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REPORT No. 84/24
PETITION 692-14

INADMISSIBILITY REPORT

FARIEL SANJUAN ARÉVALO
COLOMBIA

Approved electronically by the Commission on June 7, 2024.

Cite as: IACHR, Report No. 84/24. Petition 692-14. Inadmissibility. Fariel Sanjuan Arévalo. Colombia. June 7, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Fariel Sanjuan Arévalo
Alleged victims:	Fariel Sanjuan Arévalo
Respondent State:	Colombia[1]
Rights invoked:	Articles 8 (judicial guarantees), 9 (legality and retroactivity), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights [2]

II. PROCEEDINGS BEFORE THE IACHR[3]

Filing of the petition:	May 1, 2014
Notification of the petition to the State:	October 21, 2019
Request for extension:	January 21, 2020
State's first response:	September 16, 2020
Additional observations from the petitioner:	November 7, 2020
Additional observations from the State:	June 17, 2021

III. COMPETENCE

Competence *Ratione personae*:	Yes
Competence *Ratione loci*:	Yes
Competence *Ratione temporis*:	Yes
Competence *Ratione materiae*:	Yes, American Convention (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 applicability of an exception to the rule:	No, pursuant to the terms of Section VI
Timeliness of the petition:	No, pursuant to the terms of Section VI

V. PARTIES' POSITIONS

Position of the petitioner

1. The petitioner and alleged victim alleges violations of due process and other rights during the domestic judicial proceedings, because after a successful class action lawsuit in the first instance, in which he was awarded a legal economic incentive, in the second instance, the court eliminated this incentive because the

[1] 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.

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

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

corresponding law was repealed during the proceedings between the two sentences. The petitioner argues that the repeal was not applicable.

2. The petitioner recalls that in 1998 the State enacted Law 472, Article 39 of which granted an economic incentive for those who file class action lawsuits (*acciones populares*).[4] Pursuant to that law, Mr. Sanjuan Arévalo filed a class action before the Third Administrative Court of Neiva-Huila in order to protect the collective rights of the inhabitants of two municipalities, Yaguará and Iquira, due to paralysis of construction work on an aqueduct (file 33-31-003-2008-00403-00).

3. On April 21, 2010, the Court issued a favorable ruling recognizing the protection of collective rights, as well as the economic incentive for the plaintiff, Mr. Fariel Sanjuan Arevalo, of ten current legal monthly minimum wages ($ 5,150,000 COP, or approximately USD. 1,349.40 at the time.[5])

4. However, the municipality of Iquira appealed the decision. During the processing of the appeal, the rule referred to in Article 39 of Law 472 was repealed. Thus, on January 28, 2011, the Contentious-Administrative Court of Huila upheld the first instance ruling with respect to the collective rights involved, but revoked that related to the economic incentive due to the repeal of the rule.

5. The petitioner considers that this decision violated his right to due process and equality before the law, since Article 164 of Law 446 of 1998 established that, "*in proceedings initiated before the contentious-administrative jurisdiction, the appeals filed, the taking of evidence ordered, the terms that have begun to run, the incidents in progress, and the notifications and summons that are being served shall be governed by the law in force when the appeal was filed*". Based on this argument, he filed a tutela (protection) lawsuit against the Contentious-Administrative Court of Huila, requesting protection of his rights to due process, self-determination, and equality.

6. On May 26, 2011, the Council of State, Second Section, considered the lawsuit inadmissible because the matter had no constitutional relevance and did not involve a violation of fundamental rights. The petitioner challenged the decision, and on August 4, 2011, the Fourth Section of the Council of State upheld the decision of inadmissibility of the tutela for the same reasons previously adduced.

7. On January 31, 2012, the Constitutional Court opted to review the tutela ruling issued by the Council of State; and on June 8, 2012, through judgment T-430/2012, it considered that the matter referred to a merely legal interpretation and did not affect any fundamental right of the plaintiff. That decision was notified to the petitioner on November 12, 2013.

8. The petitioner considers that his rights to judicial guarantees, legality, and non-retroactivity, judicial protection, and equality before the law were violated by the State, due to the revocation of the economic incentive that was initially recognized in the first instance judgment. The petitioner argues that this was not simply a different legal interpretation, but an illegal and arbitrary decision. In his opinion, the judges should have recognized the non-retroactivity of the rule that excluded the economic incentive, as established in the aforementioned article 164 of Law 446 of 1998.

9. With respect to equality before the law, the petitioner recalls that, before the Constitutional Court, he invoked cases of other persons in which the economic incentive was recognized by the Council of State, such as the case of plaintiff Dolly Vanessa Bohórquez Ayala referring to class action lawsuit 2500-23-25-000-2005-00-357-01, in addition to other rulings (Ruling of May 18, 2011, file 54001-2321-000-2005-00232-

[4] "*Article 39. The plaintiff in a class action shall be entitled to receive an incentive that the judge shall fix between ten (10) and one hundred and fifty (150) monthly minimum wages. When the actor is a public entity, the incentive shall be allocated to the Fund for the Defense of Collective Interests*."

