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REPORT No. 175/19
PETITION 511-12
REPORT ON ADMISSIBILITY

FABIOLA PALOMINOS FLORES
CHILE

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 175/19, Petition 511-12. Admissibility. Fabiola Palominos Flores.
Chile. December 5, 2019.

I. INFORMATION ABOUT THE PETITION

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| Petitioner | Nicolás Lama Legrand |
| Alleged victim | Fabiola Palominos Flores |
| Respondent State | Chile ¹ |
| Rights invoked | Articles 5 (humane treatment), 12 (freedom of conscience and religion), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), and other international treaties |

II. PROCEEDINGS BEFORE THE IACHR³

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| Date of filing | March 27, 2012 |
| Notification of the petition | July 24, 2017 |
| State's first response | December 29, 2017 |
| Additional observations from the petitioner | September 14, 2018 |

III. COMPETENCE

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| <i>Ratione personae</i> | Yes |
| <i>Ratione loci</i> | Yes |
| <i>Ratione temporis</i> | Yes |
| <i>Ratione materiae</i> | Yes, American Convention (deposit of instrument of ratification on August 21, 1990) and Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ⁴ (deposit of instrument of ratification on November 15, 1996) |

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

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| Duplication of procedures and international <i>res judicata</i> | No |
| Rights declared admissible | Articles 5 (humane treatment), 8 (fair trial), 11 (privacy), 12 (freedom of conscience and religion), 24 (equal protection), and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), and Article 7 of the Convention of Belém do Pará |
| Exhaustion or exception to the exhaustion of remedies | Yes, September 27, 2011 |
| Timeliness of the petition | Yes, March 27, 2012 |

V. SUMMARY OF ALLEGED FACTS

1. Nicolás Lama Legrand (hereinafter “the petitioner”) reports purported violations of the human rights of Fabiola Palominos Flores (hereinafter “the alleged victim”) because staff of a state bank forced her to remove the veil she was wearing as per the hijab dress code, in front of male employees, in contravention of her religious beliefs. He argues that after this incident, the alleged victim was not granted effective judicial protection to restore and remedy the violated rights.

2. According to the petitioner, the alleged victim practices Islam, a belief system that requires her to cover her head with a veil according to the hijab dress code; this veil covers her hair and neck and leaves her face fully visible. He explains that according to the rules of the alleged victim’s religion, women must not remove their veil in the presence of men, except for their husband, father, or brothers; accordingly,

¹ Pursuant to the provision of Article 17.2.a of the IACHR Rules, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the discussion or the debate on this matter.

² Hereinafter, “the American Convention” or “the Convention.”

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

⁴ Hereinafter “the Convention of Belém do Pará.”

removing her veil in public in front of men constitutes for the alleged victim a form of degrading and humiliating treatment.

3. The petitioner indicates that in 2010, the alleged victim came to a branch of Banco Estado⁵ bank to cash a check⁶ through a teller. However, he says that the male employee that assisted her refused to undertake the procedure and demanded her to remove her veil in the very customer service area, even though her face was fully visible. The petitioner indicates that since the alleged victim refused to take off her veil, the head of the customer service department of that branch, another male employee, came and demanded her to remove her veil. The petitioner submits that the alleged victim was constrained given her need to receive the money and the lack of an alternative to taking off her veil before the head of the customer service department; as a result, the bank paid her check.

4. The petitioner moreover states that in the face of that incident, on August 12, 2010, the alleged victim filed an amparo action (appeal for the protection of rights) before the Court of Appeals of Santiago, on her own and without specialist assistance, claiming that the bank had treated her in a degrading and humiliating way and discriminated against her religion. He indicates that on May 31, 2011, the appeal was rejected by two votes against one. Among other things, the court of appeals established that the appeal “did not specify what constitutional right had been violated and, further, no petition was filed indicating in which manner the court was expected to protect a right that have already been violated” and that “it is impossible to restore the enjoyment of the right, that is to say, provide a redress, reparation, or a remedy for this since the appeal itself suggests that the action at issue was unfair and finished and not an ongoing or repeated behavior, as it happened at only one branch of the appealed bank and not at other branches of the same bank.”

