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REPORT No. 156/24
PETITION 875-14
REPORT ON ADMISSIBILITY

WILLIAM CEDANO BERMUDEZ
COLOMBIA

Approved electronically by the Commission on September 27, 2024.

Cite as: IACHR, Report No. 156/24, Petition 875-14. Admissibility.
William Cedano Bermudez. Colombia. September 27, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Aura Alicia Cuta Amarillo
Alleged victim:	William Cedano Bermudez
Respondent State:	Colombia ¹
Rights invoked:	Articles 8 (right to a fair trial), 11 (right to privacy), 17 (protection of the family), 19 (rights of the child), 23 (right to participate in government), and 25 (right to judicial protection) of the American Convention on Human Rights, ² in relation to Article 1.1 (obligation to respect rights).

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	June 11, 2014
Notification of the petition to the State:	December 6, 2021
State's first response:	April 7, 2022
Additional observations from the petitioner:	May 18, 2022
Additional observations from the State:	June 24, 2022
Notice about possible archiving:	August 6, 2020
Petitioner's response to notice of possible archiving:	September 6, 2020

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 deposited on July 31, 1973).

IV. 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	Articles 8 (right to a fair trial), 23 (right to participate in government), 24 (right to equal protection), 25 (judicial protection), and 26 (progressive development) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on December 11, 2013
Timeliness of the petition:	Yes, on June 11, 2014

¹ In keeping with Article 17.2(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the deliberations or in the decision in this case.

² Hereinafter referred to as "the American Convention" or "the Convention."

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

V. FACTS ALLEGED

The petitioner

1. The petitioner alleges the international responsibility of the Colombian State for the discretionary dismissal of Mr. William Cedano Bermúdez (hereinafter “Mr. Cedano”) from his position as a National Police officer, allegedly without cause. She claims that the domestic courts, in adjudicating the appeals filed in the administrative and constitutional courts, failed to respect the guarantees of due process and job stability.

2. By way of background, she states that on February 17, 1997, Mr. Cedano entered the School of Advanced Police Studies as a student. Subsequently, on February 25, 1998, he was promoted to rural patrolman, thus beginning his career as an officer of the National Police. The petitioner states that during his ten years of service Mr. Cedano received several awards for his outstanding work. However, on November 7, 2006, the National Police Bureau issued Resolution No. 05558, dismissing him from service. This resolution stated, *inter alia*, the following: “[...] [The National Police Bureau] *RESOLVES: To remove him from the active service of the National Police, at the will of the Bureau, in accordance with the provisions of Articles 55(6) and 62 of Decree Law 1791 of 2000 [...].*”⁴

3. Mr. Cedano filed a motion with the Administrative Court of Ibagué to set aside the decision and restore his rights. He alleged that the reasoning of the resolution that separated him from his position was inaccurate; that there had been a misuse of power; and that the administrative authorities abused their discretionary power. He further asserted that, throughout his professional career, he had succeeded in dismantling criminal gangs and achieved outstanding scores on his performance evaluations.

4. In a judgment dated November 30, 2011, the Third Administrative Overflow Court (*Juzgado Tercero Administrativo de Descongestión*) of Ibagué denied Mr. Cedano’s claim, finding, among other things, that he had neither proven that the discretionary dismissal power of the National Police had been improperly used, nor that there had been a misuse of power. Mr. Cedano appealed this ruling, and the Administrative Court of Tolima upheld the lower court’s decision on June 15, 2012.

5. In response to the first and second instance rulings referred to above, on May 15, 2013, Mr. Cedano filed a petition for the protection of constitutional rights (*accion de tutela*). On July 18, 2013, Section One of the Administrative Disputes Chamber of the Supreme Administrative Court (*Consejo de Estado*) found the action inadmissible, declining to examine the merits of the case because it was filed more than one year after notice of the appeal judgment was issued, thus failing to comply with the requirement of immediacy under the domestic law.

6. In August 2013, Mr. Cedano filed an appeal with the Supreme Administrative Court challenging the ruling on his petition for the protection of constitutional rights. In a judgment of October 24, 2013, Section Two, Subsection A, of the Administrative Disputes Chamber overturned the decision on appeal, but still rejected the action on the following grounds:

[...] Thus, it clearly emerges that the challenged rulings offer no grounds for the admissibility of the *tutela* action since, as demonstrated, they were not the result of capricious action by the lower court judges, but of the overall assessment of the evidence in accordance with the rules of reasoned judgment and the legal interpretation of the norms applicable to the specific case.

⁴ ART. 62.— Removal at the will of the government or the Office of the Chief of the National Police. For service reasons and at its discretion, the Office of the Chief of the National Police, by delegation of the Minister of National Defense, for the executive level and officers may order the removal of personnel with any length of service, subject to the recommendation of the respective evaluation and classification board. ART. 55.— Grounds for removal. Removal may occur for the following reasons: [...] 6. At the will of the Minister of National Defense, or the Office of the Chief of the National Police, by delegation, for the executive level and officers.

