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REPORT No. 158/21
PETITION 1855- 16
REPORT ON ADMISSIBILITY

DAYRIS ESTRELLA ESTÉVEZ CARRERA
ECUADOR

Approved electronically by the Commission on July 14, 2021.

Cite as: IACHR, Report No. 158/21. Petition 1855-16. Admissibility. Dayris Estrella Estévez Carrera. Ecuador. July 14, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Dayris Estrella Estévez Carrera
Alleged victim:	Dayris Estrella Estévez Carrera
Respondent State:	Ecuador
Rights invoked:	Articles 8 (right to a fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ¹ , in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) thereof

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	September 14, 2016
Additional information received at the stage of initial review:	March 14, 2018
Notification of the petition to the State:	November 6, 2019
State's first response:	July 16, 2020

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 (deposit of the instrument of ratification developed on December 28, 1977)

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 3 (right to recognition of juridical personality), 8 (right to a fair trial), 11 (protection of honor and dignity), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention on Human Rights, in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) 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. FACTS ALLEGED

1. Ms. Estévez Carrera, as the alleged victim and petitioner, claims that the State of Ecuador violated her rights by taking several years to rectify her identity data; not providing her with compensation for the damage it caused and not ensuring the compliance of a final court judgment ordering the State to provide her with a health treatment to allow for the affirmation of her gender identity.

¹ Hereinafter "the Convention" or "the American Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioner indicates that she identifies herself as a trans woman and that, as a result, in 2006, she requested the Ecuadorian Office of Vital Records to change her name and sex on her birth certificate, so that it was consistent with her gender identity. However, she notes that on May 2, 2006, the Office of Vital Records, by letter No. 2006-429-DAJ-GL, replied that for the rectification to be applied a court ruling in accordance with Article 89 of the Law on Civil Registry, Identification and Certification was required.³

3. After that, the petitioner filed a complaint with the Office of the Ombudsperson, which, by letter No. 2007-335-DAJ-MM of January 15, 2008, stated that the refusal to amend her identity data constituted a violation of her rights. On the basis of this resolution, the alleged victim sent a new petition to the Office of Vital Records requesting her name and sex to be changed. However, on March 17, 2008, the Office of Vital Records, by resolution No. 2008-17-74-DRCN-L, ordered only the change of her name and reiterated that for a change of sex on a document a judicial proceeding should be followed in accordance with Article 89 of the Law on Civil Registry, Identification and Certification.

4. Accordingly, the petitioner filed a protection action against the General Director of the Office of Vital Records, Identification and Certification, arguing that their previous decision affected her constitutional rights. As a result, on June 19, 2009, the Ninth Civil Court of Pichincha dismissed said remedy, arguing that Article 89 required the opening of a judicial proceeding to change the “sex” category on ID documents. The petitioner claims that she appealed that decision and on September 25, 2010, the Third Specialized Criminal Chamber of the Provincial Court of Justice of Pichincha overturned the lower court judgment and ordered “the immediate change from male to female on the [alleged victim’s] identification and certification data. On the same way and as an affirmative action, it is [was] ordered that the Ecuadorian State, through its public health service, ensures the necessary facilities so that Ms. Estévez Carrera can have medical access to the conditions necessary to affirm her sexual identity [...]”

5. The alleged victim questions that over eight years have elapsed and several administrative and judicial actions have been lodged in order for her identity to be recognized. This situation has caused her an irreparable harm. She argues that, as a result of this delay in updating her identity documents, she was unable to get a decent job; she had problems in carrying out all kinds of banking procedures; and she experienced different situations of discrimination in different public spaces. In addition, she emphasizes that her rights continue to be violated, since although she asked the Eugenio Espejo Hospital to comply with the aforementioned decision, to date the staff of that medical center have not complied with the decision, claiming that there are no policies in place to perform the type of surgery she requires.

6. As a result, on September 2, 2010, she filed a claim requesting compensation for moral injury against the State, alleging a violation of her right to sexual identity for the time the authorities had taken to make the change of sex on her ID card and for having refused to comply with the decision issued by the Third Specialized Criminal Chamber of the Provincial Court of Pichincha. After the resolution of a conflict of jurisdiction between the courts, on October 17, 2012, the Twenty-fifth Civil Court of Pichincha rejected her claim. The petitioner appealed this decision, but on November 25, 2013, the Civil and Commercial Chamber of the Provincial Court of Justice of Pichincha dismissed the appeal and confirmed the decision of the lower court. The petitioner then filed an appeal to contest this decision, but on August 20, 2014, the National Court of Justice dismissed it. In this regard, the petitioner has not provided copies or information about the grounds of any of the decisions issued during said compensation proceeding.

