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REPORT No. 112/17
PETITION 1102-08
REPORT ON ADMISSIBILITY

JUAN ALFONSO LARA ZAMBRANO AND OTHERS
COLOMBIA

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

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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Juan Alfonso Lara Zambrano, Edwing Jabeth Arteaga Padilla and Estefanel Gutierrez Pérez
Alleged victims:	Juan Alfonso Lara Zambrano and others ²
State denounced:	Colombia
Rights invoked:	Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	September 22, 2008
Additional information received at the initial study stage:	October 3, 2008; June 27 and July 19, 2011; May 25, June 21 and October 31, 2012
Date on which the petition was transmitted to the State:	May 5, 2014
Date of the State's first response:	September 25, 2014
Additional observations from the petitioning party:	December 10, 2014
Additional observations from the State:	June 17, 2015

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

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
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¹ In accordance with Article 17.2.a of the IACHR's Rules of Procedure, Commissioner Luis Vargas, a Colombian national, did not participate in the discussion or the decision on this matter.

² This petition was lodged on behalf of the 359 alleged victims individualized in the document attached hereto.

³ Hereinafter "the Convention" or "the American Convention."

⁴ The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 8 (Fair Trial), 21 (Property), 24 (Equal Protection), 25 (Judicial Protection) and 26 (Progressive Development) 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; exception to Article 46.2.c of the ACHR applies
Timeliness of the petition:	Yes; under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners submit that Juan Alfonso Lara Zambrano and other 1,370 former workers (hereinafter “the alleged victims” or “former workers”) of *Aerovías Cónдор de Colombia S.A.* (“*Aerocónдор*” or “the company”), 359 of whom have been individualized in this petition, were dismissed as a result of the company’s cease of operations on June 15, 1980. On March 10, 1983, the company reached three conciliation agreements with the workers’ trade union, committing itself to pay the workers’ salaries, wages and social benefits. The petitioners claim that the company did not comply with these agreements although they filed the applicable legal actions in the company’s bankruptcy proceedings, and lodged execution proceedings in the labor jurisdiction. Therefore, they claim that the disregard for of their rights, the delays and the irregularities in the domestic legal proceedings violate their rights enshrined in Articles 4, 5, 8, 24 and 25 of the American Convention.

2. As regards to the bankruptcy of the company, they indicate that the Superintendence of Corporations, by its order of May 18, 1982, recognized the payments in favor of the former workers; and that on February 22, 1983 it forwarded the case to the First Circuit Civil Court for Barranquilla in order to commence the bankruptcy proceedings. The petitioners assert that on December 16, 1994 the First Circuit Civil Court for Barranquilla issued a judgment in which it established the payments claimed in the framework of the bankruptcy proceedings. The alleged victims state that in this judgment, however, said Court failed to recognize a payment in favor of the Institute of Social Security of Colombia (“ISS”) arising from the company’s lack of payment of workers’ social security benefits. This part of the judgment was objected by the ISS and on December 9, 1996, the High Court of the District of Barranquilla recognized this payment in favor of the ISS as a preferred labor creditor, thus including it as a creditor in the bankruptcy proceedings.

3. The petitioners assert that, in the framework of the bankruptcy proceedings, the First Circuit Civil Court for Barranquilla requested the trustee of the proceedings (a judicial officer appointed to administer the assets of companies facing bankruptcy proceedings) to make the payments, nine times in nine years, recognized in favor of several creditors in the proceedings. In this regard, the petitioners claim that there was a conflict between the First Circuit Civil Court for Barranquilla and the trustee about who was to cancel the debts, which produced an unwarranted delay of the payments. Consequently, the alleged victims filed an appeal for the protection of fundamental rights which, on September 17, 1998, the Section Council of the Judiciary of the Atlantic settled by urging the trustee to make the payments due to the ISS. Nevertheless, the trustee allegedly failed to comply with the order. As a result, the First Circuit Civil Court for Barranquilla continued urging the trustee to liquidate the debts. In this regard, the petitioners denounce that the alleged victims have not yet been paid their salaries, wages and benefits. They allege that this situation has significantly damaged their life quality and their capacity to afford basic needs.

4. In view of the lack of payment, the alleged victims filed a second appeal for legal protection, which the High Court of the Judicial District of Barranquilla found out of order on July 13, 2005. The petitioners appealed against this ruling before the Supreme Court of Justice. On August 29, 2006, the Supreme Court revoked the lower judgment and ordered the First Civil Court to liquidate the debt and pay the alleged victims. However, allegedly, this resolution was ignored.

5. Moreover, with regard to the execution proceedings in the labor jurisdiction, the petitioners assert that on May 13, 1983 the First Circuit Labor Court for Bogotá issued an order of payment and ruled the

enforcement of the seizure of the company's assets in order to pay the workers. Subsequently, on May 10, 1990 and October 8, 1993 the First Labor Court, at its own initiative, requested the First Civil Court to undertake the seizure for the amount of the debt recognized in favor of the workers in the labor jurisdiction. As the First Circuit Civil Court failed to comply with this order, in December 1997, the First Labor Court ordered the seizure of the moneys paid into the First Civil Court. And on August 18, 1998 the First Labor Court requested, at its own initiative, to undertake the seizure it had ordered before. However, the last order was apparently disobeyed as well.

