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REPORT No. 111/17
PETITION 883-07
REPORT ON ADMISSIBILITY

ROSARIO BEDOYA BECERRA
COLOMBIA

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

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Colombia. September 7, 2017.



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 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Daniel Emilio Mendoza and John Freddy Bustos Lombana
Alleged victim:	Rosario Bedoya Becerra
State denounced:	Colombia
Rights invoked:	Articles 1 (Obligation to Respect Rights), 3 (Right to Juridical Personality), 5 (Humane Treatment), 8 (Fair Trial), 10 (Compensation), 11 (Privacy), 14 (Reply), 17 (Family), 18 (Name), 21 (Property), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention; ² Article 13 of the Protocol of San Salvador; and other international treaties ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	July 11, 2007
Additional information received at the initial study stage:	August 7 and 31, October 1, 2007; and October 19, 2011
Date on which the petition was transmitted to the State:	October 20, 2011
Date of the State's first response:	January 26, 2012
Additional observations from the petitioning party:	February 23 and July 27, 2012
Additional observations from the State:	July 20, 2012 and April 11, 2014

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

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 American Declaration of Rights and Duties of Man, Inter-American Convention against Corruption, Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights.

⁴ The observations presented by 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 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; February 14, 2007
Timeliness of the petition:	Yes; July 11, 2007

V. ALLEGED FACTS

1. The petitioners submit that Ms. Rosario Bedoya Becerra (hereafter “the alleged victim” or “Ms. Bedoya”) worked as the financial vice-president (at will post) of a Colombian company called “Vías Férreas” (hereafter “the company” or “FERROVÍAS”), from May 21, 1996 until July 7, 1998, when she was dismissed. They claim that Ms. Bedoya was removed because she submitted a negative observation to the president concerning the award of a contract to a third party.

2. Consequently, Ms. Bedoya lodged an appeal for annulment and reparations before the Administrative Court of Cundinamarca. On April 25, 2002 the Court ruled in her favor by ordering her reinstatement. FERROVÍAS, for its part, appealed against this decision, on the basis that there were no grounds to annul the removal. On September 11, 2003, the Second Chamber of the Administrative Court of the Council of State settled the appeal presented by the company and revoked the lower judgment, as it considered that Ms. Bedoya failed to comply with the procedural requirement of proving that her dismissal was the result of an act of abuse of power.

3. In view of this unfavorable decision, the alleged victim filed an appeal for legal protection for the violation of the rights to due process, equal protection and of defense. On November 4, 2004, the Fourth Chamber of the Administrative Court of the Council of State ruled that the appeal for legal protection was out of order on the grounds that said remedy is inappropriate to challenge a judicial resolution. The alleged victim appealed against this judgment; however, on April 21, 2005, the Fifth Chamber of the Administrative Court of the Council of State confirmed the lower resolution.

4. As a result, Ms. Bedoya resorted to the Constitutional Court. By sentence T-902 of September 1, 2005, this Court revoked the judgment of April 21, 2005 and annulled that of September 22, 2003 as it considered that the Council of State had not assessed relevant evidence to justify these rulings. In compliance with the Constitutional Court’s order to review Ms. Bedoya’s case, the Council of State again ruled, by its sentence of November 17, 2005, to overturn the lower judgment of April 25, 2002 on the basis that a constitutional judge cannot replace the sitting judge; that in the case there was no proof that there had been an act of abuse of power; and that the evidence that the Constitutional Court thought had been disregarded did not lead to a change in the judgment.

5. The petitioners claim that Ms. Bedoya made several requests to the Council of State to file a motion for contempt, and that it would always reject her request on the grounds that the ruling of November 17, 2005 met the requirements of the Constitutional Court. Subsequently, on September 6, 2006, the Constitutional Court issued an order in which it requested the Council of State to conform to sentence T-902/05, confirmed the enforceability of the original judgment of April 25, 2002, and urged FERROVÍAS to comply with the order. As a result, on September 20, 2006, the Council of State asserted that the abovementioned order was beyond the Constitutional Court’s competence. Ms. Bedoya, for her part, filed a petition to FERROVÍAS to request it to comply with the Constitutional Court’s ruling of legal protection; nevertheless, the company refused to conform in view of the decisions issued by the Council of State. In addition, by the order of February 14, 2007, the Constitutional Court requested FERROVÍAS to comply with

resolution T-902/05 and the order of December 6, 2006. On June 13, 2007, FERROVÍAS responded to the Court that there was no contempt on its part in view of the decisions by the Council of State.

