive Board in question was originally denied, when SINTRAFEC filed a new request in 2003, authorization was given to register a new Executive Board of the Bucaramanga Committee. The State further contends that SINTRAFEC was duly notified of the decision on October 1, 2004, which in the State’s view means that the petition did not fulfill the timeliness requirement.

4. After examining the positions of the parties and compliance with the requirements established in articles 46 and 47 of the Convention, the Commission decided to declare the case admissible for purposes of an examination of the alleged violation of articles 2 (obligation to adopt domestic legislative measures), 8 (right to a fair trial), 16 (freedom of association) and 25 (judicial protection) of the Convention, in keeping with its Article 1(1), and the alleged violation of Article 8 (trade union rights) of the Protocol of San Salvador. It also decided to notify the parties of the decision and to order its publication in the Commission’s Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The Commission received the petition on March 31, 2005, which was dated March 21, 2005. On April 4, 2004, it registered the petition under number 374-05. After completing the initial review provided for in Article 26 of its Rules of Procedure, on September 15, 2009 the Commission sent a communication to the petitioner to inform him that no action could be taken on the petition because the information contained therein did not meet the requirements established in the Rules of Procedure and other applicable instruments.

6. On November 5, 2009, the IACHR received a brief in which the petitioner provided additional information. After conducting a preliminary review of that information, on December 2, 2010 the IACHR forwarded the pertinent parts to the State for its observations, and gave it two months in which to present them. On February 9, 2011, the IACHR granted the State's request for a two-month extension to present its observations, making the new deadline March 6, 2011. The State forwarded its observations by a brief dated March 4, 2011. The petitioner presented additional information, received on April 20, 2011. For its part, the State presented additional information on July 14, 2011. The information received was duly forwarded to both parties.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petitioner points out that with approval of Act 50 of 1990, certain reforms were introduced in the legal system governing trade unions in Colombia. These reforms reportedly affected the rights of the alleged victims, who were workers for the National Federation of Coffee Growers of Colombia (hereinafter "the Federation") and Almacafé S.A. and also members of National Trade Union of Workers of the National Federation of Coffee Growers of Colombia (SINTRAFEC). The petitioner states that SINTRAFEC was founded over forty years ago and its legal personality was recognized in 1959, well before Act 50 was enacted in 1990.

8. Of the amendments introduced, the petitioner mentions Article 55 of Act 50 of 1990, which provides that "[i]n its statutes, a trade union can provide for the establishment of sectional sub-branches in municipalities outside its principal domicile in which it has no fewer than twenty-five (25) members. It can also provide for the creation of sectional committees in municipalities outside its principal domicile or the domiciles of the sectional sub-branches and in which it has no fewer than twelve (12) members. There can be only one sub-branch or committee per municipality."

9. Prior to enactment of Act 50 of 1990, the understanding was that the law allowed the creation of sectional sub-branches or committees in municipalities or regions provided two conditions were met: that the statutes made provision for such sub-branches or committees and that no two sub-branches or committees could have the same domicile. And so, prior to enactment of Act 50, the statutes of SINTRAFEC made provision for the existence of sectional boards and regional committees and specified, *inter alia*, the minimum number of members required for the creation of such bodies, and the possibility of grouping, under the same board or committee, members from different municipalities or places that were either neighboring communities or located close-by.

10. The petitioner claims that the Executive Board of the Bucaramanga SINTRAFEC Regional Committee in the Department of Santander was elected on November 25, 2000, and that the election was conducted in accordance with the statutes and the law. The members elected to serve on the Executive Board were Pablo Enrique Reyes Socha, Solangel Celis Serrano, José Antonio Martínez Chía, Jaime Moreno Fletcher, Pedro Leonardo Rosas and María de Jesús Pineda. He adds that the election was reported to the administrative labor authority for registration purposes and to the company's representatives. He also reported that the administrative authority recognized the election and arranged to have the new Executive Board entered into the corresponding record. The petitioner points out that registration was ordered in a second instance decision that, if enforced, would have exhausted the governmental avenue. The petitioner

contends that the only avenue left to challenge the decision would be the contentious administrative jurisdiction.