5. He submits that the abovementioned decision was appealed before the Supreme Court, which upheld it on June 6, 2011, with four votes in favor and one against. The dissident judge believed that the appeal for legal protection had to be granted because “it is clear that the appeal has not been filed only in regard to the branch where the incident took place, but—obviously—because of the need for a protective measure of a general nature applicable to anyone living in the territory of the Republic.” He states that, later, the resolution was enforced through an enforcement order issued by the court of appeals on September 27, 2011, which exhausted the proceedings.

6. The petitioner claims that the bank violated the alleged victim’s rights of religious freedom and humane treatment. He believes that requiring her to remove her veil did not meet legitimate restrictions standards since there was not such a law that required customers to fully uncover their head when cashing a payment instrument and, had there been such a law, it would not pursue a legitimate objective and would be manifestly disproportionate, because there are identification methods that are less offensive than the denial of the hijab dress code. He moreover contends that the court of appeals and the Supreme Court did not grant effective judicial protection to the alleged victim since they rejected her appeal on formal grounds despite their competence to declare that her rights had been violated, which would have been a form of reparation in itself, and to order non-repetition measures. He further states that the domestic courts have attributed to the alleged victim the obligation to follow complex judicial rules, such as being specific in her petitions and specifying the violated rights, in contravention of the Chilean constitution as the latter does not establish any formal requirement to file an amparo action.⁷ He believes that the State’s answer, where it refers to the introduction in 2012 of an effective procedure to hear claims such as the one raised in this case, reveals the lack of an effective remedy when the facts took place. He states that the petition must be declared admissible because the State has not filed any objections to it.

7. For its part, the State contends that “it has no objections to file during the admissibility stage, without prejudice to the observations it may submit on the merits when applicable.” It highlights that Law

⁵ An autonomous State company with its own juridical personality and assets according to article 1 of Decree-Law 2079 of 1978 “containing the text of the organic law of the Bank of the State of Chile (Banco del Estado de Chile).”

⁶ He indicates that the amount of the check was around USD 100.00.

⁷ In addition, he states that the Supreme Court has unlawfully regulated the amparo action through an internal administrative provision (*auto acordado*) that contravenes Article 30 of the American Convention, under which restrictions on the rights recognized in the Convention, including the right to judicial protection, may not be applied except in accordance with laws enacted for reasons of general interest.

20609 was enacted in 2012, which establishes measures against discrimination through the creation of a judicial mechanism that allows to effectively restore the rule of law when an act of discrimination is committed. Therefore, the State claims that nowadays, it has an effective procedure to hear claims such as the one presented in this petition.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The Commission takes note that the State has not controverted the admissibility of this petition nor indicated that the filing of the petition was overdue nor referred to other remedies that must be exhausted and which may be appropriate to have the petitioner's claims heard by the domestic courts. Given the circumstances, the Commission deems that the domestic remedies were exhausted with the resolution issued by the court of appeals on September 27, 2011, ruling to enforce the unsuccessfully appealed judgment and to close the proceedings. Therefore, and since the petition was filed on March 27, 2012, the Commission finds that this petition meets the requirements established in Article 46.1, paragraphs (a) and (b) of the American Convention.

VII. COLORABLE CLAIM

9. The petitioner alleges the violation of the alleged victim's rights because state agents forced the alleged victim to infringe her religious beliefs by removing her hijab as a condition to access a service, as well as because the domestic legal remedies did not provide her with effective legal protection in the face of this incident. The Commission deems that these allegations are not manifestly groundless and must be the subject of an analysis on the merits; for, if proven, they may constitute violations of Articles 5 (humane treatment), 8 (fair trial), 11 (privacy), 12 (freedom of conscience and religion), 24 (equal protection), and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) and Article 7 of the Convention of Belém do Pará.

VIII. DECISION

1. To declare this petition admissible regarding Articles 5, 8, 11, 12, 24, and 25 of the American Convention, in relation to its Articles 1.1 and 2, and Article 7 of the Convention of Belém do Pará; and

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 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.