

OEA/Ser.L/V/II.162

Doc. 63

25 May 2017

Original: Spanish

REPORT No. 51/17

PETITION 766-07

REPORT ON ADMISSIBILITY

JOAQUÍN GUILLERMO CAMPILLO RESTREPO
COLOMBIA

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

Cite as: IACHR, Report No. 51/17. Petition 766-07. Admissibility. Joaquín Guillermo Campillo Restrepo. Colombia. May 25, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Alejandro Decastro González
Alleged victim:	Joaquín Guillermo Campillo Restrepo
State denounced:	Colombia
Rights invoked:	25 (Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Date on which the petition was received:	June 12, 2007
Date on which the petition was transmitted to the State:	May 10, 2011
Date of the State's first response:	September 16, 2011
Date on which the petitioner was notified of the possible archiving of the petition:	January 26, 2015
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	March 16, 2015

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention on Human Rights (ratification instrument deposited on July 31, 1973)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; December 15, 2006
Timeliness of the petition:	Yes; June 12, 2007

¹ Hereinafter "the Convention" or "the American Convention."

² The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner claims that Joaquín Guillermo Campillo Restrepo (hereinafter "Mr. Campillo" or "the alleged victim") worked as a specialist physician registered as a staff employee at the Sports Institute of Antioquía Department (hereinafter "*Indeportes*" or "the institution") from September 21, 1995 until May 4, 2000, when he was removed from his work for restructuring changes. He asserts that the decision to dismiss Mr. Campillo infringed the law and was not subjected to an expert study per the legal framework for such a measure.

2. The petitioner indicates that the alleged victim filed an action for invalidity and damages before the Administrative Law Court of Antioquía. He asserts that the Court overruled the claims of the petition in a sole instance, on December 5, 2005 on the grounds that his removal from work was due to reasons of good service (a condition established by the law) and the restructuring of *Indeportes*. The petitioner claims that the Administrative Law Court of Antioquía failed to examine the evidence concerning the lack of legal grounds for Mr. Campillo's removal, during the proceedings. Consequently, the petitioner claims that such a judgment violated the right to due process of law.

3. As a result, the alleged victim filed a writ of protection of constitutional rights before the Council of State (*Consejo de Estado*) that was overruled by judgment of October 23, 2006 on the grounds that a writ of protection of constitutional rights was not the appropriate remedy to challenge a ruling. The petitioner claims that the Council of State did not comply with the jurisprudence of the Constitutional Court, under which judgments contrary to due process can be challenged through a writ of protection of rights. The petitioner believes that the Council of State's view on the alleged victim's case is due to the different opinions of the highest courts of the different jurisdictions, which is usually known as a "crash of trains" (*choque de trenes*). He asserts that by a legal provision the proceedings were subsequently referred to the Constitutional Court and that on December 15, 2006 said Court, in its discretion, decided not to review the case.

4. The State claims that the petition was filed out of the time limit of six months established in Article 46.1(b) of the American Convention since the final domestic ruling was the Council of State's judgment of October 23, 2006. The State adds that the judgment was notified on November 3, 2006 and that the petition was presented to the IACHR on June 12, 2007, which is more than seven months after the date of issuance of the final ruling. In addition, it asserts that under the domestic legal framework, a review by the Constitutional Court is not a remedy but a discretionary competence of the Court. As a result, it believes that the petition must be declared inadmissible.

5. Likewise, it claims that the facts described in this petition do not assimilate to the phenomenon known as a "crash of trains," and that the facts of this particular case must be analyzed prior to making a decision on the petition's admissibility. Moreover, it claims that this petition seeks to have a "fourth instance" inasmuch as the domestic rulings were issued in full compliance with the rights to due process of law, and access to appropriate and effective remedies. It also asserts that the petitioner seeks a review of decisions that are contrary to his claims. Consequently, it believes that the facts do not establish a violation of the rights protected by the American Convention on Human Rights.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. According to the petitioner, on October 23, 2006 the Council of State dismissed the writ of protection of rights lodged by the alleged victim, and on December 15, 2006 the Constitutional Court decided not to review the case. In turn, the State believes that the domestic remedies were exhausted by the Council of State's judgment of October 23, 2006, which was notified on November 3, 2006. The State, therefore, claims that the petition was lodged out of time.

7. In view of the position of the parties, and the information available from the case file, the Inter-American Commission believes that the domestic remedies were exhausted by the Constitutional Court's ruling of December 15, 2006, in which it decided not to examine the writ of protection of rights in the alleged victim's case file. In this regard, the Commission notes that according to the information available the

case had been referred to the Constitutional Court by a legal provision, and that the Court had the discretionary competence to decide whether to review the case. The fact this competence is of a discretionary nature, in itself, does not mean that it was impossible to conduct a substantive review to resolve the aforementioned judicial situation. Moreover, the government did not indicate that this type of review was inappropriate in the domestic framework. Likewise, given that the petition was received by the Commission on June 12, 2007, that is to say, within the six months following the issuance of said judicial decision, the petition does meet the admissibility requirements established in Article 46.1(a) and (b) of the American Convention.

VII. COLORABLE CLAIM

8. In view of the elements of fact and law presented by the petitioner, and given the nature of the matter brought to it,³ the IACHR believes that the arguments in relation to the determination of the alleged victim's rights in a sole legal instance must be analyzed in the merits stage, in accordance with Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in connection with Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of Mr. Joaquín Guillermo Campillo Restrepo.

9. Regarding the State's pleadings concerning the "fourth-instance formula," the Commission recognizes that it is not entitled to conduct a review on the judgments of domestic courts acting within their jurisdiction and in accordance with due process and the right to a fair trial. However, under its mandate, the Commission is competent to declare a petition admissible and, if there is a merits stage, decide on the merits of the case even if it concerns domestic proceedings that may have violated any of the rights protected by the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention on Human Rights, in accordance with Articles 1.1 and 2 of the same treaty;

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.

³ In previous cases, the Inter-American Commission has admitted petitions concerning the purported lack of a court of review for administrative proceedings in Colombia. In this regard, please see: IACHR, Report No. 71/09, Petition 858-06, Massacre of Belén - Altavista, Colombia, August 5, 2005, par. 44; and IACHR, Report 69/09, Report No. 69/09, Petition 1385-06, Rubén Darío Arroyave Gallego, August 5, 2009, par. 37.