

OEA/Ser.L/V/II
Doc. 178
18 October 2024
Original: Spanish

REPORT No. 169/24

PETITION 918-14

REPORT ON ADMISSIBILITY

VIRILIO JOYA BUENO & ARTEMO FONTALVO GRANADOS
COLOMBIA

Adopted electronically by the Commission on October 18, 2024.

Cite as: IACHR, Report No. 169/24. Petition 918-14, Admissibility, Virgilio Joya Bueno and Artemo Fontalvo Granados, Colombia, October 18, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner(s)	Virgilio Joya Bueno and Artemo Fontalvo Granados
Alleged victims:	Virgilio Joya Bueno and Artemo Fontalvo Granados
Respondent State	Colombia ¹
Rights invoked	Articles 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	June 26, 2014
Additional information received at the stage of initial review	October 26, 2017
Notification of the petition to the State	November 25, 2019
State's first response	December 14, 2020
Additional observations from the petitioner(s)	February 26, 2021
Additional observations from the State	July 21 and October 15, 2021

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 PROCEEDINGS 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), 25 (right to judicial protection) and 26 (right to work) of the American Convention, in conjunction with Article 1(1) (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule	Yes, as referred to in Section VI
Timeliness of the petition	Yes, as referred to in Section VI

¹ Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or decision in this matter.

² Hereinafter "American Convention" or "Convention."

³ The observations of either party were duly forwarded to the opposing party. In a communication dated April 22, 2022, the petitioner expressed its interest in the petition being processed.

V. POSITIONS OF THE PARTIES

The petitioners

1. Virgilio Joya Bueno and Artemo Fontalvo Granados (hereinafter, "the petitioners") claim that the Colombian State bears international responsibility for both men's alleged discretionary dismissal as employees of the Ministry of Finance and Public Credit, which was allegedly with cause. They argue that, in adjudicating the remedies invoked in the contentious-administrative and constitutional jurisdictions, the courts failed to respect their guarantees of due process and job security.

2. According to the petitioners, on February 7, 1991, the Ministry of Finance and Public Credit announced a competition to fill various positions in the National Tax Authority (Dirección General de Impuestos Nacionales). In particular, they say that in resolution 3195 of August 6, 1991, the Ministry of Finance and Public Credit promoted Mr. Joya from administrative assistant to national tax collector. They mention, however, that by resolution 000887 of March 25, 1992, the Ministry nullified their positions, and they were dismissed. In that regard, Mr. Joya says that he had not even been able to take up the position he had won in the competition.

3. As a result of the foregoing, the petitioners jointly filed an action to vacate and restore rights with the Contentious Administrative Court of Atlántico Department, requesting the abrogation of resolution 000887. In a judgment dated December 11, 1997, the aforementioned court annulled the resolution and ordered the reinstatement of the petitioners.

4. The Ministry of Finance and Public Credit filed an appeal against this ruling with the Council of State. On August 26, 1999, Subsection A of the Second Section of the of the Administrative Chamber of the Council of State revoked the decision at first instance on the grounds of improper joinder of claims.

5. The petitioners state that on July 30 and August 13, 2001, Mr. Joya and Mr. Fontalvo separately filed an extraordinary appeal for review with the Council of State, those appeals being filed as cases 11001031500020011014101 and 1100110315000210014301, respectively. They say that on August 11, 2006, five years later, the Council of State joined the two appeals.

6. In a communication subsequent to the initial petition, the petitioners say that on February 3, 2015, 14 years later, the Contentious-Administrative Chamber of the Council of State rejected the appeal, stating literally:

[...] In the matter under consideration, Mr. Virgilio Joya Bueno and Mr. Artemo Antonio Fontalvo Granados held different positions in the Ministry of Finance and Public Credit and filed an action to vacate and restore rights, seeking the abrogation of resolution 00887 of 1992 (March 25), which nullified their appointments, and, consequently, they requested the restoration of their rights.

This body analyzed the claims contained in the action and concluded that it did not meet the requirement set out in paragraph 3 of Article 82 of the CPC (Code of Civil Procedure) because, although it is the same administrative act, it has individual effects on each of the plaintiffs; consequently, the claims do not arise from the same cause, do not address the same object, and cannot be based on the same evidence.