11. The National Federation of Coffee Growers had filed a complaint before the contentious administrative jurisdiction (the Council of State) seeking cancellation of the registration, arguing that the Ministry of Labor and Social Security had ordered registration of the Trade Union's Regional Executive Board knowing that the Regional Committee did not meet the requirements of the law, namely, that the municipality in which a sectional committee is to be established must be home to at least twelve (12) members. The Ministry of Labor had allegedly deemed that the trade unions created prior to enactment of Act 50 of 1990 were not required to comply with the requirements of that law. In the complaint, it was alleged that the National Federation and Almacafé have domiciles in Bucaramanga, where the number of workers who are members of the Bucaramanga SINTRAFEC Regional Committee is fewer than twelve and that none of the workers elected as members of the Bucaramanga SINTRAFEC Regional Committee has his/her place of work either in that city or in neighboring communities, as required by Article 55 of Act 50 of 1990. In a decision dated September 17, 2004, the Contentious Administrative Chamber reportedly cancelled the registration on grounds that the Bucaramanga Regional Committee did not have the twelve members required under Act 50 and that while SINTRAFEC's Statutes contained a different provision in this regard and were approved prior to enactment of Act 50, the latter is a standard of immediate compliance and applicable to the Bucaramanga Sectional Committee of SINTRAFEC.

12. The petition alleges that several violations of the American Convention and the Protocol of San Salvador were consummated with that judgment. The petitioner contends that these events led to a violation of the labor union rights of the members elected to the Executive Board of the Bucaramanga SINTRAFEC Regional Committee, and of the members of the Regional Committee themselves. The petitioner maintains that one of the elements of labor's right to organize is the autonomy of the organizations, which presupposes that trade unions are free to establish their own statutes, choose their leadership and decide their internal structure. He argues that by demanding cancellation of the registration of the Bucaramanga Regional Committee -in an effort to ensure that the law would prevail over collective bargaining- the Federation had interfered in union activities and had ignored the collective bargaining agreement signed with SINTRAFEC. The petitioner observes in this regard that the cancellation of the registration meant that the employer interference had consequences in law, thereby compromising the State's international responsibility.

13. According to the petitioner, the effect of the Council of State's decision was to dismember an organization created to coordinate the trade union's activities with a membership dispersed over large territories. He also points out that the members were denied priority participation in national trade union activities; sectional general assemblies could not function; SINTRAFEC members working in the Department of Santander who were members of the sectional committee whose registration was cancelled were denied the opportunity to elect and be elected to the SINTRAFEC bodies, particularly the statutory sectional or regional organ, and those who were elected to the Bucaramanga Sectional Executive Board were denied the opportunity to serve in the office to which they were elected.

14. The petition states that notification of the decision of the Council of State's Contentious Administrative Chamber was by edict posted in the Office of the Clerk of the High Court from September 29 until October 1 of that year; SINTRAFEC was notified of the decision by a memorandum addressed to its president, dated October 11, 2004 and received on October 15 of that year. The petition is alleging that the rights to due process and to judicial guarantees were thus violated inasmuch as the members of the Regional Committee whose registration was cancelled by the Council of State, were not notified of the complaint and therefore did not have an opportunity to defend the registration; also, they were neither notified of the judgment nor sent a copy of it.

15. The petition states that when an employer files a complaint with a judicial body seeking cancellation of the registration of an executive board of a trade union like SINTRAFEC, the opposing arguments should be heard; the members of the executive board and those who voted for them should be asked to participate in the proceedings, not just the trade union itself. The petition asserts that the complaint

was brought against the Ministry of Labor and Social Security and the only interested party summoned was SINTRAFEC; the persons who served on the Bucaramanga SINTRAFEC Regional Committee and those who elected them were never named as interested parties.

16. The petitioner claims that the members of the Bucaramanga Regional Committee never had the possibility of an effective recourse to defend their rights, as they had no knowledge of the case that the Federation had brought seeking cancellation of the registration of the Regional Committee of which they were members. Furthermore, the Council of State's ruling that consummated the human rights violations, was not subject to appeal.

17. The petitioner claims that although a different executive board was eventually elected and registered, this fact would only suggest that the violation of the objective dimension of the trade union rights had ceased, but not the violation of the subjective right to freedom of association in the case of Pablo Enrique Reyes Socha, Solangel Celis Serrano, José Antonio Martínez Chía, Jaime Moreno Fletcher, Pedro Leonardo Rosas and María de Jesús Pineda. These persons were never compensated for the alleged violations of their rights nor were measures of non-repetition adopted.

B. Position of the State

18. The State considered necessary to clarify that the National Federation of Coffee Growers of Colombia is a trade organization, with legal personality under private law, apolitical and non-profit. Its relationship with its workers is covered by Colombia's Substantive Labor Code. For their part, the *Almacenes Generales de Depósito del Café S.A.* [General Coffee Warehouses, Inc.] (ALMACAFÉ) is a private-law commercial partnership or trading company under the supervision of the Office of the Superintendent of Finance. SINTRAFEC, for its part, is a small labor union; as of February 2011, its membership accounted for 9% of the employees of the National Federation of Coffee Growers of Colombia and Almacafé.