6. The petitioners indicate that the internal controversy among the highest courts of the administrative and constitutional jurisdictions gave rise to a phenomenon known as “clash of trains,” as a result of which the alleged victim underwent a situation of judicial uncertainty and lack of due protection of her rights. Having extended for almost nine years, the proceedings significantly damaged her and her family’s economy, as well as her professional career.

7. The State, in turn, indicates that on December 12, 2007 the state company FERROVÍAS, already in a bankruptcy process, ordered to reinstate Ms. Bedoya in her post as vice-president, and to pay her the salaries and benefits, along with the applicable increases, adjustments, deductions, corresponding to the period in between her removal and her reinstatement. It asserts that in the same year, on December 14, Ms. Bedoya took up her post; and that on December 20, by resolution No. 0000172, the trustee of the company authorized the payment of the abovementioned salaries and benefits owed to Ms. Bedoya.

8. Consequently, on February 14, 2008, by order A-039/08, the Sixth Chamber of review of the Constitutional Court decided to declare that its ruling of legal protection issued on September 1, 2005 had been satisfied by the FERROVÍAS state company. In view of this, the State believes that the petition is out of order as regards to the facts giving rise to it, because it has been proved that the controversy was settled by the domestic courts, in favor of the alleged victim.

9. The State submits that this petition constitutes a fourth instance as the decisions adopted by the administrative jurisdiction were justified, and based on the legislation in force and on all the evidence available from Ms. Bedoya’s case file, which includes the evidence that the Constitutional Court ruled to take into account. Consequently, it claims that the decisions were adopted pursuant to due process, and that the petitioners seek that the Commission review the evidence analyzed in the domestic proceedings, in a way different from that of the domestic courts, and to review their judgments. Lastly, it requests the IACHR to limit its actions to the assessment of possible violations of the American Convention.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. The petitioners submit that the domestic legal remedies were exhausted by the Constitutional Court’s decision of February 14, 2007. The State, on the other hand, did not controvert this argument about the exhaustion of the domestic remedies nor the timeliness of the filing of the petition under the American Convention.

11. In view of these considerations, after analyzing the information appearing on the petition’s file, particularly the information about the compliance procedure that is central to this matter, the Commission believes that the domestic remedies were definitely exhausted by the Constitutional Court’s order of February 14, 2008 that declared the satisfaction of the ruling of legal protection. Likewise, since the petition was received by the IACHR on July 13, 2007, the petition meets the admissibility requirements set forth in Article 46.1(a) and (b) of the American Convention on Human Rights.

VII. COLORABLE CLAIM

12. Based on the elements of fact and law presented by the parties, and on the nature of the matter brought to its attention, the Commission considers that, although, according to the State, sentence T-902 of September 1, 2005 was satisfied –over two years later after its issuance–, the arguments concerning the time elapsed between the petitioner’s initial claim and the adoption of the decision declaring that the judgment had been satisfied –over six years– and particularly the purported delay in the enforcement of the

legal resolutions, produced by the “clash of trains”⁵ among the highest courts, establish possible violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights), to the detriment of Ms. Rosario Bedoya Becerra. The Commission will analyze these facts at the merits stage.

13. As to the claim about the alleged violation of Articles 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 10 (Right to Compensation), 11 (Right to Privacy), 14 (Right of Reply), 17 (Rights of the Family), 18 (Right to a Name), 21 (Right to Property) and 24 (Right to Equal Protection) of the American Convention; and of Article 13 of the Protocol of San Salvador, the Commission notes that the petitioners did not submit arguments or proofs sufficient to *prima facie* consider their possible violation.

14. As to the State’s arguments that this petition leads to a fourth-instance, the Commission recognizes that it is not entitled to review the judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the right to a fair trial. However, the Commission recalls that under its mandate it is competent to declare a petition admissible and, if applicable, decide on the merits of the case even when the matter concerns domestic proceedings that may have violated any of the rights protected by the American Convention.

15. In addition, as regards the other international instruments cited by the petitioners, the Commission lacks competence to determine violations of their norms. However, the IACHR may consider them for interpretation purposes of the American Convention at the merits stage of this case, in accordance with Article 29 of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention on Human Rights, in accordance with 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 by the Inter-American Commission on Human Rights in the city of México, on the 7 day of the month of September, 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.

⁵ In this regard, the controversy described in this petition is significantly similar to that already analysed by the IACHR in that regard in: IACHR, Report No. 1/04 (Admissibility), Petition 4391/02, Sergio Emilio Cadena Antolinez, Colombia, February 24, 2004, par. 21; and IACHR, Report No. 44/08 (Merits), Case 12,448, Sergio Emilio Cadena Antolinez, Colombia, July 23, 2008, paras. 53-55.