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REPORT No. 127/18
PETITION 1500-07
REPORT ON ADMISSIBILITY

JUAN CAMILO VEGA PEREZ AND FAMILY
COLOMBIA

Approved electronically by the Commission on October 18, 2018.

Cite as: IACHR, Report No. 127/18, Petition 1500-07. Admissibility. Juan Camilo Vega Perez and Family. Colombia. October 18, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Edith Alcira Perez Martinez, Luis Roberto Vega Perez, Javier Alfonso Galindo Perico, and Gloria Amparo Perico de Galindo
Alleged victims:	Juan Camilo Vega Perez and family ¹
Respondent State:	Colombia ²
Rights invoked:	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention on Human Rights, ³ in connection with Article 1.1 (obligation to respect rights); Articles I (life, liberty, personal security) and xi (right to preservation of health and well-being) of the American Declaration of the Rights and Duties of Man; ⁴ Articles 10 (health) of the Protocol of San Salvador; and other international treaties ⁵

II. PROCEDURE BEFORE THE IACHR⁶

Filing of the petition:	November 21, 2007
Notification of the petition to the State:	September 26, 2013
State's first response:	February 7, 2014
Additional observations from the petitioner:	June 2, 5 and 11; and October 8, 2014
Additional observations from the State:	February 20, 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 (deposit of ratification instrument 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 4 (life), 5 (humane treatment), 8 (fair trial), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in connection with Article 1.1 (Obligation to respect rights); Articles XI (right to preservation of health and well-being) of the American Declaration

¹ The petition was filed on behalf of Juan Camilo Vega Perez, Edith Alcira Perez Martinez and Luis Roberto Vega Perez.

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not partake in the discussion or the decision on this matter.

³ Hereinafter "American Convention" or "Convention."

⁴ Hereinafter "American Declaration" or "Declaration."

⁵ Universal Declaration of Human Rights (no articles are specified); articles 6 and 14 of the International Covenant on Civil and Political Rights; and article 12 of the International Covenant on Economic, Social and Cultural Rights.

⁶ The observations submitted by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners claim that on April 23, 2003 Mr. Juan Camilo Vega Perez (hereinafter “the alleged victim” or “Mr. Juan Vega Perez”) was diagnosed with lymphoblastic leukemia, a type of cancer of the blood and bone marrow, and that given his frail health, he required special treatment and continuous medical monitoring. They affirm that in 2005, because of a relapse, he was admitted to the MD Anderson Cancer Center, in Texas, United States (hereinafter “MD Anderson” or “the Center”). They submit that due to repeated failures to comply with the payment obligations established in the insurance policy contract on the part of the Colseguros S.A. Allianz Group insurance company (“the insurance company” or “Colseguros”), the alleged victim died on November 6, 2007 at the MD Anderson Center, for his medical treatment was interrupted in view of the insurance company’s breach of contract. Consequently, Ms. Edith Perez presented several legal actions in order to have the insurance company fulfill its obligations because it had allegedly failed to do so in a timely manner, considering that the treatment kept the alleged victim alive and was not available in Colombia.

2. The petitioners indicate that on April 16, 2001 Ms. Edith Alcira Perez Martinez (hereinafter “Ms. Edith Perez”), the alleged victim’s mother, bought from the insurance company an insurance policy to ensure the continuous and interrupted provision of a high-quality health service, in which Mr. Juan Vega Perez and his brother Luis Roberto Vega Perez were insureds. The petitioners assert that Ms. Edith Perez requested Colseguros the coverage of a leukemia treatment for Juan Vega Perez at the MD Anderson Center in 2005, but she did not get an answer. Therefore, she sent several communications to the Financial Superintendence of Colombia reporting the breach of contract on the part of insurance company. On March 25, 2005 the alleged victim’s relatives decided to cover the beginning of the treatment while they waited for an answer from Colseguros.

3. The petitioners submit that Ms. Edith Perez many times requested the insurance company to fulfill the terms of the contract, but that it failed to make the payments in a timely and due manner. They allege that since 2005 Coleseguros had increased the premiums by 300 per cent and the deductibles by 100 per cent for the period of the policy. They indicate that in August 2005 the insurance company sent two documents in writing to the Center in Texas whereby it explained that coverage for Mr. Juan Camilo Vega Perez was of one million dollars for life and not per year—the petitioners claim that the policy established that such coverage was to be provided on an annual basis. After this communication from the insurance company, the MD Anderson Center suspended the medical treatment until the controversy relating to the payments was resolved. Later, Ms. Edith Perez asked for a renewal of the insurance policy for the period between April 16, 2007 and April 16, 2008. On May 31, 2007 Colseguro’s attorney notified Ms. Edith Perez the insurance company’s decision to terminate the insurance policy contract as of June 21, 2007 based on provision number 15 thereof according to which “the instant insurance policy may be unilaterally terminated by the company by giving 10 business days’ prior written notice to the policy holder and/or named insured at their last known address.”

