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REPORT No. 115/19
PETITION 754-10
REPORT ON ADMISSIBILITY

YAKELINE HERRERA SOLER
VENEZUELA

Approved electronically by the Commission on July 3, 2019.

Cite as: IACHR, Report No. 115/19, Petition 754-10. Admissibility. Yakeline Herrera Soler. Venezuela. July 3, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Yakeline Herrera Soler
Alleged victim:	Yakeline Herrera Soler
Respondent State:	Venezuela
Rights invoked:	Articles 8 and 25 of the American Convention on Human Rights ¹ in relation to its Articles 1.1 and 2

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	May 20, 2010
Notification of the petition to the State:	December 22, 2016
State's first response:	April 18, 2017

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 made on August 9, 1977)

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	Articles 8 (right to a fair trial), 23 (right to participate in Government), 25 (right to judicial protection) and 26 (progressive development) of the Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on November 24, 2009
Timeliness of the petition:	Yes, on May 20, 2010

V. FACTS ALLEGED

1. The petitioner and alleged victim, Mrs. Yakeline Herrera Soler (hereinafter "Mrs. Herrera", "the alleged victim" or "the petitioner"), alleges the violations of her human rights as a result of her removal from office as First Criminal Court Judge of the Judicial District of the Metropolitan Area of Caracas. She alleges that on July 19, 2005, she was informed that her appointment had been terminated by the Judicial Council, without any disciplinary or evaluation proceedings.³ She considers that her right to a defense was violated because she did not have the opportunity to be heard or to submit rebuttal evidence before the decision was taken, as well as the lack of reasoning for the decision. She points out that the absence of a disciplinary cause justifying her dismissal was demonstrated in the last ordinary assessment made to her (February 28, 2005). She argues that, although at one point she was reported to the General Court Inspectorate for an alleged irregularity, she was acquitted by the Judicial Commission on the Functioning and Restructuring of the Judicial System on November 9, 2004. She emphasizes that the same individual who filed this complaint against her later acted as president of the Judicial Commission and signed the order terminating her appointment. She alleges that this represents a clear violation of the principle of impartiality and the applicable rules regarding disqualifications and recusals.

¹ Hereinafter "the American Convention" or "the Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

³ She indicates that the order stated that the decision to nullify her appointment was taken "by reason of the observations made before this Body."

2. The alleged victim argues that, although she had the status of provisional judge, her appointment lasted until the recruitment contests took place, and therefore she could only be removed if a judge was appointed through open competition or if she did not pass the competition. She indicates that her removal took place during the recruitment process and after she had already passed the first phase. She alleges she was prevented from participating in the last phase of the contest due to her removal, and therefore suffered discrimination vis a vis the other provisional judges who were permitted to participate and compete for the position. She argues that there is a lack of effective remedies against the arbitrary removal of temporary judges in Venezuela, since the courts merely confirm the discretionary power of the Judicial Council to remove them.⁴ She adds that temporary appointments of judges that are not subject to specific conditions or fixed terms are incompatible with international standards on the independence of the judiciary.

3. The State did not object to the facts alleged.

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

4. The alleged victim indicates that she filed an appeal for reconsideration of the decision on July 19, 2005, which was dismissed on November 22, 2005 by the Judicial Commission of the Supreme Court of Justice.⁵ Likewise, on August 5, 2005, she filed an *amparo* appeal that was declared inadmissible by the Constitutional Chamber of the Supreme Court of Justice on December 15, 2005.⁶ Subsequently, on July 13, 2006, she filed an appeal for annulment with the Administrative Political Chamber of the Supreme Court of Justice, which rejected it on November 24, 2009.⁷ The petitioner alleges that this decision exhausted domestic judicial proceedings, while the State has not presented objections in this regard, nor has it referred to the existence of other appropriate remedies to deal with the petitioner's claim at the domestic level. Therefore, the Commission concludes that this petition satisfies the requirement of Article 46.1 (a) of the American Convention.

5. The State did not present arguments or observations on compliance with the requirement of the exhaustion of domestic remedies.

6. Regarding the requirement of timeliness, the only point disputed by the State, the State alleges that the petition is untimely because it was filed more than six months after the final decision which exhausted the domestic remedies. For purposes of this calculation, the State considers May 25, 2010, as the date of submission of the petition, because that is the date appearing on the receipt stamped by the Commission in a brief that was sent to it by the petitioner through postal mail, which was then sent to the State. It emphasizes that according to Article 29 of the Commission's Rules of Procedure in force at the moment when the petition was submitted, it was established that the IACHR would "receive the petition, register it, record the date of receipt on the petition itself and acknowledge receipt to the petitioner."

7. Regard the allegations made by the State, the Commission indicates that it was first aware of the petitioner's claim against the State through a "petition form" submitted electronically on May 20, 2010. This "petition form", as well as all the subsequent petitioner's submission, was transmitted to the State with a communication stating that the petition had been received on May 20, 2010,⁸ the date on which the

⁴ She refers to I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011; as case she argues refers to similar facts as those set out her claim and where the Inter-American Court concluded that there had been a violation of Article 25 of the Convention.

⁵ She indicates that in response to this remedy, the Judicial Council confirmed that her removal was not based on disciplinary grounds, but rather on the power of the administrative organ.

⁶ The Constitutional Chamber ruled that the *amparo* was inadmissible on the ground of a lack of risk of irreparable harm and that the petitioner should exhaust ordinary remedies, meaning the Nullity Appeal before the Administrative Political Chamber, which was an appropriate avenue to redress the legal situation affected by the acts of the administration.

⁷ The Chamber found that provisional judges are "liable to be removed from their post in the same manner as they were appointed: discretionally".

⁸ Equally, the acknowledgement of receipt sent to the petitioner and dated September 7, 2010, that is part of the case file also unequivocally refers to the petition's submission date as May 20, 2010.

Commission received the original petition. Therefore, the IACHR concludes that the present petition was filed within the six-month period established in Article 46.1 (b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

8. The alleged victim argues that her human rights were violated because she was removed without any prior due process and alleges that the Venezuelan system permits the discretionary removal of temporary judges in violation of judicial independence and also that the decision to remove her was not issued by an impartial tribunal. The State, for its part, has failed to present observations on whether the petitioner's allegations may or may not characterize possible violations of the American Convention.

9. Without advancing an opinion on the merits, the Commission considers that the petitioner's arguments are not manifestly ill-founded and that, if verified, the facts alleged could characterize violations of Articles 8 (right to a fair trial), 23 (right to participate in Government), 25 (right to judicial protection) and 26 (progressive development) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 23, 25 and 26 of the Convention in relation to its Articles 1.1 and 2;

2. To notify the parties of this decision; to continue with the analysis on the merits; and 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 3rd day of the month of July, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.