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**REPORT No. 125/18**  
**PETITION 556-07**  
REPORT ON ADMISSIBILITY

LEOPOLDO JOSE ANTONIO PORTO LAGONTERIE  
COLOMBIA

Approved electronically by the Commission on October 19, 2018.

**Cite as:** IACHR, Report No. 125/18, Petition 556-07. Admissibility. Leopoldo Jose Antonio Porto Lagonterie. Colombia. October 19, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Ofelia Margarita Mouthon Franco
<b>Alleged victim:</b>	Leopoldo Jose Antonio Porto Lagonterie
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (Fair Trial) and 24 (Equal Protection) of the American Convention on Human Rights, in relation to Article 1.1 thereof

**II. PROCEDURE BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	May 4, 2007
<b>Notification of the petition to the State:</b>	June 3, 2011
<b>State's first response:</b>	August 3, 2011
<b>Additional observations from the petitioner:</b>	September 3, 2011
<b>Additional observations from the State:</b>	November 18, 2011

**III. COMPETENCE**

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

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, March 29, 2007
<b>Timeliness of the petition:</b>	Yes, May 4, 2007

**V. ALLEGED FACTS**

1. The petitioner indicates that her husband, Mr. Leopoldo Jose Antonio Porto Lagonterie, (hereinafter "the alleged victim" or "Mr. Porto") worked as the head of economic studies at the Banco de la Republica bank (hereinafter "the Bank") from September 10, 1984 to March 31, 1997 after signing a conciliation agreement whereby he decided to sign up for a buyout severance package. She claims that the conciliation agreement is null and void because the alleged victim was mentally incompetent when he signed it.

<sup>1</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not partake in the discussion or the decision on this matter.

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioner submits that on January 29, 1997 Mr. Porto was diagnosed with the mental disorder of paranoid psychosis by the doctor of the bank, as he was, a diagnosis later confirmed by other specialist doctors. The petitioner indicates that on February 6, 1997 the alleged victim had a crisis and that, as a result, he stayed in the hospital for a month, during which he took medication causing side effects on his mental health. On March 10, 1997 Mr. Porto came back to work and on March 18, 1997 he signed the abovementioned conciliation agreement before the Circuit Eighth Labor Court of Barranquilla. The petitioner alleges that according to the psychiatric reports of the private specialists that examined Mr. Porto, the alleged victim has been permanently unable to work since February 6, 1997, and that such incapacity began in 1996. She claims that these expert opinions were taken into account by the domestic courts, for instance by the Jurisdictional Chamber of the Superior Judiciary Council in its judgment of October 19, 2006, and by the Fourth Chamber for Civil Family Matters of the Superior Court of Barranquilla in its judgment of May 26, 2003. Therefore, the petitioner deems that the conciliation agreement was not entered with the full consent of the alleged victim.

3. The petitioner alleges that said conciliation agreement deprived Mr. Porto of a lifelong pension that he was entitled to in view of his having worked for more than ten years at the Bank, in accordance with article 8.2 of the Collective Labor Agreement in force at the time of his retirement; and that he was recognized a smaller pension instead.

4. The petitioner argues that she lodged a petition for legal interdiction for mental incapacity before the Second Family Court of Barranquilla due to Mr. Porto's serious condition. In the framework of this proceeding, on May 21, 1998 the court ruled the alleged victim's temporary interdiction, appointing the petitioner as his curator and on September 11, 2000 this court ruled full interdiction for insanity.

5. She alleges having filed an action for annulment against the conciliation agreement before the Second Labor Court of Barranquilla, which on March 25, 2003 declared the agreement null and void and ordered the Bank to recognize Mr. Porto's right to a retirement pension equivalent to 56% of the average salary earned during his last year at work, on the grounds that the latter was mentally incompetent when he entered the conciliation agreement. The Bank appealed this decision before the Second Chamber for Labor Matters of the Superior Court of Barranquilla, which on August 31, 2004 revoked the trial-court's judgment on the basis that Mr. Porto's incapacity was found on September 11, 2000, two years after the conciliation agreement was signed and that the agreement was valid accordingly. She claims having lodged an appeal before the Labor Chamber of Appeals of the Supreme Court of Justice, and that it was dismissed on May 10, 2006. This chamber found that the appeal did not meet the formal requirements of this type of remedy; thus, for example, it deemed it contradictory in that it sought to obtain a lifelong pension without first seeking the annulment of the conciliation agreement, and it considered that the petitioners had failed to expressly mention which articles of the Code of Labor Procedure had been infringed. In view of this decision, she believes that the Supreme Court of Justice did not examine the arguments submitted but applied a mistaken interpretation of the legal provisions in order to prioritize rules of procedure at the expense of substantive law.

6. In relation to that last decision, on June 30, 2006 the petitioner filed an appeal for legal protection before the Jurisdictional Disciplinary Chamber of the Sectional Judiciary Council of Cundinamarca, and it was declared out of order on August 25, 2006 on the basis that legal protection of rights does not apply in relation to judicial resolutions. However, the petitioner lodged an appeal for annulment before the Jurisdictional Chamber of the Superior Judiciary Council, which, by a decision of October 19, 2006, upheld the judgment on the inadmissibility of the appeal for legal protection of rights. Based on the appendixes of the petition, the petitioner requested the intervention of the Ombudsman's Office in bringing the case before the Constitutional Court, which, in the exercise of its discretionary power, decided on March 29, 2007 to not pick se the case for review.

