

OEA/Ser.L/V/II.
Doc. 202
28 December 2017
Original: Spanish

REPORT No. 171/17
PETITION 1454-07
INADMISSIBILITY REPORT

MARÍA DEL CARMEN CAMARGO ROMERO
COLOMBIA

Approved by the Commission electronically on December 28, 2017.

Cite as: IACHR, Report No. 171/17, Petition 1454-07. Inadmissibility. María Del Carmen Camargo Romero. Colombia. December 28, 2017.

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 MARÍA DEL CARMEN CAMARGO ROMERO
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 DECEMBER 28, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Eduardo Insignares Romero
Alleged victim:	María del Carmen Camargo Romero
State denounced:	Colombia
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, ² in connection with Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the same treaty

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:⁴	November 8, 2007
Additional information received at the stage of initial review:	September 12, 2011
Date on which the petition was transmitted to the State:	February 15, 2013
Date of the State's first response:⁵	December 27, 2013
Additional observations from the petitioning party:	January 22 and November 8, 2014
Additional observations from the State:	April 15, 2014

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 (deposit of ratification instrument 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	None

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 Hereinafter "Convention" or "American Convention."

³ The observations presented by each party were duly transmitted to the opposing party.

⁴ Between 2008 and 2010, the petitioner sent several communications to the IACHR to request information on the status of the procedure.

⁵ On May 8, 2013, the IACHR requested the petitioner to submit information that it deemed vital for the State to send its reply.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on March 22, 2007
Timeliness of the petition:	No, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner alleges that the State is liable for the denial of justice to the detriment of his sister, María del Carmen Camargo Romero. He asserts that several courts of law allowed that the person who should have paid her alimony in view of her being an interdicted person, committed procedural fraud. In the petitioner's view, the alleged victim cannot be lawfully deprived of her right to receive alimony from her ex-husband, in spite of their divorce. Consequently, he alleges the violation of his sister's rights to humane treatment, due process and life.

2. The facts presented by the petitioner indicate that on December 8, 1966 Mrs. Camargo married Mr. Molinares. Since Mrs. Camargo suffered from schizophrenia, on July 8, 1986 Mr. Molinares filed for annulment of marriage before the Regional Ecclesiastical Court of Barranquilla. On June 8, 1992, said court ruled the marriage void, as it considered that had Mr. Molinares known about his future wife's mental condition, he would not have contracted marriage, which was confirmed after the short cohabitation of the spouses was proved. On March 11, 1999, the Ecclesiastical Court of Appeals upheld the lower judgment and declared Mr. Molinares and Mrs. Camargo's marriage void. On June 29, 1999, the Seventh Family Court ordered the execution of the Ecclesiastical Court's judgment in regard to the civil effects of marriage.

3. Due to the alleged victim's mental condition, Mr. Eduardo Insignares Romero, her brother ("the petitioner"), filed with Cartagena's Fourth Family Court for Civil and Criminal Matters a petition for interdiction by reason of Mrs. Camargo's insanity, who had been in a psychiatric hospital since 1972. In the proceedings, the petitioner demonstrated that the alleged victim suffered from schizophrenia and that she was consequently incapable of defending her rights by herself. Based on these psychological diagnoses presented in the proceedings, on August 23, 1991 the judge ruled Mrs. Camargo's temporary interdiction, appointing the petitioner as her temporary curator. Finally, on April 26, 1996, the Fourth Family Court for Civil and Criminal Matters declared Mrs. Camargo in a state of interdiction, appointing the petitioner as the alleged victim's permanent curator.

4. On April 1, 1997, the petitioner, on behalf of Mrs. Camargo, filed a petition for alimony against Mr. Molinares, with Cartagena's Fourth Family Court for Civil and Criminal Matters, for failure to pay the alimony. Likewise, on October 23 said court ordered the payment of temporary alimony consisting in thirty per cent of Mr. Molinares' retirement pension, and issued a writ of attachment on the additional monthly payments he received from his pension. These deductions from Mr. Molinares' income were made from February 18, 1998 until June 2002.

