IACHR Inter-American Commission on Human Rights

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REPORT No. 81/24
PETITION 2152-16

REPORT ON INADMISSIBILITY

E.C.S.D.
COLOMBIA

Approved electronically by the Commission on June 9, 2024.

Cite as: IACHR Report No. 81/24. Petition 2152-16. Inadmissibility. E.C.S.D. Colombia. June 9, 2024.

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I. INFORMATION ABOUT THE PETITION

Petitioner:	E.C.S.D[1]
Alleged victims:	E.C.S.D.
Respondent State:	Colombia[2]
Rights invoked:	No articles of the American Convention on Human Rights are specified,[3] nor is any other treaty over which the Inter-American Commission has competence cited. However, the petitioner alleges violations of the rights "of women and to life, due process, and justice."

II. PROCEEDINGS BEFORE THE IACHR[4]

Filing of the petition:	October 27, 2016
Additional information received at the review stage:	September 17, 2020
Notification of the petition to the State:	September 1, 2021
State's first response:	December 23, 2021
Additional comments from the petitioner:	February 7, 2022
Notification of the possible archiving of the petition:	September 16, 2020
Petitioner's response to the notification regarding the possible archiving of the petition:	September 17, 2020

III. COMPETENCE

Competence *ratione personae*:	Yes
Competence *ratione loci*:	Yes
Competence *ratione temporis*:	Yes
Competence *ratione materiae*:	Yes, American Convention (ratification instrument deposited 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 *res judicata*:	No
Rights declared admissible:	None
Exhaustion of domestic remedies or admissibility of an objection:	Yes, pursuant to the terms of Section VI
Timeliness of the petition:	Partially, pursuant to the terms of Section VI

[1] Pursuant to the request made in the initial brief of the petition, the name of the petitioner is kept confidential, in accordance with Article 28(2) of the IACHR Rules of Procedure. In addition, the petitioner, as the alleged victim, has decided to keep her name confidential, in view of the nature of the alleged facts. In view of the public nature of this report, only the alleged victim's initials will be used.

[2] Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the deliberations nor in the decision in this matter, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

[3] Hereinafter "the American Convention" or "the Convention."

[4] The observations presented by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

The petitioner

1. The petitioner alleges Colombia is internationally responsible specifically for the failure to compensate her for a series of acts of negligence and medical malpractice she experienced during childbirth, which caused her chronic health problems. She also alleges a lack of access to the judicial rulings issued in the framework of the adversarial administrative process launched regarding these facts.

2. The petitioner states that on March 25, 1997, she was treated at the Julio Méndez Barreneche Central Hospital, located in Santa Marta, department of Magdalena, for a spontaneous delivery. She states that the attending physicians performed an episiotomy[5] and that, after this procedure, they allegedly refused to suture her immediately. She alleges that when she was sutured, the doctors left medical materials inside her and that the episiotomy was performed negligently. This caused permanent injury, leading to constant pain in the mid part of her body and in her legs, which prevents her from walking at times, forcing her to use a wheelchair.

Criminal complaint and complaint to the Medical Ethics Tribunal

3. The information contained in the file shows that on April 29, 1997, the petitioner filed a complaint with the Twelfth Prosecutor's Office of Santa Marta for the crime of personal injury. On June 10, 1997, the prosecutor's office launched a preliminary investigation into the treating physicians. However, on April 20, 1999, the prosecutor's office decided not to launch a full investigation because they could not find evidence that would have made it possible to establish that the fistula suffered by the petitioner was due to recklessness or negligence on the part of the doctors. Additionally, on April 29, 1997, the petitioner filed a complaint before the Medical Ethics Tribunal, which acquitted the accused physician in a decision issued on August 11, 1999.

Contentious-administrative proceeding

4. On April 27, 1998, the petitioner filed suit for direct reparations before the Administrative Court of the Department of Magdalena, alleging that the Central Hospital of Santa Marta—which is part of the Colombian public health system—was morally and materially responsible for the injuries caused by the doctors who treated her during her delivery. In a decision issued on February 15, 2005, the Administrative Court of Magdalena denied the claim, finding that the causal link between the health complications suffered by the petitioner and the alleged actions of the doctors who treated her during childbirth was not proven.

