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REPORT No. 86/18
PETITIONS 550-07 AND 1357-08
REPORT ON ADMISSIBILITY

LUZ DARY RONCANCIO TORRES *ET AL.*
COLOMBIA

Approved electronically by the Commission on July 16, 2018.

Cite as: IACHR, Report No. 86/18. Petitions 550-07 and 1357-08. Admissibility.
Luz Dary Roncancio Torres *et al.* Colombia. July 16, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	National Union of State Employees of Colombia (<i>UNETE</i>), National Federation of State Employees (<i>FENALTRASE</i>) and Jairo Villegas Arbeláez
Alleged victims:	P-550-07: Luz Dary Roncancio Torres <i>et al.</i> ¹
	P-1357-08: Olga Lucía Ceballos Ramos
Respondent State:	Colombia ²
Rights invoked:	Articles 8 (Fair Trial), 9 (Freedom from <i>Ex Post Facto</i> Laws), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights; ³ Article VII (Right to protection for mothers and children) of the American Declaration of Rights and Duties of Man ⁴ Articles 3 (Obligation of Nondiscrimination), 4 (Inadmissibility of Restriction), 6 (Work) and 7 (Just, Equitable, and Satisfactory Conditions of Work) of the Protocol of San Salvador, and other international instruments ⁵

II. PROCEDURE BEFORE THE IACHR⁶

Filing of the petition:	P-550-07: May 4, 2007
	P-1357-08: November 25, 2008
Additional information received at the stage of initial review:	P-550-07: April 28, June 23 and September 26, 2011
Notification of the petition to the State:	P-550-07: January 27, 2012
	P-1357-08: October 15, 2012
State's first response:	P-550-07: April 4, 2012
	P-1357-08: January 17, 2013
Additional observations from the petitioner:	P-550-07: May 23, 2012
	P-1357-08: February 23, 2015
Additional observations from the State:	P-550-07: August 3, 2017
	P-1357-08: August 25, 2015
Notification of the possible archiving of the petition:	P-550-07: March 27, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	P-550-07: March 30, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes, in both petitions
Competence <i>Ratione loci</i>:	Yes, in both petitions
Competence <i>Ratione temporis</i>:	Yes, in both petitions
Competence <i>Ratione materiae</i>:	Yes, in both petitions. American Convention (deposit of ratification instrument on July 31, 1973)

¹ Elvia Isabel Perry Torres, Marcela Ximena Olarte Charry, Marina Sánchez Pabón and Julio César Ovalle Vargas.

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

⁴ Hereinafter "Declaration" or "American Declaration."

⁵ Article 24 of the Inter-American Charter of Social Guarantees.

⁶ The observations submitted by each party were duly transmitted to the opposing party.

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, in none of the petitions
Rights declared admissible	Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to 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 two petitions considered herein were filed by the same petitioners and concern the alleged wrongful dismissal of six alleged victims in the framework of a restructuring procedure within the Municipality of Bogotá in May 2001, and the lack of effective judicial answers. In view of these aspects and similar events, the IACHR hereby decides to join the petitions in accordance with Article 29.5 of its Rules of Procedure.

Common claims

2. The petitioners indicate that the alleged victims worked as public officials in administrative career positions of the Administrative Department of District Planning of the Municipality of Bogotá (hereinafter “Planning Department”). They indicate that on April 30, 2001 the Mayor of Bogotá issued Decree No. 366 to approve the new organizational structure of the Planning Department and entitle the Director of said institution to implement it. They assert that on that same day the Director issued Resolution No. 182 to include the employees into the new staff, leaving out the alleged victims, as their jobs had been eliminated.

3. Later, on May 3, 2001 the alleged victims were notified of their dismissal from said institution because they had not been appointed to available posts. The petitioners argue that Decree No. 366 was effective from the day following its date of issue; that is to say, May 1, 2001. Therefore, they allege the nullity of Resolution No. 182 as the Director was not entitled to issue it right on April 30, 2001.

4. The petitioners claim that the dismissals were arbitrary and wrongful since the alleged victims were employees in the administrative career, hence, they had a special right to continuity and stability that was disregarded by the Planning Department. They remark that these positions were replaced with provisional jobs. Moreover, they allege that in prior similar cases, the State Council found the removals or dismissals null and void, which, the petitioners believe, violates their right to equal protection.

5. In turn, the State claims that the Commission lacks competence in regard to the matter presented herein because the petitioners invoke rights protected by Articles 3, 4, 6 and 7 of the Protocol of San Salvador and Article 24 of the Inter-American Charter of Social Guarantees. It also claims that, based on the domestic legal framework and the judgment of the domestic courts, Decree No. 366 came into force on its date of issue on the Government Gazette, that is to say, April 30, 2001.