7. Finally, she indicates that on October 15, 2014, she filed an extraordinary protection action against the aforementioned decision of the National Court of Justice, alleging the violation of her rights to physical, mental, moral and sexual integrity; to equality, to the free development of her personality and her right to make free, informed, voluntary and responsible decisions about her sexuality, life and sexual

³ Law on Civil Registry, Identification and Certification. “Article 89. Nullity or judicial amendment. - Except as provided for in Article 94, if any of the requirements specified in Article 25 have been omitted, or if it is a record containing inaccurate data in relation to those requirements, or if the sex of the registered person changes, the person in question may ask the competent civil court to declare the nullity or amendment of said record. The complaint shall be processed in a summary proceeding, and it shall be resolved based on the opinions of the Head of the Office of Vital Records, Identification and Certification of the provincial capital and the Office of the Public Prosecutor [...]”

orientation. In addition, she requested for the judgement issued by the Third Specialized Criminal Chamber of the Provincial Court of Pichincha to be complied with, and that a comprehensive reparation was recognized to her. However, on March 15, 2016, the Admission Chamber of the Constitutional Court rejected her appeal, considering that there was no evidence of a causal relationship between the facts and the damage caused.

8. With regard to the alleged facts, the petitioner concludes that the State has violated her rights and, therefore, after exhausting all judicial remedies, she has not received adequate reparation for what happened and has not had an adequate and effective protection mechanism at her disposal to ensure the protection of her rights.

9. For its part, the State replicates that the alleged facts do not constitute violations of human rights for which it could be held accountable. It argues that the alleged victim does not specifically identify what actions or omissions violated her rights. It points out that after the Office of Vital Records denied her request to change her sex, Ms. Estévez raised a protection action. The Third Specialized Criminal Chamber of the Provincial Court of Justice of Pichincha declared said action founded and ordered the change of the alleged victim's identity data. In this regard, the State emphasizes that such a decision was fully complied with and that the corresponding change was made in the record of the alleged victim.

10. It argues that the subsequent claim for compensation for moral injury brought by Ms. Estévez was correctly resolved by the domestic judicial authorities, through reasoned and reasonable decisions. In this regard, it argues that the Constitutional Court ultimately determined that there was no causality between the alleged facts and the damage caused, and that there is no evidence of such a decision failing to fulfill any international obligations. For these reasons, the State requests for the petition to be declared inadmissible on the basis of Article 47(b) of the American Convention, since it considers that the alleged victim's claim is aimed at the Commission acting as a court of appeals, which is against its supplementary nature.

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

11. The alleged victim indicates that domestic remedies were exhausted with the decision of the Constitutional Court rejecting the extraordinary remedy of protection she had filed. For its part, the State has not contested the exhaustion of domestic remedies or made any reference to the time limit for the filing of the petition. In view of this and the information presented in the file, the Commission concludes that this petition meets the requirement of exhaustion of domestic remedies pursuant to Article 46.1(a) of the American Convention.

12. In addition, in light of the fact that the Constitutional Court's decision was issued on March 15, 2016, and that the present petition was received by the Commission on September 14, 2016, the petition also complies with Article 46.1(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

13. The Commission recalls that the Inter-American Court of Human Rights, in its Advisory Opinion OC-24/17, has established that States have the duty to determine and establish the most appropriate procedures for the change of identity information so that it conforms to a person's self-perceived gender identity.⁴ In addition, with regard to the right to health, the IACHR has already received, at the stage of admissibility, complaints filed by trans persons, or with non-normative gender identities, claiming the lack of adequate treatment to achieve the affirmation of their gender.⁵ In this regard, the IACHR considers it appropriate to recall that States, under their international obligations, must guarantee health protocols that address the specific needs of trans persons, including gender identity affirmation treatments that are based on

⁴IACHR Court. Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples. State obligations concerning change of name, gender identity, and rights derived from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 160.

⁵IACHR, Report No. 11/16, Admissibility, Luiza Melinho, Brazil, April 24, 2016.

their free, prior and informed consent. These treatments must include psychological, endocrine and surgical care within the public health system, and they must be moving towards being free of charge.⁶

14. In light of these considerations, and after examining the elements of fact and law set forth by the parties, the Commission considers that the alleged victim's allegations referring to the lack of an expedited procedure to achieve the rectification of her identity data, the absence of any kind of reparation for the damage caused, and the failure to comply with the judgment ordered to provide health services that conform to her gender identity are not manifestly unfounded and need to be studied on the merits. The IACHR⁷ believes that, if corroborated, the alleged facts could imply violations of Articles 3 (right to recognition of juridical personality), 8 (right to a fair trial), 11 (protection of honor and dignity), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention on Human Rights, in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) thereof.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 3, 8, 11, 24, 25 and 26 of the American Convention on Human Rights; and

2. To notify the parties of this decision; to proceed with the merits of the case; 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 14th day of the month of July, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana (dissenting opinion), Commissioners.

⁶ IACHR, Report on Trans and Gender Diverse Persons and Their Economic, Social, Cultural and Environmental Rights. August 7, 2020, p. 187.

⁷ Consistent with the decision of the IACHR in its Report No. 57/18, Petition 969-07. Admissibility. Karen Mañuca Quiroz Cabanillas. Peru. May 5, 2018; para. 15.