19. According to the State, in 2001 SINTRAFEC requested registration of the Executive Board of the Bucaramanga Regional Committee, elected on November 25, 2000. In Resolution 001 of January 12, 2001, that request was denied by the Ministry of Labor and Social Security through its Santander Regional Directorate, on grounds that it did not comply with the requirements established in Article 55 of Act 50 of 1990, which the State contends would be immediately operative, pursuant to articles 14 and 16 of the Labor Code.

20. According to the State, SINTRAFEC filed an appeal for reversal of this resolution arguing that "for more than 35 years, and for the 10 year that Act 50 of 1990 has been in effect, which sets forth this Article 55, the existence of SINTRAFEC Bucaramanga has always been recognized; for 35 years its executive boards have been registered, which has allowed the workers with the Departmental Committee of Coffee Growers of Santander and Almacafé S.A., Bucaramanga branch, to effectively exercise their basic constitutional rights, such as the right to vote and to be elected to office." This appeal for reversal was decided by the Ministry of Labor and Social Security in Resolution GR003 of March 23, 2001, in which Resolution G-001 of January 12, 2001 was revoked and the order given to "register the new executive board of the business-related labor union called Regional Committee of Workers of the National Federation of Coffee Growers of Colombia SINTRAFEC, elected in a Regular General Assembly on November 25, 2000, for a statutory period of one (1) year starting the day after issuance of the writ ordering its enforcement."

21. The State claims that, thereafter, the National Federation of Coffee Growers of Colombia exhausted the administrative procedures and filed an action for restoration of rights and nullification of Resolution G-003 of March 23, 2001, claiming violation of Article 55 of Act 50 of 1990¹ and violation of

¹ The State points out that Article 55 of Act 50 of 1990 reads as follows: "Sectional branches. In its statutes, a trade union can provide for the establishment of sectional sub-branches in municipalities outside its principal domicile in which it has no fewer than twenty-five (25) members. It can also provide for the creation of sectional committees in municipalities outside its principal domicile or the domiciles of the sectional sub-branches and in which it has no fewer than twelve (12) members. There can be only one sub-branch or committee per municipality."

[continues ...]

articles 14 and 16 of the Labor Code. Those articles, it argued, define this norm as one of public order, which must therefore be applied generally and with immediate effect, in keeping with Article 353, which recognizes the right of association.

22. According to the State, as a result of that complaint seeking nullification and restoration of rights, the Council of State, in a September 17, 2004 judgment handed down in sole instance, declared Resolution GR-003 of March 23, 2001 to be null and void. The relevant part of that decision read as follows:

there can be no doubt that it [Article 55 of Act 50 of 1990] became operative immediately by virtue of articles 14 and 16 of the Labor Code, which state that labor standards, as they concern public order, take effect immediately. And while the matter before the Council of State does not involve the creation of a new committee, if the existing committee does not comply with the requirements set forth in the article in question, the necessary adjustments would have to be made; if those adjustments are not made, then the executive board elected to replace the previous one would not be registered, precisely for noncompliance with the law. The Chamber considers that while the Statutes of the Trade Union of Workers of the National Federation of Coffee Growers were approved by the Ministry of Labor and that the Sectional Committees existed before Act 50 of 1990 entered into force, it is no less true that the labor standards concern public order and therefore take immediate effect. The union branches should have taken steps to amend their statutes to bring them in line with the legal requirements spelled out in Article 55 of Act. 50 of 1990, compliance with which is compulsory.

[...]

Based on these considerations, the Council of State resolves:

1. By law, sectional sub-branches cannot be created by pooling trade union members from various municipalities because Article 55 of Act 50 of 1990 specifically provides that sectional sub-branches can only be established in municipalities outside the trade union's principal domicile and in which the trade union's representation involves no less than twenty-five (25) members.
2. The Ministry of Labor and Social Security must refuse to register those sectional sub-branches of a trade union that are made up of members from various municipalities, because this type of membership pooling is in violation of the rule set forth in Act 50 of 1990.

