

OEA/Ser.L/V/II.168
Doc. 56
4 May 2018
Original: Spanish

REPORT No. 46/18
PETITION 1638-12
REPORT ON ADMISSIBILITY

RAIZA ISABEL SALAZAR
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. 46/18, Petition 1638-12. Admissibility. Raiza Isabel Salazar.
Colombia. May 4, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	<i>Líderes en Acción</i> Association, Santamaría Foundation, Germán Humberto Rincón Perfetti, Giomar Angélica Aguilar González and Global Initiatives for Human Rights, Heartland Alliance for Human Needs and Human Rights (GIHR-HA) ¹
Alleged victim:	Raiza Isabel Salazar
Respondent State:	Colombia ²
Rights invoked:	Articles 4 (Life), 5 (Personal Integrity), 8 (Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 24 (Right to Equal Protection) and 25 (Judicial Protection), regarding articles 1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	September 3, 2012
Notification of the petition to the State:	June 7, 2013
State's first response:	November 14, 2013
Additional observations from the petitioner:	February 21, 2014 ⁵
Additional observations from the State:	January 4, 2018

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 dated July 31, 1973); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ⁶ (instrument of accession deposited on November 15, 1996)

¹ Through written document on July 12, 2017, Global Initiatives for Human Rights, Heartland Alliance for Human Needs & Human Rights (GIHR-HA) were constituted as co-petitioners.

² In accordance with the provisions of Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the debate or in the decision of this case.

³ Hereinafter "Convention" or "American Convention."

⁴ The observations of each party were duly transferred to the opposing party.

⁵ In addition, the petitioner has submitted several communications requesting information on the status of the petition, the latest being dated January 18, 2018.

⁶ Hereinafter "Convention of Belém do Pará".

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	Yes, Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 11 (Privacy), 13 (freedom of Thought and Expression) 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects), and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of Article 46.2.c of the Convention applies
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

1. The petitioners point out that this petition is framed in the context of violence suffered by trans people in Colombia by individuals as well as state agents. They state that in Colombia there is no due protection of their rights, and that although the Constitutional Court has recognized rights to the LGBTI community and issued orders to the public authority in order to make their protection effective, such orders have been circumvented. They argue that there is a prejudiced attitude in investigations related to crimes committed against LGBTI persons, which is mainly reflected in homicide investigations, by characterizing offenses as crimes of passion; and by erroneous collection and preservation of the evidence.

2. In the aforementioned context, they argue that the alleged victim, Raiza Isabela Salazar, is a transvestite woman who in 2001 acquired a property in the municipality of Dagua, Department of Valle, Colombia. They note that since her arrival at the site, she was the victim of repeated threats from neighbors and butlers of the condominium, in order to force her to leave the place. They state that this situation continued until 2005, when the threats worsened and came to be attacked with rubber bullets, receiving an impact on the head, seriously compromising one eye. They indicate that she was forced to leave her home that year, being recognized by the state as displaced. They claim that in 2009 she returned to reside in the property for personal reasons and, since the threats and violent acts continued, she decided to report the facts.

3. They add that in 2009, Raiza Isabela Salazar filed a criminal complaint with the Office of the Prosecutor and went to the *Personería de Cali* (Ombudsman Office in Cali) in order to receive protection. In the complaint, she alleged the repeated threats and persecution, indicating that since she arrived to the premises, her neighbors, the administrator and the steward together with their children and other relatives, "have dedicated themselves to making her life impossible" in order to force her to leave the place. In the same complaint, she denounced that she had to leave the place years ago because of the attack on her life, indicating that she was wounded with a shotgun shot of pellets on her head, and detailed that in the month of October 2009 she received threats and insults, and that the accused threw garbage and horse feces, as well as rocks to her house, and that the accused entered her property by climbing on the roof, ordering her to leave, indicating that they would kill her, saying first that "they were paramilitaries and then that they were with the guerrilla." They explain that in October 2009, the Ombudsman of Cali delegated the ombudsman of the Municipality of Dagua to do the follow-up of what had happened. They add that in June 2011, she filed a right of petition to the Office of the Prosecutor to report the status of her complaint, without receiving a response, and that in December of that year she presented the case to the Prosecutor of Valle through the Santamaría Foundation. She states that her complaint was processed as a contravention, which is known to the police authorities in accordance with the National Police Code, which they allege constitutes a discriminatory treatment, as it involves actions that threaten life and integrity, which constitutes a crime and not

contravention, which differs in the severity of the offense and the graduation of penalties, the offenses being minor offenses.

4. They allege that the State was aware of her situation since 2005 when she was granted the status of displaced by violence, and that despite having reported the facts, there has been no result in the investigations even though the persons who participated in the events have been individualized in her complaint. For the foregoing, they allege that the exception contemplated in Article 46.2.c of the Convention is applicable given the unjustified delay in the decision of the actions undertaken. Additionally, they affirm that, regarding the contentious administrative action referred by the State as suitable, the Commission has indicated in its decisions that said action seeks only compensation for damages caused, and the protection requested to the Commission goes beyond this type of compensation.

5. The State alleges that the facts reported are groundless, and that the context, which has not been proven, cannot be considered to determine the State's international responsibility in this case, since there is no connection between the specific case and the alleged context of violation of the rights of the LGBTI population. In addition, it rejects the existence of state inactivity in cases of LGBTI victims, and refers to various public policies established in order to prosecute the crimes perpetrated against the LGBTI community.