In accordance with the foregoing, the Chamber concludes that the charge is not likely to succeed, because the action to vacate and restore rights was brought in accordance with the procedure provided in the CCA (Contentious Administrative Code), the judgment complied with the parameters established by law and case law and, lastly, it is not possible to reopen the judicial debate through an extraordinary appeal for review to challenge the decision at second instance [...].

7. In view of the foregoing, on August 13, 2015, Mr. Joya separately filed a *tutela* action with the Council of State. In a judgment dated December 10, 2015, the Fourth Section of that court denied the *tutela* action as inadmissible, considering that the obligation to identify and support the specific defects was not met

in accordance with the criteria established by the Constitutional Court for it to prosper against interlocutory orders in judicial proceedings. Dissatisfied with this, Mr. Joya filed a challenge with the Council of State. In a resolution dated April 7, 2016, the Fifth Section of the Contentious Administrative Chamber of that court upheld the challenged judgment.

8. The petitioners claim that the Colombian State bears international responsibility for their dismissal as employees of the Ministry of Finance and Public Credit in 1992. They argue that this dismissal was discretionary and lacked cause, violating their rights to due process and job security. In sum, the petitioners argue that the Colombian State, through its judicial organs, failed to provide them with effective judicial protection, unjustifiably prolonging their dismissed status and violating their rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention. In addition, they allege a violation of Article 24 (right to equal protection) of the Convention, inasmuch as the domestic courts did not consider other judicial decisions in cases similar to theirs that favored them.

The Colombian State

9. Colombia confirms the way in which the proceedings in the contentious-administrative and constitutional jurisdictions unfolded and agrees with the sense of the rulings described in the petition.

10. It also requests the IACHR to declare this petition inadmissible in that it amounts to a situation of a fourth international instance, arguing that the petitioners intend that the IACHR review decisions issued by domestic courts within their authority and in observance of judicial guarantees, in which no violation of their rights under the Convention can be inferred, making it nothing more than a disagreement with the outcome on the part of the petitioners. Accordingly, it requests that the petition be declared inadmissible under Article 47(b) of the American Convention.

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

11. The main subject matter of the petition concerns the alleged arbitrary dismissal of Virgilio Joya Bueno and Artemo Fontalvo Granados as employees of the Ministry of Finance and Public Credit. They also charge delays in the contentious-administrative proceeding that they jointly initiated, since the judgment on the extraordinary appeal for review was issued more than 13 years after it was filed.

12. The Inter-American Commission has established that the appropriate remedies to be exhausted in cases in which violations of due process and other human rights are alleged in the course of judicial proceedings are alleged are, as a rule, the means that domestic procedural law provides to enable actions and decisions adopted in the course of proceedings to be challenged, in particular, the ordinary judicial remedies available, or extraordinary remedies if the latter are filed by alleged victims in order to assert their rights. Likewise, the Commission has established as a general criterion that if the petitioner invoked such subsequent, additional, or—as the case may be—extraordinary remedies in the reasonable expectation that they will obtain a favorable result, then these should be deemed validly exhausted remedies when determining a petition's compliance with the admissibility requirements. In addition, the IACHR takes into consideration the fact that such remedies have been admitted for processing and adjudicated by the respective courts, and not rejected as inadmissible, as an important indication of their relevance or appropriateness.⁴

13. Based on the information provided by the parties, the petitioners jointly filed an action to vacate and restore rights, requesting the abrogation of the administrative resolution that dismissed them. On December 11, 1997, the Contentious Administrative Court of Atlántico Department annulled the aforementioned resolution and ordered them to be reinstated in their jobs. In view of this, the Ministry of

⁴ IACHR, Report No. 156/17, Petition 585-08, Admissibility, Carlos Alfonso Fonseca Murillo, Ecuador, November 30, 2017, para. 17; and IACHR, Report No. 27/16, Petition 30-04, Inadmissibility, Luis Alexander Santillan Hermoza, Peru, April 15, 2016, paras. 25 and 26.

Finance and Public Credit appealed the decision, and on August 26, 1999, Subsection A of the Second Section of the of the Administrative Chamber of the Council of State revoked the decision at first instance.

