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REPORT No. 151/17
PETITION 1474-07
REPORT ON INADMISSIBILITY

FELICIDAD FLORES SOLÓRZANO
MEXICO

Approved by the Commission at its session No. 2104 held on October 26, 2017.
165th Regular Period of Sessions.

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 OCTOBER 26, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Centro de Derechos Humanos Fray Jacobo Daciano and others ²
Alleged victim:	Felicidad Flores Solórzano
State denounced:	Mexico
Rights invoked:	Articles 1.1 (obligation to respect rights), 2 (domestic legal effects), 8 (right to a fair trial), 16 (freedom of association), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights ³ ; 3 (Obligation of nondiscrimination), 6 (Right to Work) and 7 (Just, Equitable, and Satisfactory Conditions of Work) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ⁴ ; 1, 4, 5, 6 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ⁵ ; and another international treaty ⁶

II. PROCEDURE BEFORE THE IACHR⁷

Date on which the petition was received:	November 14, 2007
Date on which the petition was transmitted to the State:	January 17, 2012
Date of the State's first response:	May 31, 2012
Additional observations from the petitioning party:	September 12, 2012; May 3 and July 19, 2013; February 7 and December 31, 2014; July 13, 2015; and January 24, 2017
Additional observations from the State:	December 10, 2012; March 25, October 1 and December 11, 2013; March 23, 2015; May 14, 2015; and February 1, 2017

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the deliberations or decision concerning this matter.

² The following entities are co-petitioners in this case: Alianza Cívica A.C.; Asociación Nacional de Locutores de México, A.C.; Fundación Movimiento por la Certidumbre, A.C.; Comité Ejecutivo Nacional de Movimiento México Avanza; Corriente Social Participativa; Junta Nacional México Democrático; Confederación de Jóvenes Mexicanos; Genes Instituto de Género y Salud Sexual, S.C.; Agrupación Política Nacional "Emiliano Zapata"; Comité Nacional de la Asociación Mexicana de Periodistas de Radio y Televisión; Academia Mexicana de Derechos Humanos; Asociación Nacional de Abogados por los Derechos Humanos A.C.; Movimiento Social por la Democracia Nacional; Comité Estatal del Estado de Querétaro; Comité Nacional de Democracia Social A.C.; Foro Nacional Permanente de Legisladores; y el Movimiento Nacional de Crítica Socio-Política CEN.

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

⁴ Hereinafter "Protocol of San Salvador".

⁵ Hereinafter "Convention of Belem do Para".

⁶ Articles 1, 3 and 11 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁷ The observations presented by each party were duly transmitted to the opposing party.

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 (ratification instrument deposited on March 24, 1981)

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
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	N/A

V. ALLEGED FACTS

1. The petitioners hold that the Mexican State is responsible for the violation of Ms. Solórzano's (hereinafter "the alleged victim") human rights due to her wrongful and discriminatory dismissal based on her gender and for denial of justice. According to the petitioners, the alleged victim was one of the founders of Radio Querétaro and performed her duties as a broadcaster on the program "Querétaro en la Hora Nacional" in an exemplary fashion until June 9, 2003, when she was fired. They state that she was fired because the director of the radio station at that time preferred to have a male voice hosting the radio program and preferred to "disseminate an image in which the man was the main host and the woman would play a secondary role."

2. The petitioners allege that there is no effective remedy in the Mexican legal system to simultaneously address violations of the alleged victim's labor rights and human rights. They indicate that for this reason Ms. Solórzano filed an employment claim before Special Board No. 50 of the Federal Conciliation and Arbitration Board (hereinafter, "the Board") and went to the State and National Commission on Human Rights (hereinafter, "CEDH" and "CNDH", respectively) to address the violation of her human rights.

3. They allege that the employment claim was ineffective given the proceeding's unwarranted delay and because the Board did not rule on the discrimination that Mrs. Solórzano suffered. With regard to the unwarranted delay, they assert that the Board took about nine years to resolve the claim and this delay is exclusively attributable to the State since during this period several hearings were postponed and the Board did not respect the procedural terms and deadlines set forth under the Federal Labor Law. The petitioners affirm that the victim's consent to hearing postponements does not exempt the State from its responsibility for the delay, as the Board should have set new dates for the hearings in keeping with the deadlines established by law, which it failed to do. Furthermore, they indicate that Ms. Solórzano did not file indirect *amparos* to correct procedural errors because it would have been necessary to submit numerous *amparos* to correct the large amount of errors committed by the Board. They assert that this would have been contrary to the purpose of this remedy, which is to ensure a speedy trial. As regards the purported omission of the Board with respect to the alleged discrimination suffered by Ms. Solórzano, the petitioners indicate that the Board only assessed the date on which her employment with the radio station had ceased and, in determining that her employment had been terminated on a date subsequent to the one she had alleged due to the non-renewal of her contract, the Board considered that it was not necessary to delve into the reasons for her dismissal.

