

OEA/Ser.L/V/II
Doc. 72
21 May 2024
Original: Spanish

REPORT No. 69/24
PETITION 1964-13
REPORT ON ADMISSIBILITY

CÉSAR ALFONSO FRAGA NARVÁEZ
COLOMBIA

Approved electronically by the Commission on May 21, 2024.

Cite as: IACHR, Report No. 69/24. Petition 1964-13. Admissibility.
César Alfonso Fraga Narváez. Colombia. May 21, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Juan Agustin Garzon Coral
Alleged victim::	César Alfonso Fraga Narváez
Respondent State:	Colombia ¹
Rights invoked:	Articles 5 (Right to Humane Treatment), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	November 28, 2013
Notification of the petition to the State:	May 19, 2016
State's first response:	April 9, 2018
Additional observations from the petitioner:	September 22, 2018
Additional observations from the State:	April 30, 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 (deposit of instrument of ratification submitted 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.
<i>Rights</i> declared admissible:	Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 24 (Right to Equal Protection), 25 (Right to Judicial Protection), and 26 (Economic, Social, and Cultural Rights) of the American Convention, in conjunction with Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

V. PARTIES' POSITIONS

Position of the petitioner

1. The petitioner denounces the failure to provide compensation to Mr. César Alfonso Fraga

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 debate or in the decision on the present case.

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

³ The observations submitted by each party were duly transmitted to the opposing party. On November 12, 2021, the petitioner expressed its interest in maintaining the case before the IACHR.

Narváez for the injuries he suffered while working as a laborer in the construction of a police station. The damage resulted from the accidental activation of an explosive device located at the construction site, eventually leading to the alleged victim's disability.

2. According to the petitioner, on September 22, 2005, Mr. César Alfonso Fraga Narváez was performing his tasks as a laborer in the construction of the Police Station of the Chiles Corregimiento of the Municipality of Cumbal when an artifact exploded at the time he was handling a shovel over a pile of sand in an internal area of the police station, and this caused him serious injuries. The explosion cut off his eye, so he immediately fainted. In the long term, this caused a partial loss of his capacity for work.

3. Mr. Fraga Narváez and his family group filed a lawsuit against the Nation – Ministry of Defense – Colombia's National Police, seeking compensation for damages corresponding to consequential damages, loss of earnings, moral damages, and damage to life. Based on the complaint, the State's responsibility results from the fact that the explosive device was presumably owned by the National Police, as it was located within its facilities. According to the petitioner, both documentary and testimonial evidence collected in the file of the complaint have conclusively demonstrated that the device exploded at the very moment Mr. Fraga Narváez was handling a shovel over a pile of sand located in the facilities of the Police Station.

4. In its reply to the demand, the Nation – Ministry of Defense – Colombia's National Police argued that the presence of the explosive device that detonated inside its facilities was due to an armed confrontation that had taken place the day before between the police and a guerrilla group. Therefore, the State is not responsible for the damages suffered by the alleged victim.

5. On August 23, 2010, the Fifth Administrative Court of Pasto declared the administrative and non-contractual responsibility of Colombia's National Police for the damages claimed by the alleged victim. However, on 26 October 2012, the Administrative Court of Nariño reversed the judgment on the grounds that the ownership of the explosive device in the head of the National Police was not proven, and it was therefore not possible to plead failure in conduct or performance of duties. The Court also found the theory of special damages to be inapplicable. In the context of the petitioner's writings, the "special damages" would have occurred because the incident occurred in the facilities of a police station and is related to the activities of illegal armed groups. Thus, the damages suffered by Mr. Fraga Narváez would not be a normal burden that citizens should expect to bear in their daily lives, and therefore, the State should be responsible for compensating the victim, even without the need to prove ownership of the explosive device by the State.

6. Having been notified of the second-instance judgement handed down by the Administrative Court of Nariño, the alleged victim brought an action for protection of constitutional rights in the Council of State of Colombia arguing that the Administrative Court of Nariño violated the rights to equal protection and judicial protection by failing to observe the case law treating similar claims. In this regard, he mentions cases where the State was held responsible for damages caused under attacks committed by illegal armed groups and terrorist attacks, as well as cases of traffic accidents, dangerous activities and failure in conduct or performance of duties where the judicial authority, based on the principle of *iura novit curia*, determined the regime of State responsibility in the light of the proven facts, regardless of the theory of State liability presented on the claim.