14. Subsequently, on July 30 and August 13, 2001, Mr. Joya and Mr. Fontalvo separately filed an extraordinary appeal for review with the Council of State. On February 3, 2015, 13 years later, the Contentious-Administrative Chamber of the Council of State rejected the appeal. For his part, on August 13, 2015, Mr. Joya separately filed a *tutela* action with the Council of State, which rejected it on December 10, 2015. In view of this, he filed an appeal, and in a judgment of April 7, 2016, the Fifth Section of the Contentious Administrative Chamber of the Council of State upheld the appealed judgment.

15. In light of the foregoing, the IACHR will analyze—with respect to each of the petitioners—if domestic remedies were exhausted and if the petition was lodged in a timely manner. On the one hand, it notes, in the case of Mr. Fontalvo, that domestic remedies were exhausted on February 3, 2015, specifically with the Council of State’s rejection of the extraordinary appeal for review. On the other hand, in relation to Mr. Joya, it notes that domestic remedies concluded on April 7, 2016, with the confirmation of the judgment that rejected the *tutela* action. The State, for its part, does not allege failure to exhaust domestic remedies or improper exhaustion of domestic remedies. Therefore, the Commission concludes that both petitioners meet the exhaustion requirement set forth in Article 46(1)(a) of the American Convention.

16. Regarding the timeliness of the petition, taking into account that the last remedy invoked at the domestic level by Mr. Fontalvo was disposed of on February 3, 2015, and that with respect to Mr. Joya it was decided on April 7, 2016, and taking into account that the Executive Secretariat of the IACHR received the petition on June 26, 2014, that is, while the petition was in the examination stage, the Commission likewise concludes that the provisions of Article 46(1)(b) of the Convention have been met.

VII. ANALYSIS OF COLORABLE CLAIM

17. First, the Commission reiterates that the standard by which these requirements are assessed at the admissibility stage is different from that needed to decide the merits of a petition. At this stage, the Commission must perform a *prima facie* evaluation and determine whether the petition provides grounds for an apparent or potential violation of a right guaranteed by the Convention, although not whether the violation has in fact occurred. This examination of the colorability of an alleged violation of the American Convention is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, could characterize a violation of rights, or whether, pursuant to paragraph (c) of the same article, the petition is “manifestly groundless” or “obviously out of order.”

18. In this regard, the IACHR notes that the Contentious Administrative Chamber of the Council of State took more than 13 years to rule on the extraordinary appeal for review filed by the petitioners. The Commission also finds, with regard to that appeal, that for the first five years there was no procedural activity, which only occurred upon the joinder of the two appeals. Therefore, the Commission will analyze in the merits stage whether the conduct of the judicial authorities caused an undue delay with respect to this pronouncement.

19. At the same time, the IACHR recalls that Article 26 of the American Convention protects the right to work in both the public and private spheres,⁵ and that the guarantee of job security derives from that right,⁶ which, in turn, implies that if a person is dismissed from their position, it must be on the basis of a duly reasoned decision.⁷ In the case of public sector employees, the right to job stability must be interpreted in conjunction with the right to have tenured access under general conditions of equality, to the public service of one’s country, as enshrined in Article 23(1)(c) of the American Convention. In that connection, the IACHR notes

⁵ IACHR, Report No. 169/19, Case 12.396, Merits, Leonidas Bendezú Tuncar, Peru, November 9, 2019, para. 70.

⁶ *Ibid.*, para. 75.

⁷ *Ibid.*, paras. 76 and 77.

that the domestic courts found that the petitioner's termination was in accordance with the provisions of domestic law, specifically, the discretionary power granted to administrative entities to remove public servants from their posts.

20. In light of these considerations, the Commission finds that the facts claimed in the petition are not manifestly groundless, since the alleged facts, if confirmed as true, could amount *prima facie* to violations of Articles 8 (right to a fair trial), 23 (right to participate in government), 25 (right to judicial protection) and 26 (right to work) of the American Convention, in conjunction with Article 1(1) (obligation to respect rights) thereof to the detriment of Mr. Virgilio Joya Bueno and Mr. Artemo Fontalvo Granados.

21. Lastly, regarding the alleged violations of Article 24 (right to equal protection) of the Convention, the Commission notes that the petitioner does not offer any submissions or basis to establish, *prima facie*, a possible violation.

VIII. DECISION

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

2. To declare this petition inadmissible in relation to Article 24 of the American Convention.

3. To notify the parties of this decision, to proceed to the analysis of 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 18th day of the month of October, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.