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REPORT No. 54/17
PETITION 1327-07
REPORT ON ADMISSIBILITY

LUZ ANGELICA PORRRAS CAMACHO AND OTHERS
COLOMBIA

Approved by the Commission at its session No. 2085 held on May 25, 2017
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I. INFORMATION ABOUT THE PETITION

Petitioner	Jairo Villegas Arbelaez, National Union of State Employees and National Federation of State Workers of Colombia
Alleged victims:	Luz Angelica Porras Camacho and others
State denounced:	Colombia
Rights invoked:	Articles 8 (Right to a Fair Trial), 9 (Freedom from Ex Post de Facto Laws), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ² ; 3, 4, 6 and 7 of the Protocol of San Salvador; and 19 and 24 of the Inter-American Charter of Social Guarantees

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	October 11 th 2007
Additional information received during the initial stage:	February 9 th 2011
Date on which the petition was transmitted to the State:	November 28 th 2011
Date of the State's first response:	February 21 st 2012
Additional observations from the petitioner:	May 21 st 2014
Additional observations from the State:	June 3 rd 2015

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 on Human Rights (ratification instrument deposited on July 31 st 1973)

¹ Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the discussion and decision of the present case, in accordance with article 17.2.a) of IACHR Regulations.

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

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

IV. ANALYSIS OF 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 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in accordance with articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners state that Luz Angelica Porras Camacho, Humberto Rey Baron, Alvaro Damian Gomez Granja and Jose Silar Benavides Ariza (hereinafter the “alleged victims”) were working as temporary employees at the Public Prosecutor’s Office (hereinafter “Public Prosecutor”), in different positions, when they were dismissed. They indicate that the dismissals were made without complying with legal requirements, since they allege that these measures were not justified; that no record of the facts or grounds were left in the employee files; and that they did not base it on reasons of good service (a grounds established by law).

2. For all four of the alleged victims, the petitioners claim that the Public Prosecutor did not have the authority to dismiss a person who worked as a temporary employee while exercising the duties of a public administration career, by virtue of the stability which is characteristic of such positions; and that the fact that they were public servants appointed in a temporary capacity does not imply that their employment may be terminated discretionally. They state that a competitive selection process confers the permanent nature of these positions, but it is asserted that the Public Prosecutor did not hold such exams, despite these having been ordered by the Council of State (*Consejo de Estado*) in a general context in a ruling of October 4th 2001. The alleged victims therefore in practice had been working in positions that were by nature of public office, but that, as the competitive exams required for the formal appointment to such positions had not taken place, they continued to exercise these duties for several years through temporary contracts. The petitioners allege that the court with administrative jurisdiction ignored constitutional case law (they cite various rulings) that establishes the requirement that acts dismissing career employees, including temporary employees, must present a justification for dismissal; and that the failure to present any justification for these dismissals constitutes a violation of due process. Moreover, they state that the Council of State declared dismissed procedures null and void in previous cases similar to those of the alleged victims, which, according to the petitioners, indicates that the right to equality of the alleged victims has been violated.

3. With respect to the individual situation of each of the alleged victims, the petitioners allege that:

(a) Mrs. Luz Angelica Porras Camacho worked in the position of university-educated professional I from February 19th, 1996 to August 31st, 2001 when she was dismissed. In light of this decision, she filed an action for annulment and reinstatement of rights before the Administrative Tribunal of Cundinamarca. On June 10th 2004, the Tribunal rejected her claims as it considered that Mrs. Porras had not demonstrated that she had been included in the hierarchical order of the service and, therefore, that there was no stability of position, which allowed her dismissal to be declared for organizational reasons. The alleged victim appealed before The Council of State, which confirmed the decision in a ruling on March 1st, 2007, affirming that no irregularity, misuse of power or lack of justification had been demonstrated.

(b) Mr. Humberto Rey worked as Deputy Prosecutor from April 1st, 1998 until he was dismissed on January 15th, 2002. He filed an action for annulment and reinstatement of rights before the Administrative Tribunal of Cundinamarca, which on March 17th, 2005 rejected his claims on the basis that a misuse or abuse of power had not been demonstrated, and that the temporary nature of the position equated it with positions

of discretionary appointment and dismissal. Following this decision, the alleged victim appealed before the Council of State, which confirmed the ruling on April 12th, 2007 affirming that illegality had not been proved and that discretionary appointment and dismissal was applicable.

(c) Mr. Alvaro Gomez occupied the position of head of section III of the National Directorate of the Technical Investigation Unit (*Cuerpo Técnico de Investigación –CTI*) from April 1999 until December 31st, 2001 when he was dismissed. In light of this decision, he filed an action for annulment and reinstatement of rights before the Administrative Tribunal of Cundinamarca, which on January 13th, 2005 rejected his claims by establishing that the temporary position had the same stability as a position of discretionary appointment and dismissal. Furthermore, the Tribunal considered that appointments to administrative service positions are required to undergo a selection process, which in Mr. Gomez's case it did not occur. The alleged victim appealed before the Council of State, which on March 1st, 2007 confirmed the first instance ruling, stating that the declaration of redundancy was presumed to have been given for organizational reasons and that in this case it had not been proven otherwise.

(d) Mr. Jose Benavides worked as a judicial investigator II in the National Directorate of the Technical Investigation Unit (CTI) from June 30th, 1992 until he was dismissed on June 9th, 2003. He filed an action for annulment and reinstatement of rights before the Administrative Tribunal of Cundinamarca, which rejected his claims on February 22nd, 2007, stating that the appointment of Mr. Benavides was temporary and precarious given that it was temporary. The alleged victim appealed. On May 24th, 2007, the Administrative Tribunal of Cundinamarca rejected the appeal, considering the judgment on the action for annulment and reinstatement to be non-appealable due to the amount of the demand in accordance with the provisions of Law 446 of 1998 in force when the appeal was filed.

