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REPORT No. 93/17
PETITION 48-08
REPORT ON ADMISSIBILITY

ERNESTO LIZARRALDE ARDILA ET AL.
COLOMBIA

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I. INFORMATION ABOUT THE PETITION

Petitioner:	Rubén Darío Restrepo and Marco Antonio Arango Barrera
Alleged victims:	Ernesto Lizarralde Ardila and others
State denounced:	Colombia
Rights invoked:	Article 8 (Right to a Fair Trial) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Date on which the petition was received:	January 11, 2008
Additional information received at the initial study stage:	February 18 and December 15, 2008
Date on which the petition was transmitted to the State:	February 4, 2014
Date of the State's first response:	June 6, 2014
Additional observations from the petitioner:⁴	August 31, 2014
Additional observations from the State:	March 4, 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 (instrument of ratification was 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:	No
Rights declared admissible:	Articles 8 (Fair Trial), 21 (Property), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)

¹ In accordance with Article 17.2.a of the IACHR's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

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

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

⁴ On February 10, 2016, the petitioners submitted communications to update their contact information.

Exhaustion of domestic remedies:	Yes; July 11 and August 14, 2007
Timeliness of the petition:	Yes; January 11, 2008

V. ALLEGED FACTS

1 The petitioners submit that Mr. Ernesto Lizarralde Ardila, Mr. Luis Alfonso Olaya Fonseca and Ms. Blanca Lyliam López López worked for a corporation called ALMACENES GENERALES DE DEPÓSITO S. A. (“ALMADELCO S. A.”) and that within the period of December 31, 1969 to April 1, 1994 they reached more than twenty years of work at it. They assert that the corporation was, by that time and until July 4, 1994, an indirect or second-degree mixed-economy company in which over ninety per cent of the capital stocks were state-owned; and that, as a result, they were eligible for the pension plan applicable to public-sector employees, under Law No. 33 of 1985. They indicate that, based on this assumption, they claimed this pension plan to the company. However, their claim was dismissed and they were told that the plan applicable to them was that of private-sector employees, established in Law No. 100 of 1993. The petitioners assert that under this plan, the age at which benefits are paid increases and the pension amount drops.

2 Mr. Lizarralde, Mr. Olaya and Ms. López filed labor claims that were rejected by courts of both first and second instance. In the case of Mr. Lizarralde, the Court ruled on October 7, 2002 that his had not been a public employment contract; that it had always been under the rules governing private-sector employee relations; and that he had never objected to these. The Court also asserted that it was not true that, throughout his years of work at the company, the corporation had been of nature such that a pension plan for public-sector employees was applicable. In the cases of Mr. Olaya and Ms. López, the Court ruled, on August 15 and September 27, 2002, that the type of pension plan applicable was that corresponding to the termination date of their contracts; in the case of the alleged victims, it was the pension plan for private-sector workers.

3 The alleged victims therefore appealed against these resolutions, but the Labor Chamber of the Supreme Court of Justice dismissed the appeals. In the case of Mr. Lizarralde, the judgment was issued on August 12, 2003 and in the case of Ms. López, the appeal was settled on September 29, 2003. The Court submitted that, in these cases, the appeal was out of order since it objected to assumptions other than those dealt with by the Court. In the case of Mr. Olaya, the Court settled the appeal on October 23, 2003, claiming that it had been proved that at the time when he retired, the legal scheme applicable was that of private-sector employees.

4 Three years later, on June 28, 2006, the same body ruled on the case of Mr. Carlos Urbano Rivas, another employee of ALMADELCO S.A., who was granted a pension plan applicable to public-sector employees. The main argument in this resolution was that the type of pension plan applicable depended not on the termination date of a contract, but on the nature of the company throughout the time that an employee had been working at it. The Court established that workers cannot lose their benefits as a consequence of a change in the nature of a company. The petitioners assert that the alleged victims and Mr. Urbano had been in the same working conditions as regards the period when all of them reached more than 20 years of work, which, under Law No. 33 of 1985, is required to access the pension plan for public-sector employees.

5 The petitioners submit that they filed appeals for legal protection, as they believed that said decision proved that their rights to due process, equal protection, social security and work had been violated. However, these appeals were eventually dismissed. The last decision in these proceedings was that in which the Constitutional Court ruled not to choose the judgments for review, which was notified to Lizarralde and Olaya on July 11, 2007, and to Ms. López on August 14, 2007.

6 They indicate that on October 21, 2008, the Labor Chamber of the Supreme Court of Justice ruled on the case of Mr. Tito Julio Villamil Sánchez, another employee of ALMADELCO S. A. who was granted the pension plan applicable to public-sector employees, although he and the alleged victims had been in the same working conditions.