23. The State observes that the Council of State's decision handed down in sole instance was notified via Edict No. 258, which was posted for the legally prescribed three-day period in a public place in the Office of the Clerk of the Council of State's Contentious Administrative Chamber, from September 29, 2004 to October 1, 2004. It also asserts that the members of the Union Board were not notified of the complaint, pursuant to Article 207 of the Contentious Administrative Code in effect at the time.²

[... continuation]

²The State points out that Article 207 of the Contentious Administrative Code provides as follows:

Once the complaint is received and distributed, it shall be admitted if it is found to meet the legal requirements and the following shall be ordered:

1. That the legal representative of the respondent entity or his delegate shall be notified, in keeping with Article 150 of the Contentious Administrative Code.
2. That the Public Prosecution Service shall be notified in person.
3. That any person or persons who, based on the complaint or the acts accused therein, may have a direct stake in the outcome of the process shall be notified in person. If notification cannot be made in person within a period of five (5) days, starting on the day after the interested party makes the deposit that this provision requires, no special order shall be required in order to replace personal notification with an edict posted for five (5) days as notification

[continues ...]

24. Based on the foregoing, the State points out that because this is a trade union, notifications of any kind must be sent to its legal representative, especially inasmuch as the organization is composed of workers and the union was created to represent and defend their interests. The State argues that there is no truth to the claim that the alleged victims were not duly notified of the Council of State's proceedings; the State maintains that the alleged victims were themselves members of the union, which was notified of the nullification complaint; as union members, the alleged victims were represented by the union itself, pursuant to the provisions of SINTRAFEC's own statutes (Article 37.a).

25. The State asserts that the decision in the Council of State's proceedings on the complaint for cancellation of the registration and restoration of rights was a reasoned one and that judicial guarantees and other procedural rights were observed during the proceedings. The State further points out that the decision did not violate any of the alleged victims' basic rights.

26. The State adds that Article 55 of Act 50 of 1990 was challenged before the Supreme Court, which declared it enforceable in its judgment No. 115 of 1991. In that judgment, the Supreme Court stated that it "does not see how the provisions being challenged affect the right of association, specifically to the freedom of organized labor (...)." The State also reports that Article 55 of Act 50 of 1990 was challenged a second time, in a case before the Constitutional Court. The latter, in its judgment C-043 of 2006, confirmed judgment No. 115 of 1991 and declared that the following clauses were constitutional: "in municipalities outside its principal domicile", "in municipalities outside its principal domicile or the domiciles of the sectional sub-branches" and "[t]here can be only one sub-branch or committee per municipality," all of which appear in Article 55 of Act 50 of 1990.

27. The State also observes that the Constitutional Court's judgment was delivered in a constitutionality challenge filed by a number of citizens, one of whom was Alberto León Gómez Zuluaga, the petitioner in the complaint that the Commission has under review; the arguments made in the case brought to the Constitutional Court were the same arguments made in the 1990 Supreme Court case, and therefore were *res judicata*.

28. Finally, the State asserts that the facts set forth in the petition no longer persist since, while registration of the Executive Board in question was originally denied, when the union filed a new request in 2003 –one in which it complied with the rules in force– authorization was given to register the new Executive Board of the Bucaramanga Committee, without opposition from the National Federation of Coffee Growers. The Executive Board is still registered.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. The Commission's competence *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci*

29. Under Article 44 of the American Convention, the petitioner is, in principle, authorized to file petitions before the Commission. Colombia has been a State party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification; it has been party to the Protocol of San Salvador since November 16, 1999, the date on which the Protocol's eleventh instrument of ratification was deposited. The Commission therefore is competent *ratione temporis* since the obligation to respect and

[... continuation]

of the order admitting the complaint. The edict shall clearly spell out what the matter concerns; it shall be posted in the Clerk's Office for the prescribed period and shall be published two (2) times, on different days within the same time frame, in a newspaper with broad national or local circulation, depending on the case. The edict and the publications shall be entered into the record. A copy of the edict shall be sent by certified mail to the address indicated in the complaint and the address that appears in the telephone directory of the place; this, too, shall be entered into the record.

If the person served does not appear for the proceedings, a guardian *ad litem* shall be appointed to represent him therein.

ensure the rights protected under the American Convention and Protocol of San Salvador was already in effect for the State on the dates on which the facts alleged in the petition occurred.

30. The petition names two different groups as alleged victims. The first group would be those persons who were elected to serve on the Regional Committee's Executive Board; the second group would be the members of the union who were affiliated with the Bucaramanga Regional Committee and who had selected their leaders. Both groups of alleged victims are natural persons whose rights under the American Convention and the Protocol of San Salvador the Colombian State undertook to respect and guarantee. The Commission therefore is competent *ratione personae* to examine the petition with regard to the violations of those instruments purportedly committed against the alleged victims.