5. Despite the alimony deductions, it was only on April 25, 2000 that Mr. Molinares was notified in person of the petition for alimony, as a result of which he lodged an appeal for reconsideration against the orders by which said petition had been admitted and temporary alimony been granted in favor of Mrs. Camargo. Mr. Molinares founded his appeal on the following instruments: the resolution issued by the Ecclesiastical Court, the judgment of annulment of marriage issued by the Second Family Court and the document issued by the Seventh Family Court ruling the execution of the Ecclesiastical Court's decision. The petitioner asserts that on April 28, 2000 Mr. Molinares requested the revocation of the judgment granting alimony in favor of Mrs. Camargo. On May 11, 2000, the Fourth Family Court of Cartagena ruled his appeal well-founded, and recognized that there was *res judicata*; for there was a judgment of annulment of marriage issued by the Colombian Ecclesiastical Court and a resolution of termination of the civil effects of marriage issued by the Second Family Court of Barranquilla. Therefore, the Fourth Family Court of Cartagena officially concluded the proceedings filed for alimony against Mr. Molinares, and revoked the obligation of temporary alimony.

6. On February 13, 1998, Mr. Molinares filed for catholic divorce and for the dissolution of marriage (community of property) before the Second Family Court of Barranquilla. His petition was admitted on February 23 and notified to the defendant by legal notice, as Mr. Molinares asserted ignoring the defendant's address. Mrs. Camargo did not appear in court for the proceedings; thus, a curator *ad litem* was appointed for her. Mr. Molinares presented in the proceedings two witnesses to prove the separation as to bed and board, and on September 17, 1998 the trial court judge declared the cessation of the civil effects of marriage and the dissolution of the community of property regime in light of the proof of the parties' judicial or *de facto* separation as to bed and board of more than two years. Likewise, the Court of Justice of Atlántico confirmed the judgment on March 9, 1999.

7. The petitioner claims that the resolution of September 17, 1998 under which the civil effects of marriage ceased was granted as a result of false witness statements and procedural fraud because he, as his sister's representative, was not notified of said petition and resolution. On July 24, 2000, the petitioner filed a complaint against Mr. Molinares for procedural fraud, perjury and swindle, in which he claimed that the latter did know Mrs. Camargo's address, for there was a petition for alimony against him and temporary alimony had been deducted from his income. Likewise, he alleged the falsehood of the witness statements and filed for the annulment of the divorce decree and for the reinstatement of alimony in favor of the alleged victim.

8. However, on July 24, 2012, the Sixtieth Prosecutor's Office of the Unit Specializing in Crimes Against Public Administration ordered to preclude the investigation in view of the lack of sufficient elements to prove the existence of procedural fraud, on the basis of the principle of *in dubio pro reo*, as there was no proof that Mr. Molinares knew the alleged victim's domicile at the time of filing for the cessation of the civil effects of marriage. On July 30, 2002, the Ombudsman's Office representative lodged an application for reconsideration and an appeal against the preclusion of the investigation, alleging that Mr. Molinares must have known Mrs. Camargo's address because by the time when he filed for divorce a petition for alimony had been filed against him. On August 22, 2002, the Prosecutor's Office decided not to annul the impugned resolution because the witness statements were presented to demonstrate the time for which the spouses had been separated, and because there was no proof that Mr. Molinares knew Mrs. Camargo's address at the time of filing for divorce. On April 27, 2004, the Prosecutor's Office of the Superior Court upheld the decision to preclude the investigation based on the principle of *in dubio pro reo*, on the grounds that Mr. Molinares could not have known Mrs. Camargo's address because it was not until April 2000 that he was notified of the petition for alimony against him and because the temporary alimony deductions were made after Mr. Molinares had lodged a suit for divorce.

9. In view of this decision, the petitioner filed several administrative complaints against the prosecutors that decided to preclude the investigation, claiming that they also participated in the alleged procedural fraud; for they failed to consider the evidence of the offense. The Superior Council of the Judiciary archived these complaints on September 7, 2005 and September 29, 2006 since it considered that the prosecutors' performance was in accordance with the criminal rules and procedures, and that there was no evidence of any disciplinary error.

10. In addition, the petitioner lodged a constitutional appeal against the District Superior Court and the Second Family Court for the purported lack of notification of the proceedings in which the civil effects of marriage were decided, requesting that the decision made in the divorce proceedings be declared void. On March 14, 2007, the Chamber of Civil Appeals of the Supreme Court of Justice dismissed the remedy, a decision notified on March 22 of that same year.