6. As for the elimination of administrative career jobs, the State affirms that Law No. 443 of 1998 establishes that administrative career employees must be reinstated to similar positions “without a change of duties.” In this regard, it claims that the new structure did not foresee duties or jobs similar to those the alleged victims had. In addition, the State indicates that the alleged victims were offered to choose between their reinstatement to similar jobs and compensation, in accordance with article 39 of Law No. 443 of 1998, which establishes that when the staff of an institution is reorganized, career employees must be

reinstated without a change of their duties. Accordingly, the alleged victims were given five days to notify their decision; however, as they failed to do so, it was understood that they had chosen compensation.

7. Finally, the State claims that in all of these cases an analysis was conducted in relation to the norms governing staff management and administrative career positions, and that these norms were applied in a well-founded and individualized manner, considering each situation. Nevertheless, the alleged victims failed to demonstrate that they were better suited for the jobs than the persons that finally replaced them in their jobs—unlike those people whose petitions are invoked here, whose special rights were recognized because they did prove that they were better suited than their replacements and that there existed similar positions which they were finally reinstated to.

8. In view of the foregoing, the State claims that the instant petition seeks a fourth instance of jurisdiction because the decisions of the administrative jurisdiction were adopted in accordance with due process; and it affirms that the petitioners seek a review of decisions that are contrary to their interests. Thus, it considers that the facts do not establish violations of rights enshrined in the American Convention.

Specific claims

Elvia Isabel Perry Torres

9. They claim that Ms. Perry Torres worked at the Planning Department from March 26, 1996 to May 3, 2001. Due to her dismissal, she filed an action for annulment and restoration of rights before the Second Chamber of the Administrative Court of Cundinamarca, which on December 19, 2003 dismissed her claims, arguing that the elimination of jobs conformed to the domestic rules. The alleged victim appealed this decision to the State Council, which on August 3, 2006 upheld the decision, establishing that there was no proof that a job similar to her previous one existed so she could be reinstated. This judgment was notified on August 15, 2006.

10. The State indicates that the alleged victim did not file other remedies foreseen in the domestic legal framework in relation to the decisions adopted by the administrative courts.

Marcela Ximena Olarte Charry

11. They claim that Ms. Olarte Charry worked at the Planning Department from March 6, 1992. They indicate that on May 3, 2001 she was notified of her dismissal; however, she was informed that because she was protected by union law, her dismissal would be effective only after said protection finished. On September 21, 2001 she was notified that her dismissal would be effective on September 24, 2001, and that she had to choose between compensation and her reinstatement to a job similar to the one she had. On September 24, 2001 the alleged victim manifested that she chose to be reinstated; however, only on March 19, 2002 did the institution inform her that reinstatement was impossible because at that moment no jobs were left that matched her professional profile. In view of this, the alleged victim filed an action for annulment and restoration of rights before the Second Chamber, which rejected it on July 24, 2003 on the grounds that her dismissal did not violate the guarantees applicable to her under union law. The alleged victim appealed this decision to the State Council, which on November 24, 2005 upheld the decision, claiming that there was no proof that a job similar to her previous one existed so she could be reinstated. This judgment was notified on February 9, 2007.

12. The State argues that, just as the courts of law established, the alleged victim's protection by union law was respected.

Marina Sánchez Pabón

13. They claim that Ms. Sánchez Pabón worked from September 19, 1979 to May 3, 2001. In view of her dismissal, she filed an action for annulment and restoration of rights before the Administrative Court of Cundinamarca, which rejected it on March 25, 2004 arguing that there was not a position similar to

her previous job which she could be reinstated to. The alleged victim appealed this decision to the State Council, which confirmed the lower instance judgment on August 3, 2006 reiterating that there was not a similar job. This judgment was notified on December 15, 2006.

Julio César Ovalle Vargas

14. They claim that Mr. Ovalle Vargas worked at the Planning Department from November 7, 1996 to May 3, 2001. In view of his dismissal, he filed an action for annulment and restoration of rights before the Administrative Court of Cundinamarca, which rejected it on September 2, 2004, claiming that the elimination of jobs conformed to the legal framework. The alleged victim appealed this decision to the State Council, which on February 8, 2007 upheld that decision, arguing that there was no proof that a job similar to his previous position existed. The previous judgment was notified on April 13, 2007.

Luz Dary Roncancio Torres

15. They claim that Ms. Roncancio Torres worked from December 2, 1991 to May 3, 2001. In view of her dismissal, she filed an action for annulment and restoration of rights before the Administrative Court of Cundinamarca, which rejected it on January 24, 2007 claiming that the elimination of jobs conformed to the domestic rules. The alleged victim appealed this decision to the same court, which dismissed the remedy, arguing that the legal action was of single instance of jurisdiction because of the low amount of damages, based on article 134E, paragraph 3, of the Administrative Code.

