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**REPORT No. 123/24**  
**PETITION 340-14**  
REPORT ON INADMISSIBILITY

ALFONSO QUIÑONES CARVAJAL  
COLOMBIA

Approved electronically by the Commission on August 29, 2024.

**Cite as:** IACHR, Report No. 123/24, Petition 340-14. Inadmissibility. Alfonso Quiñones Carvajal, Colombia. August 29, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Alfonso Quiñones Carvajal
<b>Alleged victims:</b>	Alfonso Quiñones Carvajal
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (humane treatment), 7 (personal liberty), 10 (compensation), and 11 (honor and dignity) of the American Convention on Human Rights, <sup>2</sup> in conjunction with its Article 1(1) (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	February 25, 2014
<b>Additional information received at the stage of initial review:</b>	October 7, 2016, January 3, 2017, and September 19, 2019
<b>Notification of the petition to the State:</b>	September 30, 2019
<b>State's first response:</b>	November 3, 2020
<b>Additional observations from the petitioner:</b>	January 5, 2021 and September 12, 2022
<b>Additional observations by the State:</b>	August 27, 2021

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument ratified on July 31, 1973)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No.
<b>Rights declared admissible</b>	Does not apply
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	No, in the terms of Section VI
<b>Timeliness of the petition:</b>	No, in the terms of Section VI

<sup>1</sup> In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the decision in the instant matter.

<sup>2</sup> Hereinafter the "American Convention" or "the Convention."

<sup>3</sup> Each party's observations were duly forwarded to the other party.

## V. THE PARTIES' POSITIONS

### *Petitioner*

1. Mr. Alfonso Quiñones Carvajal (hereinafter "Mr. Quiñones" or the "petitioner") reports alleged violations of his human rights due to the lack of adequate medical care in his capacity as an active-duty member of the army, which resulted in irreversible harm to his health. He also alleges violations of criminal due process rights.

2. He notes that in 1999 he joined Infantry Battalion No. 27 "Magdalena," located in the municipality of Pitalito, in the department of Huila. Subsequently, in January 2001, he was promoted and transferred to High Mountain Battalion No. 1, in the department of Cundinamarca. On October 15, 2001, during a confrontation with the guerrilla forces, he suffered an injury to the spine and in the testicles as he fell on a rock while seeking refuge. He states that he received medical care 10 days after the incident.

3. On November 5, 2001, he was diagnosed with atrophic changes in the right testicle, which incapacitated him for continuing his activities as an active-duty member of the National Army. In this regard, he argues that: *"Despite the foregoing I was subjected to the activities typical of a professional soldier, keeping me from attending medical appointments and check-ups, causing me problems of varicoceles on the left side."*

4. In 2002 he was transferred to Battalion No. 28 "Colombia," where he continued performing his duties as a soldier. Due to the difficulties he experienced doing his work, due to his health, he asked the Major of the battalion to continue under medical care and treatment, but this request was denied; rather, he was urged to apply for his discharge from the army. In July 2003 he underwent a left varicocelectomy (surgical procedure to correct a circulatory dysfunction in the testicular veins).

5. On December 17, 2003, he underwent a biopsy of the right testicle; based on the results he was informed that it was necessary to surgically remove the testicle. Mr. Quiñones communicated his physical incapacity to his superiors after getting the results of the biopsy. Nonetheless, the Major of the battalion reacting violently, pushing him against the wall, slapping him, and threatening to initiate a criminal proceeding against him for disobedience.

6. Even though his injury had not yet healed, on December 30, 2003 he was sent on a patrol to the municipality of Viotá, department of Cundinamarca. During the patrol one of the soldiers assaulted him with a kick to the genital area, justifying his action by saying *"that's what you get for messing with my Major"* (*"eso le pasa por meterse con mi Mayor"*). In addition, he was forced to patrol at night, receiving threats and insults from the other soldiers in the battalion. On February 25, 2004, he underwent a right orchiectomy (surgical removal of the testicle) and given 10 days of incapacity, with a prohibition on making any physical exertion. Nonetheless, on March 8, 2004, he was ordered to be in the municipality of Viotá to carry out his obligations as a soldier, which he continued to perform until September 2004.

7. On September 3, 2004, he was summoned to one of the administrative offices of the battalion to which he had been assigned; he was told by telephone that he would be given administrative compensation; nonetheless, when he arrived he was stopped by four soldiers who forced him to sign documents the content of which he was not shown and they held him locked up all night. Accordingly, a criminal proceeding was instituted against him in the military jurisdiction for the offense of disobedience; by judgment of July 18, 2005, the Fifth Court of the First Army Brigade convicted him of that offense and sentenced him to one year in prison.

