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REPORT No. 155/24
PETITION 757-14
REPORT ON ADMISSIBILITY

NICOLAS DEL CRISTO BUELVAS GUTIERREZ
COLOMBIA

Approved electronically by the Commission on September 27, 2024.

Cite as: IACHR, Report No. 155/24. Petition 757-14. Admissibility. Nicolás del Cristo Buelvas Gutiérrez. Colombia. September 27, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nicolas del Cristo Buelvas Gutierrez
Alleged victims:	Nicolas del Cristo Buelvas Gutierrez
Respondent State:	Colombia ¹
Rights invoked:	Articles 8 (judicial guarantees), 11 (protection of honor and dignity), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights; ² and Articles 6 and 7 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	May 30, 2014
Notification of the petition to the State:	November 4, 2019
State's first response:	November 3, 2021
Notice about possible archiving:	November 8, 2022
Petitioner's response to notice of possible archiving:	November 8, 2022

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 (instrument of ratification deposited on July 31, 1973)

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

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 8 (judicial guarantees), 23 (political rights), 24 (equality before the law), 25 (judicial protection), and 26 (right to work) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) thereof.
Exhaustion of domestic remedies or applicability of an exception:	Yes, on January 24, 2014
Timeliness:	Yes, on May 30, 2014

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not take part in the discussion or the decision on this matter.

² Hereinafter, "the American Convention" or "the Convention."

³ Hereinafter, "the Protocol of San Salvador."

⁴ Each party's observations were duly transmitted to the other party.

V. POSITION OF THE PARTIES

The petitioner

1. Nicolás del Cristo Buelvas Gutiérrez (hereinafter "Mr. Buelvas" or the "petitioner") alleges the international responsibility of the Colombian State in connection with his dismissal, purportedly without grounds, from the Colombian National Police. He claims that the Colombian courts, in ruling on the appeals he filed in both the contentious-administrative and constitutional jurisdictions, failed to respect due process guarantees.

2. The petitioner states that the Director General of the Colombian National Police removed him from police service by means of Resolution No. 04962 of November 14, 2008. In response, he filed a *tutela* action against the National Police. In a March 17, 2009 judgment, the Disciplinary Jurisdictional Chamber of the Cesar Sectional Council of the Judiciary ordered that Mr. Buelvas be reinstated to the position he had held before being dismissed from service or to another position of equal or higher rank. The petitioner was reinstated as an officer of the Colombian National Police via Resolution No. 00726 of March 18, 2009.

3. The Ministry of Defense appealed the *tutela* decision. On April 30, 2009, the Disciplinary Jurisdictional Chamber of the Superior Council of the Judiciary amended its *tutela* decision and ordered the National Police to move forward with the administrative act of dismissal. In implementing this order, the Evaluation and Classification Board for Non-Commissioned Officers, Level Staff, and Officers of the National Police laid out the reasons for Mr. Buelvas' dismissal in Act No. 014 of June 9, 2009. These were primarily based on the Colombian administrative authorities' discretionary power to remove public servants from their positions. Thereafter, the Board issued Resolution No. 01776 of June 17, 2009, which upheld Resolution No. 04962, and the petitioner was dismissed once again.

4. As a result of the foregoing, Mr. Buelvas filed an action for annulment and reestablishment of rights with the Administrative Court of Barranquilla, once more asserting that he had not been made aware of the reasons for which he had been dismissed from his position. He further argued that, throughout his professional career with the Colombian National Police, he had succeeded in dismantling criminal gangs and his performance evaluations had been outstanding.

5. In a judgment dated October 7, 2011, the Twelfth Administrative Court of the Barranquilla Circuit set aside resolutions 04926 and 01776 and ordered Mr. Buelvas be reinstated to an equivalent, similar, or higher-ranking position and be paid back wages and other benefits not accrued from the time he was dismissed until the effective date of his reinstatement. The Colombian National Police appealed this decision. On September 17, 2012, the Subsection to Streamline Cases of the Atlántico Administrative Court reversed that decision, stating that Mr. Buelvas had been removed from his position in accordance with discretionary power, the purpose of which is to improve the service provided by public law enforcement, adding that, during his tenure, the petitioner did not exhibit qualities that would warrant protection or justify his reinstatement.