16. The State alleges that said decision was not challenged through a complaint, which is foreseen in the domestic legal framework.

Olga Lucía Ceballos Ramos

17. They indicate that Ms. Ceballos Ramos worked as Departmental Head at the Planning Department and that on May 3, 2001 she was removed from office despite her being protected by maternity law. Therefore, she filed an action for annulment and restoration of rights before the Administrative Court of Cundinamarca, alleging the violation of her maternity leave which is foreseen in articles 39 and 40 of Decree No. 1848 of 1969. Then, on January 16, 2004, said court annulled part of Resolution No. 182, establishing that compensation had been miscalculated, for the alleged victim was dismissed from her job 12 days before the end of her leave. However, it confirmed the lawfulness of the dismissal and established that the new amount of damages should consider the 12 days that, in principle, she should have remained employed.

18. Not satisfied with said decision, on November 5, 2004 she lodged an appeal, alleging that the judgment contradicted case law because said decision established compensation instead of reinstatement to an equivalent or similar job to the one the alleged victim had. She also alleged that other people in a situation similar to hers were included in the new positions available at the Planning Department. Subsequently, on February 28, 2008 the State Council revoked the trial court's judgment, claiming that her leave was respected and that the compensation granted was correct since her dismissal was effective from May 5, 2001; that is, after the 84 days of leave granted under Law No. 443 of 1998. The court also considered that Ms. Ceballos Ramos did not demonstrate that she, as a career employee, was better suited than the persons employed. This decision was notified on July 25, 2008.

19. The State asserts that the administrative restructuring by which the alleged victim's job was eliminated was duly undertaken in accordance with the rules in force. It indicates that on May 3, 2001 Ms. Ceballos Ramos was notified of the five-day period she had for choosing between reinstatement to a similar job and compensation. However, the period was due without her having informed her choice; therefore, on May 14, 2001, by a resolution, she was granted compensation for her removal from office.

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

20. The petitioners affirm that the alleged victims appealed their dismissals by filing actions for annulment and restoration of rights. The petitioners indicate that except for the case of Ms. Luz Dary Roncancio Torres, analyzed hereafter, all of the cases were resolved through negative final judgments of the State Council; thus, domestic remedies were exhausted. For its part, the State questioned the exhaustion of domestic remedies only in the cases of Elvia Isabel Perry Torres and Luz Dary Roncancio Torres.

21. In view of the foregoing, the Commission establishes that Marcela Ximena Olarte Charry, Marina Sánchez Pabón, Julio César Ovalle Vargas and Olga Lucía Ceballos Ramos exhausted domestic remedies through the judgments of the State Council issued in the context of the respective proceedings and notified on the dates mentioned in Section V, in accordance with Article 46.1.a of the Convention. Likewise, the petitions were lodged within the six-month period following the notification date of the final judgments that exhausted the domestic remedies; therefore, the petitions meet the requirement established in Article 46.1.b of the Convention.

22. In regard to Ms. Elvia Isabel Perry Torres, the Commission notes that despite the State's indication that the alleged victim had to exhaust other remedies in relation to the judgment issued by the administrative jurisdiction, it did not specify these other remedies or explain how these could be effective in relation to this particular matter. Therefore, the IACHR believes that Ms. Perry Torres exhausted the domestic remedies through the State Council's decision of August 3, 2006, notified on August 15, 2006, in accordance with Article 46.1.a of the Convention.

23. As for Ms. Luz Dary Roncancio Torres, the petitioners allege that, due to her dismissal, she filed an action for annulment and restoration of rights to the Administrative Court of Cundinamarca. On March 29, 2007, the court rejected it, arguing that said action was of single instance of jurisdiction because the compensation sought does not reach the established quantum, hence unappealable. The State claims that the judgment of March 29, 2007 was not challenged through an appeal of complaint. About this allegation, the IACHR recalls that when a State alleges lack of exhaustion of domestic remedies, it is up to the State to indicate which domestic remedies have not been exhausted and to prove their effectiveness. The Commission notes that the State did not indicate how a complaint could have been effective to address the lack of review of judgments issued in proceedings involving a low amount of damages. Accordingly, the Commission notes that the Administrative Court of Cundinamarca clearly established the impossibility to challenge the decision, preventing Ms. Roncancio Torres from exhausting effective remedies in the domestic jurisdiction. As a result, the Commission concludes that the exception concerning the exhaustion of domestic remedies, referred to in Article 46.2.b of the Convention, is applicable in this case and that the admissibility requirement of timeliness must be declared met.

