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REPORT No. 71/21
PETITION 874-09
REPORT ON ADMISSIBILITY

RUBI YAZMÍN CHAN SULUB
MÉXICO

Approved electronically by the Commission on March 15, 2021.

Cite as: IACHR, Report No. 71/21, Petition 874-09. Admissibility. Rubi Yazmín Chan Sulub.
México. 15 de marzo de 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Juan Manuel Hernández Paez/Leopoldo Alfredo Chavez Montes
Alleged victim:	Rubi Yazmín Chan Sulub
Respondent State:	México ¹
Rights invoked:	Articles 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ² in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	July 14, 2009
Additional information received at the stage of initial review:	October 6, 20, 2016
Notification of the petition to the State:	January 18, 2017
State's first response:	August 2, 2017
Additional observations from the petitioner:	March 5, 7 2018
Notification of the possible archiving of the petition:	August 12, 2016
Petitioner's response to the notification regarding the possible archiving of the petition:	October 6, 2016

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 ratification instrument on March 24, 1981)

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 (fair trial), 23 (right to participate in government)24 (equal protection), and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not partake in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

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

V. ALLEGED FACTS

1. This petition concerns a claim of unfair dismissal and violation of due process by Rubi Yazmin Chan Sulub (hereinafter “Mrs. Chan Sulub” or “the alleged victim”). According to the petition, the alleged victim had served as a public servant in the Federal Judiciary of Mexico since 1991 until she was dismissed in 2006. The petition states that prior to her dismissal she held the position of Secretary to the *Juzgado Segundo de Distrito* in the State of Campeche.

2. According to the petition, between September and October 2005, Judge Mirza Estela Be Herrera (of the *Juzgado Segundo de Distrito*) initiated four sets of disciplinary proceedings against the alleged victim largely on the ground of professional misconduct in the management of cases before the court. According to the record, Judge Be Herrera initially conducted hearings on September 29, 2005, October 25, and November 7, 2005, in the presence of the alleged victim.

3. The petition alleges that four sets of disciplinary proceedings were ultimately consolidated on January 11, 2006; and that on January 13, these proceedings concluded with the dismissal of the alleged victim from her position by Judge Be Herrera. According to the petitioner, the judge grounded her decision in various provisions of the legal regime that authorize the federal judiciary to impose discipline on public servants attached to the federal judiciary. These provisions include Article 108 of the Constitution of Mexico, Articles 4, 199, 200 and 214 of the *Acuerdo General* (administrative ruling). However, the petitioner argues that these provisions do not authorize individual judges like Judge Be Herrera to exercise these disciplinary powers, but only the *Consejo de la Judicatura Federal*.

4. According to the petition, the alleged victim challenged her dismissal before various domestic tribunals but was ultimately unsuccessful. For the most part, these held that her claims were inadmissible, mainly on the ground that the law did authorize federal judges to conduct disciplinary proceedings and to impose sanctions; and that accordingly, these tribunals held that they lacked competence to review the decision of Judge Be Herrera (on the merits). Following her dismissal, the alleged victim initiated amparo proceedings on February 07, 2006, which was dismissed on February 9, 2006. The alleged victim then filed an appeal against this decision, which was ultimately dismissed on May 17, 2006. According to the petitioner, the alleged victim was notified of this decision on May 26, 2006.

5. The petition further states that on December 4, 2006, the alleged victim filed an administrative revocation appeal to challenge her dismissal from her post, but this appeal was dismissed as inadmissible on December 5, 2006. According to the petitioner, the alleged victim filed another revocation administrative appeal, which was also dismissed, on the ground of inadmissibility on February 1, 2007.

6. According to the petition, on May 16, 2006, the alleged victim also challenged her dismissal before an administrative tribunal connected to the federal judiciary known as the *Comisión Substanciadora Única del Poder Judicial de la Federación*. Ultimately, on December 10, 2008, the application of the alleged victim was dismissed – again on the ground of inadmissibility; that there was no legal basis to review the legality of the decision to dismiss the alleged victim from her post. According to the record, the alleged victim was notified of this decision on January 16, 2009. The petitioner contends that this last decision represents the exhaustion of domestic remedies.

7. Ultimately, the petitioner complains that the alleged victim was not only dismissed unfairly, but was deprived of any hearing on the merits of her complaint by the judicial or administrative bodies that she approached. The petition also mentions that the alleged victim filed an administrative complaint against Judge Be Herrera on November 28, 2005, alleging, among other things, that the judge had subjected her to workplace harassment and abuse of power. This complaint was ultimately dismissed by the *Comisión de Disciplina del Consejo de la Judicatura* on March 28, 2006 as unfounded. According to the petition, the alleged victim also made a complaint against Judge Be Herrera on November 18, 2015, before the *Visitador General* (of the *Consejo de la Judicatura Federal*) but claims that that the complaint was never investigated.

8. The State rejects the petition as inadmissible for failing to state any facts that demonstrate any colorable violations of the rights of the alleged victim. The State contends that the alleged victim is simply dissatisfied with the outcome of the domestic proceedings, and that this is not a basis for a colorable claim. The State alleges that the proceedings initiated against the alleged victim by Judge Be Herrera because of manifest ineptitude and carelessness in the performance of her duties. The State emphasizes that the law of Mexico⁴ authorizes judges like Judge Be Herrera to conduct disciplinary proceedings against public servants attached to the federal courts, and to impose sanctions, like dismissal. According to the State, the remedies sought by the alleged victim were duly conducted and concluded in accordance with the law, and that unfavorable outcomes do not constitute a colorable claim.

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

9. The alleged victim filed a number of domestic remedies unsuccessfully, with the last remedy invoked being the complaint before the *Comisión Substanciadora Única del Poder Judicial de la Federación*. This was dismissed on December 10, 2008, and the alleged victim was notified of this decision on January 16, 2009. For its part, the State does not dispute the exhaustion of domestic remedies by the alleged victim. Based on these considerations, the Commission considers that the exhaustion of domestic remedies occurred with the dismissal of the complaint before the *Comisión Substanciadora Única del Poder Judicial de la Federación*, and the notification of this decision on January 16, 2009. The IACHR received the petition on July 14, 2009; and therefore the petition was lodged within the six-month time limit prescribed by Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

10. The Commission takes note that, this petition is substantially about the lack of effective and adequate remedies to challenge the removal of the alleged victim from her position, following disciplinary proceedings. The Commission notes that all of the domestic tribunals affirmed the dismissal of the alleged victim without any consideration of the merits of her complaint. The Commission considers that the absence of any substantive consideration of the petitioner's complaints regarding her dismissal are sufficient to require an analysis at the merits stage

11. Given these considerations and having examined the factual and the legal elements presented by the parties, the Commission deems that the claims submitted by the petitioner, are not manifestly groundless and if proven to be true may constitute violations of the rights protected by Articles 8 (fair trial), 23 (right to participate in government), Article 24 (equal protection), and 25 (judicial protection) of the American Convention, in line with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

VIII. DECISION

1. To find the instant petition admissible in connection with Articles 8, 23, 24 and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof;

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.

⁴ In this regard, the State expressly refers to Articles 131 and 135 of the *Ley Orgánica del Poder Judicial de la Federación*.

Approved by the Inter-American Commission on Human Rights on the 15th day of the month of March, 2021. (Signed:) Antonia Urrejola, President; Flávia Piovesan, Second Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.