6. In response, Mr. Buelvas filed a *tutela* action with the Council of State. In its January 17, 2013 ruling, the Council of State's Contentious-Administrative Chamber, Section Two, Subsection A declared the *tutela* action inadmissible, stating:

[...] It is worth mentioning that both the Court and the Tribunal examined all of the evidence accompanying the complaint and the response. Additionally, they exhausted all stages of the process in a timely manner, making the plaintiff a party—guaranteeing him due process and the right to defense, and providing him with timeframes for both filing appeals and the rulings thereon. For this reason, a contrary decision would violate the constitutional principles of judicial autonomy and independence, according to which, judges' legal decisions are subject only to the rule of law.

7. The petitioner filed a challenge against the above *tutela* decision with the Council of State. In a March 22, 2013 decision, the Contentious-Administrative Chamber, Fourth Section of the Council of State upheld that decision, stating, among other things: "[...] *The Chamber notes that the plaintiff's quarrel with the*

way the evidence was evaluated cannot be resolved through a *tutela* action because if that were the case, the action would become a pretext for assessing how convincing the judicial authorities' reasoning is when they are not acting as judges [...]" Thereafter, on August 29, 2013, the Constitutional Court announced that the *tutela* action had not been selected for review. Mr. Buelvas filed an insistence request for reconsideration with the Constitutional Court, but such request was denied on January 24, 2014.

8. To recap, the petitioner alleges that the decision that led to his removal from his position as an officer with the Colombian National Police was not duly substantiated. He further argues that the decisions handed down in the contentious-administrative and *tutela* proceedings in the Colombian courts were based on domestic laws that grant discretionary powers to administrative authorities to remove public servants from their positions at will, in violation of the international human rights treaties to which Colombia is party, because no system exists to mount a defense in these cases.

The Colombian State

9. Colombia, for its part, confirms the account given by the petitioner regarding the way the proceedings unfolded before the contentious-administrative and constitutional jurisdictions as well as the substance of the different decisions. The State requests that the Inter-American Commission declare the instant petition inadmissible based on two considerations: (a) the argument regarding a fourth international instance scenario; and (b) failure to exhaust domestic remedies.

10. As to point (a), the State maintains that the judicial decisions resulting from an examination of the constitutionality and lawfulness of the administrative acts that led to the removal of Mr. Buelvas Gutiérrez from the Colombian National Police were consistent with convention-related standards. The State therefore contends that a review of such decisions by the organs of the Inter-American Human Rights System would give rise to a fourth international instance scenario.

11. Additionally, with respect to point (b), Colombia notes that the administrative authorities' discretionary powers, which were used to remove the petitioner from service, are provided for in Article 44 of Law 1437 of 2011 (Code of Administrative Procedure and Contentious-Administrative Matters).⁵ So, as far as its claim of failure to exhaust domestic remedies is concerned, the Colombian State maintains that if any citizen believes a domestic law runs contrary to the international treaties ratified by Colombia, the Colombian constitutional system provides for a "public action of unconstitutionality" as the primary mechanism for the exercise of abstract constitutionality challenges.

12. In this connection, the State indicates that the above remedy is: "[...] a mechanism by which Colombians may exercise their basic right to defend the integrity of the Political Constitution, protected by the fundamental right of access to justice, which enables any citizen to challenge domestic laws that may contravene the constitution and which, consequently, may constitute a potential violation of international treaties ratified by Colombia, as alleged by the petitioner in his initial brief. The State therefore believes the petition fails to meet the requirements of Article 46(1)(a) of the American Convention.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

13. This petition concerns the alleged failure by the Colombian National Police to state the grounds for its decision, using its discretionary power, to dismiss Mr. Buelvas Gutiérrez. The State alleges that the petitioner failed to exhaust domestic remedies inasmuch as he had at his disposal the "public action of unconstitutionality" to challenge the constitutionality of the legal provision that grants administrative authorities the discretionary power to remove state agents from their posts.