7 The petitioners submit that these facts violate Article 8 of the American Convention. They assert that the domestic remedies were exhausted by the Constitutional Court's decisions ruling not to review the judgments on the appeals for legal protection. They also indicate that the petition was lodged within the six months following the date of notification of said decisions.

8 The State, for its part, claims that the petition is untimely since the six-month period must be considered as of the dates of notification of the decisions by the Labor Court of Appeals of the Supreme Court of Justice, since the filing of the appeal for legal protection was aimed at extending the period for presenting the petition to the IACHR. In this regard, it also submits that the appeals for the protection of fundamental rights did not meet the requirement of immediacy. In addition, the State alleges that the petitioners intend to have the Commission work as a court of appeals, as they only express their objection to the domestic resolutions. Lastly, the State indicates that the facts described in the petition do not establish violations of the American Convention. It affirms that although the alleged victims were not granted the pension plan applicable to public-sector employees, they were able to access the general pension plan.

9 Basically, as regards the petitioners' argument about the different results in the judgments by the Labor Chamber of the Supreme Court of Justice concerning the alleged victims' cases and the cases of Mr. Urbano and Mr. Villamil, the State submits that these did not amount to a change in the jurisprudence because the factual hypotheses, though similar, were not identical to those of the alleged victims –at the admissibility stage, the State did not specify how the factual hypotheses differ from one another. Moreover, it asserts that even if the hypotheses were identical, under no circumstances should a legitimate change in the jurisprudence cause that the legal judgment in which it is contained be considered contrary to the provisions of the Convention. The State submits that changes in the jurisprudence are admissible in any legal framework, and that otherwise there would be an irrational obstruction in the evolution of law.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10 According to the facts denounced by the petitioners, the fact that gave rise to this petition was not the judgment that the Labor Chamber of the Supreme Court of Justice issued in each one of the labor proceedings, but its judgment issued in the case of Mr. Urbano on June 28, 2006, which they considered was an act of unequal treatment with respect to the right to social security. In this regard, the Commission believes that, if there was an act that violated the rights to due process, equal protection, social security and work, the remedy through which the petitioners could have had the judgments overturned was an appeal for legal protection, which was duly exhausted. As to the State's argument that the filing of the appeals for legal protection allegedly did not meet the requirement of immediacy, the Commission *prima facie* notes that, according to the case file, that was not the reason why the legal actions were found inadmissible. Based on the foregoing, the Commission believes that in this case the domestic remedies were pursued and exhausted pursuant to Article 46.1.a of the American Convention and Article 31.1 of the Rules.

11 As to the requirement of timeliness, the petition was lodged on January 11, 2008, within the six months following the date on which the alleged victims were notified of the Constitutional Court's resolutions of not choosing their cases for review, i.e. July 11, 2007, in the case of Mr. Lizarralde and Mr. Olaya, and August 14, 2007, in the case of Ms. López. Therefore, the Commission finds that this petition meets the requirement set forth in Article 46.1.b of the Convention and Article 32.1 of its Rules.

VII. COLORABLE CLAIM

12 The petitioners submit that the judicial resolutions deprived them of the pension plan that for over 20 years of work had applied to them, on the grounds that the deciding factor was the pension plan applicable at the termination date of their contract. They claim that later, with regard to people that worked at the same company and in the same conditions as the alleged victims had, the same Labor Chamber established the contrary, i.e. that the deciding factor was the pension plan applicable throughout the time that they had worked for the company, not the plan in force at the termination date of the contract; and that workers cannot lose their benefits as a result of changes in the nature of the company. The State, for its part, claims that the cases cited are not identical, though it does not specify how they differ from one another. And

it indicates that changes in the jurisprudence are part of the evolution of the domestic legal framework and that it does not entail a human rights violation. The Commission believes that the present matter needs to be further analyzed at the merits stage.

13 In view of the elements of fact and law presented by the parties, and the nature of the matter brought to it, the IACHR believes that, if proved, the facts denounced may establish violations of Articles 8 (Fair Trial), 21 (Property), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights), to the detriment of the alleged victims. The Commission recalls that this requirement is a *prima facie* analysis aimed at determining whether the facts described establish a possible violation of the rights enshrined in the American Convention or other applicable instruments, or are manifestly groundless or out of order. In this regard, the IACHR considers that the facts described are not groundless or out of order, and that at the merits stage, it will analyze the petitioners' arguments concerning the purported infringements of their rights to a fair trial and judicial protection, among others, due to the alleged application of a pension plan less beneficial than that applicable to them.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 21, 24 and 25 of the American Convention on Human Rights, in relation to its Article 1.1;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved electronically by the Commission on the 8 day of the month of August, 2017. (Signed): Francisco José Eguiguren, President; Margarette 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.