6. The petitioners claim that given the irregularities in the bankruptcy proceedings, they resorted to the National Attorney General's Office, the Ombudsman's Office, the High Council of the Judiciary and the Ministry of Labor so that these would supervise, control and order the compliance with *Aerocóndor's* obligations as to labor rights and social security rights. In addition, they filed a criminal complaint against the trustee for failure to comply with the judicial decisions ruling the payment of their salaries, wages and social security benefits.

7. In sum, the petitioners denounce that there has been an unwarranted delay and lack of diligence on the part of the judicial authorities regarding the protection of their rights to property and social security benefits. Such delay on the part of the administrators of justice for over thirty years is said to have damaged their decent life quality. Around 200 out of a total of 1,371 former workers died without having obtained justice.

8. The State of Colombia submits that the bankruptcy proceedings were complex since *Aerocóndor* was a very large company, with many debts to cancel and 144 creditors participating in the proceedings, apart from the alleged victims. It claims that the petitioners failed to mention the most recent judgments issued by the First Circuit Civil Court and the First Circuit Labor Court, which prove judicial officers' diligent performance. It also indicates that the alleged victims interfered with the bankruptcy proceedings by filing different legal actions in different jurisdictions simultaneously to claim the same payments. The State submits that the alleged unwarranted delay results from the petitioners' procedural inactivity from October 28, 1997 until January 19, 2012, along with their lack of diligence and the complexity of the case.

9. By its communication of September 25, 2014, the State alleges the lack of exhaustion of domestic remedies as it believes that, although the now closed bankruptcy proceedings are the appropriate remedy, the alleged victims chose to exhaust the execution proceedings, which the State also considers is an effective and appropriate remedy to obtain labor-related payments due. These last proceedings are allegedly still pending final resolution as the alleged victims apparently requested to change the liquidation of the debt originally approved in 1983, due to financial considerations. In view of the foregoing, according to the State, domestic remedies have not been exhausted as the execution proceedings in the labor jurisdiction are underway and many of the arguments could be resolved in the framework of such procedure.

10. In addition, the State submits that this petition constitutes a fourth instance and is therefore inadmissible, since the decisions made by the First Circuit Civil Court were adopted pursuant to due process. The State believes that the petitioners intend that the Commission will make a new interpretation of the rules, considers again the evidence discussed in the domestic proceedings and review the decisions adopted by the First Circuit Civil Court.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The petitioners assert that they have filed a number of legal remedies on behalf of all the workers; they allege that there is an unwarranted delay in the settlements and the execution of the decisions. They consider that this leads to an exception to the rule of prior exhaustion of domestic remedies. The State, in turn, alleges the inadmissibility due to the non-exhaustion of the domestic remedies as the execution proceedings in the labor jurisdiction are still pending final resolution.

12. In view of the foregoing, after analyzing the information available in the file of the petition, the Commission considers, in the first place, that the alleged victims lodged the appropriate and effective legal remedies to claim their rights, for over thirty years in the civil and labor jurisdictions, which none of the parties controvert. The Commission moreover notes that the State recognizes that the proceedings in the labor jurisdiction are still underway and their final resolution is pending, which the petitioners do not controvert. Based on the available information, the judgment that the Supreme Court of Justice issued on August 29, 2006 to order the liquidation and payment of the debt in favor of the alleged victims allegedly has not been complied with. As a result, according to the available information on the failure to comply with the judgment and on the extension of the proceedings for over thirty years, the Commission believes that the exception foreseen in Article 46.2.c of the American Convention applies.

13. In addition, the petition was filed on September 22, 2008. Considering its specific circumstances, particularly the facts concerning the delay in relation to the right to protection and a fair trial, which apparently persist to date, the IACHR concludes that the petition was lodged within a reasonable time in accordance with Article 46.2 of the American Convention and Article 32.2 of the Rules of Procedure of the Inter-American Commission.

VII. COLORABLE CLAIM

14. 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 believes that the arguments concerning the delay and the lack of enforcement of the judicial rulings 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). As regards to the alleged disregard for the alleged victims' rights to property and social security benefits, the Commission considers that it establishes possible violations of Articles 21 (Right to Private Property) and 26 (Progressive Development) of the Convention, in relation to its Article 1.1, all of these possible violations are to the detriment of the 359 alleged victims identified in the file and of those that will be individualized in the merits stage.

15. With respect to the complaint about the alleged violation of Article 4 (Life), 5 (Humane Treatment) and 24 (Equal Protection) of the American Convention, the Commission notes that the petitioners did not submit sufficient arguments or evidence to *prima facie* consider their possible violation.

16. As to the State's arguments that this petition leads to a fourth-instance, the Commission recognizes that it is not entitled to review 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 there is a merits stage, 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.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 21, 25 and 26 of the American Convention, in relation to its Article 1.1;

2. To find the instant petition inadmissible in relation to Article 4, 5 and 24 of the American Convention;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and

5. 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 7th day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete 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.