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REPORT No. 193/21
PETITION 1833-12
REPORT ON INADMISSIBILITY

ALFONSO RAFAEL LÓPEZ LARA AND OTHERS
COLOMBIA

Approved electronically by the Commission on September 7, 2021.

Cite AS: IACHR, Report 193/21. Petition 1833-12. Inadmissibility. Alfonso Rafael López Lara and others. Colombia. September 7, 2021.



I. INFORMATION ABOUT THE PETITION

Petitioner	Alfonso Rafael López Lara, Manuel Antonio Echevarría Franco and Roberto Rafael Romero Turizo
Alleged victim	Alfonso Rafael López Lara and others ¹
Respondent State	Colombia
Rights invoked	Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 9 (freedom from ex post facto laws), 17 (right of the family), 21 (right to property), 24 (right to equal protection), 25 (right to judicial protection), 26 (progressive development) of the American Convention on Human Rights ² , in relation to its article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	October 3, 2012
Additional information received during initial review	June 26, 27, 2013; September 13, 17, 27, 2013; May 30, 2014; July 10, 2014; September 18, 2014; October 28, 2014; December 2, 2014; March 23, 2015; August 20, 21, 2015; September 9, 2015; May 26, 2016; July 12, 2016; November 15, 2016; May 25, 2017; August 1, 14, 16, 18, 23, 25, 28, 2017; September 12, 13, 27, 28, 2017 and October 17, 2017
Notification of the petition to the State	October 30, 2017
State's first response	July, 26, 2018
Additional observations from the petitioner	April 12, 2019 and August 3, 2021

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument of ratification 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	None
Exhaustion or exception to the exhaustion of remedies	No, according to section VI
Timeliness of the petition	No, according to section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner party denounces that the State criminally convicted the alleged victims for the labor lawsuits that they initiated against the Puertos de Colombia Company (hereinafter, "COLPUERTOS"). Likewise, the petitioner argues that the jurisdictional authorities arbitrarily reversed a set of final decisions that ordered the payment of rights and social benefits in favor of a group of the alleged victims, in their capacity as former employees of the aforementioned public company.

¹ Roberto Rafael Romero Turizzo, Horacio Cantillo Narváez, Luis Alberto Gutierrez Alfaro, Jose Alfredo Constantino Prasca, David Alba de la Hoz, María Teresa Suárez Cabrales and Rosa Emilia Barraza.

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

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

2. Without providing clear details, the petitioner party mentions that David Alba de la Hoz, María Teresa Suárez Cabrales and Rosa Emilia Barraza Barraza filed an ordinary labor lawsuit against "COLPUERTOS" and the Social Liability Fund of the Puertos de Colombia Company (hereinafter, "FONCOLPUERTOS"), obtaining favorable judgments that ordered the recognition of their rights as former workers of said company. The petitioner indicates that, in 1998, the Ministry of Finance and Credit issued resolutions that ordered the payment of said compensation. Despite this, it denounces that the Judiciary Council, through a procedure which damaged their judicial guarantees, ordered the unarchiving of such processes, and distributed them among the Overflow Courts.

3. In this regard, it indicates that the aforementioned decision of the Judicial Council relied on the unification judgment 962 of the Constitutional Court, of December 1, 1999, which held that, by virtue of Article 69 of the Labor and Social Security Procedure Code,⁴ the decisions related to the liquidation process of "COLPUERTOS" which impacts the national treasury, will only be final after being submitted to a consultation procedure. Specifically, the Court held that:

There is no doubt about the mandatory application of article 69 of the Labor and Social Security Procedure Code and, therefore, of the forced consultation of first instance judgments that are totally or partially adverse to FONCOLPUERTOS, since the payment of the recognized credits would have to be carried out by the State Nation, directly responsible for the labor obligations and the labor liabilities of COLPUERTOS and FONCOLPUERTOS.

4. The petitioner party argues that, by virtue of this jurisprudence, the Courts arbitrarily reversed the decisions favoring the alleged victims. The petitioner party does not provide precise information with the specific dates of such resolutions.

