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REPORT No. 52/17
PETITION 816-08
REPORT ON ADMISSIBILITY

DIANA MILENA BARONA SÁNCHEZ AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

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and family. Colombia. May 25, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Roberto Fernando Paz Salas
Alleged victims:	Diana Milena Barona Sánchez and family
State denounced:	Colombia
Rights invoked:	Article 24 (Equal Protection) of the American Convention on Human Rights; ¹ and Articles 6, 7 and 10 of the International Covenant on Civil and Political Rights

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	June 9, 2008
Date on which the petition was transmitted to the State:	October 12, 2012
Date of the State's first response:	December 13, 2012
Additional observations from the petitioning party:	February 22, 2013 and September 21, 2013
Additional observations from the State:	June 7, 2013

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, 1973)

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 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; December 14, 2007
Timeliness of the petition:	Yes; June 9, 2008

¹ Hereinafter, "the American Convention" or "the Convention."

² The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner claims that the facts described in this petition occurred in the context of the armed conflict in Colombia. He asserts that Mrs. Diana Milena Barona Sánchez (hereinafter “the alleged victim”) resided near the police station in the corregimiento of Villa Colombia, Jamundí (Valle del Cauca), with her life partner, Darwin Piedrahita Zuluaga, and their two children, Miguel Ángel Piedrahita Barona and Mauren Nallely Piedrahita Barona. He indicates that on March 31, 2000 unlawful armed groups attacked the police station by using explosives. As a result, the alleged victim was seriously injured with severe wounds, fractures and the subsequent amputation of her left leg. The petitioner claims that the alleged victim and her family saw their lives affected in many ways due to the severe damages suffered, and that the State never made reparations for the damages or considered the fact that they were in a situation of risk as they lived near the station of the public security forces. He asserts that the alleged victim was therefore subjected to damages that surpass and exceed the situations that citizens are usually obliged to withstand. In addition, he believes that the State had the duty to keep civilians out of the conflict and help the victims. He claims that the State is responsible for the damages in view of the risk caused and the nature of the public power and of the State’s actions.

2. The petitioner asserts that on October 12, 2000 the alleged victim lodged a claim for damages with the Administrative Law Court of Valle del Cauca, and that it was rejected as the Court found no negligence on the part of the state authorities that could lead to State responsibility. He indicates that in view of the unfavorable decision, on March 21, 2006, Diana Barona and her family filed appeal. He adds that the Administrative Law Court of Valle del Cauca dismissed this recourse on April 7, 2006 based on Law No. 954 of 2005, under which the case was to be settled by a single instance in view of the amount for bale of jurisdiction of damages. According to the information in the annexes, the petitioner regards that the Law was retrospectively applied since the facts occurred before it came into force.

3. He asserts that on June 4, 2007 the alleged victim filed a writ of protection of constitutional rights for alleged violation of due process in view of the denial to appeal the judgment. He claims that the Second Chamber of the Administrative Law Court of the Council of State nevertheless ruled, on July 12, 2007, to dismiss the writ of protection of constitutional rights. As a result, he asserts, on August 27, 2007 Diana Barona appealed against said unfavorable ruling. He indicates that on October 18, 2007 the Fourth Chamber of the Administrative Law Court of the Council of State settled the appeal by confirming the inadmissibility of the writ of protection of constitutional rights, and referred the case to the Constitutional Court. He asserts that on December 14, 2007 the Constitutional Court, in the exercise of its discretional competence, ruled not to review the case, and that, as a result, the alleged victim lodged a “request to persist” in relation with the action for review.

4. In sum, the petitioner claims that the State has not admitted responsibility for the damages caused to the alleged victims. In this regard, he asserts that the Council of State (*Consejo de Estado*) has settled similar cases through the application of the doctrine of special damages or exceptional risk, accepting the State’s responsibility and ordering reparations in favor of victims of attacks perpetrated by unlawful armed groups.³ Consequently, he alleges violation of the right to equal protection, which is enshrined in Article 24 of the American Convention. Likewise, he claims that the legal proceedings whereby the alleged victim was denied direct reparations were of a sole instance.