4. Likewise, they claim that on June 15, 2007 Ms. Edith Perez filed an appeal for legal protection before the First Civil and Criminal Court of the Municipality of Corozal. By a decision of June 29, 2007, this court ordered the reinstatement of the alleged victim as an insured within 48 hours and the provision of insurance on condition that the corresponding premiums and deductibles were paid according to their fair value. On July 13, 2007 Ms. Edith Perez filed an action for contempt on the grounds that Colseguros did not comply with that judgment; however, the petitioners indicate that this action was not furthered and that it was not processed in accordance with the law. For its part, the insurance company appealed the judgment of June 29, 2007 before the First Civil and Criminal Court of Corozal, which, on August 6, 2007, upheld the trial-court judgment on the basis that insurance policy coverage must be provided in a timely and

due manner for as long as the patient so requires, and sent copies to the Public Prosecutor's Office in case an investigation would be undertaken. Subsequently, by a legal provision, the case file was examined by the Constitutional Court, which, on February 28, 2008, in the exercise of its discretionary powers, decided to not choose the case for review.

5. On January 12, 2010 the First Civil and Criminal Court of Corozal resolved the action for contempt filed by Ms. Edith Perez on July 13, 2007, affirming that it was impossible to establish that Mr. Juan Vega Perez had died as a result of a delay in the payments of the treatment or that his death is attributable to the insurance company, thus ruling that Colseguros complied with the judgment and that the alleged victim's death meant that the constitutional proceedings had to be closed. As a result, the court decided to not impose penalties for contempt on Colseguros and ordered to close the case.

6. The petitioners argue that on August 22, 2007 Ms. Edith Perez lodged a civil liability claim before the Thirteenth Civil Court for Bogotá Circuit, whose resolution has been unwarrantedly delayed and is pending final resolution. Moreover, she filed a criminal complaint before the Public Prosecutor's Office on the charges of falsehood, fraud, and contempt of court, also pending final resolution. The petitioners also assert that since 2005 the alleged victim's relatives have filed complaints before the Attorney General's Office, the Financial Superintendence, the Public Prosecutor's Office and the Ombudsman's Office about the breach of contract on the part of Colseguros and the damage to the alleged victim, but that they were given no effective answer; for the constitutional court's judgment ordering Colseguros to renew the insurance policy for Mr. Vega Perez, and to continue covering his treatment was not complied with and the action for contempt was not resolved by the ordinary court until three years later. Consequently, the civil liability claim against Colseguros continues to be substantiated without the court having ruled on it, and the criminal complaint against the insurance company's representatives was unsuccessful.

7. For its part, the State of Colombia indicates that the matter was resolved in the domestic jurisdiction because Colseguros renewed the insurance policy on July 5, 2007. It argues that although the renewal was not notified in a timely manner, such delay was due to reasons attributable to Ms. Edith Perez, who, having changed her address, hindered her being timely notified; and that there is not proof that she had duly fulfilled her contractual obligations, that is, the payment of the premiums and deductibles according to the terms established in the insurance policy, based on a fair, non-discriminatory value.

8. The State alleges that Mr. Juan Vega Perez had always been provided with the required health services and that his death was not due to medical malpractice or lack of health services. Additionally, it deems that the alleged breach of contract is not attributable to the State since it did fulfill its duty in the matter of health and there is no proof that the alleged victim's death was caused by inactivity on the part of the State nor is it evident that it was the result of the interruption of the treatment or the lack of payment on the part of the insurance company. The State argues that the obligations set forth in Articles 1 and 2 of the American Convention are not unrestricted in relation to any action on the part of individuals in that the State's duty consists in regulating, supervising and overseeing entities providing health services. The State claims that in the instant petition it is not alleged that the State has failed to comply with said duty and that the petition only concerns the breach of contract on the part of the Colseguros S.A. insurance company. Therefore, it concludes by affirming that, since the petition concerns the liability of said company, it refers to an action by third parties, thus it is not attributable to the State by virtue of Article 47.b of the American Convention. Moreover, Mr. Vega Perez received medical assistance whenever needed it; therefore, there is nothing to indicate that his right to life, humane treatment and privacy were violated.

9. Furthermore, the State alleges the lack of exhaustion of domestic remedies because the appropriate and effective remedy in this case is the civil liability claim that is pending final settlement. Likewise, it claims that the criminal complaints filed were not the appropriate remedies to be exhausted, considering that the Prosecutor's Office deemed that they were out of order because of the lack evidence and the lack of a list of laws violated by such conduct; and that it is pending resolution and will be archived in view of an order for atypical conduct.