5. Subsequently, the Prosecutor began criminal investigations against all the alleged victims for the crimes of embezzlement by appropriation and breach of public duty by action, alleging that they had committed irregular acts during the aforementioned labor proceedings. The petitioner specifies that while David Alba de la Hoz, María Teresa Suárez Cabrales and Rosa Emilia Barraza Barraza faced the charges in their capacity as plaintiffs and former COLPUERTOS workers, the rest of the alleged victims were linked by the actions they adopted as lawyers or judges in such cases. -Although the petitioners denounce that the alleged victims have been sanctioned by the judicial bodies in said proceedings, the information they provide to the IACHR lacks clarity; therefore, it is not possible to establish the procedural status of these processes.

6. By virtue of these considerations, the petitioner denounces that the right to judicial guarantees of the alleged victims was violated, since the criminal proceedings against them suffered an unreasonable delay and that, in most of such cases, the statute of limitations should have been decreed. Likewise, the petitioner affirms that the jurisdictional authorities did not correctly assess the evidence provided and made incorrectly reasoned decisions.

7. Additionally, the petitioner argues that the rights to private property, due process, and the principle of legality of the alleged victims were violated, since the judicial decisions that recognized their conventional and pension rights were issued before December 1, 1999, the date on which the unification judgement 962 was promulgated. Consequently, it maintains that at the time the aforementioned resolutions were issued, the consultation procedure was not applicable to the proceedings against "COLPUERTOS."

8. Finally, it argues that the alleged victims' right to a natural judge was also violated. It argues that the Superior Council of the Judiciary forwarded, in an extraordinary manner, the labor files to the Overflow Chambers of the different courts of the country, which compromised the impartiality and independence of the

⁴ Labour and Social Security Procedure Code. Article 69. Appropriateness of the query. In addition to these resources there will be a degree of jurisdiction called "consultation". The judgments of first instance, when they are totally against to the claims submitted by the worker, will necessarily be consulted with the respective Labor Court, if they are not appealed. First instance judgments will also be consulted when they are against to the State, the Department or the Municipality.

judges of such cases. In a similar vein, it argues that the criminal files were also sent to special bodies, which affected the right to defense of the alleged victims.

9. The State, for its part, replies that the facts denounced do not characterize human rights violations. On a preliminary basis, it questions that the petition is presented in a general manner and that it includes eight alleged victims with different legal situations within the questioned labor proceedings. It specifies that some of these people appear as former workers, while others appear as lawyers, former public officials, and former judges. Likewise, it argues that it cannot be identified with certainty which are the alleged violations that the petitioner alleges in each case, nor which correspond to each of the alleged victims with respect to the processes faced by each one of them.

10. Despite this, by way of context, it explains that the so-called “FONCOLPUERTOS scandal” has been classified as one of the largest corruption cases in the country. The State reports that “COLPUERTOS”, created as a State Industrial and Commercial Company, was in charge of the administration of the country’s Maritime and River Ports. It maintains that, in 1991, given the anomalies presented in the management of the ports and the constant losses that said company was reporting, the then president issued the Ports Law, which privatized its administration and ordered the liquidation of COLPUERTOS. It argues that, later, by Decree 036 of 1992, “FONCOLPUERTOS” was created as a Public Establishment of National Order, attached to the Ministry of Transportation, and in charge of managing the payment of different rights to former workers of “COLPUERTOS”.

11. In this context, it argues that the lawyers of the former workers and other judicial authorities, taking advantage of the chaos of the archives, initiated a series of administrative and judicial actions, without legal support, aimed at defrauding the interests of the Colombian state worth millions, through the filling of claim of benefits for remaining balances and definitive dismissals. It specifies that such a situation made it easier for the general directors of FONCOLPUERTOS to issue recognition resolutions and payments for non-existent or inappropriate labor claims to former workers, in collusion with judges, labor inspectors and the lawyers of the alleged victims.

