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REPORT No. 41/18
PETITION 644-08
REPORT ON ADMISSIBILITY

REGINA BETANCUR DE LISKA
COLOMBIA

Approved by the Commission at its session No. 2126 held on May 4, 2018
168th Special Period of Sessions.

Cite as: IACHR, Report No. 41/18. Petition 644-08 Admissibility. Regina Betancur de Liska.
Colombia. May 4, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Regina Betancur de Liska
Alleged victim:	Regina Betancur de Liska
Respondent State:	Colombia ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment/personal integrity), 8 (judicial guarantees), 11 (honor and dignity), 12 (freedom of conscience and religion), 13 (freedom of thought and expression), 21 (private property), 22 (freedom of movement and residence), 23 (right to participate in government/political rights), 24 (equal protection before the law), and 25 (judicial protection) of the American Convention on Human Rights. ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition⁴:	May 28, 2008
Notification of the petition to the State:	August 13, 2014
State's first response:	February 2, 2015
Additional observations from the petitioner:	April 21, 2015
Additional observations from the State:	November 28, 2017

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 deposited on July 31, 1973)

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
Rights declared admissible	Articles 5 (humane treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), 9 (freedom from Ex Post Facto Laws), 21 (private property), 23 (right to participate in government/political rights), and 25 (judicial protection) of the American Convention in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of said Convention.

¹ Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or decision in this matter.

² Hereinafter "Convention" or American Convention".

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

⁴ Since filing the petition, the petitioner sent several messages to the IACHR requesting information about the status of the petition and asking that a decision be adopted. The last such communication was on March 30, 2016.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as per Section VI
Timeliness of the petition:	Yes, as per Section VI

V. FACTS ALLEGED

1. The petitioner and alleged victim, Regina Betancur de Liska, states that in 1975 she directed a personal advancement teaching program on national radio. She alleges that as her audience grew the Government identified her as a political figure and began persecuting her, because the media began excluding her. She states that it was for that reason that she did then decide to enter politics. She describes how she founded and headed the Movimiento Unitario Metapolítica political party as of 1977, was elected a councilor, then a deputy in Congress, then Senator (between 1991 and 1994). She states that because of her activities denouncing acts of corruption she suffered political persecution, which took the forms described below.

Kidnapping and alleged failure to investigate

2. The petitioner says that on October 15, 1994, she was kidnapped by a guerrilla movement and illegally held captive for five months. She asserts that her captors decided to release her near the mountains in Valle del Cauca on March 10, 1995. She indicates that while she was kidnapped, the State authorities did nothing to rescue her; nor were there any investigations to throw light on the facts and punish those responsible.

Loss of parliamentary status proceedings

3. She alleges that on October 7, 1993, former supporters denounced her before the Second Procurator's Office for Administrative Oversight for having induced and coerced them into making contributions to the Movimiento Unitario Metapolítica political party out of their wages as Senate employees. She says that, as a result of those complaints, proceedings against her were initiated and on August 17, 1994 the Council of State declared that she had lost her status as a Senator based on Article 110 of the Political Constitution.⁵ She underscores the fact that said resolution was passed one month after her parliamentary term of office had ended solely in order to discredit her politically. She adds that in similar proceedings against other members of parliament the Council of State did not apply the aforementioned article.

4. In response, the alleged victim filed a special appeal for review, which was denied by Section Four of the Council of State on October 11, 2005, which argued that it had found no violation of the guarantees to which Ms. Betancur was entitled. It added that the cases she had described as similar were in fact different both factually and with regard to the evidence, so that there had been no violation of the right to equality before the law.

Criminal proceedings for the crime of extortion

5. The petitioner states that, in violation of her judicial guarantees, she was later tried on the same grounds in criminal proceedings. Thus, she explains, the Second Procurator's Office referred the complaints by her former supporters to the Supreme Court of Justice, which decided to initiate criminal proceedings against her for the crime of extortion. She says that on November 28, 1996 the Court of Criminal Cassation sentenced her to 48 months imprisonment and banned her from exercising rights and public office for four years. It also ordered her to pay damages to her former supporters and ruled that she was not eligible for a suspended sentence (*condena de ejecución condicional*).

⁵ Article 110. Those who perform political functions shall be prohibited from making any contribution to parties, movements, or candidates, and from inducing others to do so, except in cases permitted by law. Failure to comply with these prohibitions shall be grounds for removal from office or loss of investiture.