5. The petitioner appealed the ruling before the Council of State (case file 31614), which, in a judgment issued May 29, 2014, by its Adversarial Administrative Chamber, Third Section, Subsection B, upheld the ruling as follows:

> [...] In the instant case, the plaintiff failed to prove the deficiency in the service attributed to the defendant. Indeed, there is no evidence to show that the delivery was not properly attended or that the mid-lateral episiotomy that was performed was not the medical procedure indicated in this case. On the contrary, the medical record indicates that the patient entered the health care center in labor, that she was quickly attended to, and that the procedure was carried out without complications, to the point that the baby, despite being born premature, lived. At the same time, the audit report suggests that the episiotomy—which the Dictionary of the Royal Academy of the Spanish Language defines as a surgical incision made in the vaginal area—was appropriate because it is a routine medical procedure "to facilitate the fetus expulsion period at the time of delivery."
>
> There is also no evidence that Ms. Estella Serrano Díaz was left with foreign elements such as gauze, "strands," or remains of placenta inside her vagina. The medical records show that following the

[5] Surgical incision in the vulva performed in certain deliveries to facilitate the exit of the fetus and avoid tearing to the perineum.

delivery, the patient underwent a procedure to clean the uterine cavity and that the placenta was removed manually. The claim is therefore supported only by the plaintiff's own statement [...].

Other considerations

6. Additionally, the petitioner states that on September 1, 2014, she requested copies of the first and second instance judgments in her suit for direct reparations from the Administrative Court of the Department of Magdalena. She alleges, however, that a year and five months after filing this request, she had not received a response. Consequently, on February 16, 2016, she filed a writ of protection before the Council of State against the Administrative Court of the Department of Magdalena for having denied her right to petition.

7. However, in a judgment dated April 14, 2016, the Adversarial Administrative Chamber, First Section, of the Council of State denied the writ of protection, finding that in an order dated September 18, 2014, the Administrative Court of Magdalena issued the copies of the judgments requested by the petitioner, and that she was notified of this electronically on September 19, 2014. It concluded that it was the petitioner's fault that the requested copies were not delivered, as she had failed to go to the court and do the paperwork necessary to obtain the documentation. Lastly, according to the information contained in the file, it appears that on July 28, 2016, the Constitutional Court declined to review the writ of protection.

Main arguments of the petitioner

8. In sum, the petitioner alleges the violation of her human rights due to medical malpractice and negligence during childbirth. She alleges that the injuries suffered caused irreversible damage to her health to the extent that her legs became partially immobile. In this regard, she also alleges a failure to provide her with administrative reparations. Additionally, she alleges that the Administrative Court of the Department of Magdalena denied her request for copies of the case file on the suit for direct reparations she brought, thus violating her right to petition that court.

Stance of the Colombian State

9. Colombia, for its part, largely confirms the facts described by the petitioner; however, it asks the IACHR to declare the petition inadmissible because, in its opinion, the instant case amounts to invoking what it calls a "fourth international instance"; and because the petition was filed out of time.

10. Regarding the alleged invocation of a fourth instance, Colombia indicates that in the framework of the adversarial administrative process brought before the Administrative Court of the department of Magdalena; the process brought before the Medical Ethics Tribunal; the writ of protection filed before the Council of State; and the criminal investigation conducted by the Office of the Attorney General of the Nation, the authorities reviewed whether the doctors were liable for alleged negligence or recklessness when attending to the petitioner's childbirth. However, all the instances concluded that there was no evidence that the injuries suffered were the result of medical malpractice. It also argues that the petitioner has not presented evidence to establish that these proceedings were arbitrary or that they violated her rights under the Convention.

11. Likewise, Colombia argues that the petition was filed out of time, since the last resolution in the domestic sphere was the appeal judgment issued on May 29, 2014, by the Adversarial Administrative Chamber, Third Section, Subsection B, of the Council of State, which was notified on June 16 of that same month and year. Thus, since the petition was filed before the IACHR on October 27, 2016, it argues that the petitioner waited until more than two years after the remedies under domestic jurisdiction were exhausted to bring this claim to the inter-American system. Therefore, the time limit requirement established in Article 46(1)(b) of the American Convention has not been met.

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

12. To analyze the exhaustion of domestic remedies in this case, the IACHR recalls that, according to its settled and standard practice, in order to identify the suitable remedies that should have been exhausted by a petitioner before resorting to the Inter-American System, the first methodological step in the analysis consists of separating the different claims made in the petition in order to proceed to examine them individually.[6] In the this case, the Commission notes that the petitioner has made two claims: (i) a failure to provide administrative reparations for the alleged negligence and medical malpractice suffered by the petitioner during childbirth; and (ii) an alleged failure of the Administrative Court of the Department of Magdalena to issue her a copy of the first and second instance rulings handed down in the framework of the suit for direct reparations.

13. With regard to claim (i), the IACHR notes that the petitioner filed suit against the public hospital and the doctors who treated her during childbirth, seeking direct reparations; however, in a decision issued on February 15, 2005, the Administrative Court of the department of Magdalena denied the claim, finding that the causal link between the health complications suffered by the petitioner and the alleged actions of the doctors who treated her during childbirth was not proven. In response, she filed an appeal, in response to which on May 29, 2014, the Adversarial Administrative Chamber, Third Section, Subsection B, of the Council of State issued a ruling upholding the appealed decision. The IACHR concludes with respect to this claim that the domestic remedies were exhausted when the judgment in the suit for direct reparations was upheld, such that in this regard, the requirements of Article 46(1)(a) of the Convention have been met.

