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REPORT No. 150/17
PETITION 123-08
REPORT ON INADMISSIBILITY

HERNANDO DE JESÚS RAMÍREZ RODAS
COLOMBIA

Approved by the Commission at its session No. 2104 held on October 26, 2017
165th Regular Period of Sessions

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Ramírez Rodas. Colombia. October 26, 2017.

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 REPORT ON INADMISSIBILITY
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 OCTOBER 26, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Hernando de Jesús Ramírez Rodas
Alleged victim:	Hernando de Jesús Ramírez Rodas
State denounced:	Colombia

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	January 31, 2008
Additional information received at the initial study stage:	April 29, 2008; February 2 and 24, March 12 and 24, April 13 and 28, May 14, August 18 and November 5 and 24, 2009; March 15 and October 7, 2010; April 5, 2011; March 1 and July 13, 2012; and April 5, 2013
Date on which the petition was transmitted to the State:	March 12, 2014
Date of the State's first response:	August 12, 2014
Additional observations from the petitioning party:	September 25, 2014 ³
Additional observations from the State:	February 18, 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 (deposit of ratification instrument: July 31, 1973) ⁴

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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	Not applicable

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

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

³ On April 18, 2017, the petitioner requested information on the state of his petition.

⁴ Hereinafter "the Convention" or "the American Convention."

V. ALLEGED FACTS

1. The petitioner, a bricklayer, submits that on August 9, 1993 he was treated at the Manuel Uribe Ángel hospital in the city of Envigado (Antioquia), as a stone had fallen on his left hand. According to the medical history that he submitted, when he arrived at the hospital, he was told that no fractures had been found and was prescribed analgesics and a fifteen-day's disability. On August 19 of the same year, the petitioner returned to the hospital due to intense pain, and anti-inflammatory drugs and rest were prescribed to him. This situation repeated in the days that followed until September 13; therefore, he was sent to the physiotherapy area. There, doctors ruled out possible infections, performed a stellate ganglion block and apparently found several fractures. Given his unsuccessful recovery, the alleged victim was sent to the pain management and rehabilitation area of the San Vicente de Paúl hospital, which treated him in October. From November 19 to December 7, he was hospitalized again in the Manuel Uribe Ángel hospital, where he underwent a pain treatment. On the last day, he was discharged and sent to the plastic surgeon of the San Vicente de Paúl hospital for a second medical opinion. Eventually, on December 14, 1993 he underwent the amputation of his left forearm in the Manuel Uribe Ángel hospital.

2. The petitioner claims that some doctors that treated him had informed him of the need to amputate two fingers to preserve his hand in light of the severe gangrene; however, the doctor responsible believed that it was not the appropriate solution, postponing his decision for three months. The petitioner claims that such delay caused that his forearm, seriously infected by then, was completely amputated, leaving him disabled for his work and unable to provide for his seven children. The petitioner concludes that he lost his hand due to negligence on the part of the hospital.

3. The petitioner submits that in 2000 he filed a complaint before the Ombudsman's Office and that on March 9, 2001 the Office informed him that the periods for filing investigations of administrative and disciplinary nature had expired in 1997 and 1998 whereas the periods for filing criminal proceedings and ordinary proceedings for non-contractual civil liability were open and that he could therefore file said remedies. He also indicates that he does not know whether the Ombudsman's Office lodged legal proceedings. He submits that eight years after he filed his complaint, said Office returned the documents to him, claiming that the period for filing the appropriate legal remedies had expired. Finally, the petitioner asserts that in 2006 he filed a request for a friendly settlement in civil matters before the Settlement Center of the Ombudsman's Office of Medellín in order that the doctor responsible for his condition be summoned; however, the petitioner asserts that the procedure was unsuccessful.

4. The State alleges the petition's inadmissibility in view of lack of prior exhaustion of domestic remedies and claims that the facts described in the petition do not constitute a violation of the rights protected by the American Convention. It submits that the treating doctors timely informed the petitioner of the need and the consequences of the medical procedure and undertook their work pursuant to the rules governing their profession, without harming or jeopardizing the alleged victim's right to health through their technical intervention. It asserts that the petitioner, at his own will and pressed by the sole intense pain, went to the Manuel Uribe Ángel hospital and presented documents that he and his family members had signed to authorize the amputation surgery.