4. For its part, the State argues that the alleged victims were working in temporary positions, that they consequently did not enjoy the stability of a public office position, and that, therefore, dismissal from the position for organizational reasons was possible, as occurs in positions of discretionary appointment and dismissal. Furthermore, it considers that the Public Prosecutor's failure to hold competitive exams, with respect to the positions in which the alleged victims worked, does not constitute a violation of the rights contained in the American Convention, since it is not possible to assume that the alleged victims would have passed the exams.

5. The State indicates in general terms that the alleged victims did not resort to other actions offered by domestic legislation regarding rulings by courts with administrative jurisdiction. It indicates to that effect that Mr. Benavides could have contested the ruling that rejected the appeal. With respect to the non-appealability of Mr. Benavides' case, the State asserts that this is exceptional and it is established by Law 446 of 1998 by virtue of the need to reduce procedural delays. The State asserts that in the case of Mr. Benavides there is no violation of article 8 of the Convention, as the right to appeal contained in it is applicable to criminal matters only.

6. The State also asserts that the case falls outside the jurisdiction of the Commission due to the matter that is in question, given that the petition invokes a violation of the rights contained in articles 3, 4, 6 and 7 of the Protocol of San Salvador; and articles 19 and 24 of the Inter-American Charter of Social Guarantees for Workers.

7. Furthermore, the State alleges that the present petition constitutes a "fourth instance", given that the judgments pronounced by domestic courts fully complied with the requirements of due process and access to efficient and suitable remedies. It also indicates that the petitioners seek the judicial review of judgements that rule against them, while the alleged victims were handed judgements that were well founded on the basis of the legislation in force.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. In view of the positions of the parties and considering the information available in the case file, the Inter-American Commission considers that all domestic remedies were exhausted for each of the

alleged victims: (a) in the case of Mrs. Luz Porras, on March 1st, 2007 with the ruling of the Council of State notified on June 1st, 2007; (b) with respect to Mr. Humberto Rey, with the judgment of the Council of State of April 12th, 2007 notified on July 19th, 2007; (c) in the case of Mr. Alvaro Gomez, with the judgement of the Council of State of March 1st, 2007 notified on July 13th, 2007; and (d) regarding Mr. Jose Benavides, with the ruling of the Administrative Tribunal of Cundinamarca that rejected the appeal on May 24th, 2007. Moreover, the Commission observes that, with respect to the first three alleged victims, the State indicated in general terms that they had access to other resorts or remedies in the domestic judicial system, but did not indicate what these remedies were or whether they were suitable and effective. In addition, in the case of Mr. Jose Benavides, the Commission observes that the procedure followed before the administrative jurisdictions was non-appealable by law, and therefore it cannot be demanded of him that he resorts to further judicial remedies.

9. Furthermore, considering that the petition was received by the Commission on October 11th, 2007, the Commission observes that the alleged victims appealed to the IACHR within the six months following the final judgment pronounced in their cases. In that respect, the Inter-American Commission concludes that the present petition complies with the admissibility requirements established in articles 46.1.a and 46.1.b of the American Convention.

VII. COLORABLE CLAIM

10. In view of the facts and questions of law presented by the petitioners, and of the nature of the issues brought to its knowledge, the Commission considers that the allegations related to the declaration of redundancy not complying with legal requirements and not being justified could, *prima facie*, constitute violations of articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in connection with article 1.1 (obligation to respect rights) of that treaty to the detriment of Luz Angelica Porras Camacho, Humberto Rey Baron, Alvaro Damian Gomez Granja and Jose Silar Benavides Ariza.

11. Regarding the claims related to Mr. Benavides' rights in a non-appealable judicial procedure⁴, the merits of the matter must be analyzed with respect to articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in accordance with articles 1.1 (obligation to respect rights) and 2 (obligation to adopt domestic legislative measures) thereof.

12. As for the claim about the alleged violation of articles 9 (freedom from ex post facto laws) and 24 (right to equal protection) of the Convention, the Commission observes that the petitioners have not offered sufficient arguments or grounds to consider that a *prima facie* violation of those articles may have taken place.

13. With respect to the claims of the State regarding the "fourth instance formula", the Commission recognizes that it does not have the jurisdiction to review judgments pronounced by national courts that have acted within their jurisdiction and applied the principles of due process and the right to a fair trial. Nevertheless, its mandate does confer it jurisdiction to declare a petition admissible and, if the case has legal basis, to pronounce judgment on questions of law when a petition refers to domestic procedures that may violate rights that are protected by the American Convention.

14. As for the claims about violations of articles 3, 4, 6 and 7 of the Protocol of San Salvador, the IACHR indicates that the jurisdiction established in the provisions of article 19.6 of that treaty to pronounce judgment in the context of an individual case is limited to articles 8 and 13. With respect to the other articles, in compliance with article 29 of the American Convention, the Commission may take them into consideration to interpret and apply the American Convention and other applicable instruments.

⁴ In previous cases, the Inter-American Commission has established the admissibility of petitions that alleged a lack of instance of appeal for administrative proceedings in Colombia. In this respect, see for example: IACHR, Report No. 71/09, Petition 858-06, Belén Massacre – Altavista, Colombia, August 5th 2009, par. 44; and IACHR, Report No. 69/09, Petition 1385-06, Rubén Darío Arroyave Gallego, August 5th 2009, par. 36.

VIII. DECISION

1. To find the present petition admissible in relation to articles 8 and 25 of the American Convention, in connection with articles 1.1 and 2 thereof;
2. To find the present petition inadmissible in relation to articles 9 and 24 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. 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 in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.