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REPORT No. 165/21
PETITION 1183-08
REPORT ON ADMISSIBILITY

DENNIS RODRÍGUEZ CADENA
COSTA RICA

Approved electronically by the Commission on August 3, 2021.

Cite as: IACHR, Report No. 165/21. Petition 1183-08. Admissibility. Dennis Rodríguez Cadena. Costa Rica. August 3, 2021.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Dennis Rodríguez Cadena
Alleged Victim:	Dennis Rodríguez Cadena
Respondent State:	Costa Rica
Rights invoked:	Petition does not specify international instruments ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	October 8, 2008
Additional information received during the review stage:	October 27 and November 10, 2010; February 10 and 23, May 23, July 5, 7, 12, 19, 21 and 28, August 31, October 31 and November 2, 23 and 30, 2011; February 2, 11 and 17, March 10, April 10, July 28, August 27, November 27 and December 12, 2012; March 7, 2018 ³
Notification of the petition:	July 1, 2019
State's first response:	October 31, 2019
Additional observations from the petitioner:	December 2, 2020 ⁴
Additional observations from the State:	July 9, 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 (instrument of ratification deposited on April 8, 1970)

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 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of domestic remedies:	Yes, the exception enshrined in Article 46.2(b) is applicable.
Timeliness of the petition:	Yes

V. SUMMARY OF ALLEGED FACTS

1. Dennis Rodríguez Cadena (hereinafter “the petitioner”) denounces that a private company and the Judiciary have acted in complicity to judicially auction off his property, for which purpose they

¹ The petition refers, without specifying articles or instruments, to the rights to private property, equal protection of the law, protection of honor and dignity, protection of the family and judicial protection against violations of fundamental rights.

² The observations of each party were duly transmitted to the other party.

³ Some of the additional information provided by the petitioner is confusing, without clarity about its relevance to the object of the petition; the State has stated that this circumstance compromises its right to defense. Consequently, and in order to guarantee procedural fairness, the Commission has not assessed, for the purposes of this report, any and all information whose relationship with the object of the petition is not clear.

⁴ In accordance with the previous footnote, this information has not been evaluated for the purposes of this report because its relevance in relation to the rights of the alleged victim or the object of the petition is not clear.

arbitrarily refused to acknowledge that the debt he had with the private company had been paid. He also claims that during the proceedings his rights to honor and dignity, and to the equal protection of the law, have been violated; and that he has not been afforded effective judicial protection.

2. The petitioner identifies as a blind person with legal recognition of this condition, and also highlights that he was president of the Hellen Keller Institute for the Rehabilitation and Training of the Blind and Visually Impaired. He explains that he was sued before a civil court by a private company with which he had a debt, which was later paid in full by the National Insurance Institute (hereinafter the "NIS") through a life and permanent disability policy. He claims that the civil court hearing the lawsuit against him has arbitrarily refused to recognize said payment, despite having provided the documents that prove it. He alleges complicity between the private company and the Judiciary in order to deprive him of a home that belongs to him and auction it off based on a non-existent debt. He states that during the proceeding his rights to equal protection of the law, honor and dignity, private property, and protection of the family have been violated. For these reasons, he filed multiple appeals before the Constitutional Chamber, which were all rejected.

3. The petitioner filed an action for the protection of constitutional rights to denounce that improper notifications were made in the civil proceeding, which allegedly left him totally defenseless; he alleges that the court in charge ignored his claims. This action was dismissed on October 27, 2006, with the court indicating that he should file the corresponding claim before the same court that was hearing the case. On October 28, 2008, he filed a claim demanding the nullity of the proceeding against him and denouncing that he had been improperly notified since, despite having knowledge of his visual impairment, the authorities did not read or explained to him the content of the notification and they did not make him sign in the presence of 2 witnesses as required by Law 7600 (Law of Equal Opportunities for Persons with Disabilities) for blind persons. In the same claim, he also complained that the plaintiff's lawyer "impersonated" as a notification agent in the presence of a policeman. This claim was rejected. In addition, on November 26, 2007, the alleged victim filed an appeal for an action for the protection of constitutional rights claiming that the facilities of the court in handling of the civil proceeding against him did not have the accessibility conditions required by his condition as a blind person. In the same action, he also claimed that he had not been provided with the necessary conditions to be able to review the relevant file of the proceeding against him. This action was dismissed on January 11, 2008 on the basis that the defendant court and the president of the Supreme Court of Justice had made sworn statements indicating that the necessary measures had been adopted for the court to comply with the requirements of Law 7600 and that "there is no credible evidence in the proceedings that refute the statements of the defendants."

4. For its part, the State considers that the petition should be inadmissible for failure to exhaust domestic remedies, since the petitioner resorted to the IACHR prematurely; and because he improperly requests for said body to act as a court of appeal or "fourth instance".

5. The State maintains that the applicable regulations allowed the petitioner to oppose the auction of his property through motions of payment, prescription and annulment, accompanied by the corresponding evidence; and that if the nullity of any resolution issued in the proceeding was alleged, that motion ought to be filed together with the applicable appeal against such resolution. It adds that on November 20, 2007, the petitioner filed a motion of full payment that was rejected because it was not accompanied by evidence; on November 23, 2007, the petitioner reiterated the same motion. The State states that, from that point on, the petitioner filed multiple motions and appeals that were rejected as inadmissible; for lack of evidence; extemporaneity; reiteration of motions that had already been rejected; and motions of nullity that were not accompanied by an appeal against the respective resolution. The State also maintains that the petitioner presented 10 actions for the protection of constitutional rights, which were rejected because they referred to matters that were being heard by the ordinary courts, and therefore were not within the jurisdiction of the constitutional justice. Additionally, he filed a criminal complaint for malfeasance against the civil judge, which was dismissed; and another for fraud against the judge, the accountant who certified the debt, the plaintiff's lawyer and another employee of the latter, which concluded in definitive dismissal.

