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REPORT No. 204/20

PETITION 2146-12

REPORT ON ADMISSIBILITY / INADMISSIBILITY

ALBERTO MUÑOZ CAAMAÑO
COLOMBIA

Approved by the Commission electronically on August 4, 2020.

Cite as: IACHR, Report No. 204/20, Petition 2146-12. Admissibility. Alberto Muñoz Caamaño.
Colombia. August 4, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Alberto Muñoz Caamaño
Alleged victim:	Alberto Muñoz Caamaño
Respondent State:	Colombia
Rights invoked:	Articles 4 (life), 8 (fair trial), 25 (judicial protection) and 26 (progressive development) ¹ of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Date of receipt	November 22, 2012
Notification of the petition to the State:	August 28, 2017
Additional information received during the investigative stage:	May 25, 2016, August 11, 2016, October 19, 2016, and October 20, 2017
State's first response:	June 7, 2018
Additional observations from the petitioners	July 11, 2018

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 the instrument of ratification made on July 31, 1973); and American Declaration of the Rights and Duties of Man ⁴ (deposit of the instrument of ratification of the OAS Charter made on December 13, 1951)

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
Rights declared admissible	Articles 8 (fair trial), 25 (judicial protection) and 26 (progressive development) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); and Article XVI (social security) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the terms of Section VI

¹ Although the petitioner did not expressly invoke the articles of the American Convention on Human Rights that he considers violated, these are directly deduced from his clear account of the facts.

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

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter, "the American Declaration" or "the Declaration".

Timeliness of the petition:

Yes, under the terms of Section VI

V. FACTS ALLEGED

1. Mr. Alberto Muñoz Caamano requests the IACHR to declare the Colombian State internationally responsible for the violation of his rights to life in dignified conditions, judicial guarantees, effective judicial protection and social security, on the occasion of the failure to comply with the guardianship judgment that protected his right to the pension, despite the successive and unsuccessful judicial efforts that he has made to implement what is ordered there.

2. The petitioner reports that he was a worker at TELECOM company, whose liquidation led to the creation of an autonomous patrimony destined to pay the remaining debts in labor and pension matters (the Autonomous Patrimony of Remnants, PAR). Mr. Muñoz Caamano had availed himself of the early pension plan offered by the company before its liquidation, and in that capacity he was entitled to the pension under the PAR. In the absence of payment of his pension allowances, he filed a tutela action against the PAR, which favorably ruled on his claims in the Second Municipal Promiscuous Court of Lorica (Córdoba), which in a ruling of January 26, 2010 ordered the PAR to pay the pension to Mr. Muñoz. When the sentence was appealed, it was confirmed in second instance by the Promiscuous Family Court of Lorica, in a ruling of February 10, 2010. The judgment of second instance guardianship was sent to the Constitutional Court for its eventual review; however, file T-2611092, corresponding to the case, was not selected for review by the Court, which excluded it by order of April 23, 2010. Through the Ombudsman's Office, an insistence on the request for selection of the case, but by order of June 11, 2010, the Constitutional Court rejected the insistence and refused to select the file for review.

3. Through a memorandum on February 15, 2010, the PAR informed Mr. Muñoz that it would include him on the payroll of the Early Pension Plan in compliance with the first instance guardianship ruling, although he considered that he did not meet the requirements to access said pension plan; and warned him that the guardianship ruling was not final and that the inclusion in the payroll would be automatically revoked by a contrary judicial decision, in which case Mr. Muñoz should reimburse all the monies that have been paid to him. In compliance with the first and second instance court orders, the PAR thus made the payment by bank deposit of three pension funds of Mr. Muñoz, in March, April and May 2010; however, as of June 2010, payments were suspended without a prior court order. On May 3, 2011, Mr. Muñoz addressed an official letter to the PAR requesting the reactivation of payments pursuant to the guardianship orders. In response, the PAR, by letter dated May 24, 2011, informed Mr. Muñoz that it was not possible to attend to his request to reactivate payment, since (i) the PAR had no budget to make the payments or resources in its bank accounts, which were seized, which placed it in a situation of factual and legal impossibility of paying; (ii) he did not share the decisions of the guardianship judges, despite him taking all the necessary actions to comply with the ruling; and (iii) it was awaiting a unifying decision from the Constitutional Court on the matter, and they had asked the Court to suspend in that unifying decision the effects of the judgments that favored Mr. Muñoz. However, Mr. Muñoz reports that the Constitutional Court, in the order in which he accumulated different files for said unification process and ordered to suspend pension payments in the cases of said files while adopting a unifying sentence, did not include his file, T-2611092, an exclusion that was confirmed to Mr. Muñoz by the rapporteur magistrate in response to a right of petition of August 25, 2011.