[5] At that time, the current legal minimum wage in Colombia was COP$515,000 (https://www.consultorcontable.com/datos-hist%C3%B3ricos/salario-m%C3%ADnimo-historico/), or approximately USD $134.94 (https://www.exchangerates.org.uk/COP-USD-spot-exchange-rates-history-2010.html).

01; Ruling of May 26, 2011, file 25000-23-25-000-000-2006-0376-01; Ruling of May 18, 2011, file 70001-23-31-000-2004-00794-01).

Position of the Colombian State

10. The State considers that the domestic proceedings complied with all due process guarantees. It affirms that the petitioner was heard by a competent, independent, and impartial judge or tribunal, established before the law was passed, with all guarantees and within a reasonable time. It points out that the judges of the administrative contentious jurisdiction correctly ruled on the class action proposed by Mr. Fariel Sanjuan Arévalo and the issue related to the economic incentive, in light of the legislative change that occurred during the proceeding. It argues that the judicial process before the *tutela* (protection lawsuit) judges, which culminated in the ruling of the Constitutional Court, also upheld the petitioner's rights. Regarding this last ruling, the Constitutional Court stated that it did not find factual support to consider possible violations of the invoked rights to due process, self-determination, and equality. Likewise, the Constitutional Court considered that the Contentious-Administrative Court of Huila acted within the limits of the autonomy that judges have in the interpretation and application of a law, and that Mr. Fariel Sanjuan Arévalo's claim was a matter of exclusively legal interpretation that did not violate his fundamental rights and, consequently, had no constitutional relevance.

11. The State further alleges that the petitioner was never deprived of protection by the courts. In fact, he used domestic remedies to resolve the legal situation that he considered to be a violation of his fundamental rights, such as the *tutela* action, a remedy that the State emphasizes as being quintessentially simple and expeditious. He also had the opportunity to challenge the *tutela* decision that was unfavorable to his interests and to urge the Constitutional Court to review the possible violation of his fundamental rights. In this context, all the actions and appeals filed by the petitioner were resolved in a timely manner, in accordance with the right to judicial protection upheld in the American Convention.

12. Regarding Article 9 of the American Convention invoked by the petitioner, the State argues that the right in question does not cover the factual situation of the petition, since it is not discussing a situation subject to conviction or punishment, but a contentious-administrative matter concerning the non-granting of an economic incentive.

13. The State also alleges that the petitioner had the procedural opportunity to allege violation of the right to equality before the Council of State and the Constitutional Court in the same manner as he is now doing before the IACHR. However, he did not. It emphasizes that he did not provide domestic courts with the factual and legal support corresponding to this alleged violation. In the State's view, this shows that the petitioner has turned to the IACHR to remedy his failure to present his allegations and evidentiary support before the domestic judges.

14. Additionally, the State argues that the petitioner could have requested a review before the Council of State of the decision of the Contentious Administrative Court of Huila, and that the request for review under Article 11 of Law 1285 of 2009 was the appropriate remedy, not the *tutela* suit.

15. In light of the foregoing, the State concludes that the petition is inadmissible because it does not state facts that characterize violations of rights under the Convention. Additionally, it finds that the petitioner's allegations show his disagreement with the interpretation adopted by the domestic judges in relation to the non-granting of the economic incentive requested, which makes the petition inadmissible also because it involves invoking a fourth international instance.

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

16. The Inter-American Commission notes that the petitioner complains of the elimination of a legal economic incentive in a successful class action lawsuit, due to the repeal of the corresponding law between the first and second instance sentences. This is the main purpose of the petition.

17. The purpose of the requirement of prior exhaustion of domestic remedies is to afford an opportunity to the national authorities to take cognizance of the alleged violation of a protected right and, where appropriate, to resolve the matter before it is taken up by an international body.

18. Thus, the national authorities could have been apprised of the alleged violations in the course of the domestic proceedings. On April 21, 2010, Mr. Fariel Sanjuan Arévalo obtained a ruling recognizing protection of collective rights and of an economic incentive, which was later appealed by the municipality of Iquira. During the appeal, the incentive law was repealed. On January 28, 2011, the Huila Contentious-Administrative Court revoked the incentive due to the repeal of that law. The petitioner contested the ruling through a *tutela* lawsuit, arguing that the repeal did not apply retroactively to a proceeding that had already begun, invoking the protection of his rights to due process, self-determination, and equality. However, his subsequent appeals were rejected for lack of constitutional relevance: first by the Council of State, Second Section, on May 26, 2011; then by the Fourth Section of the Council of State evaluating the petitioner's challenge, on August 4, 2011; and, finally, by the Constitutional Court on June 8, 2012, in a decision notified on November 12, 2013.