11. The Colombian State, for its part, alleges the untimely presentation of the petition because the dismissal of the constitutional appeal was notified on March 22, 2007, and the petition was lodged with the Commission on November 8, 2007, hence two months beyond the period established in Article 46.1.b of the Convention. Likewise, it alleges that the Prosecutor's Office performance was diligent and conformed to the international standards of due process of law; that the petitioner was able to actually pursue a remedy that allowed him to file an effective investigation to clarify the purported procedural fraud; and that said

remedy was duly settled, in accordance with international standards. It claims that all the decisions on the appeals for legal protection were settled in accordance with the legal parameters of due process. It submits that the petitioner lodged a constitutional appeal to seek the protection of his fundamental rights, and that the judges settled it lawfully and promptly.

12. The State alleges that it fulfilled its duty of respecting and ensuring the petitioner's and the alleged victim's rights and freedoms, and that the state bodies undertook a thorough and impartial investigation into the facts reported by the petitioner, ensuring the rights to life, humane treatment, fair trial, family protection and judicial protection. Likewise, it asserts that the facts presented by the petitioner do not tend to establish a violation of the rights enshrined in the American Convention on Human Rights; thus, it believes that the admissibility of this petition would lead to an international fourth instance. Consequently, it requests the IACHR to dismiss the petition.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

13. With regard to the exhaustion of domestic remedies, the Commission notes that the information submitted by the parties indicates that in the framework of this case, there were several lawsuits. The first one of these, filed by Mr. Molinares for the annulment of marriage, was heard by the Ecclesiastical Court, which settled it on June 8, 1992. This decision was confirmed by the Ecclesiastical Court of Appeals on March 11, 1999. The second civil lawsuit, filed by the petitioner on April 1, 1997 before the Fourth Family Court for alimony payment, was settled on May 11, 2000 when said court finished proceedings on grounds of *res judicata*. The third civil proceedings began on February 13, 1998 when Mr. Molinares filed for divorce before the Second Family Court, which settled them on September 17, 1998, the decision of which was confirmed by the Court of Justice of Atlántico on March 9, 1999.

14. As to the criminal proceedings, on July 24, 2000 the petitioner lodged a complaint against Mr. Molinares for procedural fraud, in relation to which the investigation was precluded on July 24, 2002 under the principle of *in dubio pro reo*. On July 30, 2002, an application for reconsideration and an appeal were filed in connection with said preclusion. On August 22, 2002, the Prosecutor's Office leading the investigation denied the petition for review. Later, on April 27, 2004, the Prosecutor's Office of the Superior Court confirmed the decision to precluding the investigation.

15. Subsequently, as part of the series of the judicial procedures aimed at addressing the situation denounced in the petition, the petitioner filed a constitutional appeal that was dismissed on March 14, 2007 by the Chamber of Civil Appeals of the Supreme Court of Justice. Likewise, the Commission notes that the State of Colombia, in its replies, does not challenge the petitioner's exhaustion of domestic remedies; hence, there is no controversy in this regard. In light of these considerations, the Commission believes that the petition meets the requirement on the exhaustion of domestic remedies established in Article 46.1.a of the American Convention.

16. In regard to the requirement of timeliness of the petition, the State explicitly denies that it has been met on the grounds that the last judicial decision in the framework of these proceedings was notified eight months before the petition was presented to the IACHR. In this respect, the Commission notes that both parties agree in stating that the abovementioned ruling on the constitutional appeal was issued by the Chamber of Civil Appeals of the Supreme Court of Justice on March 14, 2007, of which the petitioner was notified on March 22, 2007. Therefore, the parties do not controvert this information, which is also evidenced by the corresponding certificate submitted by the petitioner himself. With regard to this, the Inter-American Commission moreover notes that its Executive Secretariat received the instant petition in paper (in printed form) on November 8, 2007, which the IACHR confirmed through an acknowledgement of receipt dated November 14 of that same year.

17. In light of the foregoing, the Commission concludes that the instant petition was lodged beyond the six-month period established on Article 46.1.b of the American Convention.

VIII. DECISION

1. To find the instant petition inadmissible in relation to Article 46.1.b of the American Convention;
2. To notify the parties of this decision;
3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved electronically by the Commission on December 28, 2017. (Signed): Francisco Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, Commissioners.