31. As for the provisions of the American Declaration of the Rights and Duties of Man mentioned by the petitioner, the State argues that because Colombia is a State Party to the American Convention, the Commission does not have competence to find the State responsible based on the articles of the American Declaration cited in the petition. The petitioner points out that the petition was, from the outset, based solely on the relevant articles of the American Convention on Human Rights and the Protocol of San Salvador, and that there is nothing that prevents the petitioners from citing the provisions of the American Declaration.

32. The Commission observes that inasmuch as the petition reports possible violations of human rights protected by the American Convention and the Protocol of San Salvador, the Commission is competent *ratione materiae* to hear the complaint. The IACHR has established that once the American Convention enters into force for a State, it is the Convention –not the Declaration– that becomes the specific source of law that the Commission will apply, provided the petition alleges violations of rights that are substantially identical in the two instruments and that the petition is not in reference to a continuing situation. In the instant case, the facts denounced started in the year 2000, by which time the State had already ratified the Convention. Furthermore the subject matter of Article XXII of the American Declaration is substantially the same as Article 16 of the Convention, both of which the petitioner invoked. Hence, the Convention will be the basis for the Commission's evaluation of the characterization of the facts alleged in the petition.

33. Finally, the Commission is competent *ratione loci* to take up the petition, as it alleges violations of rights protected under the American Convention and the Protocol of San Salvador, said to have occurred within the territory of Colombia, a State party to both treaties.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

34. Article 46(1)(a) of the American Convention provides that, for a petition filed before the Inter-American Commission to be admissible, in accordance with Article 44 of the Convention, all domestic legal remedies must have been pursued and exhausted, in keeping with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to take cognizance of a supposed violation of a protected right and, if appropriate, to have the opportunity to resolve it before the case is heard in an international court.

35. As for the prior exhaustion rule, the petitioner argues that the internal remedies were exhausted with the Council of State's decision, which could not be challenged through ordinary remedies. The petitioner explains that the Council of State is the tribunal of sole instance in the contentious administrative jurisdiction. He explains that the only way to challenge decisions handed down in second or sole instance is by recourse to the extraordinary remedy of reconsideration for a violation of the law, and the extraordinary remedy of review on specific grounds. However, the petitioner claims that these remedies could not be used to appeal the sole instance decision that cancelled the registration of the Bucaramanga Regional Committee's Executive Board, since the Council of State had not violated the substantive law *strictu sensu*, nor were the required grounds for review present. Here, the State concurs that decisions by the Council of State are not subject to review through ordinary remedies.

36. For its part, the State began by pointing out that the petitioner should have filed for a writ of protection, provided for in Article 86 of Colombia's Constitution, to demand that the basic rights he claims were violated be respected and protected. In response, the petitioner explained that a writ of protection is an extraordinary and residual remedy that cannot be filed to challenge judgments. Nevertheless, the petitioner states that after filing his petition with the IACHR, he did attempt to file an action seeking a writ of protection against the September 17, 2004 judgment, but it did not prosper. By an order dated March 15, 2007, the Second Section of the Council of State's Contentious Administrative Chamber rejected it as out of order, on the grounds that such an action cannot be brought against judicial decisions. The petitioner notes that the action was brought jointly by SINTRAFEC and by Pablo Enrique Reyes Socha, Solangel Celis Serrano, José Antonio Martínez Chía, Jaime Moreno Fletcher, Pedro Leonardo Rosas and María de Jesús Pineda, and that the Constitutional Court did not select it for review. In its observations on the petitioner's brief, the State made no further reference to the action for a writ of protection as a suitable, extraordinary and residual remedy.

37. Finally, according to the petitioner, Pablo Enrique Reyes Socha, Solangel Celis Serrano, José Antonio Martínez Chía, Jaime Moreno Fletcher, Pedro Leonardo Rosas and María de Jesús Pineda were denied access to a suitable remedy, which would trigger the exception allowed under Article 46(2)(b) of the Convention. He explains that even if there had been an ordinary remedy by which to challenge the Council of State's decision, the alleged victims do not have standing to file such an action because they would not have been regarded as parties with an interest in the proceedings. The petitioner alleges that, from the procedural standpoint, Pablo Enrique Reyes Socha, Solangel Celis Serrano, José Antonio Martínez Chía, Jaime Moreno Fletcher, Pedro Leonardo Rosas and María de Jesús Pineda were never convoked either as parties or as third parties with a substantial interest in the proceedings, nor were they notified of the decision. According to the petitioner, the failure to notify the alleged victims in the case of the complaint brought by the National Federation of Coffee Growers of Colombia denied them their right to defend themselves and to defend their election. It was thus assured that the alleged victims would have no simple and prompt recourse for protection against the human rights violations committed through the Council of State's judgment. In response to the exception claimed by the petitioner, the State argues that the union of which the alleged victims were members was duly notified both of the complaint seeking cancellation of the registration and of the judgment delivered, and that the union has the authority to bring judicial or administrative complaints, to represent the union and defend the workers' interests; hence, personal notification of the alleged victims was unnecessary.