4. According to the petitioners, the alleged victim appealed the Board's decision by filing a direct *amparo*, but subsequently dropped the appeal after reaching an agreement with the State with respect

to her employment situation because of the financial pressure she was under. However they claim that the direct *amparo* was not the effective remedy to ensure the rights violated, as the filing of this appeal first depended on the board's final decision, which only occurred nine year after the suit was filed. Therefore, any effectiveness this remedy would have been lost due to the labor proceedings' unjustified delay. They add that although the constitutional reform of 2011 provided that the *amparo* proceedings must perform a conventionality control, exhaustion of this remedy is not required to go before the IACHR. In this regard, they point out that in keeping with the *pro homine* principle, the legislation to be applied is the one that most favors Ms. Solórzano's interests and offers speedy, expedited justice and the protection of her human rights. They allege that in this case, such a remedy is the petition submitted to the IACHR.

5. The petitioners also indicate that only the complaints and remedies filed with the CEDH and the CNDH could have been effective to ensure the human rights of the alleged victim. They indicate that these administrative remedies were exhausted, but that they were ineffective as the State did not comply with the recommendations of these commissions.

6. The State holds that the IACHR has limited competence to hear this matter and that the petition should be declared inadmissible. In this regard, it asserts that the employment claim Ms. Solórzano filed addressed work-related matters that fall outside the Commission's competence and that the effective remedies that exist in the Mexican legal system to guarantee the human rights purportedly violated were not exhausted. Additionally, the State indicates that given the petitioner's withdrawal of her *amparo* and the conclusion of the labor proceedings through a friendly settlement, the petition should be archived as the grounds therefor no longer exist.

7. The State points out that the employment claim filed by the alleged victim was the suitable remedy to protect her labor and human rights. The State adds that the allegedly unwarranted delay in concluding the employment lawsuit was exclusively due to Ms. Solórzano's litigation strategy and adds that the Supreme Court of Justice has already established the suitability of the indirect *amparo* for omissions and delays in labor proceedings and at no time did Ms. Solórzano file this remedy. The State alleges that the petitioners' argument on this remedy's efficacy and their justification for not filing it is abstract and that a reading of Article 46 of the American Convention does not provide for the petitioners' right to assess the alleged effectiveness of an existing remedy that is available without even having filed it.

8. The State also alleges that once the Board issued a ruling, the alleged victim was able to address the purported violation of her rights through a direct *amparo*, a remedy which the IACHR itself has recognized to be suitable for analyzing and repairing human rights violations. The State indicates that Ms. Solórzano filed this remedy on June 21, 2012, but withdrew it on February 1, 2013, as a result of the friendly conciliation of the interests of both parties to the labor dispute. Furthermore, the State claims that the *pro homine* principle does not allow choose between submitting her claim to domestic courts or directly to the IACHR. It affirms that the IACHR has subsidiary competence and that before it can rule on an alleged violation of human rights it must allow the States to repair the alleged violations.

9. The State also alleges that it has complied with the CEDH's recommendations. In this respect, it indicates that administrative proceedings were initiated and concluded against the director of the radio station at that time and that Ms. Solórzano's *curriculum vitae* was evaluated for her former post. It indicates that she presented three complaints to the CNDH as she considered that the State had not complied with the CEDH's recommendations; however, on September 12, 2006, the CNDH, in its last recommendation, stated that the complaint was not admissible given that the government had complied with the CEDH's recommendations.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. According to the petitioners, there is no effective remedy in the Mexican legal system to simultaneously address violations of the alleged victim's labor rights and human rights and therefore the exception to the requirement to exhaust domestic remedies provided for under 46(2)(a) of the Convention should apply. They also allege that there was unwarranted delay that was exclusively the State's fault in

concluding the judicial proceedings and the exception to exhaustion of domestic remedies provided for under 46(2)(c) of the Convention should apply. For its part, the State affirms that the employment claim submitted to the Board was initially suitable for repairing the violations of Ms. Solórzano's labor and human rights, and once the Board's decision was issued, the suitable remedy was to file a direct *amparo*. It further indicates that the delays in concluding judicial proceedings was due to the alleged victim's litigation strategy and that domestic remedies were not exhausted since the alleged victim dropped her case.