⁵ Article 44. Discretionary decisions. To the extent that the content of a decision of a general or specific nature is discretionary, it must be appropriate to the purposes of the rule authorizing it, and proportional to the facts upon which it is based.

14. The Inter-American Commission has determined that the requirement to exhaust domestic remedies does not mean alleged victims are necessarily required to exhaust every available remedy. On the contrary, if an alleged victim has pursued a matter through any of the valid and effective avenues provided for in the domestic legal system and the State has had the opportunity to remedy the issue in its jurisdiction, the purpose of the international standard has been met.⁶ In this regard, as it has decided on previous occasions,⁷ the IACHR considers the remedies that must be exhausted in cases in which there are allegations of violations of due process and other human rights in the course of judicial proceedings to be, as a general rule, those provided for under domestic procedural law that make it possible to contest the actions and decisions adopted in the course of the proceedings, in particular the regular judicial remedies available, or special remedies if these were pursued by the alleged victims in pursuit of their rights.

15. Based on the information furnished by the parties, it is clear that, in response to the decision that removed him from his position in the Colombian National Police, Mr. Buelvas filed first, a *tutela* action; second, an action for annulment and reestablishment of rights; third, a *tutela* action against the decisions that once again ordered his removal; and finally, an insistence request for *tutela* review before the Constitutional Court. The outcomes of these legal actions, which are spelled out in greater detail in the section above, are summarized in the following table:

Legal/Administrative Action	Judicial/Administrative Body	Decision	Date of Decision
Resolution No. 04962	Director General of the Colombian National Police	Dismissal from service	November 14, 2008
Ruling in the first <i>tutela</i> action	Disciplinary Jurisdictional Chamber of the Cesar Sectional Council of the Judiciary	Order to reinstate to police service	March 17, 2009
Ruling on the appeal filed by the Ministry of Defense	Disciplinary Jurisdictional Chamber of the Superior Council of the Judiciary	Amends the <i>tutela</i> decision, order to move forward with the dismissal	April 30, 2009
Implementation of ruling on the appeal	Evaluation and Classification Board for Non-Commissioned Officers, Level Staff, and Officers of the National Police	Reasons for termination of service (discretionary power)	June 9, 2009
Ruling – action for annulment and reestablishment of rights	Twelfth Administrative Court of the Barranquilla Circuit	Reversal of termination decisions	October 7, 2011
Ruling on appeal – National Police	Atlántico Administrative Court – Subsection to Streamline Cases	Reversal of previous ruling	September 17, 2012
Judgment in <i>tutela</i> action	Council of State’s Contentious-Administrative Chamber, Section Two, Subsection A	<i>Tutela</i> denied	January 17, 2013
Ruling on challenge to denial of <i>tutela</i>	Contentious-Administrative Chamber, Fourth Section of the Council of State	Contested decision upheld	March 22, 2013
<i>Tutela</i> review	Constitutional Court – Selection Chamber	Not selected	August 29, 2013
Decision – insistence request regarding <i>tutela</i> review reconsideration	Constitutional Court – Selection Chamber	Refusal to reconsider selection	January 24, 2014

16. In view of the foregoing, the IACHR considers Constitutional Court’s decision to deny the petitioner’s insistence request to reconsider review of the *tutela* appeal, which was issued on January 24, 2014, to be the decision that marked the exhaustion of domestic remedies. The Commission therefore concludes that the exhaustion requirement provided for in Article 46(1)(a) of the American Convention has been met.

⁶ See, for example: IACHR, Report No. 279/21. Petition 2106-12. Admissibility. Huitosachi, Mogótavo, and Bacajipare Communities. Mexico. October 29, 2021, para. 37; IACHR, Report No. 150/21. Petition 172-15. Admissibility. Rapa Nui People. Chile. July 14, 2021, para. 28; IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12; IACHR, Report No. 67/12 (Admissibility), Petition 728-04, Rogelio Morales Martínez, Mexico, July 17, 2012, para. 34.

⁷ See, among others: IACHR, Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and Son. Argentina. November 4, 2014, paras. 68 et seq; IACHR, Admissibility Report No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and Daughters. Argentina. November 5, 2013, paras. 24 et seq; and IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. et al. Ecuador. November 8, 2012, paras. 23 et seq.