The foregoing clearly leads to the denial of the relief sought and not to the dismissal of the *tutela* action as determined by the lower court in the judgment of first instance. This is because the *tutela* action was rejected for failing to meet the general or specific admissibility requirements, as occurred in the case *sub lite*, specifically with respect to its inherent characteristic of subsidiarity.

Consequently, the challenged decision is reversed in order for the action to be rejected as inadmissible in accordance with the preceding paragraph.

7. This ruling on Mr. Cedano's petition for the protection of constitutional rights was referred to the Constitutional Court for possible review; however, in an order dated December 11, 2013, the Twelfth Selection Chamber of the Constitutional Court declined to hear the matter.

8. In sum, the petitioner alleges that the decision removing Mr. Cedano from his position as an officer of the National Police was arbitrary, because the grounds for the decision were not properly stated. She argues that the domestic courts in the administrative litigation and the *tutela* proceedings failed to protect Mr. Cedano's right to job stability and failed to uphold due process guarantees, since they recognized the legality of his discretionary dismissal, thus violating the rights enshrined in Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention; she further claims that Article 11 (honor and dignity) of the Convention was violated, since his dismissal called into question his integrity and honesty in the performance of his police duties.

9. The petitioner also alleges violations of Articles 17 (rights of the family) and 19 (rights of the child) of the Convention to the detriment of Mr. Cedano's wife, who was pregnant at the time of the facts, and that his dismissal deprived her of access to public health system services. Lastly, she contends that Articles 23 (right to participate in government) and 24 (equal protection) of the Convention were violated because Mr. Cedano was denied access to the civil service without reasonable grounds for his removal and because the employment regulations for career civil servants, who may be removed at will, were applied to him. In view of the foregoing, the petitioner seeks compensation from the State of Colombia in the amount of COP\$ 404,515,000 (approximately US\$97,500 as of August 2024) on behalf of Mr. Cedano.

The Colombian State

10. Colombia confirms that proceedings were carried out in the administrative and constitutional courts, and agrees with the rulings cited in the petitioner's allegations. In addition, it requests the IACHR to declare this petition inadmissible based on two considerations: (a) the petitioner is asking the Commission to act as an international court of fourth instance; and (b) failure to exhaust domestic remedies.

11. In relation to point (a), the State argues, first, that the decisions issued in the administrative disputes courts—which found no false grounds for termination or misuse or abuse of power in the decision to dismiss him from his police officer position—were analyzed and adjudicated appropriately, in accordance with domestic law. Second, it establishes that the *tutela* action was adjudicated in accordance with the guarantees enshrined in the American Convention, based on the laws and regulations in force, and with a proper statement of the grounds for the decision; it further notes that the first and second instance decisions issued in the *tutela* proceedings were issued by competent judges in keeping with the guarantees of due process of law. Therefore, Colombia argues that the petitioner is asking the Inter-American Commission for a new assessment of the evidence and interpretation of the legal provisions analyzed by the domestic judges.

12. With respect to point (b), Colombia asserts that the petitioner provides no evidence of factual or legal elements to support the alleged violation of Convention rights. In addition, it contends that: “[...] *[the petitioner] does not explain, even summarily, how the facts regarding medical care for [Mr. Cedano's] partner, who was allegedly pregnant, are the result of his separation from employment. It does not detail the circumstances of the poor service, whether they filed any complaints, and how the facts could be attributable to the State [...].* Therefore, it requests that the petition be declared inadmissible under Article 47(c) of the American Convention.

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

13. This petition concerns the alleged failure to state the reasons for the decision ordering the discretionary dismissal of Mr. Cedano from his position as a National Police officer. The State does not question the exhaustion of domestic remedies or the timely filing of the petition.

14. The Inter-American Commission has established that the appropriate remedies to be exhausted in cases of alleged violations of due process and other human rights during judicial proceedings are, as a general rule, those means available under national procedural law that make it possible to challenge—during the proceedings in question—actions and decisions made in those same proceedings. This refers in particular to the ordinary judicial remedies available, or to extraordinary remedies if filed by the alleged victims to assert their rights. The Commission has also established as a general standard that if the petitioner used these subsequent, additional, or, as the case may be, extraordinary remedies with the reasonable expectation of obtaining a favorable result, then they may be considered remedies validly exhausted for the purposes of complying with the petition admissibility requirements. Furthermore, the IACHR takes into account, as an important indication of the relevance or admissibility of these remedies, that they have been admitted for processing and adjudicated by the respective courts, and not rejected as inadmissible.⁵

