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REPORT No. 37/16
PETITION 124-00
REPORT ON ADMISSIBILITY

NORKA MOYA SOLÍS
PERU

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ADMISSIBILITY REPORT
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I. SUMMARY

1. On March 22, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Norka Moya Solís (hereinafter “the petitioner” or “the alleged victim”) against the Republic of Peru (hereinafter “Peru” or “the State”) for the alleged violations committed by the Judicial branch of the State, which removed her from her position as judicial clerk (*secretaria judicial*) arbitrarily and in violation of due process guarantees when analyzing her claims with regard to that removal.

2. The petitioner argues that the State violated her rights to humane treatment, judicial guarantees, the protection of honor and dignity, and judicial protection, for being removed from her job as judicial clerk as the result of an irregular proceeding; and that in response to the defense actions she filed for said arbitrary removal, the judicial authorities did not respect due process guarantees nor did they give her effective judicial protection.

3. The State argues that at no time did the Peruvian judicial branch violate the petitioner’s human rights, for it argues that her judicial guarantees were respected in all the judicial proceedings, and that she was accorded effective judicial protection.

4. Without prejudging on the merits of the complaint, after analyzing the parties’ position, and in keeping with the requirements set forth at Articles 46 and 47 of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”), the Commission decides to find the case admissible in relation to the allegations regarding the possible violation of the rights enshrined in Article 8 (judicial guarantees) and Article 25 (judicial protection) in conjunction with Article 1(1) of the American Convention. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCEDURE BEFORE THE IACHR

4. The IACHR received the petition on March 22, 2000, and on December 6, 2002, forwarded a copy of the pertinent parts to the State, which it gave two months to submit its observations, pursuant to Article 30(3) of its Rules of Procedure in force at that time. On February 12, 2003, the State requested an extension for filing its observations; that extension was granted by the IACHR. The State’s response was received on April 14, 2003; it was forwarded to the petitioner on April 22, 2003.

5. The petitioner submitted additional observations on May 29, 2003, August 2, 2011, and April 14, 2014. The State submitted additional observations on May 18, 2011 and July 17, 2014. These communications were forwarded to the other party in due course. In the processing of this petition the Commission, by note of June 30, 2011, asked the petitioner for up-to-date information, indicating that if it were not received the petition could be archived in the terms of Article 48(1)(b) of the Convention and Article 42 of the IACHR’s Rules of Procedure. The petitioner, as already noted, responded to this request by communication of August 2, 2011.

¹ In keeping with Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the debate or decision in the instant matter.

III. THE PARTIES' POSITIONS

A. The position of the petitioner

6. The petitioner notes that in 1979 she was appointed judicial clerk (*secretaria judicial*) of a labor court in the city of Lima. Subsequently, by Law No. 23,344, of December 19, 1981 and Law No. 23,369 of December 31, 1981, the appointment and ratification of judicial clerks, judges, and reporters was regulated. In order to carry out those statutory mandates, a special committee was formed for carrying out the processes of ratifying judicial clerks. Accordingly, having concluded the evaluation stage, on September 13, 1982, the President of the Plenary Chamber of the Court of Labor and Labor Communities of Lima (hereinafter "Labor Court") informed the alleged victim that she had not been ratified, and that she would no longer continue in her job, as she was removed from her position as judicial clerk. According to the petitioner, she was never given written notice of that decision and subsequently was kept from entering her place of work.

7. Given the situation described, and also calling into question the fact that she had no right to defense in the ratification process, on September 17, 1982, the petitioner filed a motion for review (*recurso de revisión*) against the decision of the Labor Court, to have her case administratively processed before the Supreme Court of Justice (hereinafter "the Supreme Court"). Nonetheless, she states that the Supreme Court found that her motion was unfounded, by Supreme Resolution of October 12, 1983, without engaging in any review of the record of ratifications. The petitioner filed a writ of *amparo* against that judgment, with was declared to be inadmissible on procedural grounds by the Twelfth Civil Court of Lima (hereinafter "Civil Court") on June 14, 1985. For this reason, she filed a motion of appeal (*recurso de apelación*) before the Third Civil Chamber of the Superior Court of Justice of Lima, which upheld the judgment that she challenged on August 2, 1985.

8. Accordingly, on September 19, 1985, the petitioner filed a motion for nullity (*recurso de nulidad*) before the Second Civil Chamber of the Supreme Court. In the context of the proceeding, after analyzing the record, the Supreme Prosecutor ruled on January 17, 1986, that the judgments at trial and on appeal were resolved without having reviewed the record of ratifications, accordingly those resolutions should be considered null and void and a new judgment should be handed down. In view of the foregoing, the Supreme Court, on August 4, 1986, annulled the judgment on appeal and vacated the ruling of the trial court, ordering that the trial judge, that is, the Civil Court, issue a judgment revising that record.

9. The petitioner states that for 10 years she sought, on numerous occasions, to have the record of ratifications removed by the Labor Court to the Civil Court, but it answered that it had been lost, failing in its duty to replace the documents. In view of the foregoing, she notes that on December 30, 1996, the Sixteenth Civil Court of Lima issued a judgment once again without reviewing the record of ratifications, and finding the writ of *amparo* to be without foundation.