17. Regarding the timeliness of the petition, bearing in mind that official notification of the Constitutional Court's decision to uphold its original decision to not agree to review the *tutela* decision, in response to the request filed by petitioner for reconsideration is dated January 24, 2014; that the instant petition was lodged on May 30, 2014; and that the State has not questioned the timeliness of the petition, the Commission considers that the terms of the provisions of Article 46(1)(b) of the Convention to have been met.

VII. ANALYSIS OF THE CHARACTERIZATION OF THE ALLEGED FACTS

18. As indicated in the preceding sections, the Commission notes that the instant petition includes allegations regarding a lack of grounds for the discretionary removal of Mr. Buelvas Gutiérrez from the Colombian National Police and a reported lack of compliance with international conventions. The Colombian State challenges the notion that the allegations characterize a violation of the petitioner's judicial guarantees and right to access to justice inasmuch as exercise of the discretionary power of removal is based on objective, reasonable, and proportional reasons with the legitimate aim of ensuring good policing and primacy of the general interest. The State argues that the petitioner is turning to the IACHR as a "fourth international instance" to review domestic judicial decisions.

19. With respect to the State's allegations regarding a so-called fourth instance approach, the Commission reiterates that, for purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," per Article 47(c). The criterion for evaluating these requirements differs from the one used to rule on the merits of a petition. Likewise, within the context of its mandate, the Commission is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention.⁸ In other words, pursuant to the aforementioned articles, and in accordance with Article 34 of the IACHR's Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements [that, if proven, could *prima facie* lead to determine violations of the American Convention].⁹

20. Additionally, the IACHR recalls that Article 26 of the American Convention protects the right to work in both the public and private spheres,¹⁰ and from this right derives the guarantee of job stability,¹¹ meaning that when a person is dismissed from his or her position, that dismissal must be based on sufficient grounds.¹² In the case of persons holding public positions, the right to job stability must be interpreted in conjunction with the right to access and tenure under general conditions of equality in public service, enshrined in Article 23(1)(c) of the American Convention. In this connection, the IACHR notes that the domestic courts held that Mr. Buelvas' dismissal was consistent with domestic law, specifically, the discretionary power granted to administrative agencies to remove public servants from their positions.

21. In view of these considerations, and in keeping with precedent in similar cases, specifically in its recent Report no. 134/22 concerning Colombia 134/22,¹³ the Commission considers that the arguments regarding the lack of grounds for the removal of Mr. Buelvas from police service are not manifestly unfounded and require a study of the merits, since the alleged facts, if proven, could characterize violations of Articles 8 (judicial guarantees), 23 (political rights), 24 (equality before the law), 25 (judicial protection), and 26 (right to work) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic law provisions) thereof, to the detriment of Mr. Nicolás del Cristo Buelvas Gutiérrez.

⁸ IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, para. 52.

⁹ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, para. 12; and IACHR, Report No. 293/20, Petition 434-09. Admissibility, Gabriel Ulises Valdez Larqué and family members. Mexico. October 13, 2020, para. 22.

¹⁰ IACHR, Report No. 169/19. Case 12.396 Merits. Leonidas Bendezú Tuncar. Peru. November 9, 2019, para. 70.

¹¹ *Ibidem*, para. 75.

¹² *Ibid.*, paras. 76 and 77.

¹³ IACHR, Report No. 134/22. Petition 1874-12. Admissibility. Fidel Hernando Parra Mesa. Colombia. June 6, 2022.

22. Lastly, the Inter-American Commission recalls that pursuant to Article 19(6) of the Protocol of San Salvador, it is only competent to analyze, through its system of petitions and cases, violations of Articles 8(a) and 13 thereof. Consequently, the Commission cannot examine the violations of Articles 6 and 7 of the Protocol of San Salvador alleged in the instant petition.

VIII. DECISION

1. To declare the present petition admissible in relation to Articles 8, 23, 24, 25, and 26 of the American Convention, in connection with Articles 1(1) and 2 thereof.

2. To notify the parties of this decision; to proceed with the analysis of the merits of the matter; and 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 on the 27th day of the month of September, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.