

OEA/Ser.L/V/II.
Doc. 25
12 March 2019
Original: Spanish

REPORT No. 22/19
PETITION 521-08
REPORT ON ADMISSIBILITY

LAURA SUSANA HARO JÁCOME
ECUADOR

Approved electronically by the Commission on March 12, 2019.

Cite as: IACHR, Report No. 22/19, Petition 521-08. Admissibility. Laura Susana Haro Jácome. Ecuador. March 12, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Laura Susana Haro Jácome ¹
Alleged victim:	Laura Susana Haro Jácome
Respondent State:	Ecuador
Rights invoked:	Not specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	April 26, 2008
Additional information received at the stage of initial review:	June 8, 2011; February 25, 2014; December 28, 2015
Notification of the petition to the State:	March 3, 2017
State's first response:	June 29, 2017
Additional observations from the petitioner:	August 28, 2017
Additional observations from the State:	January 18 and February 7, 2018

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 on Human Right ³ (ratification instrument deposited on December 28, 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), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception Article 46.2.c of the Convention is applicable
Timeliness of the petition:	Yes, under the terms of Section VI

¹ The organization *Fundación para el Desarrollo de la Legislación* [Global Foundation for the Development of Global Legislation] (FUDEGLO) was named as a petitioner in the initial petition. However, the alleged victim is the one who has submitted all subsequent documents.

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

³ Hereinafter, "the American Convention."

V. FACTS ALLEGED

1. Laura Susana Haro Jácome (hereinafter “the alleged victim” or “Ms. Haro”) states that she was serving as General Counsel at the National Institute of Agrarian Development (hereinafter “INDA”), and that on October 18, 2000, the agency’s director arbitrarily ordered her administrative transfer to another province, where no INDA office even existed. She alleges that the move would cause her to be separated from her family and to give up her right to education since at the time she was pursuing postgraduate studies.

2. The alleged victim filed a petition for a constitutional remedy [*recurso de amparo constitucional*] challenging the administrative transfer order, which was decided in her favor by the Third Chamber of the Constitutional Court (hereinafter “TC”) on August 24, 2001. However, she notes that, in anticipation of the decision, the director of INDA ordered her dismissal on December 8, 2000. The alleged victim contends that once the *amparo* was decided in her favor, she applied for reinstatement to her former job.

3. She states that she appealed the dismissal decision in a motion for nullity before the District Court for Administrative Litigation [*Tribunal Distrital de lo Contencioso Administrativo*] (hereinafter “TDCA”), which was ruled partially admissible on November 24, 2003; that is, the court ordered her reinstatement, but not the reparation of damages. Therefore, she filed an appeal in cassation [*recurso de casación*] with the Supreme Court of Justice (hereinafter “CSJ”) seeking recognition of her right to reparation, which was denied by the Administrative Litigation Chamber of the CSJ on January 29, 2008.

4. The alleged victim indicates that the State maintained at the domestic level that INDA had been dissolved by Executive Decree No. 373/2010 and that, therefore, she should refile the case against the new agency in charge of this area, that is, the Office of the Undersecretary of Lands and Agrarian Reform of the Ministry of Agriculture, Livestock, Aquaculture, and Fisheries (hereinafter “MAGAP”). Ms. Haro expressed her disagreement with this argument, given that the Supreme Court has already ruled on the matter. She further states that, at one point, she felt threatened and was prevented from working as a lawyer representing third parties before the agency.

5. Finally, she states that on July 14, 2009, the First Chamber of the Administrative Litigation Court ordered the immediate enforcement of the November 24, 2003 judgment, which had been upheld by the Administrative Litigation Chamber of the CSJ on January 29, 2008. Given the noncompliance, Ms. Haro states that she requested the criminal prosecution of the director of INDA for contempt of court. In a decision dated May 21, 2013, the Administrative Litigation Court once again ordered that the judgment of November 24, 2003, be complied with within 8 days. The alleged victim says that on March 19, 2014, an attempt was made to place her in a MAGAP position below the one she held at the time of her dismissal, which she refused.