6. It argues that the petition is inadmissible due to lack of exhaustion of domestic remedies, since the investigation is still open. It indicates that the alleged victim reported the facts in 2009 and that the Office of the Prosecutor, after analyzing the complaint, on August 29, 2009, forwarded it to the Secretariat of the Mayor's Office of Dagua, Valle del Cauca, on the grounds that the facts were raised by problems of coexistence, and therefore they were of a contravention nature. It indicates that in turn, the Government Secretary, in compliance with the decision of the Sectional Council of the Judicature in Cauca Valle, which resolved a conflict of jurisdiction, sent the matter to the Dagua's Contraventions Office of the Police on November 30, 2009, which is the office investigating the facts. It alleges that, because these were facts that affected the healthy coexistence of the alleged victim, the authority considered that they should be investigated as a contravention, which does not constitute a discriminatory act, but rather is an assessment of facts based on the legal system of the moment.

7. It adds that both the ombudsman office from Santiago de Cali as well as the ombudsman office from Dagua have followed up on the case, guiding the alleged victim in the process within their jurisdiction. It also indicates that the authorities took the matter to the Regional Attorney's Office of Valle, in order to analyze the facts within the disciplinary jurisdiction and establish possible penalties. Therefore, it argues that the investigation remains open, so the complaint does not meet the requirement of admissibility related to the exhaustion of domestic remedies.

8. It adds that, although the exposed facts do not result in direct liability of State agents in the commission thereof, in order to analyze a possible responsibility of the State for failing in its duty of protection, it argues that it is necessary to exhaust the action for direct reparation before the administrative law court jurisdiction, seeking to request compensation for the damages that the alleged victim would have suffered, which would allow the State to have the opportunity to analyze its possible responsibility in the face of the facts. It states that the legal system offers effective remedies for the protection of the rights allegedly violated, those that are defined in accordance with due process, and the alleged victim has not been prevented from interposing. It also states that there is no unjustified delay in the decision of domestic remedies since, although the facts would have occurred in 2005, and were reported in 2009, date from which various measures have been taken to clarify the facts and determine responsibilities derived from them, and grant the corresponding repairs.

9. In addition, it states that since April 2005 the alleged victim is registered in the Victims' Registry in accordance with the statement that she gave, including her partner, specifying the measures adopted in relation to her. It adds that although there are no grounds to attribute responsibility to state agents in the facts, the State, in compliance with the duty to guarantee the rights of the persons under its jurisdiction, has provided various measures to ensure the effective enjoyment of the rights of Raiza Salazar.

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

10. The petitioners allege that the exception contemplated in Article 46.2.c of the Convention is applicable given the unjustified delay in the decision of the actions taken, and affirm that the contentious administrative action is not intended to safeguard the rights they seek to protect, so it is not an appropriate remedy for this purpose. For its part, the State argues that there is a lack of exhaustion of domestic remedies, since the investigation is still open, and that the alleged victim must have exhausted the action for direct reparation before the administrative law court jurisdiction in order to request compensation for the damages suffered.

11. The Commission has established that, whenever an alleged offense is prosecuted *ex officio*, in the instant case alleged acts of violence, threats and persecution based on the identity and gender expression of the alleged victim, the State has the obligation to promote and drive criminal proceedings and, in those cases, this is the best way to clarify the facts, judge those responsible and establish the corresponding criminal penalties⁷. Additionally, in relation to administrative law court process, the Commission has repeatedly argued that such a route does not constitute an appropriate remedy for the purposes of analyzing the admissibility of a claim of such nature, since it is not adequate to provide comprehensive compensation and justice to family members⁸.

12. According to the information provided, in 2009 the alleged victim filed a criminal complaint with the Prosecutor's Office for threats and violent acts against her, facts that were investigated by the Office of Police Contraventions on November 30 of 2009 as they are considered to be contravention. The Commission observes that, more than 8 years after the complaint was filed, an investigation has not been carried out to determine the source of the alleged facts or the criminal liability of the participants, for which it concludes that in the present case it applies the exception to exhaustion of domestic remedies provided for in Article 46.2.c of the Convention.

13. On the other hand, the petition before the IACHR was received on September 3, 2012, the alleged facts that were the subject of the claim took place since 2005, the criminal complaint was filed in 2009, and certain effects would be extended to the present. Therefore, in view of the context and characteristics of the current case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period must be defined as satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

14. In view of the factual and legal elements alleged by the parties, the Commission considers that, if proven the lack of investigation and criminal punishment of the alleged acts of threats, insults and attacks against the life of the alleged victim, her gender identity and expression, a situation that would have forced her to leave her place of residence, could characterize possible violations of Articles 4, 5, 8, 11, 13, 22, 24 and 25 of the American Convention to the detriment of the alleged victim, all in relation to Articles 1.1 and 2 of said instrument. Additionally, the Commission considers that the allegations could constitute violations of Article 7 of the Convention of Belém do Pará taking into account that under that instrument, States have an obligation to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, trans and intersex⁹ women.

⁷ IACHR, Report Number 47/17. Petition 42-07. Admissibility. Jenner Alfonso Mora Moncaleano and others. Colombia May 25, 2017, Par. 11; IACHR Report Number 17/16, Petition 1132-06. Admissibility. Hortencia Neyid Tunja Cuchumbe And others, Colombia, April 15, 2016, Par. 27.

⁸ IACHR Report Number. 119/17. Petition 1618-07. Admissibility. Duver Alberto y Fredy Alonso Orozco García. Colombia, September 7, 2017, Par. 10.

⁹ IACHR, Report Number 64/16. Petition 2332-12. Admissibility, Vicky Hernandez and family, Honduras, December 6, 2016. Par. 31.

VIII. DECISION

1. To declare the present petition admissible in regards to Articles 4, 5, 8, 11, 13, 22, 24 and 25 of the American Convention in accordance with Articles 1.1 and 2 of said treaty; and Article 7 of the Convention of Belém do Pará; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include in the General Assembly Annual Report 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): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, y Flávia Piovesan, Commissioners.