4. Thus, Mr. Muñoz's file was neither selected for review by the Constitutional Court, nor was it added to the file that would lead to the unification sentence. Despite the above, the PAR continued to refuse to pay the allowances, and before a new right of petition presented by Mr. Muñoz on September 27, 2011, requesting the reactivation of payments, the PAR responded, on October 19, 2011, reiterating that: (i) it had no resources and its accounts were seized; (ii) they were awaiting a unification sentence from the Constitutional Court; (iii) they did not have an item in their budget to pay the allowance of Mr. Muñoz because the tutela action that favored him was not in progress at the time of TELECOM's liquidation; and (iv) the guardianship judges who ruled in his favor were under disciplinary investigation for irregular conduct and were provisionally suspended from their positions. This situation of non-payment of pension allowances and non-compliance with the guardianship order that protected Mr. Muñoz continued to occur until the adoption of the unification judgment referred by the Court in 2014, and then continued after said judgment, until the present.

5. The aforementioned constitutional process that would give rise to a unification sentence had its origin in the situation detected by the Constitutional Court in 2010 and 2011 in the Departments of Córdoba and Sucre, where several courts and tribunals had participated in the repeated practice of imparting irregular guardianship orders to the PAR, providing that it pay the pensions of many people who did not comply with the legal and regulatory requirements to access such a right, in several cases through fraudulent judicial maneuvers. The Court, in the unification judgment SU-377/14, of June 12, 2014, ruled on the case and made specific decisions on numerous controversial guardianship processes and on some of the numerous beneficiaries of judicial orders for payment of pensions; to that extent, in said unification judgment the Court ruled on multiple guardianship files that it had accumulated in that constitutional process - in many cases reversing the rulings that had granted irregular pensions - which did not include Mr. Muñoz's guardianship file. The case of Mr. Muñoz Caamano was not, therefore, the subject of a specific decision in judgment SU-377/14. Despite the foregoing, the PAR decided to use the constitutional precedent set by the Constitutional Court in judgment SU-377/14, and apply it in the case of Mr. Muñoz Caamano, abstaining from paying his pension allowances. This was done, the petitioner alleges, despite the fact that the guardianship file corresponding to Mr. Muñoz had not been accumulated in the unification process, nor was his case the subject of an express ruling by the Court in SU-377/14, therefore, in his opinion, said unification sentence was not applicable to him at all.

6. Mr. Muñoz filed a first incident of contempt of the guardianship ruling that favored him, before the Second Promiscuous Municipal Court of Lorica as a first instance guardianship judge. By decision of May 11, 2015, said Court resolved to suspend the incidental process as a precautionary measure, until the SU-377/14 sentence was duly notified or until the Full Chamber of the Constitutional Court adopted a decision on the merits for a specific ruling that benefited Mr. Muñoz. Given this decision, the petitioner appealed to the Constitutional Court by means of a right of petition, inquiring about the firmness of the unification sentence. This right of petition was answered by the judge presenting the judgment SU-377/14, informing that the judgment had been executed within the ordinary term, without the requests for clarification, addition, complementation or modification, or the request for nullity filed against it, interrupt or suspend said term or alter its enforceability. Through a memorial of July 15, 2015, Mr. Muñoz informed the Second Promiscuous Municipal Judge of Lorica of this response from the magistrate of the Constitutional Court. Said Judge, in an order dated August 21, 2015, reiterated her decision of May 11, 2015 to suspend the incidental process, for the same reasons. However, on October 22, 2015, the Constitutional Court issued Order No. 503/15, in which it expressly specified that nothing decided in judgment SU-377/14 extended to other guardianship processes that had not been accumulated to that particular unification process. Mr. Muñoz brought this decision to the attention of the Second Promiscuous Municipal Court of Lorica, which, by order of February 16, 2016, accepted the contempt incident, declared the guardianship ruling that favored Mr. Muñoz was not complied with, and imposed a sanction to the PAR Legal Representative for breach of the ruling of January 26, 2010. However, this order was revoked in its entirety in second instance (jurisdictional degree of consultation) by the Promiscuous Family Court of Lorica by decision of February 29, 2016.