7. Furthermore, apart from the foregoing legal actions, in July 1999 the Bank filed a foreclosure proceeding against Mr. Porto before the Circuit Fourth Civil Court of Barranquilla. Subsequently, this court, by a judgment of May 2, 2002, ruled the termination of this proceeding on the grounds that the alleged victim's financial debt had been paid off, including the accrued interests from 1997 up until 2002, without imposing

the legal costs on any of the parties to the legal action. Nevertheless, the Bank impugned this judgment on considering that the legal costs were to be imposed on the petitioner. With respect to this, the Fourth Chamber for Civil Family Matters of the Superior Court of Barranquilla, through a decision of May 26, 2003, upheld the judgment that the financial debt was paid off and that the Bank had to cover the legal costs. By this decision the court also deemed proven that “a long time before said proceeding was filed, [the Bank] knew about the mental incapacity of the defendant; thus it is evident that the former knew beforehand that it could not sue the insurance company that guaranteed the mortgage bond.” This judgment of the court was based on the fact that the doctor of the Bank had diagnosed Mr. Porto’s mental incapacity on January 29, 1997.

8. In this regard, the petitioner claims that throughout the judicial proceeding filed to obtain the annulment of the conciliation agreement entered on March 18, 1997, the Bank, in order to argue the validity of the agreement, claimed that Mr. Porto was legally able to enter it; but that in the foreclosure proceeding, the same Bank argued—in order to have the corresponding insurance companies pay the debt—that Mr. Porto was mentally unable to fulfill his obligations. Therefore, the petitioner alleges that the Bank has shown a contradictory position because for civil matters it accepts that Mr. Porto was legally unable—which was also recognized by the civil courts— but when it comes to the recognition of his labor and pension rights, it argues that he was fully able to enter the conciliation agreement.

9. For its part, the State claims that the conciliation agreement on a buyout was entered when the alleged victim was able and had not yet been diagnosed with a mental incapacity; that therefore his health situation was unknown when the conciliation agreement was entered. It alleges that in the labor proceeding Mr. Porto’s mental incapacity was not proven in accordance with article 38 of Law No. 100 of 1993, under which a person is considered “disabled when they have lost 50% or more of their ability for work.” Likewise, the State considers that the termination of the agreement was valid because the alleged victim had signed up for a buyout severance package freely and without any misleading information. The State affirms that Mr. Porto has a disability pension from the Social Security Institute, apart from a bonus from the Bank consisting of 55,530.457 Colombian pesos.

10. In addition, it submits that the instant petition constitutes a court of “fourth instance” because the decisions of the domestic courts were made in full observance of due process and the judicial guarantees enshrined in the American Convention; and it affirms that due process does not entail a favorable judgment. In that regard it indicates that the alleged victim obtained duly-justified decisions grounded on the submitted evidence. As a result, it believes that the instant petition does not tend to establish violations of the rights protected by the American Convention.

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

11. In view of the position of each of the parties and taking into account the information on the case file, the Inter-American Commission believes that the domestic remedies were finally exhausted through the Constitutional Court’s decision of March 29, 2007 whereby said court decided to not choose the petition for legal protection relating to the alleged victim’s case. The Commission observes that the petitioner filed an appropriate remedy to safeguard the juridical situation infringed within the domestic jurisdiction, and that the State has not alleged the lack of exhaustion of domestic remedies.

12. As for the requirement of timely presentation, the petition was received on May 4, 2007, within the six months following the issue of the judicial ruling referred to above; thus it fulfills the admissibility requirements established in Article 46.1 subparagraphs (a) and (b) of the American Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

13. In view of the elements of fact and law presented by the parties, and given the nature of the matter brought to its attention, the IACHR deems that, if proven, the claims filed by the petitioner relating to the purported violation of the right of due process and equal protection could *prima facie* establish violations of Articles 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the Convention, in connection

with Article 1.1. (Obligation to Respect Rights) thereof, to the detriment of Mr. Porto. In the merits stage of the instant petition, the Commission will analyze whether at the time the conciliation agreement was entered the alleged victim's health was such that he was able to make an informed decision on that legal act and its effects.

14. As for the State's allegations on the establishment of a court of fourth instance, the Commission recognizes its lack of competence to review judgments issued by domestic courts acting within the scope of their jurisdiction and in conformity to due process and judicial guarantees. Nevertheless, it reiterates that within the framework of its mandate the Commission is competent to decide on the admissibility of a petition and rule on the merits when said petition concerns domestic proceedings that may have violated the rights protected by the American Convention.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8, 24 and 25 of the American Convention, in connection with Article 1.1 thereof; and

2. 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 19<sup>th</sup> day of the month of October, 2018. In favor: Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli (dissenting vote), Joel Hernández García, Antonia Urrejola, and Flávia Piovesan.