7. According to the petitioner, by demanding proof of the ownership of the explosive device, the domestic case law that has recognized the State liability for this type of damages suffered by the civilian population as a result of the armed conflict is ignored. When the damages occur within an institution representing the State on account of an explosive device owned by the State, or in such proximity as to infer that the explosive device belonging to a third party targeted the agents of this institution. In both cases the responsibility is objective and derives either from a dangerous activity carried out by the State, or from the breakdown of the balance in the public burdens to be borne by the Administration.

8. The petitioner argues that acts similar to those suffered by Mr. César Alfonso Fraga Narváez have resulted in state responsibility for the State of Colombia, as shown by case-law. In this regard, he cites, e.g., Judgment of 19 August 2011, Council of State of Colombia, filing number 54001-23-31-000-1994- 08507-

01(20028). Section Three, C.P. Jaime Orlando Santofimio Gamboa. In this precedent, the Council of State of Colombia condemned the State for the damage caused to a mason working for the army following the explosion of an artifact; also, for having allowed civilians to enter without observing the most basic safety measures, failing to comply with due diligence as expected in order to avoid such kind of accidents. The petitioner argues that in the aforementioned case the State was found responsible for failure in conduct or performance of duties and non-compliance with elementary safety measures. However, the Council of State itself stated that, although the State may be condemned under the strict liability regime, it chose to do it under the absolute liability regime in order to assign blame to the Administration for acts of misconduct that must be addressed.

9. On February 28, 2013, the Fourth Section of the Council of State declared the action for protection of constitutional rights inadmissible, arguing that the Administrative Court of Nariño took into consideration the case-law relevant to the case. In light of the above, the alleged victim challenged the decision by way of appeal. On September 5, 2013, the judgment was upheld by the Fifth Section of the Council of State of Colombia. This decision, which was notified to the alleged victim and his relatives on 19 November 2013, essentially considered that the arguments of the action for protection of constitutional rights reflect a non-conformity or mere dissatisfaction with the challenged judgment; and that the Administrative Court of Nariño acted under the rulings of 25 March 2001 and 31 August 2006 by the Third Section of the Council of State whereby unlawful damage caused by weapons, munitions of war, explosives or other items can only be attributable to the State if these are proven to be part of the authorized equipment.

10. With respect to this decision, the petitioner alleges that it is *ipso facto* accepted that the explosive device is the property of an illegal armed group. However, the Council of State of Colombia should not require proof of ownership of the explosive device for special damages to be awarded. Further, he affirms that the Council disregarded or failed to assess the evidence indicating that the explosive device went off when accidentally hit by the alleged victim while handling a shovel on a pile of sand in the facilities of a police station, in addition to the victim's own claim, which also has probative value.

11. The petitioner also alleges that the State failed to submit any report, collect material evidence, or physical evidence to initiate investigations aimed to determine the ownership of the explosive device and the possible individual responsibilities or liabilities for harm to the physical integrity of César Alfonso Fraga Narváez. He also finds it paradoxical that the judicial authorities impose such a burden of proof upon the alleged victim. For the petitioner, by denying compensation to the alleged victim and his family in circumstances similar to others in which the unlawful damage suffered by Mr. Fraga Narváez has been compensated, the State violated his rights to equal protection and to effective judicial protection.

Position of the State

12. According to the State, the petition is inadmissible because, in its opinion, the fourth-instance doctrine would be applied, since it lays out the facts that have already been heard by the national courts, through procedures in which the petitioner's claims were reviewed, without any violation of due process or other conventional guarantees.

13. The State alleges that the decision handed down by the Administrative Court of Nariño did not disregard the precedents in the matter having concluded that the case law on indictments related to special damages and exceptional risk did not apply to this specific case since there was no sufficient evidence allowing to conclude that the explosive was for official use. Thus, the indictment should have read "failure in conduct or performance of duties". In the specific case, however, the Court held that the injuries suffered by the alleged victim were not caused by construction or negligence but were the result of the explosion of a grenade whose origin has not been proven to be attributed to the State. The Court took into account the evidence of the attack on the police station the day before the events that caused injuries to Mr. Fraga Narváez; however, it found no evidence that the explosive belonged to the Colombian National Police, unless it had been abandoned by State agents.

14. The State reports that the alleged victim and her family filed an action for protection of constitutional rights against the decision of the Administrative Court of Nariño on the grounds of an alleged violation of their rights to equal protection and access to the Administration of Justice, pleading the same facts now being brought before the IACHR. The action for protection of constitutional rights was examined by the Fourth Section of the Council of State of Colombia, which considered that the applicable case-law in the matter had not been ignored; and that the Administrative Court of Nariño referred to the unified judicial precedent of the Council of State of Colombia in relation to the imputation of “failure in conduct or performance of duties”, in addition to studying whether special damage was constituted. Therefore, it concluded that the Court acted correctly, on a substantiated basis, and therefore dismissed the request for *amparo*. The plaintiffs appealed such decision, which was heard by the Fifth Section of the Council of State of Colombia. In this regard, the Section considered that the plaintiffs’ arguments only reflect their non-conformity or mere dissatisfaction with the contested decision, which is unfavorable to their interests.