8. Subsequently, on September 23, 2010, Mr. Quiñones filed a *tutela* action against the Office of Health (Dirección de Sanidad) of the National Army, 88<sup>th</sup> Court of Military Criminal Investigation, 24<sup>th</sup> Military Criminal Prosecutor, and the Fifth Court of the 13<sup>th</sup> Army Brigade. Nonetheless, by judgment of October 21, 2010, the Disciplinary Chamber (Sala Jurisdiccional Disciplinaria) of the Superior Judicial Council of Cundinamarca found the action inadmissible on procedural grounds, mainly because: (i) the action was time-

barred in relation to the alleged violations of the criminal procedure, since more than five years had elapsed from notice of the guilty verdict to the filing of the action; and (ii) Mr. Quiñones did not seek compensation from the competent authorities nor did he submit to the medical exam upon retiring.

9. Mr. Quiñones appealed this decision, but on November 24, 2010 the Disciplinary Chamber of the Superior Judicial Council upheld the judgment of the trial court and sent the judgment to the Constitutional Court for its possible review. Nonetheless, the Constitutional Court gave notice on March 24, 2011, that the judgment was not selected for review.

10. In summary, the petitioner alleges a series of criminal due process violations of his rights before the military jurisdiction, stating that he was not informed of the cause of his detention and that he did not have an adequate defense. He argues that he never met the lawyers who appear as having been designated his defense counsel in that proceeding, and that the signatures that appear in the powers of attorney are not his. He also adduces that he did not receive any compensation for the damages to his health, which were a consequence of his superiors' refusals to provide him adequate medical care and allow for his recovery after an accident suffered in the course of his military service.

#### *The Colombian State*

11. The State, for its part, confirms the gist of the rulings issued in the criminal proceeding in which Mr. Quiñones was convicted and sentenced to one year in prison for the crime of disobedience before the military jurisdiction, as well as those handed down in the context of the *tutela* action.

12. Colombia asks that the IACHR find the instant petition inadmissible based on three considerations: (a) failure to exhaust domestic remedies; (b) untimely filing of the petition; and (c) failure to describe facts that tend to establish violations of human rights enshrined in the American Convention.

13. With respect to point (a), it adduces that Mr. Quiñones did not exhaust the action of direct reparation for the purpose of obtaining compensation for damages to his health, arguing that this remedy is adequate for requesting compensation for alleged harms committed by state agents. In addition, it adduces that the petitioner did not state, in his initial petition, or in his subsequent memorials, that the alleged assaults and threats against his integrity had been reported to the competent authorities. Accordingly, it considers that the petition is inadmissible under Article 46(1)(a) of the Convention.

14. As regards point (b), it notes that notice of the last domestic ruling, in the *tutela* action brought by the petitioner was given on March 24, 2011, by the Constitutional Court. Nonetheless, the petition was filed with the IACHR on February 25, 2014, three years after the deadline provided for in Article 46(1)(b) of the Convention.

15. As regards point (c), it argues first that on March 4, 2004 Mr. Quiñones formally designated his public defender. Then, on October 25, 2004, the Office of the 24<sup>th</sup> Military Criminal Prosecutor designated, at its initiative, attorney Alfonso Torres Bueno, recognizing him as the counsel of record. Finally, by notice of June 24, 2005, a new lawyer served as his public defender, representing him until the judgment was handed down on July 18, 2005, by which the First Judge of the Brigade convicted him and sentenced him to one year in prison for the crime of disobedience, imposing the minimum sentence, as he had no prior criminal record.

16. Second, Colombia adduces that: *"Regarding the supposed assaults and threats against Mr. Quiñones, no showing is made, even summary, of the existence of these facts that he alleges. Accordingly, one can conclude that the petition does not contain a minimum of support or evidence so as to establish that the facts described in the petition are attributable to the State."*

#### *The petitioner's reply*

17. The petitioner argues that his public defenders did not adequately represent him, stating the following as regards one of them: *"she told me that she once approached the offices of the battalion and Mr. ...,"*

*who was the Colonel in charge, the commander of the battalion at that moment, told her that she should not agree to defend me; according to her, the colonel said that for the Army I was an embarrassment, a problem, and a guerrilla, those were this colonel's words, and that she shouldn't help me; I was never able to contact her again."*

18. In addition, with respect to the petition being time-barred, as argued by the State, the petitioner states: "... I don't meet what the state mentions about the six-month period, it's easy to speak of such a short period for the defense, but it is not easy for a large part of the population like me who see how we are abused by our own State."