14. Now, with respect to the filing deadline, the Colombian State has alleged that the petition was filed out of time. In this regard, based on the information found in the case file, the Commission notes that the petitioner was notified of the appeal decision on June 16, 2014; and that the petition was not filed until October 27, 2016. Therefore, the Commission concludes that this part of the petition is inadmissible for having been filed after the six-month period provided for in Article 46(1)(b) of the American Convention.

15. Additionally, with respect to point (ii), regarding the alleged failure to respond to the petitioner's request for copies of the decisions issued in the framework of the contentious-administrative process, it is noted that, in response to the court's alleged omission, the petitioner filed a writ of protection, which the Adversarial Administrative Chamber, First Section of the Council of State, denied in a judgment of April 14, 2016. Then subsequently, on July 28, 2016, the Constitutional Court declined to review the writ of protection. The Commission therefore concludes that the final decision of the domestic jurisdiction was the one declining to select for review the writ of protection, as sought by the petitioner following the judgment denying the writ of protection. Therefore, the Commission concludes that this part of the petition meets the requirements of Article 46(1)(a) of the American Convention.

16. Regarding the deadline for filing the petition, which has not been disputed by the State, the Commission notes that the last judicial decision was issued on July 28, 2016. Thus, taking into account that the petition was received by the Executive Secretariat of the IACHR on October 27, 2016, the aspect of the petition meets the requirement established in Article 46(1)(b) of the American Convention.

[6] For illustrative purposes, the following IACHR admissibility reports may be consulted: Report 117/19. Petition 833-11. Admissibility. Workers released from Boa-Fé Caru Farm. Brazil. June 7, 2019, paras. 11, 12; Report 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, para. 19 et seq; Report 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26, 27; Report 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15-16; Report 122/17. Petition 156-08. Admissibility. Williams Mariano París Tapia. Peru. September 7, 2017, paras. 12 et seq; Report 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 13 et seq; Report 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and relatives. Colombia. June 7, 2019, paras. 20 and following.

VII. ANALYSIS OF COLORABLE CLAIM

17. The admissible parts of the petition—as per Section VI of this report—include allegations regarding the failure to issue copies of the judicial decisions issued in the contentious-administrative proceeding brought by the petitioner. For its part, Colombia argues that the petitioner intends to use the IACHR as an international court of appeal to review the decisions adopted by domestic courts, despite the fact that its decisions were adopted in observance of the judicial guarantees enshrined in the American Convention.

18. The Commission reiterates that for the purposes of determining the admissibility of a petition, it must decide whether the facts alleged tend to establish a violation of rights, as provided for in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c). The criterion for the evaluation of these requirements differs from those used to issue an opinion on the merits of a case. In this regard, the Commission reiterates that it is not competent to review judgments handed down by national courts acting within the sphere of their competence, in strict observance of due process and judicial guarantees.

19. In this regard, the Commission recalls that just because petitioners disagree with an interpretation that the domestic courts have made of the relevant legal norms is not sufficient to establish violations of the Convention. The interpretation of the law, the relevant procedure, and the weighing of evidence are, among other things, the exercise of a function that falls to domestic jurisdictions and they cannot be performed by the IACHR.[7] In this sense, the Commission's role is to ensure compliance with the obligations assumed by the States parties to the American Convention, but it cannot act as a court of appeal to examine alleged errors of law or fact that may have been committed by national courts acting within the limits of their competence.[8]

20. In line with these criteria, and in accordance with the information provided by the parties in the instant petition, the Commission observes that the petitioner has not presented specific elements of fact or law that would make it possible to establish that the judgment handed down by the Adversarial Administrative Chamber, First Section of the Council of State, in resolving the writ of protection filed over the alleged failure to grant copies of the rulings issued in the adversarial administrative jurisdiction, was vitiated in any way or violated any of the guarantees enshrined in the American Convention. In this regard, the IACHR notes that the Administrative Court of Magdalena ordered the issuance of the copies requested by the petitioner in an order dated September 18, 2014; however, the petitioner did not take the corresponding steps to obtain these copies, which is why the writ of protection was denied.

21. The Commission therefore concludes that the allegation is inadmissible based on Article 47(b) of the American Convention, since the facts presented do not even *prima facie* establish possible violations of the American Convention.

VIII. DECISION

1. To declare this petition inadmissible.

2. To notify the parties of this decision; 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 9th day of the month of June, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

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[7] IACHR, Report No. 83/05 (Inadmissibility), Petition 644/00, Carlos Alberto López Urquía, Honduras, October 24, 2005, para. 72.

[8] IACHR, Report No. 70/08, (Admissibility), Petition 12,242, Pediatric Clinic of the Lake Region, Brazil, October 16, 2008, para. 47.