11. Based on the information presented, the IACHR notes that Ms. Solórzano alleged in her employment claim that she had been discriminated against and fired for being a woman and had requested that the Board reinstate her. On June 21, 2012, this complaint was dismissed. On August 3, 2012, the alleged victim filed a direct *amparo* before the Appellate Court of the Twenty-Second District (hereinafter, "the Appellate Court") invoking the claim of her unjustified dismissal and the Board's omission in this regard and requested that the Board's resolution be nullified and that a new one be entered. On December 11, 2012, the Appellate Court granted the *amparo* in this respect, recognizing the lack of congruence between the object of the employment complaint and the Board's decision since it did not address the unjustified dismissal. Therefore, the Appellate Court voided the Board's decision and ordered it to issue a new one in which it should fully resolve the matters raised in the complaint. According to the available documentation, the Board and the alleged victim were notified of this decision in December 2012.

12. On February 1, 2013, the alleged victim dropped her employment complaint after reaching an agreement with the defendants⁸. On February 14, the Appellate Court asked the alleged victim to express her opinion on the enforcement of the *amparo* decision, stating that, if a response was not received within three days, the body would rule on the compliance. On February 20, 2013, the Appellate Court, noting that none of the parties had requested a review of the December 11, 2012 decision, declared that decision enforced. Moreover, on March 13, 2013, the Appellate Court, noting that the alleged victim had not responded to the Court's request of February 14, considered that, despite the Board not issuing a new resolution, due to the withdrawal of the complaint and the order to close the matter, the object of the complaint no longer existed and it would not be possible for a new resolution to be issued. It added that, given the conformity of the contestants, the protective judgment was considered to have been complied with for all legal purposes. The alleged victim was notified of this decision on March 15, 2013. Later, on April 15, 2013, since that decision had not been challenged, the Appellate Court decided to close the matter.

13. From the allegations raised in the employment complaint it is possible to identify that the alleged victim considered this complaint to be an appropriate remedy to address her claim concerning her alleged unjustified and discriminatory dismissal. Furthermore, the judicial authorities voided the Board's resolution dismissing the complaint and ordered it to issue a new resolution in which it was to address the reasons for the alleged victim's dismissal. The Board did not issue a new resolution due to the withdrawal of the complaint by the alleged victim, who, in addition, did not present any observations to the Appellate Court concerning the enforcement of the *amparo* decision and the compliance of the Board with that decision. Therefore, the withdrawal of the complaint, which according to the information available in the case file was a voluntary act by the alleged victim, put an end to the proceedings before the Board could have issued a new resolution in compliance with the *amparo* decision. In this regard, the Commission concludes that the available remedies were not properly exhausted and finds no elements to warrant the application of an exception to the requirement of exhaustion of domestic remedies.

14. In addition, with respect to the alleged violation of the rights enshrined in Articles 8 and 25 of the American Convention due to a supposed unwarranted delay in resolving the employment complaint, the IACHR observes that the judicial files show that the alleged victim did not question the duration of the proceedings and that several postponements generally occurred with her consent, as a result of her own

⁸ On December 30, 2016, the Commission requested both parties to provide a simple copy of the agreement reached in the employment complain in order to conduct a *prima facie* review of the terms. However, the parties only provided a copy the certificate of the withdrawal of the case, which did not contain the terms of the agreement between Ms. Solórzano and the defendants in the employment claim.

request or due to her own procedural activity. Hence, the IACHR considers that the domestic remedies were not exhausted in this regard and that the exception of Article 46.2.c of the Convention is also not applicable.

15. Given that domestic remedies have not been exhausted and the exceptions to such a requirement are not applicable, the IACHR concludes that this petition is inadmissible in terms of Articles 46(1)(a) and 47(a) of the American Convention and Article 31(1) of the Rules of Procedure, with which it is not necessary to analyze the other requirements for admissibility.

VIII. DECISION

1. To declare this petition inadmissible;
2. To notify the parties of this decision; and
3. To publish this ruling and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Montevideo, Uruguay on the 26th day of the month of October, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.