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

19. In keeping with its consistent practice, the Commission should identify the object of the petition filed with it to determine the appropriate procedural path that must be exhausted domestically to meet the prior exhaustion requirement.<sup>4</sup> Accordingly, it observes that the purpose of this petition is two-fold: (i) to address alleged violations of criminal due process before the military jurisdiction; and, (ii) to address the failure to pay administrative compensation to Mr. Quiñones for the detriment to his health stemming from an accident during his active-duty service.

20. As for point (i), the IACHR has established in repeated decisions that the suitable remedies to be exhausted in cases in which there are alleged violations of procedural guarantees, personal liberty, and other human rights in the course of criminal proceedings are, as a general rule, those provided for by the domestic procedural legislation that make it possible to attack, in the course of the very proceeding called into question, the actions and decisions adopted as it unfolds, in particular the regular judicial remedies available, or special ones if they are invoked by the alleged victims of violations of the right to liberty and procedural guarantees for upholding their rights, which, once exhausted, comply with the requirement established at Article 46(1)(a) of the American Convention.<sup>5</sup>

21. In this regard, it appears in the record that Mr. Quiñones pursued the sole remedy of a *tutela* action against the guilty verdict handed down against him in the military criminal jurisdiction. Nonetheless, by resolution of October 21, 2010, the Disciplinary Chamber of the Superior Judicial Council of Cundinamarca found it inadmissible on procedural grounds since the alleged violation of due process was time-barred, for more than five years had gone by from the handing down of the guilty verdict to the filing of the action.

22. Closely related to the foregoing, the Commission has determined that the petitioner must exhaust domestic remedies in keeping with the domestic procedural legislation so long as it is not incompatible with the State's obligations under the American Convention. In this case the IACHR notes that the Supreme Judicial Council of Cundinamarca rejected the claim as time-barred; that ruling was upheld on appeal. The Commission considers that the dismissal of the *tutela* action on grounds of being time-barred is not unreasonable, nor it is a departure from the relevant practice of the national courts in relation to *tutela* actions. Similarly, it does not appear that the petitioner has, for example, appealed the guilty verdict handed down at trial in the military criminal courts. For this reason, considering that the domestic remedies were rejected on reasonable and non-arbitrary procedural grounds, such as the failure to file within the statutory time periods,

<sup>4</sup> By way of illustration, one can consult the following admissibility reports of the IACHR: Report No. 117/19. Petition 833-11. Admissibility. Freed workers of the Boa-Fé Caru Plantation. Brazil. June 7, 2019, paras. 11, 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19 ff.; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26, 27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15-16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 ff.; Report No. 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 13 ff.; Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and family members. Colombia. June 7, 2019, paras. 20 ff.

<sup>5</sup> IACHR, Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, para. 15; Report No. 108/19. Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019, paras. 6 and 15; Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and son. Argentina. November 4, 2014, paras. 68 ff.; IACHR, Report No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and daughters. Argentina. November 5, 2013, paras. 24 ff.; and IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. et al. Ecuador. November 8, 2012, paras. 23 ff.

the IACHR concludes that this aspect of the petition does not comply with the requirement at Article 46(1)(a) of the American Convention.

23. As regards argument (ii), Mr. Quiñones has a grievance with respect to the lack of administrative reparation through the same *tutela* action mentioned earlier. Nonetheless, in the same judgment of October 21, 2010 the Disciplinary Chamber of the Superior Judicial Council of Cundinamarca found the action inadmissible on procedural grounds, on determining that Mr. Quiñones did not seek compensation before the competent authorities nor was the medical exam on retirement performed. He filed an appeal against this decision, which was affirmed, in a ruling of November 24, 2010. The judgment was sent to the Constitutional Court for its possible review, but it gave notice on March 24, 2011, that it was not selected for review.

24. In view of the foregoing, the IACHR observes that in effect, as the courts before which Mr. Quiñones filed his *tutela* action told him, he did not pursue the appropriate remedies for seeking his monetary reparation for damages, a matter that should have been brought before the contentious-administrative courts, thus this part of the petition also fails to meet the requirement of Article 46(1)(a) of the American Convention.

25. Moreover, this *tutela* proceeding, in which the petitioner was informed that he did not exhaust the appropriate remedy, ended, as already indicated, on March 24, 2011, i.e. three years before the filing of the petition, therefore, even considering hypothetically that the filing of his claim for compensation via a *tutela* was valid, the petitioner would be violating the requirement regarding the timeliness of a petition in Article 46(1)(b) of the American Convention, with respect to this part of the petition.

## **VII. DECISION**

1. To find the instant petition inadmissible.
2. To notify the parties of this decision; and publish 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 29th day of the month of August, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.