6. The State asserts that Ms. Haro’s petition refers to two independent administrative orders, analyzed in different judicial spheres. The first concerned her transfer to another province of the country and was brought before the Third Chamber of the Constitutional Court on appeal through the writ of *amparo*. The State notes that the aforementioned court ruled in favor of Ms. Haro in a decision handed down on August 24, 2001, finding the administrative decision unlawful. The State reports that on October 2, 2001, the judge of first instance ordered the case closed, given the compliance with the decision of the Constitutional Court.

7. The State maintains that the second order was the result of a summary administrative proceeding that led to the alleged victim’s dismissal. It notes that Ms. Haro filed an appeal with the TDCA on April 3, 2001, claiming that the administrative decision violated her individual rights; the TDCA ruled on November 24, 2003, that that decision was indeed unlawful. The State noted that the parties filed motions for the clarification and expansion of the decision and that on June 3, 2005, the First Chamber of the TDCA denied both parties’ motions. On June 8, 2005, Ms. Haro appealed the judgment of November 24, 2003, and filed an appeal in cassation, bringing the case before the CSJ. The State alleges that on January 29, 2008, the Administrative Litigation Chamber of the CSJ adjudicated the motions filed by both parties, dismissing the cassation appeal filed by INDA on the grounds that it was not timely filed, and dismissing the alleged victim’s

motion on other procedural grounds. This decision, according to the State, affirmed the November 24, 2003 decision.

8. The judgment enforcement stage began in 2009. However, the State notes that the organizational structure of INDA had changed, and the position and duties performed by Ms. Haro no longer existed. In light of this fact, the State alleges that the director of INDA asked the TDCA to determine an amount of compensation for the alleged victim, who refused to accept it. For this reason, according to the State, the case is still pending before the administrative litigation courts.

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

9. Regarding the exhaustion of domestic remedies, the alleged victim asserts that despite the court decisions finding that both administrative orders were illegitimate and unlawful, she has never been reinstated to her former position and duties. She states that she has filed various pleadings with the courts in order to ensure the proper enforcement of the decisions handed down, but to no avail. The State, for its part, claims that in relation to the remedy of *amparo*, the alleged victim has failed to comply with the six-month time limit outlined in Article 46.1.b of the American Convention. It further argues that Ms. Haro has failed to plausibly assert a violation of the Convention, as her transfer never took place. In relation to the administrative litigation proceedings, the State alleges that the petition does not meet the requirement of exhaustion of domestic remedies. It contends without greater detail that the case is still at the enforcement stage, and therefore cannot be examined by the inter-American Human Rights System, which is essentially subsidiary to the domestic legal system.

10. The Commission observes that the domestic remedies were exhausted by the alleged victim with the decision handed down on January 29, 2008 by the Administrative Litigation Chamber of the Supreme Court of Justice, thus satisfying the requirement outlined in Article 46.1.a of the American Convention. From the information provided, it can be concluded *prima facie* that the alleged victim has filed the domestic legal actions available to enforce the judgment and that these remedies were not effective. In cases of alleged noncompliance with judicial decisions, the IACHR has maintained that, since the situation is reported under mechanisms provided for in domestic legislation, it is up to the competent court to take the necessary measures to ensure that the decision is enforced.⁴

11. Finally, the Commission concludes that the petition was filed within a reasonable period of time under Article 32(2) of its Rules of Procedure. Although the alleged facts have taken place since 2000 and the petition was received in 2008, the State itself reports that the judgments are at the enforcement stage; therefore, their effects extend to the present time. Accordingly, in view of the context and characteristics of the facts contained in this report, the Commission finds that the petition was filed within a reasonable period of time and that the admissibility requirement concerning the timeliness of the petition has been met.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the factual and legal elements put forward by the parties and the nature of the case brought before it, the Commission finds that, if proved, they could potentially amount to violations of Articles 8 (right to a fair trial), 25 (judicial protection), and 26 (economic, social, cultural, and environmental rights), all in relation to Articles 1.1 (obligation to respect rights), and 2 (domestic legal effects) of the American Convention.

VIII. DECISION

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

⁴ IACHR, Report No. 106/10, Admissibility, Petition 147-98, Oscar Muelle Flores, Peru, July 16, 2010, para. 29.

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 12th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.