5. As to domestic remedies, the State submits that the petitioner should have filed criminal proceedings against the doctors, which he failed to lodge. It indicates that the Ombudsman's Office of Antioquia reported that, upon searching its database, no records were found to prove the alleged victim's filing of a complaint. Moreover, it asserts that at the time of the facts, said institution had no digital records to organize the information and that the documents received were stored in a physical archive, which was also unsuccessfully searched. It submits that in order to clarify the facts the Ombudsman's Office of Antioquia summoned the petitioner to testify under oath on May 22, 2014. At that moment, the petitioner declared that two years after filing a complaint, said Office notified him of the expiration of the period for filing legal remedies. The State considers that the facts described in the petition contradict those in the petitioner's sworn statement.

6. The State submits that the petitioner also failed to lodge the procedure set forth in Law 23 of 1981 (Code of Medical Ethics). It also claims that since, at the time of the facts, the Manuel Uribe Ángel hospital was a public institution professionals working there are state workers. Consequently, according to the State, these professionals are bound not only by the rules of the abovementioned disciplinary code, but also by the disciplinary rules set forth in Law 734 of 2002, in view of their status of public employees. It indicates that the petitioner also failed to lodge this remedy. Lastly, it asserts that the petitioner was also able to file a claim for damages for the purported damage, which he did not file either.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner claims that in 2001 he filed a complaint before the Ombudsman's Office for alleged violations of his rights due to the irregularities committed by a doctor of the Manuel Uribe Ángel hospital. He asserts that said Office did not file legal proceedings and eight years later, it notified him of the lapse of his right to file any remedy. The State, for its part, alleges non-exhaustion of domestic remedies, since the petitioner did not file criminal proceedings or the several disciplinary proceedings envisaged in the domestic legislation or sought compensation for damages.

8. Under Article 46.1.a of the American Convention, admission by the Commission of a complaint lodged in accordance with Article 44 of the Convention requires that the remedies under domestic law have been pursued and exhausted pursuant with generally recognized principles of international law. This requirement aims to allow that domestic authorities examine the purported violation of a protected right and, if appropriate, settle the matter before it is heard by an international body.

9. The IACHR notes that it appears that the petitioner lodged before the Ombudsman's Office a complaint for medical practice and, according to the casefile submitted to the IACHR, said Office lodged a series of procedures. Likewise, the IACHR notes that on March 9, 2001, the Ombudsman's Office notified the petitioner of the following:

"The periods for filing investigations of administrative nature, under the Federal Health Superintendence, and of administrative nature, under the Tribunal of Medical Ethics, for the facts of 1994 which are the subject matter of the complaint at issue were due in 1997 and 1998 respectively. The time limit for filing ordinary proceedings for non-contractual civil liability is of twenty years and the time limit for filing criminal proceedings set forth in Article 333 of the Criminal Code, which is applicable on your case, is of ten years. Therefore, these are the remedies that you can lodge in the present, in accordance with the law."

10. As a result, according to the available information, the only procedure that the petitioner filed was a complaint before the Ombudsman's Office, which is not a legal remedy for the purpose of the requirement of exhaustion of domestic remedies. Moreover, once said Office notified him, in 2001, that criminal proceedings and ordinary proceedings for civil liability could be lodged at that time, the petitioner failed to pursue said remedies. In addition, the petitioner did not submit arguments or information about the reasons that allegedly prevented him from pursuing said remedies.

11. In this regard, the available information does not indicate that the petitioner has pursued or exhausted the available legal remedies or that an exception to the requirement of exhaustion of domestic remedies is applicable. In light of the foregoing, the Commission concludes that this petition does not meet the requirement of exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention.

VII. DECISION

1. To find the instant petition inadmissible;
2. To notify the parties of this decision; and

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

Done and signed in the city of Montevideo, Uruguay on the 26th day of the month of October, 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.