6. The petitioner points out that the criminal sentences handed down against members of parliament in proceedings conducted by the Supreme Court cannot be reviewed by a second instance. Nevertheless, in her quest for a review, the alleged victim filed an action for protection (*acción de tutela*) against her conviction, which was rejected on February 12, 2008 by the Civil Cassation Division of the Supreme Court of Justice, which pointed out that the decisions handed down by the Criminal Division could not be challenged.

Asset seizure process (extinción de dominio)

7. The petitioner states that on May 27, 1997 the National Unit for Seizure of Property and against Money Laundering, acting ex officio, ordered the opening of preliminary investigations against the alleged victim, based on the conviction handed down previously by the Supreme Court of Justice. This, with the objective of determining the origin of the assets of three commercial companies of Mrs. Betancur. Subsequently, on July 27, 2000, the Second Specialized Public Prosecutor's Office ruled that it was admissible to terminate the alleged victim's ownership of her companies which she says she purchased legally in 1977. Then, on February 16, 2007, the Fifth Specialized Criminal Court for Decongestion in the Bogotá Circuit rejected the asset seizure action arguing that it had not been proven that the alleged victim's shares in the companies derived from illicit capital. The petitioner states that that decision was referred ex officio for consultation to the Criminal Cases Decongestion Division of the Higher Court of Bogotá, which applied Law No. 793 of 2002 in a judgment on July 30, 2007, ordering the seizure of 100 percent of the petitioner's shares in the three commercial companies she owned, declaring that their activities stemmed from illegal acts committed while she was a senator between 1991 and 1994. The petitioner stresses that the facts submitted for consideration by the Court occurred prior to promulgation of the law enforced against her. She further underscored the fact that the decision expressly ruled out the possibility of an extraordinary appeal for cassation.

8. In response, the petitioner brought an action for protection (*acción de tutela*) seeking to have the seizure verdict declared null and void and the return of her expropriated properties. That action was denied on October 4, 2007 by the Criminal Cassation Division of the Supreme Court of Justice on the grounds that it had not found any violations of fundamental rights.

9. The alleged victim then brought a second action for protection (*acción de tutela*) against the Criminal Cases Decongestion Division of the Higher Court of Bogota, because she considered that the fact that the Division had pronounced on a case remitted to it informally had violated her right to due process. That action, too, was rejected on February 21, 2008 by the Criminal Cassation Division of the Supreme Court of Justice, which argued that the authorities against whom the actions had been brought had acted in a manner consistent with the procedures provided for in cases of seizure of assets.

10. Finally, the petitioner brought an action for protection against the Plenary of the Administrative Litigation Division of the Council of State, the Criminal Cassation Division of the Supreme Court of Justice and the Criminal Cases Decongestion Division of the Higher Court of Bogotá, pointing out that the decision to deprive her of her investiture as senator, criminal conviction for extortion, and the seizure of her assets violated her right to equality before the law and her good name, as well her right to judicial guarantees, because she had been tried several times on the same charges. This action was rejected on February 21, 2008 by Section Five of the Administrative Litigation Division of the Council of State, which argued that the action could not be brought against judicial orders.

11. The petitioner argues that the aforementioned acts form part of a political persecution of the alleged victim. She underscores that domestic judicial proceedings violated due process and her right to legitimate self-defense. She adds that there were discrepancies in the application of Article 110 of the Constitution in the loss of investiture proceedings against her between the way she and three other members of Congress were treated, and for that reason she alleges violation of her right to equality before the law.

12. For its part, the State maintains that the petition is inadmissible because the alleged victim's intention is to resort to the Commission for it to act as if it were a higher court and revise judgments handed

down by domestic courts. It states that both the procedures and the hearings conducted in domestic courts fully observed the procedural guarantees of due process. It also claims that in no way did the State's behavior violate the Convention.

13. The State points out that due to the alleged kidnapping of the alleged victim, the Regional Public Prosecutors' Office in Cali initiated an investigation on October 21, 1994. However, in a resolution of December 14, 1998, the Public Prosecutors' Office stated that it had not been able to establish those responsible. Subsequently, on February 24, 2005, it decided not to bring criminal charges. That decision was confirmed by the Unit of the Public Prosecutor's Office assigned to the case before the Higher Court of Cali on September 22, 2005 on the grounds that, despite the gathering of evidence, it had not been possible to identify the perpetrators.

