

**REPORT No. 150/24**

**PETITION 1602-14**

REPORT ON INADMISSIBILITY

AMPARO RAMÍREZ OSPINA ET AL.

COLOMBIA

OAS/Ser.L/V/II

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Amparo Ramírez Ospina et al. Colombia. September 16, 2024.



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**I. INFORMATION ABOUT THE PETITION**

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| **Petitioner:** | Oscar Gerardo Torres Trujillo |
| **Alleged victim:** | Amparo Ramírez Ospina et al[[1]](#footnote-2)  |
| **Respondent State:** | Colombia[[2]](#footnote-3)  |
| **Rights invoked:** | Articles 8 (right to a fair trial), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights[[3]](#footnote-4)  |

**II. PROCEEDINGS BEFORE THE IACHR[[4]](#footnote-5)**

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| **Filing of the petition:** | November 21, 2014 |
| **Additional information received at the stage of initial review:** | June 9, 2015, May 24, 2017, and November 27, 2016 |
| **Notification of the petition to the State:** | April 7, 2022 |
| **State’s first response:** | August 3, 2022 |
| **Additional observations from the petitioner:** | February 10, 2023, and February 28, 2023 |
| **Notification of the possible archiving of the petition:** | July 8, 2020 |
| **Petitioner’s response to the notification regarding the possible archiving of the petition:** | August 5, 2020 |

**III. COMPETENCE**

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| **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**

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| --- | --- |
| **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. POSITIONS OF THE PARTIES**

*Position of the petitioner*

1. The petitioner claims that the authorities have not complied with the ruling on a petition for the protection of constitutional rights [*acción de tutela*] that ordered the payment of a special pension to the alleged victims for their work in education, violating their right to judicial protection and equal protection of the law.
2. The petitioner states that the alleged victims worked as teachers, and therefore, under domestic law, are entitled to a special benefit called “*special pension*,” which consists of an additional pension allowance paid by the State. It claims that the National Social Security Fund (CAJANAL) denied this right to the alleged victims, who subsequently filed a petition for the protection of constitutional rights on June 8, 2006. On June 22, 2006, the Ninth Criminal Court of the Cali Circuit found that it was appropriate to grant temporary protection to the alleged victims, and ordered CAJANAL to pay the claimed benefit to the plaintiffs until their situation was resolved through administrative litigation, which is the appropriate ordinary mechanism to decide such matters. The court noted that if they had not done so, it was up to the alleged victims to file an administrative lawsuit. In the words of the judge:

[…] the Court has reviewed the file and the documentation submitted by each of [the plaintiffs], and it is clear that they met the legal requirements for accessing the special pension […]. Based on the foregoing, this Court can verify the unlawful and arbitrary nature of the decisions issued by the agency in question, in the way it denied the award of the special pension; the difference between these teachers and other similarly situated teachers is also evident in that decision, in clear violation of the right to equality […] in each administrative act denying the special pension to the plaintiff teachers, the National Social Security Fund, CAJANAL, issued decisions contrary to constitutional and legal provisions, acting in flagrant violation of the principles that safeguard the due process of law to which every citizen is entitled.

[…] in principle, the *tutela* action, which is eminently ancillary and subsidiary in nature, cannot be used for the recognition of this type of benefit. However, the Court has also established case law that can be extended to pensions, according to which, in exceptional circumstances, the recognition of pensions can be temporarily enforced by means of a *tutela* action […]. Hence, although the plaintiffs have another mechanism to defend their interests through administrative litigation, such as motions to vacate the decisions that denied recognition and payment of the benefit, […] the *tutela* action is admissible as a temporary mechanism to prevent irreparable harm […]. Consequently, […] protection will consist of requiring the NATIONAL SOCIAL SECURITY FUND, CAJANAL, to issue the appropriate decision regarding each one of the teachers from the date of notice of this decision and until the administrative court renders a final decision […].