7. On August 11, 2016, Mr. Muñoz addressed a right to petition to the magistrate rapporteur at the Constitutional Court, requesting that he expressly specify that judgment SU-377/14 had not modified the judgments of guardianship issued in his case, which they had to be fulfilled; and asking her to directly monitor compliance with the judgment of the Second Promiscuous Municipal Court of Lorica. In response, through an official communication dated November 30, 2016, the presenting judge stated that file T-2611092 had not been selected for review by the Court; and that "pursuant to the provisions of Order No. 503 of 2015, it was concluded with respect to said process that 'nothing established in judgment SU-377 of 2014 allows us to infer that the effects of what was decided there extend to other processes of guardianship '", for which reason the fulfillment of the sentence issued by the Second Promiscuous Municipal Court of Lorica corresponded to this same court of first instance, and not to the Court.

8. Following this guideline, Mr. Muñoz filed a second contempt incident before the Second Promiscuous Municipal Court of Lorica, which, in a decision of March 13, 2017, resolved to refrain from imposing a sanction for non-compliance with the guardianship ruling on the legal representative of the PAR. This decision was based on the following reasons: (i) that the Constitutional Court did not select to review the file of Mr. Muñoz's case, but at the same time, "that corporation, in its wisdom, curtailed compliance with all

the sentences that were based on the same facts, by extending the effects of the Unifying Judgment 377 of 2014, to all cases that are initiated, filed or have been filed against the ward (PAR and CAPRECOM), establishing mandatory guidelines for the judges in the resolution of this type of cases"; (ii) that the Promiscuous Family Court of the Lorica Circuit, its hierarchical superior, by order of February 29, 2016, revoked the decision made by the Second Promiscuous Municipal Court of Lorica in the incidental proceeding initiated by Mr. Muñoz Caamano, "By indicating that within the aforementioned action there was fraud, which was based on the evident ignorance of the subsidiarity requirement, the judges who ruled at the time are under criminal investigation for the crimes of prevarication by action and embezzlement by appropriation in favor of third parties."; and (iii) therefore, there is a real legal impossibility of complying with the first and second instance guardianship rulings that favored Mr. Muñoz, especially taking into account that although said rulings are protected by *res judicata*, said figure of the *res judicata* is not absolute, "and in exceptional events, for example when the illegality of the decision is proven, the *res judicata* must yield", being that in the case of Mr. Muñoz the judges who issued the guardianship rulings were objects of a criminal investigation.

9. Against the decision of the Promiscuous Family Court of Lorica of February 29, 2016 to revoke the order to impose sanctions for contempt, and against the decision of the Second Promiscuous Municipal Court of Lorica of March 13, 2017 to refrain from sanctioning the representative legal of the PAR, Mr. Muñoz filed a new action for protection. On June 15, 2017, the Superior Court of the Montería Judicial District - Third Chamber of Civil, Family and Labor Decision denied the tutela action, considering that the defendant judges had acted rationally in relation to a legally complex issue and faced with many uncertainties, especially about the effects of the unification judgment of the Constitutional Court against firm guardianship rulings that had not been expressly revoked or modified by the Court itself. Mr. Muñoz contested this denial guardianship ruling, which was confirmed by the Supreme Court of Justice (on a date that Mr. Muñoz does not specify). The process of this guardianship was sent to the Constitutional Court for eventual review, but the Constitutional Court refrained from selecting it (by decision whose date is not reported in the petition either). With this, the petitioner alleges that he has been left without additional resources in the Colombian domestic law to obtain the protection of his rights and compliance with the firm guardianship rulings that protected his right to a pension.