6. According to the State, the petitioner has not complied with the requirement of exhaustion of domestic remedies, since he filed various inappropriate actions, but not those necessary to duly exhaust the ordinary civil procedure, which were the appeals against the decisions that rejected each of his motions or a new ordinary proceeding; nor the criminal procedure which required appeals against the decisions that dismissed one of his complaints and decreed dismissal of the defendants in the other. Likewise, it considers that the petition was presented prematurely, before the final decision of the domestic jurisdiction. As evidence of this, the State points out that the petitioner filed a motion within the civil proceeding one day after submitting his petition to the IACHR.

7. The State also argues that the petition improperly requests that the Commission act as a court of appeal to review what was decided by the domestic courts regarding matters of ordinary legality that do not concern fundamental rights. For these reasons, it alleges that the Commission would violate its subsidiary nature if it agreed to hear the merits of the petition. The State also reports that on January 29, 2010, the private company that sued the alleged victim acceded to a request presented by the latter for the property in dispute to be transferred to his sisters and a mortgage loan to be granted in their favor.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The alleged victim has reported on multiple legal actions filed in relation to the subject of the petition. In turn, the State has indicated that the alleged victim did not comply with the requirement of exhaustion of domestic remedies because he did not appeal the decisions that rejected motions that he filed in the civil jurisdiction and did not appeal the decisions that ended the proceedings related to his criminal complaints.

9. For the purposes of determining the appropriate procedural avenue that must be exhausted in domestic law, the Commission must preliminarily establish the object of the petition submitted to it⁵. In addition, the Commission has established that the requirement of exhaustion of domestic remedies does not mean that the alleged victims necessarily have the obligation to exhaust all available remedies. Consequently, if the alleged victim raised the issue through one of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international rule is fulfilled⁶.

10. In the instant case, the object of the petition refers to alleged violations of the alleged victim's rights that occurred during a civil proceeding that involved him. Therefore, the relevant remedies for the analysis of the admissibility of the present petition are those provided for the alleged victim to challenge the decisions that he considered issued in violation of his rights and for him to seek restoration of the rights that in his view had been infringed. The criminal remedies, although they could have served these purposes, had a different primary goal, the determination of responsibilities and possible punishment of natural persons. For these reasons, the Commission considers that, given the object of the present petition, the criminal remedies did not constitute an adequate procedural avenue whose exhaustion could be required as a condition for its admissibility.

11. The file contains information concerning the fact that the alleged victim filed appeals before the ordinary civil authorities and before the constitutional courts, claiming for alleged violations of his rights committed during the civil proceedings. According to what was stated by the State and not disputed by the alleged victim, the civil jurisdiction had not been fully exhausted since no appeals were filed against the rejections of multiple motions that were filed by the alleged victim. Such appeals of the motions were the appropriate remedies that could have repaired the grievances raised in the petition. However, the Commission notes that the claims made by the alleged victim before the civil and constitutional courts included complaints

⁵ IACHR, Report No. 56/08, Petition 11.602. Admissibility. Workers dismissed from Petroleos del Perú (Petroperú) Northwest – Talara Area. Peru. July 24, 2008, para. 58.

⁶ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

that the necessary measures had not been adopted so that his visual impairment did not prevent him from participating in the proceeding under conditions of equality. For these reasons, the Commission must examine whether the exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2 (b) is applicable to this petition.

12. The provisions of the American Convention that establish exceptions to the requirement of exhaustion of domestic remedies “owing to their nature and purpose, are norms with an autonomous content vis-à-vis the substantive norms of the Convention. Therefore, the determination of whether the exceptions to the rule of prior exhaustion of domestic remedies is applicable to the case in question must be made before and separately from the analysis of the merits of the matter, because the standard of assessment differs from the one used to determine the presumed violation of Articles 8 and 25 of the Convention”⁷. In the instant case, for purposes of admissibility, the Commission considers that the alleged lack of access to justice under conditions of equality for the alleged victim justifies applying to this petition the exception to the requirement of exhaustion of domestic remedies provided for in Article 46.2 (b) of the American Convention. Given that the petition was filed while the denounced situation was taking place, the Commission also concludes that the petition was filed within a reasonable period of time under the terms of Article 32.2 of its Rules of Procedure. These decisions do not prejudice the merits of the petition or the veracity of the allegations.

VII. COLORABLE CLAIM

13. This petition includes allegations that the alleged victim has not been guaranteed the necessary conditions so that his visual impairment does not prevent him from participating on equal terms in civil proceedings.

14. The Inter-American Court has stated that “persons with disabilities must enjoy effective access to justice and benefit from a due legal process on an equal footing with those who do not face such disadvantages. To accomplish its objectives, the judicial process must recognize and correct any real factors of inequality facing those who are brought before the courts. The presence of conditions of inequality requires compensatory measures to help reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of their own interests”⁸.

15. In view of these considerations and after examining the elements of fact and law submitted by the parties, the Commission considers that the allegations of the petitioner are not manifestly groundless and require a study of the merits, since the alleged facts, if corroborated as true, could characterize violations of articles 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1. (obligation to respect rights) and 2 (domestic legal effects).

VIII. DECISION

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

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include 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 3rd day of the month of August, 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, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.

⁷ CIDH, Report No. 71/17, Petition 271-07. Admissibility. Jorge Luis de la Rosa Mejía and others. Colombia. June 29, 2017, para. 51.

⁸ I/A Court H.R., Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 268.