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REPORT No. 69/17
PETITION 570-08
REPORT ON ADMISSIBILITY

HÉCTOR MARCELINO FLORES JIMÉNEZ
MEXICO

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

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PETITION P-570-08
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I. INFORMATION ABOUT THE PETITION

Petitioner:	Hector Marcelino Flores Jiménez
Alleged victim:	Hector Marcelino Flores Jiménez
State denounced:	Mexico
Rights invoked:	Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	May 7, 2008
Date on which the petition was transmitted to the State:	May 10, 2013
Date of the State's first response:	July 17, 2013
Additional observations from the petitioner:	November 28, 2013
Additional observations from the State:	August 25, 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; American Convention (deposit of instrument of ratification made in March 24, 1981)

IV. ANALYSIS ON 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 2 (Domestic Legal Effects), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in connection with Article 1.1
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception set forth in Article 46.2(a) of the ACHR
Timeliness of the petition:	Yes, in the terms of Section VI

¹ Pursuant to Article 17.2(a) of the IACHR's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, did not participate in the discussion of, or the decision on, this matter.

² Hereinafter, "the Convention" or "the American Convention."

³ The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner claims that as the Secretary of the Fourth Unitary Court in Criminal Matters, he worked as a Justice, since the officer in charge was on holidays, and on December 23, 2005 decided to confirm a judgment ruling to dismiss the criminal proceedings in a case for tax fraud on the grounds of extinctive prescription.

2. He asserts that on April 19, 2006 he was notified of administrative proceedings filed against him. He submits that he was accused of failing to conduct an exhaustive review of the certified copies in the criminal case file, and was therefore said to meet the ground specified in paragraph No. 3 of Article 131 of the Organic Law of the Federal Public Administration, which establishes that state officers in the judicial branch will be held responsible for "*actions displaying remarkable ineptitude or negligence in the performance of functions and duties assigned to them.*" He claims that on October 31, 2006 the Federal Council of the Judicature ruled to punish him with two months of unpaid suspension on the grounds that his failure damaged the institution's image regarding the provision of justice, and that this met the ground specified in paragraph No. 8 of said article, under which responsibility derives from "*[t]he failure to preserve the dignity, the impartiality and the professionalism proper to the judicial function, in the performance of duties.*" The petitioner asserts that, against that decision, he filed an action for administrative review that was rejected on May 7, 2007. In this regard, the Supreme Court of Justice indicated that, under the Mexican Constitution, the decisions by the Federal Council of the Judicature are final and incontestable and can only be reviewed when these pertain to the appointment, attachment, ratification or removal of justices and judges. The Court claimed that in the case of the alleged victim, the temporary suspension did not meet any of these grounds, hence said remedy was inapplicable.

3. The petitioner claims that his being initially prosecuted for one ground but punished for another violated the congruence principle and his right to defense. He submits that this right was also violated by the fact that no judgment was issued as regards the arguments filed in his defense. The petitioner moreover indicates that the disciplinary proceedings and the punishment imposed were motivated by an assessment of a completely jurisdictional judgment, in particular because he was never accused of violating a legal provision. He also claims that the imprecision of the grounds generates, to his detriment, a state of judicial defenselessness, insecurity and uncertainty. Also, he submits that the lack of a remedy to appeal the disciplinary judgment violated his procedural rights. Finally, he asserts that the exceptions to the requirement to the prior exhaustion of domestic remedies, established in Article 46.2(a) and (b) of the Convention, apply in view that he was deprived of the action for review and had no other remedy to appeal the disciplinary ruling.

4. On the other hand, the State claims that the petition must be declared inadmissible as it does not meet the requirement of timeliness. It indicates that the decision to punish was notified to the petitioner on May 8, 2007 and that the petition was filed to the Commission on May 7, 2008, a year later. Likewise, it asserts that the disciplinary proceedings were conducted under the laws in force and all rights were respected. It claims that the petitioner is not satisfied with the decision reached by the domestic court and seeks to have the Commission work as a fourth instance. Finally, the State indicates that, according to the Mexican Constitution, the decisions made by the Council of the Judicature are final and incontestable, unless they are decisions ruling on removal from office. It submits that, in this case, the petitioner's suspension was temporary and a disciplinary punishment; and that therefore, an action for review was inapplicable. In this regard, the State claims that the facts denounced by the petitioner do not establish violations of the American Convention.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. Concerning the requirement of prior exhaustion of domestic remedies, both parties agree that the Federal Council of the Judicature issued a disciplinary punishment against the petitioner on October 31, 2006 and that on May 7, 2007 the petitioner filed an action for administrative review before the Supreme Court of Justice, which was rejected on the grounds that judgements by the Federal Council of the Judicature are final and incontestable. Consequently, based on this information, the Commission believes that in the

domestic venue no remedies are available to challenge the disciplinary punishment imposed on the alleged victim and that, as a result, the exception set forth in Article 46.2(a) of the Convention and Article 31.2(a) of the Rules applies in this case.

6. As regards the requirement of timeliness, the State claims that the petition is untimely since it was lodged more than six months following the date of notification of the decision ruling the inapplicability of the action for review. In this regard, Article 32.2 of the Rules establishes that whenever the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the six-month deadline will not apply but the petition must be presented within a reasonable period of time. In the case under assessment, the Commission notes that the petition was lodged within a year following the date that the decision ruling the action for review's inapplicability was notified. In view of this, the Commission believes that the petition was filed within a reasonable time.

VII. COLORABLE CLAIM

7. In view of the elements of fact and law presented by the petitioner and the nature of the matter brought to its attention, the IACHR considers that if the purported violations of the right to defense and due process of law are proved, along with the lack of mechanisms to seek the protection of these rights, the facts could establish violations of Articles 8 and 25, in relation to Article 1.1, of the American Convention. The Commission moreover believes that in the merits stage it must be analyzed whether the alleged lack of legal provisions ensuring remedies to challenge the punitive judgment could establish a violation of Article 2 thereof.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 2, 8 and 25, in connection with Article 1.1, of the American Convention;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. 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 Buenos Aires, Argentina, on the 25 day of the month of May, 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.