15. The State considers that the alleged victim's claims were denied by competent judges of the Section based on impartial and reasoned decisions sustained by the evidence and jurisprudence in force. It also notes that the alleged victim had the opportunity to present his arguments and to file his appeals. For this reason, it considers that the decision of the Administrative Court of Nariño enjoys legal and compliance presumption.

16. Furthermore, it argues that the domestic proceedings respected the assurances of the alleged victim and his family to present their evidence and arguments, and that the internal judges, after finding no evidence to conclude that the explosive device belonged to the National Police, they concluded that there was a rupture in the causal link between the cause of the damage and the conduct of the Administration. Thus, according to the State, it is clear that the petitioner’s claim is aimed at the organs of the Inter-American System to re-examine the evidence and the rules governing the specific case, without implying that the judicial decisions neglected Inter-American standards.

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

17. The Inter-American Commission observes that, although the petitioner mentions that the State conducted no criminal investigation into the possible authorship of the harm caused to Mr. Fraga Narváez’s physical integrity, the main purpose of the petition relates to the failure of the State to compensate for the damages suffered by the alleged victim following the accidental explosion of a grenade while working as a laborer at a police station. The violations to the rights of humane treatment, judicial protection and equal protection before the law alleged by the petitioner are connected with this claim in the sense that the State should be held responsible for the damage to his integrity and comply with its duty to compensate.

18. According to the information provided by the parties, in summary: (i) On 21 September 2005, police officers confronted members of an illegal armed group at the same location where Mr. Fraga Narváez was working; (ii) On 22 September 2005, while performing his tasks as a laborer at the police station, Mr. Fraga Narváez was victim of the explosion of a grenade; (iii) The alleged victim and his family filed a claim for compensation against the Nation - Ministry of Defense - Colombian National Police, for which a decision was handed down on 23 August 2010 at first instance; the Fifth Administrative Court of Pasto declared the administrative and non-contractual responsibility of the National Police for the damages alleged; (iv) On 26 October 2012, the Administrative Court of Nariño reversed the judgment on the grounds that the ownership of the explosive device in the head of the National Police had not been proven; (v) On 28 February 2013, the alleged victim challenged the decision by the Fourth Section of the Council of State by means of an action for protection of constitutional rights later deemed inadmissible; (vi) the alleged victim appealed against the decision; however, the Fifth Section of the Council of State found the appeal inadmissible and upheld the judgment appealed on 5 September 2013. This decision was notified on 19 November 2013.

19. Considering that the subject matter of the petition could be known internally during the aforementioned domestic proceedings and taking into account the procedural frameworks set forth above, the Inter-American Commission concludes that the domestic remedies were duly exhausted by the petitioner.

Hence, his petition before the IACHR meets the requirement of Article 46(1)(a) of the American Convention. Given that the final decision was notified on November 19, 2013, and the petition was filed with the IACHR on November 28, 2013, the petition also meets the requirement of the timeliness established in Article 46.1.b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

20. The State asserts that the petition is inadmissible insofar as the fourth international instance doctrine is established, since the facts presented were duly considered by the domestic judicial bodies without violating due process or treaty guarantees. It submits that the Administrative Court of Nariño acted in accordance with existing case-law, dismissing an indictment to the State due to insufficient evidence that the explosive was intended for official use. It further submits that the action for protection of constitutional rights filed by the alleged victim was dismissed by the Council of State of Colombia as it only reflected dissatisfaction with the contested decision. It insists that the domestic procedures respected all guarantees and that the judicial decisions did not contravene Inter-American standards, concluding that the petitioner's claim seeks a review of evidence and rules already properly examined at the domestic level.

21. For the purposes of admissibility, the Commission must decide whether the facts alleged may characterize a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly unfounded" or "manifestly out of order," according to Article 47(c) of the Convention. The criteria for evaluating these requirements differs from that used to pronounce on the merits of a petition. The IACHR recalls that, at this procedural stage, it must make a *prima facie* evaluation to determine whether the petition establishes the grounds of a possible or potential violation of a right protected by the Convention, but not establish the existence of a violation of rights. This determination amounts to a primary analysis and implies no prejudgment of the merits of the case.

22. In the present case, the Commission notes that the petition mainly addresses the failure to redress damages suffered by César Alfonso Fraga Narváez as a victim of the explosion of a grenade while working as a laborer at a police station. The petitioner alleges that the decision that dismissed the civil action for reparation ignored domestic precedents in similar cases.