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

14. The petitioner states that for the reasons described above there had been three judicial proceedings and the appeals she had filed against each of them had been rejected by domestic courts. Thus, she says, the special appeal filed against the decision by the Council of State ordering the loss of her investiture as a Senator had been rejected on October 11, 2005. Likewise, she states that she contested her criminal conviction by the Criminal Cassation Division in an action for protection that was rejected on February 12, 2008 by the Civil Law Division. She goes on to state that against the decision to seize her assets she had brought two actions for protection that were rejected on October 4, 2007 and February 21, 2008 by Section Five of the Administrative Litigation Division of the Council of State. For its part, the State presented no argument with respect to exhaustion of domestic remedies and it did not contradict the petitioner's statements in that regard.

15. Regarding the alleged kidnapping of the alleged victim, the Commission once again points out that in cases relating to alleged deprivation of liberty, which are considered in Colombia to be crimes that can be prosecuted *ex officio*, the appropriate and most effective remedy is an investigation and criminal proceedings, which the State is duty-bound to promote and pursue. Accordingly, for all offenses that can be prosecuted *ex officio*, the IACHR has repeatedly stated that the authorities must conduct an effective criminal investigation to elucidate the facts and determine responsibilities. From the documentation provided by the parties, it transpires that investigations were conducted, but did not establish the identity of the perpetrators, who to this day have not been punished. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the Convention is applicable to the instant case, subject to the proviso that the causes preventing exhaustion of domestic remedies will be analyzed, where relevant, in the Commission's report on the merits, with a view to ascertaining whether or not there have been violations of the Convention.

16. As a result of alleged acts of extortion, the alleged victim lost her investiture as a Senator, received a criminal conviction, and suffered seizure of her assets. In connection with the loss of her status as Senator, the Commission notes that the alleged victim contested that decision by filing an extraordinary appeal for review to the Council of State, which rejected it on October 11, 2005. Regarding the criminal proceedings, due to the alleged nonexistence of an appeal against rulings by the Criminal Cassation Division, Ms. Betancur was unable to contest her conviction. As regards the decision by the Criminal Cases Decongestion Division of the Higher Court of Bogotá to seize her assets, the Commission observes that said Court expressly ruled out the possibility of challenging its judgment.

17. The IACHR notes that following a ruling in the three aforementioned proceedings the alleged victim brought an action for protection (*acción de tutela*), stating that the loss of investiture, the criminal conviction, and the seizure of assets all violated her rights. That action was rejected on February 21, 2008 by Section Five of the Administrative Litigation Division of the Council of State. Consequently, and bearing in mind that the petitioner depicts the alleged violations as inter-related, the Commission considers that the petitioner exhausted the domestic remedies available to her, thereby meeting the requirement set forth in Article 46.1.a of the American Convention.

18. At the same time, the petition to the IACHR was lodged on May 28, 2008 and the decision of Section Five of the Administrative Litigation Division of the Council of State rejecting the last action for protection brought by the alleged victim was notified on March 5, 2008. Therefore, in light of the context and characteristics of the instant case, the Commission considers that the petition was filed in a timely fashion pursuant to Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

19. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the alleged impunity of the perpetrators and lack of judicial protection in the case of the kidnapping of the alleged victim, the alleged arbitrary nature of the judicial proceedings against Ms. Betancur, the loss of her investiture as a Senator, her criminal conviction in single instance, and the seizure of her assets based on a later law, all allegedly forming part of a political persecution, could represent violations of the rights established in articles 5 (right to human treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), 9 (freedom from ex post facto laws), 21 (private property), 23 (right to participate in government/political rights), and 25 (judicial protection) of the American Convention in conjunction with Article 1.1 and 2.

20. With respect to the petitioner's claim of alleged violation of Articles 4 (life), 11 (honor and dignity), 12 (freedom of conscience and religion), 22 (freedom of movement and residence), and 24 (equal protection before the law) of the American Convention, the Commission observes that the petitioner has not provided sufficient arguments or substantiation to consider, *prima facie*, their possible violation.

21. Finally, regarding the State's allegation about fourth instance, the Commission acknowledges that it is not competent to review judgments rendered by domestic courts acting within their sphere of competence and applying due process and judicial guarantees. However, it reiterates that within its mandate, the Commission is competent to declare admissible a petition and decide on its merits when it refers to domestic proceedings that could be in violation of the American Convention.

VIII. DECISION

1. To declare the petition admissible as regards of Articles 5, 7, 8, 9, 11, 21, 23, and 25 of the American Convention, in conjunction with Articles 1(1) and 2;

2. To declare the present petition inadmissible as regards Articles 4, 11, 12, 13, 22, and 24 of the American Convention; and

3. To notify the parties of this decision; continue analysis of the merits; and publish this decision and include in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Santo Domingo, Dominican Republic, on the 4th day of the month of May, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, and Flávia Piovesan, Commissioners.