5. In turn, the State alleges lack of competence on the part of the Commission in view of the subject matter of this petition, inasmuch as the rights invoked therein are embodied in Articles 6, 7 and 10 of the International Covenant on Civil and Political Rights. In this regard, it claims that there was a change in the rights invoked by the petitioner as he first alleged the violation of rights protected by the International Covenant on Civil and Political Rights and then he alleged the violation of Article 24 of the American Convention. The State notes that this circumstance partially changes the subject matter of the case. Likewise,

³ The petitioner cites: Council of State, Sentence No. 1564, October 11, 1990; Council of State, Sentence No. 6014, July 5, 1991; Council of State, Sentence No. 7136, April 29, 1994; Council of State, Sentence No. 7310, November 3, 1994; Council of State, Sentence No. 17278, June 5, 2008; Council of State, Sentence No. 15591, March 18, 2010; Council of State, Sentence No. 25319, September 28, 2012.

it claims that the petitioner does not explain nor prove why the alleged victim is said to have been treated differently from victims in similar cases settled by the domestic courts.

6. Furthermore, the State claims that this petition constitutes a fourth instance as the decisions made by the Administrative Law Court fully conformed guarantees of due process. It also asserts that the petitioners seek a review of decisions contrary to their interests. As a result, it believes that the facts do not establish violations of the rights enshrined in the American Convention, particularly in relation to the right to equal protection.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioner believes that the domestic remedies were exhausted through the unfavorable ruling of the Constitutional Court of December 14, 2007. In turn, the State did not submit observations or questions about the exhaustion of domestic remedies, nor about the timeliness of the petition under the American Convention.

8. In view of this and after analyzing the information available from the case file of the petition, the Commission considers that the alleged victims exhausted the domestic remedies available in the administrative and constitutional courts. Moreover, the Commission notes that the domestic remedies were exhausted through the Constitutional Court's judgment of December 14, 2007 and that the petition was received by the IACHR on June 9, 2008. Therefore, the Inter-American Commission concludes that the petition meets the admissibility requirements established in Article 46.1(a) and (b) of the American Convention.

VII. COLORABLE CLAIM

9. In view of the elements of fact and law presented by the petitioners and the nature of the matter brought to its attention, the Commission notes that the arguments concerning the application of Law 954 of 2005 (which established a sole instance in view of the amount of damages applicable in cases such as the alleged victim's case⁴) establish possible violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of the alleged victim and the duly identified family members.

10. As to the claim for alleged violation of the right to equal protection, which is enshrined in Article 24 of the Convention, the Commission notes that the petitioner has not submitted arguments or grounds sufficient to *prima facie* consider its alleged violation. Concerning the pleadings about the alleged retrospective application of Law 954 of 2005, the Commission notes that there are no sufficient elements to *prima facie* consider the admissibility of Article 9 (Freedom from Ex Post Facto Laws). In the merits stage, the IACHR will analyze the court's ruling, including the review in sole instance, in the light of Articles 8 and 25 of the Convention.

11. In relation to the State's pleadings about the fourth-instance procedure, the IACHR recalls that it is not entitled to review judgments issued by domestic courts acting in their jurisdiction and in full compliance with due process of law and right to a fair trial. However, under its mandate, the IACHR is competent to declare a petition admissible and rule on the merits whenever the matter concerns domestic proceedings that may tend to establish violations of rights protected by the American Convention.

⁴ In previous cases, the Inter-American Commission has declared the admissibility of petitions concerning the alleged lack of a court of review in relation to reparations proceedings as a result of the application of Law 954 of 2005 (on jurisdiction, court decongestion, efficiency and access to the administration of justice) in Colombia. In this regard, please see: IACHR, Report No. 71/09, Petition 858-06, Belén - Altavista Massacre, Colombia, August 5, 2009, par. 44; IACHR, Report No. 69/09, Petition 1385-06, Rubén Darío Arroyave Gallego, August 5, 2009, par. 37.

12. Moreover, in relation to the International Covenant on Civil and Political Rights, the Commission is not competent to determine violations of the rules established therein. Notwithstanding the foregoing, the Commission may consider said treaty for the purpose of interpreting the rules of the American Convention, during the merits stage of this case, in accordance with Article 29 of the Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the Convention, in connection with Articles 1.1 and 2 thereof;
2. To find the instant petition inadmissible in relation to Article 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.