10. The State, in its response, alleges that the petition must be declared inadmissible in accordance with Article 47 of the American Convention, because the facts related therein do not characterize possible violations of human rights protected by the Convention, or because the allegations of the petitioner are manifestly groundless. Regarding the absence of characterization of violations of the American Convention, the State affirms that the petitioner did not have the right to access the early pension because he did not meet the requirements for it, a matter that - he affirms - has been definitively confirmed by the domestic judges; and that they only included it in the payroll of said plan in compliance with a guardianship order issued by a judge from the department of Córdoba, whose regularity and validity were at that time questioned by what was happening in said department with the processes and decisions of guardianship against PAR of TELECOM. The State also affirms that judgment SU-377/14 - which reversed the guardianship decisions that granted irregular pensions - has general effects, and its guidelines must be applied to all guardianship processes related to similar events, even if the respective files were not accumulated by the Court to that constitutional process, and even if the corresponding guardianship judgments were not expressly modified by the Court in the unification judgment: "it can be concluded that the effects of the SU- judgment 377 of 2014, apply to all judgments based on the same facts and causes that originated and / or would have caused them against the PAR, establishing guiding criteria so that when judges decide a similar issue, they take into account the decision adopted by the highest constitutional body, as well as the implications of a financial nature ". The State affirms in this regard that Mr. Muñoz is not right when he indicates that the considerations and orders of judgment SU-377/14 are not applicable to him, only because the tutela action that favored him has not been a matter for study by the Constitutional Court; and argues: "the effects of the aforementioned ruling extend to both the cases presented and those that may arise, on the occasion of the benefits established in the early pension plan of former Telecom workers, it being necessary to insist and / or reiterate that judgment SU-377 of 2014 revoked the decisions that granted recognition to be included in the plan for early pensions for former workers of the entity, when they were not entitled to it. " Given that in the State's opinion, Mr. Muñoz did not meet the requirements for access to the pension under that plan, but was included in the payroll of the plan in compliance with an irregular guardianship order, "the revocation effect of the unification sentence, with respect to guardianship decisions

that recognized rights without complying with legal requirements, it covers the petitioner's case, and not for this reason is a conventional guarantee being violated." The State also recalls that both the Second Promiscuous Judge of Lorica and the Promiscuous Judge of the Family of Lorica, who issued the guardianship sentences favorable to Mr. Muñoz, were being criminally investigated for these and other rulings that they had issued in violation of the law; and in this measure it concludes:

In this order of ideas, it should be borne in mind that judgment SU-377 of 2014 studied the regulatory framework on which, among others, related to how the Early Pension Plan should be governed, among others, which although the action of Guardianship object of requirement of the applicant here was not chosen for review, it should not be understood that its effects are still in force, since the judges who issued them are involved in criminal proceedings for having failed in their duties as administrators of justice, it is therefore, due to the jurisprudence indicated, to date, the autonomous heritage of Remnants, is not immersed in compliance with the required ruling, since it has been the Constitutional Court itself that has determined the scope of the studied rulings that they share the same facts and circumstances as those of Mr. Alberto Muñoz Caamano.

11. On the other hand, regarding the manifestly unfounded nature of the petition, the State affirms that the petitioner has not provided evidence to support his claims regarding alleged violations of his right to the bare minimum and dignity.

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

12. First, the Commission observes that the State does not allege the lack of exhaustion of domestic remedies. The petitioner alleges that the guardianship judgments that favored him and ordered the recognition and payment of his right to the pension have not been implemented, since the PAR and the knowledge judges have granted it an *erga omnes* character of binding precedent to the judgment of unification SU-377/14 of the Constitutional Court, and to that same extent they have ignored the value of *res judicata* that protects the judgments of protection favorable to Mr. Muñoz, failing to comply with them and refraining from demanding compliance. Faced with this lack of compliance with judgments of protection, Mr. Muñoz has filed two incidents of contempt, and has appealed through rights of petition to the Constitutional Court itself to clarify the matter, resources that so far have been unsuccessful to obtain payment of his pension allowances. He also filed a new tutela action against the decisions of the judges of instance to deny the incidents of contempt he filed, but said tutela action was denied in the first and second instance, and eventually was not selected for review by the Constitutional Court.

13. The tutela action in Colombia, which is a judicial action to request the protection of constitutional rights and corresponds to a modality of the amparo action, has been considered by the IACHR in the past as an ideal resource in Colombian law to achieve that protective purpose of violated fundamental rights⁵. To obtain compliance with guardianship orders that recognized his right to a pension, Mr. Muñoz Caamano resorted, among others, to the contempt incident, a procedural instrument specifically designed in Colombian law to enforce court guardianship orders. The two occasions in which Mr. Muñoz made use of this suitable procedural tool, his claims were rejected. Against these judicial refusals, Mr. Muñoz again made use of the tutela action, but this recourse was also unsuccessful. In this measure, the IACHR considers that Mr. Muñoz effectively filed and sufficiently exhausted the appropriate means provided by the Colombian legal system to enforce the judgments of protection and obtain the protection of his fundamental rights. These internal remedies were resolved after Mr. Muñoz presented his petition to the IACHR, but prior to the time of adoption of this admissibility report.