The plaintiff teachers are advised that, if they have not already done so, they should file the respective action before the administrative court within four months from the date of notice of this decision. The parties are also advised that this decision on the petition for the protection of constitutional rights [*acción de* *tutela*] will remain in force until the administrative court rules on the merits of the plaintiffs’ claims.

1. Notwithstanding the above, the petitioner maintains that the authorities failed to comply with this ruling, prompting the alleged victims to file a contempt of court action against CAJANAL. Consequently, on April 10, 2007, the Ninth Criminal Court of the Cali Circuit sentenced the head of this agency to five days in detention and a fine of five times the monthly minimum wage. On October 29, 2007, the Criminal Chamber of the Superior Court of the Cali Judicial District affirmed this decision.
2. However, on July 22, 2010, the Fourth Review Chamber of the Constitutional Court suspended the penalty, on the grounds that CAJANAL was in the process of being dissolved, so it was impossible to attribute all the responsibility to its director and order him to be placed under arrest. It also ordered that no contempt penalties be enforced before the approval of the action plan that was being prepared to adjudicate the cases of those who were awaiting a response from the institution. In the petitioner’s opinion, this decision kept the alleged victims’ interests from being limited until June 11, 2013, when CAJANAL’s dissolution process concluded and the Pension and Parafiscal Management Unit (UGPP) assumed its obligations and became responsible for enforcing the *tutela* ruling.
3. In light of this new scenario, the alleged victims filed numerous petitions with the UGPP, requesting the enforcement of the decision ordering the payment of their special pension. However, the petitioner contends that the agency continued to violate this court order, on the grounds that the alleged victims had failed to comply with the requirement to file a lawsuit in the administrative courts within four months of the notice of the decision.
4. Subsequently, on May 9, 2014, the alleged victims requested that a second contempt motion be filed for failure to comply with the judgment of June 22, 2006. On August 25, 2014, the Ninth Criminal Court of the Cali Circuit ordered the UGPP’s general director, director of pensions, and deputy director for the determination of pension rights to serve five days in detention. However, on March 19, 2015, the Criminal Chamber of the Superior Court of the Judicial District of Cali overturned this ruling, finding that the UGPP had complied with the court order, since it granted the special pension to 48 teachers for four months, as from the notice of the *tutela* ruling. It further found that the plaintiffs had not timely filed the appropriate appeal in the administrative courts, for which reason they did not continue to receive the benefit.
5. Based on these considerations, the petitioner insists that the UGPP has not complied to date with what the court ordered in the *tutela* ruling, since it erroneously conditioned the payment of the special pension to the alleged victims on their having filed an administrative lawsuit. Consequently, it argues, the alleged victims’ right to equality and judicial protection is being violated because, unlike other teachers, they are not receiving the pension payments to which they believe they are entitled. Finally, the petitioner states that the alleged victims are older individuals whose lives are adversely affected by the lack of payment of this benefit.

*Position of the State of Colombia*

1. Colombia maintains that the petition is inadmissible due to the non-exhaustion of domestic remedies. It argues that despite the fact that the Ninth Criminal Court of the Cali Circuit indicated in its June 2006 judgment that the alleged victims should file a motion to vacate the judgment and restore their rights, twelve of them had not yet availed themselves of this mechanism when they filed this petition with the IACHR. It states that this procedure could have been used even if the special pension had not yet been granted or paid, since the alleged victims had an administrative act that could be challenged. In the State’s opinion, this proves that in this case there is a clear failure to use the domestic courts.
2. With respect to the remaining fourteen alleged victims, Colombia submits that none of them complied with the respective legal action within four months after notice of the *tutela* ruling was issued, and only did so after October 28, 2006, when the deadline set forth in that ruling had already passed. The State considers it evident that none of these individuals exhausted domestic remedies as required by the Constitutional judgment of June 22, 2006; therefore, it maintains that this petition should be declared inadmissible due to the improper exhaustion of domestic remedies.
3. Colombia further asserts that, should the IACHR consider that the requirement of prior exhaustion of domestic remedies has been met, the alleged facts do not constitute even *prima facie* violations of human rights attributable to the State. It maintains that, on the contrary, the petitioner is asking the Commission to act as a court of fourth instance to review the factual and legal assessments made by the domestic judges and courts that acted within the sphere of their competence. On this basis, it considers that it is not the Commission’s responsibility to analyze this matter, since the existence of a ruling or decision that has been issued without due process or that appears to have violated any other right established in the American Convention has not been proven.
4. The State underscores that the domestic courts found that the alleged victims should have met the requirement established in the judgment of June 22, 2006, in order to prove noncompliance on the part of the UGPP. It argues that they should have filed the appropriate and effective remedy—the motion to vacate the judgment and restore their rights—within four months of being served notice of the ruling, so that the specialized courts could determine their legal status with respect to the special pension, since the *tutela* action was only a temporary mechanism and, therefore, was not suitable to address their claims.