10. Lastly, the State alleges that the instant petition establishes a court of fourth instance since the matter has already been settled domestically, and that the petitioners seek to have the Commission review the decision on the action for contempt, which was contrary to their interests and adopted in full observance of the judicial guarantees and after an analysis of the submitted evidence. Additionally, it claims that the IACHR is not competent *ratione materiae* to examine the alleged violation of the right to life provided for in Article I of the American Declaration because such right is embodied in Article 4 of the Convention. As for the alleged violation of the Protocol of San Salvador, the State indicates that said instrument limits the Commission's competence to examine purported violations of Articles 8.a and 13 of said Protocol through the individual petitions system.

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

11. The petitioners claim that the domestic legal remedies were exhausted by the Constitutional Court's decision of February 28, 2008. For its part, the State invokes the exception concerning the lack of prior exhaustion of domestic remedies, on the grounds that the civil liability claim is still pending final resolution.

12. In view of the foregoing and after an analysis of the available information in the case file, the Commission observes that the petitioner filed an appeal for legal protection on June 15, 2007, granted by the trial court and then upheld by the court of appeals, and that on February 28, 2008 the Constitutional Court decided to not choose the case for review. Also, on July 13, 2007 Ms. Edith Perez presented an action for contempt relating to the judgment on the constitutional appeal, but it was dismissed on January 12, 2010, the case being archived. Therefore, the Commission observes that domestic remedies have been exhausted in accordance with the requirements set forth in Article 46.1 paragraphs (a) and (b) of the American Convention.

13. In relation to the civil liability claim lodged before the Thirteenth Civil Court for the Bogotá Circuit on August 22, 2007 and given that from the submitted information it appears that the claim has not been resolved yet, the Commission finds that the exception to the rule on the exhaustion of domestic remedies established in Article 46.2.c of the American Convention must be applied to the instant case. Likewise, as the instant petition was received by the IACHR on November 21, 2007, it meets the requirement of timeliness established in Article 32.2 of the IACHR Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

14. In view of the legal and factual elements presented by the petitioners, and the nature of the matter brought to its attention,⁷ the Commission believes that the claims on the alleged damage to the alleged victim's life and health derived from the breach of the insurance policy contract, in connection with the alleged lack of timely and effective judicial protection, could *prima facie* establish violations of Articles 4 (Life), 5 (Humane Treatment) and 26 (Economic, Social and Cultural Rights) of the American Convention, in connection with Article 1.1 (Obligation to Respect Rights) thereof, to the detriment of Juan Camilo Vega Perez. As for the alleged lack of timely judicial protection and delayed enforcement of domestic decisions, the Commission observes that they establish possible violations of Articles 8 (Fair Trial) and 25 (Judicial Protection) of the Convention in relation to Article 1.1 thereof (Obligation to Respect Rights), the detriment of Juan Camilo Vega Perez, Edith Alcira Perez Martinez and Luis Roberto Vega Perez.

15. With respect to the claim on the alleged violation of Articles 3 (Juridical Personality) and 11 (Privacy) of the American Convention, the Commission observes that the petitioners did not present allegations or sufficient evidence for it to *prima facie* consider the possible violation of such rights.

⁷ In this regard, the instant analysis of colorable claim is consistent with that made in IACHR, Report No. 44/16 (Admissibility), Petition 1558/11, Martina Rebeca Vera Rojas and Family, Chile, November 11, 2016; par. 30-31.

16. In relation to the complaint on the purported violation of Article XI of the American Declaration, the Commission reiterates that once the American Convention takes effect in relation to a State, it is the Convention and not the Declaration that becomes the primary source of law applicable by the Commission, provided that the petition concerns an alleged violation of substantially similar rights enshrined in both treaties. Considering that Article 26 of the Convention broadly refers to economic, social and cultural rights, and that these must be determined in connection with the OAS Charter and other applicable instruments, the Commission believes that whenever a specific violation of the Declaration is alleged in relation to the general content of Article 26, an analysis of its interplay and common scope will be made at the merits stage.

17. Moreover, as for the other international instruments invoked by the petitioners, the Commission is not competent to determine the violation of the norms of said treaties; however, it may consider such instruments in order to interpret the rules of the American Convention in the merits stage of the instant case, under the terms of Article 29 of the American Convention.

18. With respect to the State's allegations on the establishment of a court of appeals, the Commission recognizes its lack of competence to review judgments issued by domestic courts acting within the scope of their jurisdiction and in conformity to due process and judicial guarantees. Nevertheless, it reiterates that, within the framework of its mandate, the Commission is competent to decide on the admissibility of a petition and to rule on the merits when said petition concerns domestic proceedings in which there may be possible violations of the rights protected by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 25 and 26 of the American Convention, in connection with Article 1.1 thereof; and Article XI of the American Declaration;

2. To find the instant petition inadmissible in relation to Articles 3 and 11 of the American Convention; and

3. To notify the parties of this decision; to continue 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 18th day of the month of October, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli (dissenting opinion), Joel Hernández García (dissenting opinion), Antonia Urrejola, and Flávia Piovesan, Commissioners.