38. Having considered the parties' positions regarding exhaustion of domestic remedies, the Commission finds that the failure to individually notify the alleged victims does not imply that the alleged victims did not have or were denied access to a suitable jurisdictional remedy to assert their rights, since they were duly represented by SINTRAFEC, which was party to the complaint seeking cancellation and the action seeking a writ of protection. In this respect, the Commission does not find grounds for the exception to the rule requiring exhaustion of domestic remedies.

39. The IACHR observes that the alleged victims exhausted the contentious administrative procedure through the case filed with the Council of State, which is forum of sole instance. After this petition was filed before the Commission, the alleged victims also filed an action seeking a writ of protection, which the Council of State denied. In this regard, the Commission reiterates its doctrine according to which the analysis of the requirements provided in Articles 46 and 47 of the American Convention is performed in the light of the situation in effect at the time a decision is issued regarding a petition's admissibility or inadmissibility.³ It often happens that, while a petition is being processed, the situation as regards exhaustion of the domestic remedies changes. Nevertheless, the petition and case system assures that both the State and the petitioner have every opportunity to present information and arguments in this regard. The Commission therefore deems that the requirement established in Article 46(1)(a) of the American Convention has been met.

³ IACHR, Report No. 108/10, Petitions 744-98 and others, Admissibility, Orestes Auberto Urriola Gonzáles *et al.*, Peru, August 26, 2010, par. 54; Report No. 2/08, Petition 506-05, Inadmissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, par. 56, and Report No. 20/05, Petition 716-00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, par. 32.

2. Timeliness of the petition

40. The Convention provides that in order for the Commission to declare a petition admissible it must have been filed within six months of the date on which the allegedly aggrieved party was notified of the final decision.

41. The Commission observes that in the instant case, the remedies would have been exhausted with the action seeking protective relief, which was decided on March 15, 2007. Consequently, since the petition was filed on March 31, 2005, and inasmuch as that requirement must be analyzed in light of the situation at the time the Commission issues its finding regarding the petition's admissibility, the Commission deems that the requirement stipulated in Article 46(1)(b) of the American Convention has been met.

3. Duplication of proceedings and international *res judicata*

42. Article 46(1)(c) of the Convention provides that the admission of petitions is subject to the requirement that the subject "is not pending in another international proceeding for settlement" and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that is substantially the same as one previously studied by the Commission or by another international organization.

43. The State argues here that the petition should be declared inadmissible because it is wholly and substantially the same as a complaint submitted to the International Labour Organisation under case number 2504. The State alleges that the facts, parties and claims made in the petition filed before the IACHR are identical to those in the complaint filed with the ILO. The State observes that although the only parties that can bring cases to the ILO are labor unions and only individuals can bring cases to the IACHR, in the instant case the individuals turned to the IACHR as members of a labor union, in this case SINTRAFEC, the very organization that brought a case to the ILO seeking protection of rights it has as an organization. The State contends that while SINTRAFEC did not turn to the Inter-American system portraying itself as an alleged victim, it did turn to the Inter-American system naming as alleged victims a group of individuals who are members, so that the parties in both cases are identical.

44. The petitioner, for his part, acknowledges that SINTRAFEC turned to the Committee on Freedom of Association of the ILO Governing Body to draw its attention to the alleged violation of the objective right of association. Nevertheless, he contends that this is not a case of duplication of international proceedings.

45. The Commission observes that the complaint filed with the ILO's Committee on Freedom of Association also made reference to the Council of State's cancellation of the registration of the Executive Board of the Bucaramanga SINTRAFEC Regional Committee on grounds that the committee, created before 1965, was not in compliance with the requirements established in Article 55 of Act No. 50 of 1990 as to the minimum number of members and their domicile. This, despite the fact that at the time it was established, it was in compliance with the legal provisions then in force. In Case No. 2504, brought by the Trade Union of Workers of the National Federation of Coffee Growers of Colombia (SINTRAFEC) and the Single Confederation of Workers (CUT), the ILO Committee on Freedom of Association adopted Report No. 346 on June 12, 2006.⁴

46. Article 47 of the American Convention provides that: "The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: ... the petition or communication is substantially the same as one previously studied by the Commission or by another international organization". Here, the IACHR has established that "[...] a prohibited instance of duplication