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

1. The Commission notes that the central focus of this petition is the alleged failure to comply with a *tutela* judgment that temporarily ordered the payment of a special pension to the alleged victims. However, the Commission notes that this ruling also ordered the plaintiffs to pursue administrative litigation by filing a motion to vacate the judgment and restore their rights within four months, in order to obtain a final determination of their situation from the competent courts. Therefore, the recognition of their right in constitutional proceedings would only have effect until the ordinary courts issued a decision.
2. Based on the above, the Commission notes that, according to the decision of the Criminal Chamber of the Superior Court of the Cali Judicial District, CAJANAL complied with the temporary payment of the special pension to the alleged victims and only suspended the payment because they failed to comply with the constitutional ruling by not filing suit in the administrative courts. In this regard, the petitioner provides no arguments or documents to disprove the conclusion of that judgment.
3. In the Commission’s opinion, this shows that the alleged victims failed to meet the requirement set forth in the court decision that they allege was not complied with, and as a result, they were unable to initiate a proceeding that would allow them to obtain their pensions. Although the petitioner asserts that the harm caused by the ineffectiveness of the constitutional ruling must be separated from the alleged victims’ failure to file a lawsuit in the administrative courts, the Commission finds that the two issues are closely linked and only their joint analysis allows it to assess whether the alleged victims had the opportunity to claim their special pensions. The Commission further notes that according to the information provided by the petitioner, the pensions in question is a special, additional benefit that the alleged victims would be receiving, and that at no time does it state that they are not receiving their regular or main pensions.
4. In view of the foregoing, the Commission concludes that this case does not meet the requirement set forth in Article 46.1(a) of the American Convention.

**VII. 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 16th day of the month of September, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

1. Amparo Victoria Manzano, Ana Mercedes Céspedes Tamayo, Armando Gordillo López, Bayardo Hely Usuga David, Benito Saucedo Rios, Bertha Blanco de Rodríguez, Blanca Lilia Morales Rios, Fredy Trujillo Otalvaro, Gladyes de la Roche Mendoza, Gladys Velasco Cuellar, Gloria Granada López, José Efraín Macana Forero, José Guillermo Nieto Pava, José Jesús Realpe Ortega, Julio César Guzman Ramírez, Julio Cesar Sandoval Patiño, Ligia Piedad Benavides Moran, Luis Eduardo Ossa, Maria Oidaliz Mendez de Paez, María Olga Arenas De Gaviria, María Orfidia Arboleda Olarte, Norberto Mayorga Sánchez, Olegario Ferro Meléndez, Omaira Capacho De Bueno, Osiris Martínez Valdeblanquez, Roque Rafael Campo Amaris and Rosabel Diuza Jory, Teresa García de Orejuela. [↑](#footnote-ref-2)
2. In keeping with Article 17.2.a of the Commission’s Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the deliberations or in the decision in this case. [↑](#footnote-ref-3)
3. Hereinafter “the American Convention” or “the Convention.” [↑](#footnote-ref-4)
4. The observations submitted by each party were duly transmitted to the opposing party. [↑](#footnote-ref-5)