12. Due to this, it indicates that the jurisdictional labor authorities reviewed the first instance judgments that benefited the former COLPUERTOS workers, through consultation procedures, and reversed such decisions. In this regard, the State maintains that such situation did not cause any violation of rights, since, according to Article 69 of the Labor and Social Security Procedure Code, the first instance judgments that ruled against the State must be consulted with the respective Labor Court, in case they are not appealed. It emphasizes that, in accordance with what is alleged by the petitioner party, in 1999, the Constitutional Court, through the unification judgment 692, heard several protection actions filed by the aforementioned former workers and confirmed that the questioned consultation procedures were mandatory and did not produce a violation of rights.

13. Additionally, it indicates that, on December 31, 1998, the Ministry of Labor and Social Security created the Internal Work Group for the Management of the Social Liabilities of Colombian Ports (hereinafter, “GIT”), in order to attend to the labor claims and payments of COLPUERTOS. It points out that, after verifying the magnitude of the fraud, said body sent copies of the files to the Office of the National Attorney General so that it could criminally investigate the former workers and their lawyers; the Circuit Labor Judges; the Labor Inspectors; the legal representatives; the Heads of the Office and the General Directors of FONCOLPUERTOS, for their participation in the embezzlement of State assets.

14. It reports that, in 2004, the National Attorney General created the Support Structure for the FONCOLPUERTOS case, made up of eight Sectional Prosecutors; while the Superior Council of the Judiciary, exclusively singled out the Sixteenth Criminal Circuit Judge for said matter. The State alleges that such organization allowed, on the one hand, for the clarification of the truth about the various ways that were devised to steal public money, and, furthermore, for the imposition of convictions against those involved in the looting of the national treasury.

15. With regard to the criminal proceedings against the alleged victims, it argues that there are no elements that, in a preliminary manner, show evidence of the existence of violations of judicial guarantees or judicial protection. Regarding Mr. Luis Alberto Gutiérrez Alfaro, it maintains that on December 28, 2009, the First Criminal Court of the Overflow Circuit - FONCOLPUERTOS CAJANAL convicted him, along with other defendants, for the crime of embezzlement by appropriation to 72 months imprisonment, a fine equivalent to 20 legal minimum wages and an interdiction to perform public functions, for his participation as a lawyer of some former workers. It argues that the alleged victim appealed that decision, but on February 17, 2012, the Criminal Chamber of the Superior Court of Bogotá confirmed the conviction.

16. Given this, the legal representative of Luis Alberto Gutiérrez Alfaro filed a cassation appeal, alleging the violation of the guarantee of the natural judge, due to the creation of a specialized division to investigate the matter of FONCOLPUERTOS within the Attorney General's Office. However, it points out that, on October 9, 2013, the Criminal Cassation Chamber of the Supreme Court rejected such action, arguing that the constitutional and legal framework allows the Superior Council of the Judiciary to create temporary positions for judges in cases of overflow to achieve efficiency in the administration of justice, hence the facts denounced did not violate any right of Mr. Luis Alberto Gutiérrez Alfaro.

17. Regarding the proceedings against David Alba de la Hoz, Rosa Emilia Barraza, Alfonso Rafael López Lara and María Teresa Suárez Cabrales, it details that on December 12, 2014, the 16th Criminal Court of the Bogotá Circuit sentenced them to custodial sentences, disqualification from the exercise of public functions and the payment of a fine for the crime of embezzlement by appropriation. It details that the representation of the alleged victims appealed that decision, but on July 18, 2017, the Criminal Chamber of the Superior Court of the Bogotá District confirmed said decision. Given this, it maintains that the defenders of Alfonso Rafael López Lara and María Teresa Suárez Cabrales filed an appeal, arguing the improper assessment of the body of evidence. However, on April 4, 2018, the Criminal Cassation Chamber of the Supreme Court of Justice rendered those claims inadmissible, stating, among other formal flaws, that the appellants did not specifically indicate the evidence that was incorrectly analyzed.

18. In relation to the investigation initiated against José Alfredo Constantino Prasca, it reports that on July 6, 2009, the Superior Court of Barranquilla convicted him for the crime of breach of public duty, for the irregularities he committed as Fourth Labor Judge in nine executive proceedings related to the case of FONCOLPUERTOS. He filed an appeal, but on February 24, 2010, the Criminal Cassation Chamber of the Supreme Court confirmed the conviction, considering that it was properly founded.