10. Against this resolution, which once again failed to abide by what was ordered by the Supreme Court, the alleged victim filed a motion of appeal on May 19, 1997. Nonetheless, on March 20, 1998, the Transitory Corporate Chamber of Public Law upheld the judgment appealed. Subsequently, on April 8, 1998, alleging the repeated violation of due process guarantees, the petitioner filed a motion for annulment with the Constitutional and Social Law Chamber of the Supreme Court, which found no ground for annulment in the judgment appealed, by resolution notice of which was given on September 23, 1999.

11. Based on the foregoing, the petitioner alleges that the State violated the rights recognized in Articles 5, 8, 11, and 25 of the American Convention to her detriment.

B. The position of the State

12. The State argues that the petitioners at all times enjoyed the judicial guarantees necessary and that the fact that its claims were dismissed does not imply a violation of her fundamental rights, for the judicial protection recognized in the Convention includes the right to fair, impartial, and swift procedures that

offer the possibility but not necessarily a guarantee of a favorable outcome. It also states that the petitioner, during her constitutional procedure, put forward a technical defense, and that it was addressed respecting her right to effective judicial protection and due process.

13. The State further argues that in light of the principle of subsidiarity and complementarity, the IACHR is not an appellate court with the powers to review supposed errors of fact or law that may have been made by the domestic courts acting within their jurisdiction, and were it to do so it would be intervening as a “fourth instance,” which also makes the petition inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

14. The petitioner is authorized, in principle, by Article 44 of the American Convention to file petitions with the Commission. The petition notes as the alleged victim an individual with respect to whom the State has assumed the commitment to respect and ensure the rights enshrined in the American Convention, as of July 28, 1978, the date Peru deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

15. The Commission is competent *ratione loci* to consider the petition for facts alleged to have occurred under the jurisdiction of a state party to the American Convention. The Commission is also competent *ratione temporis* to examine this petition under the American Convention for the acts that occurred after its ratification. Finally, the Commission is competent *ratione materiae* because the petitioners alleged violations of rights protected under the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

16. Article 46(1)(a) of the American Convention requires the prior exhaustion of the remedies available in the domestic jurisdiction in keeping with generally recognized principles of international law as a requirement for admitting claims alleging violation of the American Convention. The purpose of this requirement is to afford the domestic authorities an opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, resolve the situation before it is heard by an international body.

17. The petitioner argues that the domestic remedies were exhausted with the resolution of June 26, 1998, by the Supreme Court that ruled on a motion for annulment, and of which she was notified on September 23, 1999. The State did not make any argument regarding exhaustion of domestic remedies, nor did it controvert what was indicated by the petition in this respect.

18. Based on the available information, the IACHR notes that the petitioner exhausted domestic remedies by the judgment dismissing the motion for annulment that was filed, notice of which was given on September 23, 1999. Therefore, the Commission concludes that in this case domestic remedies were pursued and exhausted in keeping with Article 46(1)(a) of the American Convention.

2. Deadline for filing the petition

19. Article 46(1)(b) of the American Convention establishes that for a petition to be found admissible by the Commission it must be presented within six months of the date on which the person allegedly injured was notified of the final decision.

20. In the claim under analysis, the notice of the decision by the Supreme Court was made on September 23, 1999, and the petition was filed with the IACHR on March 22, 2000. Therefore, the

Commission concludes that the instant petition meets the requirement established at Article 46(1)(b) of the American Convention.

3. Duplication of procedures and international *res judicata*

21. It does not appear from the record that the subject matter of the petition is pending before any other procedure for international settlement, nor that it reproduces a petition already examined by this or any other international organization. Therefore, the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Colorable claim

22. For purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c). The criterion for analyzing admissibility is different from that used to analyze the petition, given that the Commission performs a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Convention. It is a summary analysis that does not entail prejudging or issuing a preliminary opinion on the merits.

23. Moreover, neither the American Convention nor the Rules of Procedure of the IACHR require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, though petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports what provision of the relevant inter-American instruments is applicable and whose violation could be established if the facts alleged are proven by sufficient evidence.

24. The petitioner argues that she was arbitrarily removed from her job as a judicial clerk, as her removal proceeding unfolded in breach of judicial guarantees. She also indicates that the courts that heard her claims failed to give her effective judicial protection. At the same time, the State says that she always had access to adequate and effective judicial remedies, and that if her claims were not granted that does not make for a *per se* violation of the American Convention.

25. In view of the elements of fact and law presented by the parties and the nature of the matter put before it, the IACHR considers that if it is proven that in the context of the removal of the petitioner the judicial courts did not observe the required guarantees and that, for example, according to the petition judgments were issued without having reviewed the record of ratifications and failing to abide by a ruling that ordered that the due process violations be corrected, which could tend to establish possible violations of the rights protected in Articles 8 and 25 of the American Convention, in keeping with Article 1(1) of the same Convention.

26. As regards petitioner’s claim alleging violation of Articles 5 and 11 of the American Convention, the Commission observes that the petitioner does not offer arguments or support for their alleged violation, thus that claim is not found admissible.

V. CONCLUSIONS

27. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth at Articles 46 and 47 of the American Convention, and, without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention in connection with the obligation established at Article 1(1) of the same instrument.
2. To find the instant petition inadmissible in relation to Articles 5 and 11 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis of 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 on the 12th day of the month of August, 2016. (Signed): James L. Cavallaro, President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.