23. The Commission clarifies that a violation of the human rights protected by the Convention may engage the international responsibility of a State Party if the wrongful act has involved State agents or their support or acquiescence; likewise, if this violation resulted from the State's non-compliance of its obligation to reasonably prevent human rights violations and to provide adequate reparation to the victim or his or her family members for the harm caused.⁴ This obligation is necessary for the implementation of the rights to life and personal integrity and includes taking measures to first identify and then remove or discard explosive materials.⁵ While it is not obliged to perform infeasible actions in order to prevent any and all risks to personal integrity and life in the territory under its jurisdiction, the State was expected to fulfill its duty of prevention, such as in this *prima facie* case, considering that the grenade was in a police station. Therefore, the examination and analysis of the harm to the integrity of persons suffered by the alleged victim require a merits study by the IACHR.

24. In addition, the Inter-American Commission takes note of the domestic precedents mentioned by the petitioner in which the State was held responsible, especially the one concerning a bricklayer that carried out work for the army and was victim of the explosion of an artifact. This decision was ruled at the domestic level and resulted in the condemnation of the State for allowing civilians to enter without observing the most basic safety measures. Given the similarity of these circumstances to those alleged by the petitioner, seemingly without being treated equally by the domestic courts, the Commission considers that it is incumbent upon it to exercise its complementary competence in this matter and to analyze at the merits stage whether the domestic legal system offered Mr. Fraga Narváez the appropriate ways to seek due reparation and guarantee the Right

⁴ See, e.g., IACHR. REPORT No. 25/18 PETITION 12.428. Admissibility and Merits. Employees of the Fire Factory of Santo Antônio de Jesus and their families. March 02, 2018, para. 95.

⁵ See, e.g., IACHR. Precautionary Measure No. 395- 18. Authorities and members of the Siona (ZioBain) indigenous people's reservations Gonzaya (Buenavista) and Po Piyuya (Santa Cruz de Piñuña Blanco), Colombia. July 14, 2018.

to effective Judicial Protection; and if there is a violation of the Right to Equal Protection and non-discrimination in the face of similar cases decided contrary to what was decided on the claim of the alleged victim.⁶

25. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the petition is not manifestly unfounded and require a merits study, since the facts alleged, if proven, could characterize violations primarily of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 24 (Right to Equal Protection), 25 (Right to Judicial Protection) and 26 (Economic, Social and Cultural rights) of the American Convention, in conjunction with its Article 1.1, to the detriment of César Alfonso Fraga Narváez and his family members, in the terms of this report.

26. Finally, with respect to the State's fourth instance allegation, the Commission underlines the complementary nature of the Inter-American System and highlights that, as indicated by the Inter-American Court, a "fourth instance" exception would require that the Court "review the decision of the domestic court, based on its incorrect assessment of the evidence, the facts or domestic law without, in turn, alleging that such decision was a violation of international treaties[...]"⁷ In the instant case, the Commission considers that, as indicated by the Inter-American Court, "it is up to [the Commission] to ascertain whether or not the State, in the steps effectively taken at domestic level, violated its international obligations stemming from those Inter-American instruments that grant authority to [the Commission]"⁸ It is also responsible for determining "whether or not the actions of judicial organs constitute a violation of the State's international obligations, [which] may mean that [the Commission] must examine the respective domestic proceedings to establish their compatibility with the American Convention."⁹ The analysis of whether the State committed violations of the American Convention is a matter that should be decided at the merits stage of the present case.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 24, 25, and 26 of the American Convention in conjunction with Article 1.1 thereof.

2. To notify the parties of this decision; to continue with the analysis of the merits of the case; 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 21st day of the month of May, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁶ Similarly: IACHR, Report No. 24/ 22. PETITION P-1457-12 Admissibility. Mirta Araceli Teresita Pravisani. Argentina. 9 March 2022 para. 13.

⁷ Inter-American Court of Human Rights. Case Cabrera Garcia and Montiel Flores vs. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 18.

⁸ Inter-American Court of Human Rights. Case Cabrera Garcia and Montiel Flores vs. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.

⁹ Inter-American Court of Human Rights. Case Palma Mendoza and others vs. Ecuador. Preliminary Objections and Merits. Judgment of September 03, 2012. Series C No. 247, para. 18; Inter-American Court of Human Rights. Case Rosadio Villavicencio vs. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 14, 2019. C-Series No. 388. para. 24; Inter-American Court of Human Rights. Case Cabrera Garcia and Montiel Flores vs. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.