19. Finally, regarding the process initiated against Roberto Rafael Romero Turizzo, it details that, on April 4, 2013, the 16th Criminal Court of the Bogotá Circuit convicted him of the crime of embezzlement by appropriation for his participation in the signing of records of conciliation before the Eighth Labor Inspector of the Cundinamarca Section. It maintains that, on December 18, 2013, the Criminal Chamber of the Bogotá District Court confirmed the aforementioned conviction and, in light of this, the alleged victim filed a cassation appeal alleging that the body of evidence was improperly assessed. However, the State argues that, on October 22, 2014, the Criminal Cassation Chamber of the Supreme Court of Justice dismissed said action and confirmed the first instance judgement.

20. Based on these considerations, Colombia maintains that the alleged victims had access to adequate and effective remedies in each of the criminal instances, without any arbitrariness being evidenced in the decisions adopted by the judicial bodies. On the contrary, it argues that said resolutions were correctly motivated, responding to the appeals presented by the defendants regarding the convictions issued in each case. For this reason, it requests that the petition be declared inadmissible based on Article 47 (b) of the American Convention, since it considers that the petitioner's claim is for the Commission to act as a court of appeal, contradicting its complementary nature.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

21. The petitioner party alleges that the alleged victims exhausted domestic remedies with the labor resolutions that rejected their claims and the criminal judgements that confirmed their convictions. For

its part, the State has not disputed the exhaustion of domestic remedies nor has it made any reference to the deadline for submitting the petition.

22. In relation to the labor proceedings, the Commission observes that none of the parties has provided information that makes it possible to identify when the internal proceedings ended, nor has the petitioner argued that any exception to the exhaustion of domestic remedies rule has been established. Given that, according to the information available, the latest decisions on this matter were issued in early 2000, the IACHR considers that this petition does not meet the requirement of the six-month submission period established in Article 46.1.b) of the American Convention.

23. With respect to the criminal proceedings, taking into consideration the lack of opposition from the State and the information in the file - most of which was provided by the State - the Commission observes that, at this point, the petition complies with the requirement of exhaustion of domestic remedies in accordance with Article 46.1.a) of the American Convention. Similarly, taking into consideration the dates of said resolutions, detailed above, and that this petition was received by the Commission on October 3, 2012, it is considered that this aspect complies with the aforementioned Article 46.1.b) of the American Convention.

VII. COLORABLE CLAIM

24. In the instant case, as detailed above, the petitioner claims that the domestic jurisdictional bodies were not impartial and that they did not adequately assess the body of evidence, leading to the conviction of the alleged victims. For its part, the State has provided documents that show that the national courts adequately assessed the evidence provided in the process and determined the criminal responsibility of the alleged victims, in accordance with the requirements established by each criminal type.

25. In this regard, the Commission reiterates that it is not competent to review the judgments handed down by national courts that act in the sphere of their competence and apply due process and judicial guarantees. Furthermore, it recalls that the mere discrepancy of the petitioners with the interpretation that the domestic courts have made of the pertinent legal norms is not enough to establish violations of the Convention. The interpretation of the law, the pertinent procedure and the evaluation of the evidence is, among others, the exercise of the function of the internal jurisdiction, which cannot be replaced by the IACHR.⁵

26. In keeping with these criteria, and in accordance with the information provided by the parties in the file of this petition, the Commission observes that the petitioner party has not presented concrete factual and legal elements that support that the aforementioned criminal decisions adopted against the alleged victims suffer from a defect or have violated any guarantee contemplated in the American Convention. Therefore, the Commission concludes that such allegation is inadmissible based on Article 47 (b) of the American Convention, since the facts presented do not reveal, not even *prima facie*, possible violations of the Convention.

VIII. DECISION

1. To find the instant petition inadmissible;
2. To notify the parties of this decision; 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 7th day of the month of September, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

⁵ IACHR, Report N 83/05 (Inadmissibility), Petition 664/00, Carlos Alberto López Urquía, Honduras, October 24, 2005, par. 72.