⁴International Labour Organisation, Report No. 346, June 2007, Case No.2504 (Colombia). See: The Committee's Recommendations, 487. "With regard to the cancellation by the Council of State of the entry of the new Bucaramanga SINTRAFEC Committee executive board in the trade union register, the Committee requests the Government to take measures including, if necessary, legislative measures, so as to nullify the effects of the Council of State decision cancelling the registration and to register the new executive board of the Bucaramanga Sectional Committee without delay, and invites the trade union to adapt to the new legislation in force."

involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof.⁵ Similarly, the Inter-American Court has held that *res judicata* shall be declared when the cases are the same, where “the presence of three elements is necessary, these are: that the parties are the same, that the object of the action is the same and that the legal grounds are identical.”⁶ In the instant case there is no duplication of proceedings.

47. In the present case, only the respondent, i.e., the Colombian State, is the same in both the case brought to the ILO Committee on Freedom of Association and the petition filed before the IACHR. The alleged victims are not the same, since the case before the Committee on Freedom of Association was brought by the Trade Union of Workers of the National Federation of Coffee Growers of Colombia (SINTRAFEC) and the Single Confederation of Workers (CUT), whereas the petition with the IACHR was filed by Alberto León Gómez Zuluaga as petitioner, jointly with the National Trade Union of Workers of the National Federation of Coffee Growers of Colombia (SINTRAFEC) and a group of persons allegedly affected, who are duly named in the complaint. The parties are, therefore, not the same.

48. The legal grounds are not the same either, as the present petition alleges violations of articles 2, 8, 16 and 25 of the American Convention and Article 8 of the Protocol of San Salvador. On the other hand, the complaint filed with the ILO’s Committee on Freedom of Association cited violations of the ILO’s Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98). Hence, the object of the action was not the same either, especially inasmuch as the ILO’s Committee on Freedom of Association examined only the question of the right to freedom of association and protection of the right to organize and labor rights in general; the complaint brought to the Commission, on the other hand, alleges violation of a number of rights not included in the complaint filed with the Committee on Freedom of Association, rights that protect due process and judicial guarantees.

49. The Commission must also consider a point made by the Inter-American Court to the effect that the recommendations made by the Committee on Freedom of Association are different in nature from the judgments delivered by the Inter-American Court. The Committee’s is an action specific to an organ of the ILO with the legal effect of a recommendation to the States.

50. Based on the foregoing considerations, the Commission decides that the present case does not involve a duplication of proceedings.

4. Colorable claim

51. For purposes of admissibility, the Commission must decide whether or not the petition states facts that tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, and whether or not the petition is “manifestly groundless” or “obviously out of order,” according to subparagraph c) of the same article. The standard for assessing these particulars is different from the one required to decide the merits of a complaint. The Commission must conduct a *prima facie* evaluation to examine whether the complaint substantiates the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This review is a summary analysis that does not involve any prejudgment or advanced any opinion on the merits of the case.

52. In the instant case, the petitioner claims that the Council of State’s decision cancelling the registration of the Bucaramanga Committee’s Executive Board based on Article 55 of Act 50 of 1990, had the effect of curtailing the subjective right of workers living in municipalities that did not have at least 12 union members to participate in their union structures, since they could not be affiliated with any other branch or committee for reasons of proximity or distance. He also observes that the Council of State’s decision would

⁵ IACHR. Report No. 96/98, Case 11,827, Peter Blaine vs. Jamaica, December 17, 1998.

⁶ I/A Court H.R. *Case of Baena Ricardo et al. v. Panama*. Judgment of November 18, 1999. Preliminary Objections, par. 53; see also, *Case of the Saramaka People v. Suriname*. Judgment of November 28, 2007. Series C No. 172, paragraphs 46 and 47.

have dismembered the Bucaramanga Regional Committee, which would have prevented its members from filing their requests by way of the Committee, a vehicle conceived to facilitate members' association with and participation in union life. Instead, they would have to send their requests directly to the National Board. The petitioner also observes that members had been denied their right to vote for and be elected to the SINTRAFEC organs.

53. The State, for its part, alleges that this petition does not state facts that tend to characterize, nor even make a *prima facie* case for, a supposed violation of the rights protected by the American Convention. The State alleges that the facts reported in this petition were corrected even before this petition was filed before the IACHR, as a new request to register the Bucaramanga Committee's Executive Board was submitted back in 2003, which the State alleges was authorized in accordance with the laws in force; it further alleges that the Executive Board is still listed on the register, as the decision to register it was never challenged. The State adds that the petition should be declared inadmissible inasmuch as the IACHR is not authorized to review judicial decisions handed down legally and with justice.