⁵ IACHR, Report No. 126/19. Admissibility. Eduardo Enrique Dávila Armenta. Colombia. August 2, 2019, para. 13; Report No. 108/19. Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019, paras. 11, 14; Report No. 121/17. Petition 70-07. Admissibility. José Fernando Montoro Alvarado. Peru. September 7, 2017, para. 10.No. 121/17. Petición 70-07. Admisibilidad. José Fernando Montoro Alvarado. Perú. 7 de septiembre de 2017, párr. 10.

14. In effect, the petition was received by the IACHR on February 19, 2010, and Mr. Muñoz made use of the contempt incident, the right to petition, and the tutela action after said date, instruments that were resolved by the competent authorities between the years 2015 and 2017. It is concluded that in relation to this end, the petition thus complies with the exhaustion of domestic remedies and filing deadlines established in Articles 46.1.a and 46.1.b of the American Convention. In this regard, the assessment of the exhaustion of domestic remedies is based on the current situation at the time the Commission adopts the decision on the admissibility of the petition⁶.

VII. ANALYSIS OF CHARACTERIZATION OF THE ALLEGED FACTS

15. In the present case, the IACHR considers that the central object of the petition is the alleged failure to comply with the guardianship sentences that recognized the right to pension of Mr. Muñoz Caamano, which would have violated his rights to judicial guarantees, judicial protection and social security, with direct impact on his right to dignified living conditions. This lack of compliance with guardianship decisions is inserted in a context of legal uncertainty and judicial controversy in the country regarding the tension that arose between, on the one hand, the *res judicata* effects of the guardianship sentences favorable to Mr. Muñoz, which were not modified or revised by the Constitutional Court in judgment SU-377 / 14-, and on the other, the *erga omnes* effects of binding precedent that the *ratio decidendi* of said unification of jurisprudence issued by the Constitutional Court has, as an authorized interpreter of the Colombian Constitution and the highest judge of the country's constitutionality. In its answer, the State, and the guardianship judges who were aware of the incidents of contempt and of the new action for guardianship filed by Mr. Muñoz, adopted the position of favoring the value of binding precedent of said unification sentence, refraining from complying with the firm guardianship rulings that protected the petitioner's right to a pension while Mr. Muñoz, for his part, insists that *the res judicata* force of the sentences that protected his right to a pension remains intact, for which reason these must be complied with, without such compliance being affected by the guidelines jurisprudence draws upon in judgment SU-377/14, which does not affect it. In these terms, a possible violation of various articles of the American Convention and the American Declaration has been clearly raised before the IACHR, a characterization that is not distorted by the substantive arguments presented by the State in its response, which must be carefully examined as to its merits, and contrasted with the petitioner's substantial allegations, at the merits stage of this proceeding.

16. To this extent, in the present case, the IACHR considers that possible violations have been characterized, both of the rights to judicial guarantees, to judicial protection and to the progressive development of economic, social, and cultural rights - Articles 8, 25, and 26 of the American Convention -mainly by virtue of the serious unresolved legal and jurisprudential conflict in which the petitioner's judicial case is involved, uncertainty of the legal system that has resulted in the impossibility of enforcing judgments that ordered the recognition and payment of his pension. All of which becomes more relevant if we take into account that the alleged victim is an older adult.

17. In light of these considerations, and after examining the factual and legal elements presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a thorough study, since the alleged facts, if corroborated, could characterize violations of Articles 8 (fair trial), 25 (judicial protection), and 26 (progressive development of economic, social, and cultural rights) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) to the detriment of Mr. Alberto Muñoz Caamano.

18. Regarding the claim on the alleged violation of Article 4 (right to life) of the American Convention, the Commission observes that the petitioners have not offered allegations or sufficient support to allow their possible violation to be considered *prima facie*.

⁶IACHR, Report No. 164/17, Admissibility, Santiago Adolfo Villegas Delgado, Venezuela, November 30, 2017, para. 13; Report No. 57/17, Petition 406-04, Admissibility, Washington David Espino Muñoz, Dominican Republic, June 5, 2017, para. 30.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 8, 25, and 26 of the American Convention, in connection with Articles 1.1 and 2;

2. To declare the present petition inadmissible in relation to Article 4 of the American Convention; and

3. Notify the parties of this decision; continue with the analysis of the merits of the matter; and 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 4th day of the month of August, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; and Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón, Commissioners.