15. The information provided by the parties shows that, following the decision that separated Mr. Cedano from the National Police, he filed a motion to set aside the decision and restore his rights, which was denied on November 30, 2011, by the Third Administrative Overflow Court of Ibagué. He subsequently filed an appeal; however, in a judgment of June 15, 2012, the Administrative Court of Tolima upheld the lower court's judgment. Then, in response to the decisions of the administrative disputes courts, he filed a petition for the protection of constitutional rights (*acción de tutela*); however, it was ruled inadmissible on July 18, 2013, by Section One of the Administrative Disputes Chamber of the Supreme Administrative Court, on the grounds that the requirement of immediacy had not been met. On appeal, on October 24, 2013, Section Two, Subsection A, of the Administrative Disputes Chamber rejected the action on the grounds that such actions were inadmissible for the purpose of challenging court decisions. Finally, in an order dated December 11, 2013, the Twelfth Selection Chamber of the Constitutional Court notified Mr. Cedano that the Court had declined to review his *tutela* action.

16. In view of the foregoing, the IACHR considers that the decision that exhausted domestic remedies was the Constitutional Court's denial of the petition for review on December 11, 2013; therefore, the Commission concludes that the exhaustion requirement provided for in Article 46.1(a) of the American Convention has been met.

17. Regarding the filing deadline for the petition, the Commission notes that the Constitutional Court's order declining to review the *tutela* action is dated December 11, 2013, and that this petition was filed on June 11, 2014. Therefore, the Commission also concludes that the requirements of Article 46.1(b) of the Convention have been met.

VII. ANALYSIS OF COLORABLE CLAIM

18. As established in the preceding sections, the Commission notes that this petition focuses on the alleged failure to state the grounds for the decision to remove Mr. Cedano Bermudez from his position as a member of the National Police and the alleged absence of conventionality control with respect to that decision. The State, for its part, contends that the petitioner seeks to have the IACHR review the decisions issued at the domestic level, acting as an "international fourth instance."

⁵ IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 17; IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alessander Santillán Hermoza. Peru. April 15, 2016, paras. 25-26.

19. With respect to the State’s “fourth instance” argument, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may constitute 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,” in accordance with subparagraph (c) of the same article. The standard for evaluating these requirements differs from that used to decide on the merits of a petition. Under its mandate, the Commission is also competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention.⁶ In other words, under the aforementioned articles of the Convention, in conjunction with Article 34 of the Rules of Procedure of the IACHR, the admissibility analysis focuses on verifying those requirements, which refer to the existence of elements that, if proven, could lead to a *prima facie* finding of violations of the Convention.⁷

20. The IACHR recalls that Article 26 of the American Convention protects the right to work in both the public and private spheres,⁸ and that the guarantee of job stability is derived from this right⁹ which, in turn, means that when a person is dismissed from his or her position, the grounds for dismissal must be stated in a decision.¹⁰ In the case of persons holding public office, the right to job stability must be interpreted in conjunction with the right to access and remain in public office, on general terms of equality, enshrined in Article 23.1(c) of the American Convention. In this regard, the IACHR notes that the domestic courts found that Mr. Cedano’s removal was consistent with the provisions of domestic law, being specifically within the discretionary power of administrative agencies to remove public officials from their positions.

21. In view of these considerations and following its precedents in similar cases, specifically in its recent Report No. 134/22 concerning Colombia,¹¹ the allegations of a lack of stated grounds for the removal of Mr. Cedano from police service are not manifestly groundless and require a study of the merits, since the alleged facts, if corroborated as true, could *prima facie* constitute violations of Articles 8 (right to a fair trial), 23 (right to participate in government), 24 (right to equal protection), 25 (judicial protection), and 26 (progressive development) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof, to the detriment of Mr. William Cedano Bermudez.

22. Lastly, regarding the alleged violations of Articles 11 (right to privacy), 17 (rights of the family), and 19 (rights of the child) of the Convention, the Commission notes that the petitioner offers no arguments or support for a *prima facie* determination of a possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 23, 24, 25, and 26 of the American Convention in relation to Articles 1.1 and 2 thereof.

2. To find the instant petition inadmissible in relation to Articles 11, 17, and 19 of the American Convention.

3. To notify the parties of this decision; to proceed with the analysis on the merits; 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.

⁶ IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, para. 52.

⁷ 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.

⁸ IACHR, Report No. 169/19. Case 12.396 Merits. Leonidas Bendezú Tuncar. Peru. November 9, 2019, para. 70.

⁹ *Ibid.*, para. 75.

¹⁰ *Ibid.*, paras. 76-77.

¹¹ IACHR, Report No. 134/22. Petition 1874-12. Admissibility. Fidel Hernando Parra Mesa. Colombia. June 6, 2022.