19. The Commission takes note of the State's argument that the petitioner, in order to challenge the second instance decision, should have filed a petition for review and not a *tutela* lawsuit. The Commission has also established that the rule requiring exhaustion of domestic remedies does not mean that alleged victims have to exhaust all remedies available. Therefore, if the alleged victim raised the issue by any of the valid and appropriate alternative means under the domestic legal system and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule was met.[6] In the present case, the *tutela* procedure proved to be a valid procedural alternative to question the decisions that the petitioner considered contrary to his rights. In addition, all these *tutela* actions were admitted and decided on the merits.

20. In light of the above, and reiterating that the domestic authorities were apprised of the alleged violations during the domestic proceedings, the Inter-American Commission concludes that the petition exhausted domestic remedies following the Constitutional Court's decision of June 8, 2012, in compliance with the requirement of Article 46(1)(a) of the Convention. The aforementioned decision was notified to the petitioner on November 12, 2013, while the petition to the IACHR was filed on May 1, 2014, so the petition likewise meets the requirement of Article 46(1)(b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

21. The State affirms that the petition is inadmissible under Article 47(b) of the American Convention, due to the applicability of the fourth instance rule, because the petitioner was heard by a competent, independent, and impartial judge or court, established before the law, with all the guarantees and within a reasonable period of time, in addition to his never having been deprived of protection by the courts. Accordingly, it maintains, *inter alia*, that the petitioner made use of domestic remedies and had the opportunity to challenge the unfavorable rulings all the way up to the highest constitutional body.

22. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, could characterize a violation of rights, or, pursuant to paragraph (c) of the same article, whether the petition is "manifestly groundless" or "obviously out of order." The criterion used to evaluate those requirements differs from that used to pronounce on the merits of a petition. Likewise, within the framework of its mandate, Commission is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. That is to say that, based on the aforementioned conventional norms, in keeping with Article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention.

[6] IACHR, Digest of Decisions on Admissibility and Competence of the Inter-American Commission on Human Rights. OEA/Ser.L/V/II.175. Doc. 20, March 4, 2020, p. 35; IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra, Peru. February 24, 2018, par. 12.

23. In the present case, the Commission notes that the main claim of the petitioner focuses on the elimination of a legal economic incentive derived from a successful class action lawsuit, due to the repeal of the corresponding law between the first and second instance sentences. For the petitioner, this elimination is improper because another internal rule in force prevented the retroactive application of the repeal ruling with respect to an ongoing process. The petitioner also argues that this elimination is inconsistent with the decisions of Colombian courts in other cases where the economic incentive was maintained.

24. The Inter-American Commission notes, first of all, that the facts described indicate that the domestic authorities considered the situation raised by the petitioner and gave reasoned responses to his appeals. The Contentious Administrative Court of Huila, in revoking the economic incentive in its second instance decision, explicitly based its decision on the repeal of the regulation that had granted said incentive. This action was based on an interpretation of the law that, although controversial, is in accordance with the power of the courts to interpret the law. This interpretation was later endorsed by the Constitutional Court, which also added that the issue was a matter of legal interpretation, thus reaffirming the autonomy and limits of judicial interpretation. In this regard, the Constitutional Court declared that it found no evidence of violations of due process, self-determination, and equality. In addition, it determined that the Huila Court acted within its judicial autonomy; and that the case of Fariel Sanjuan Arevalo was purely one of legal interpretation, without affecting issues of constitutional relevance. Thus, although the outcome may not have been the one desired by the petitioner, the Colombian courts acted in accordance with the established legal frameworks and provided reasoned and justified responses.

25. Moreover, the Inter-American Commission recalls that the American Convention refers, in Article 9, to the impossibility of retroactive application of the most severe penal norm, as well as the possibility of retroactive application of the penal norm that is most beneficial to the offender,[7] which differs from the situation alleged by the petitioner (referring to a rule on economic incentive in popular action).

26. Additionally, while the Inter-American Commission has already found, in *prima facie* analysis, possible violations of equality before the law resulting from different jurisprudential interpretations in similar or identical cases, the test for this to occur involves the petitioner demonstrating that the cases decided differently are sufficiently similar to his case.[8] In the present petition, however, the petitioner mentioned several judgments, dates, and rulings in allegedly similar cases, but did not present further details or copies of the decisions, which makes it difficult for the Commission to find, in the allegations, even in a *prima facie* analysis, the possibility of a violation of the right to equality before the law.

27. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the alleged facts do not characterize, *prima facie*, violations of the rights protected by the American Convention. Thus, it concludes that the petition is inadmissible under Article 47(b) of the American Convention.

VIII. DECISION

1. To find the instant 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 7th 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.

[7] See, for example, IACHR, Report No. 245/23. Petition P-1359-11. Admissibility. Nelida Manopella and Guillermo Puy. Argentina. October 7, 2023

[8] See, for example, IACHR, Report No. 147/22. Petition 375-13. Admissibility. Miguel Pinedo Vidal. Colombia. June 27, 2022.