54. The State also supplies a record dated February 9, 2011 indicating that on December 29, 2003, the Ministry of Social Protection registered the Executive Board called Bucaramanga SINTRAFEC Sectional Committee, whose membership was elected at the Assembly held on December 14, 2003, and is as follows: Jaime Moreno Fletcher, Solangel Celis Serrano, Pedro Leonardo Rosas Camacho, Omaira Díaz Rodríguez, Aquileo Téllez Castillo and María de Jesús Pineda. The same record states that by February 1, 2011, Jaime Moreno Fletcher and Maria de Jesús Pinera no longer had an employment relationship with the companies and 5 workers with current labor contracts had joined the Bucaramanga SINTRAFEC Sectional Committee. As of that date, SINTRAFEC had allegedly not applied to register a new Executive Board. Here, the IACHR observes that the members of the 2003 Executive Board would have been alleged victims Solangel Celis Serrano, Jaime Moreno Fletcher, Pedro Leonardo Rosas and María de Jesús Pineda, whereas alleged victims Pablo Enrique Reyes Socha and José Antonio Martínez Chía would not have been Executive Board members.

55. Based on the foregoing, the Commission considers that the situation denounced concerns a possible violation of the trade union rights of the members of the Bucaramanga Regional Committee, through the Council of State's enforcement of Article 55 of Act 50 of 1990. That provision establishes limitations as to how unions' internal structure can be configured, by establishing: i) a requirement that each municipality must have at least 12 union members in order to create the section sub-branches and committees, and ii) a rule prohibiting more than one sectional sub-branch or committee per municipality. Furthermore the Council of State's decision allegedly also indicated that the Committee members must be residents of the respective municipality, citing the reasons given in Resolution AG 01 of 2000 which held that under the law, members cannot be drawn from various municipalities in order to reach the 12-member minimum required to form a committee; hence the Council of State's Contentious Administrative Chamber found that the Bucaramanga Committee did not have the 12 members required by law, since many of them allegedly came from other municipalities.

56. While the State contends that a new Executive Board was registered in 2003 in accordance with the laws in force, the petitioner claims that as a result of the Council of State's decision, the Bucaramanga Regional Committee was dismembered, which had a number of negative consequences that presumably violated the trade union rights of the members of that Committee. In view of the arguments of fact and of law presented, the Commission considers that it must examine the effects that the Council of State's decision is alleged to have had on the trade union rights of the members of the Bucaramanga Regional Committee. In the merits phase the Commission must take particular care to examine whether the restrictions that Article 55 of Act 50 of 1990 imposes are "necessary ... in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others," as provided in Article 16 of the Convention and Article 8 of the Protocol of San Salvador or whether they are disproportionate considering that the right to freedom of association includes the right "to set into motion

their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right."⁷

57. Furthermore, under the petition system provided for in Article 44 of the American Convention, the IACHR is competent to examine whether laws, policies and practices are compatible with a person's rights under that international instrument. The Commission considers that it should examine whether the content and enforcement of Article 55 of Act 50 of 1990 constitute an excessive constraint on the Santander members' participation in union activities that is incompatible with the exercise of the rights recognized in the American Convention and in the Protocol of San Salvador. Accordingly, in the merits phase the Commission will study the limitations provided for in Article 55 of Act 50 of 1990, in light of the obligation to adopt domestic legal measures set forth in Article 2 of the Convention. Hence, the Commission observes that the elements of fact and of law presented by the parties could tend to establish *prima facie* violations of articles 8, 16 and 25 of the American Convention, read in conjunction with articles 1(1) and 2 thereof, and a violation of Article 8 of the Protocol of San Salvador.

V. CONCLUSIONS

1. The Inter-American Commission concludes that it is competent to examine the claims made by the petitioner regarding the alleged violation of articles 8, 16 and 25 of the Convention, read in conjunction with articles 1(1) and 2 thereof, and the violation of Article 8 of the Protocol of San Salvador; and that these claims are admissible under the requirements established in articles 46 and 47 of the American Convention.

2. Based on the arguments of fact and of law set forth above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES

1. To declare the present case admissible with respect to articles 8, 16 and 25 of the American Convention, read in conjunction with articles 1(1) and 2 thereof.

2. To notify the Colombian State and the petitioner of this decision.

3. To proceed with the analysis of the merits of the matter.

4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 24th day of the month of March, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.

⁷ IACHR, *Second Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 175.