VII. ANALYSIS OF COLORABLE CLAIM

24. The petitioners allege that the Planning Department of the Municipality of Bogotá violated the rights to stability of employment and to continuity of the alleged victims, who worked as state employees in administrative career positions. They claim that the Director of the institution was not entitled to reorganize the staff until one day after the issue of Decree No. 366, that is to say, May 1, 2001. Consequently, they affirm that Resolution No. 182 of April 30, 2001 is unlawful, and, as a result, the dismissals were arbitrary. They indicate that the facts were reported to the domestic judicial authorities, who, having wrongly analyzed the domestic norms and case law, did not rule to reinstate the alleged victims to their jobs. For its part, the State indicates that the petition leads to a court of fourth instance because the restructuring procedure conformed to the domestic rules, which was upheld by the Administrative Court of Cundinamarca and the State Council. Additionally, it asserts that all the proceedings were undertaken in accordance to the alleged victims' judicial safeguards.

25. The Commission notes that in the instant case, the lawfulness and validity of Decree No. 366 and Resolution No. 128, issued by the Mayor of Bogotá and the Director of the Planning Department

respectively, were determined by the domestic norms and that the merits were analyzed by the judicial authorities. Therefore, for the purpose of admissibility, the Commission does not find *prima facie* that the submitted elements establish a possible violation of the rights protected by the Convention.

26. In relation to the alleged violation of the right to stability of employment of Elvia Isabel Perry Torres, Marcela Ximena Olarte Charry, Marina Sanchez Pabón, Julio César Ovalle Vargas and Olga Lucía Ceballos Ramos, the Commission observes that the Administrative Court of Cundinamarca, in resolving the actions for annulment, and the State Council, in hearing the respective challenges, analyzed the specific situations of each one of the alleged victims in order to determine whether the dismissals were lawful or not. In said proceedings, the courts verified that the restructuring of the Planning Department was undertaken pursuant to the established legal requirements. Moreover, the courts determined that the jobs the alleged victims had were eliminated and that the availability of similar jobs had not been demonstrated. In this regard, the Commission takes into account the lack of response on the part of the petitioners, in relation to the claims of the State according to which the alleged victims were given five days to inform whether they chose reinstatement to similar jobs or compensation, and that, given their lack of response, it was understood that they had chosen to receive compensation.

27. By virtue of the supplementary nature of the international protection given by the inter-American human rights system, the Commission cannot take upon itself the functions of a court of appeals to examine purported errors of fact or law that domestic courts may have committed acting within their jurisdiction, unless there is unmistakable evidence of violation of the guarantees of due process enshrined in the American Convention.⁷ Consequently, in view of the lack of elements proving that the courts' resolutions were arbitrary or contrary to the rights enshrined in the American Convention or the American Declaration, the facts presented by the petitioners do not tend to establish violations of said international treaty.

28. Without prejudice to the foregoing, the Commission observes that in regard to Ms. Luz Dary Roncancio Torres, given the elements of fact and law presented by the parties, and the nature of the matter brought to its attention, the IACHR considers that, if proven, the alleged impossibility to challenge a judgment in view of the low amount of damages, and the consequent lack of judicial protection⁸ all could establish violations of Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection with Articles 1.1 and 2 thereof.

29. As for the claims concerning violations of Articles 3, 4, 6 and 7 of the Protocol of San Salvador, the IACHR notes that the competence foreseen in Article 19.6 thereof, to rule in the context of an individual case is limited to Articles 8 and 13. In regard to the other articles, the Commission may consider them for the purpose of interpreting or enforcing the American Convention and other applicable instruments, in accordance with Article 29 of the Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof, to the detriment of Ms. Luz Dary Roncancio Torres;

2. To find the instant petition inadmissible in relation to Elvia Isabel Perry Torres, Marcela Ximena Olarte Charry, Marina Sánchez Pabón, Julio César Ovalle Vargas and Olga Lucía Ceballos Ramos; and

⁷ IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alexsander Santillán Hermoza, Peru, April 15, 2016, par. 33.

⁸ Previously the Inter-American Commission has admitted petitions concerning the purported lack of courts for the review of administrative proceedings in Colombia based on the bill of damages. IACHR, Report No. 71/09, Petition 858-06, Massacre of Belén - Altavista. Colombia. August 5, 2009, par. 44; IACHR, Report No. 69/09, Petition 1385-06, Rubén Darío Arroyave Gallego, August 5, 2009, par. 37; IACHR, Report No. 107/17, Petition 535-07, Vitelio Capera Cruz. Colombia. September 7, 2017, par. 11; and IACHR, Report No. 106/17. Petition 272-07. Admissibility. Luis Horacio Patiño and family. Colombia. September 7, 2017, par. 9.

3. To notify the parties of this decision; to continue with the analysis on the merits; 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 July, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.