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REPORT No. 226/19

PETITION 1841-10

REPORT ON ADMISSIBILITY

CAROLINA LIZETTE GAYOSO BENAVIDES

PERU

Electronically approved by the Commission on October 24, 2019.

Cite as: IACHR, Report No. 226/19, Petition 1841-10. Admissibility. Carolina Lizette Gayoso Benavides. Peru. October 24, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Javier Mujica Petit, Carolina Lizette Gayoso Benavides
Alleged victim	Carolina Lizette Gayoso Benavides
Respondent State	Peru 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 its Article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR³

Date of filing	December 29, 2010
Additional information received during initial review	January 20, 2014
Notification of the petition	December 1, 2016
State's first response	March 1, 2017
Additional observations from the petitioner	July 18, 2017, and January 15, 2019
Additional observations from the State	July 12, 2018

III. COMPETENCE

<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 July 28, 1978); Protocol of San Salvador (deposit of instrument of ratification on June 4, 1995)

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 (participation in government), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes. August 26, 2010
Timeliness of the petition	Yes. December 29, 2010

V. SUMMARY OF ALLEGED FACTS

1. The petitioners allege serious human rights violations committed to the detriment of Carolina Lizette Gayoso Benavides (hereinafter “the alleged victim” or “Ms. Benavides”), who claims she was dismissed from her job at the judiciary in reprisal for the complaints she filed against several officials of that body.

2. They explain that the alleged victim worked at the judiciary for 27 years without ever receiving disciplinary sanctions. They submit that in her last five years there, she was Coordinator of the Central Registry of Convicted Persons until September 17, 1999. Then she was transferred to the Operations Management of Juvenile Detention Facilities Office, without being assigned a specific function, in a context of a systematic pattern of harassment against her. Accordingly, on September 20, 1999, she formally requested her

¹ Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguirguren Praeli, a Peruvian national, did not participate in the discussion or the voting on this matter.

² Hereinafter “American Convention” or “Convention.”

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

employer the cease of all acts of harassment against her. On September 24, 1999, she filed a criminal complaint with the Attorney General's Office against eight officials of the judiciary.⁴

3. They allege that in reprisal for her complaints, on October 6, 1999, she received prior notice of her dismissal from a notary public on account of serious offenses concerning her job. On October 13, 1999, she filed claims in her defense, denying and contradicting the false accusations. They indicate that, at that same time, she lodged a complaint against her employer for harassment, with the Judge Specializing in Labor Matters of the Superior Court of Justice of Lima. A day later, on October 14, 1999, she was terminated on the grounds raised in the letter of termination; and at the same time, criminal charges were filed against her on these same grounds.⁵

4. On November 12, 1999, the alleged victim filed an appeal seeking the annulment of her dismissal, with the Court Specializing in Labor Matters No. 3 of the Superior Court of Justice of Lima, which found it admissible on February 22, 2002. This court ruled to reinstate the claimant to her previous job or a similar one and to pay her the salaries earned following her dismissal. On August 20, 2002, Labor Court No. 1 of the Superior Court of Justice of Lima upheld this decision. They allege that these decisions confirmed the causality between the alleged victim's complaints and her termination of employment. The Supreme Court of Justice finally dismissed the criminal charges against the alleged victim on May 5, 2003.

5. The judiciary filed a cassation appeal against the decision by which the Superior Court annulled the alleged victim's termination. On June 11, 2004, the Acting Constitutional and Social Chamber of the Supreme Court found the cassation appeal to be well founded. The chamber found that the trial courts had wrongfully applied article 29.c of Supreme Decree 003-97-TR, under which terminations based on "the filing of a complaint or the participation in proceedings against an employer, before the competent authorities" shall be null. According to the chamber, applying this ground for annulment required the claimant's having filed an administrative or legal action against her employer; while the complaints filed by the alleged victim were against officials not acting on behalf of her employer. It also considered that the alleged victim had not proven that her letter of termination was due to the complaints she lodged against officials of the judiciary. Ms. Benavides filed an appeal for annulment, but on September 22, 2004, the same chamber of the Supreme Court of Justice declared the appeal unfounded.

6. The petitioners believe that the court of cassation violated her rights to due process and effective judicial protection because it exceeded its appellate review function,⁶ as it shall exclusively and strictly limit itself to analyzing the arguments raised in the remedy at issue and may not act as a court of third instance to review again the facts and the evidence, rule *ex officio*, or rule on aspects not raised by the defending party. They highlight that the negative vote from two of its members proves the groundlessness of the court's decision. Also, according to the State Attorney's report in the appeal proceedings, the lower courts' judgments that the alleged victim was not guilty of offenses that could justify her dismissal and that her termination was in reprisal for her complaints, were factual grounds not subject to cassation review. The State Attorney's report also stated that there was no wrongful application of the law because the criminal complaints were presented in view of acts committed by the defendants as employees of the accused body. They further add that the criminal court's judgments confirm that the alleged victim was not guilty of the alleged criminal offenses.

7. On November 15, 2004, Ms. Benavides presented an *amparo* action claiming the violation of her rights of access to justice, due process, and labor. However, on November 30, 2004, Civil Court No. 6 of the Superior Court of Justice of Lima dismissed the action. On March 23, 2006, the Acting Constitutional and Social Chamber of the Supreme Court revoked that judgment, ruling that the *amparo* action should be processed. On May 22, 2006, Civil Court No. 6 of the Superior Court of Justice of Lima ruled again, dismissing the *amparo* action. The court considered that despite the claims of violations of fundamental rights, the actual intent was

⁴ According to them, she reported violations of her personal liberty and privacy, damage, and other criminal offenses such as repeated and constant verbal and written maltreatment.

⁵ They indicate that attempts were made to accuse her of offense against the public administration in the form of impersonation of a public official and omission, refusal, or delay in the performance of duties; and of forgery in the form of fictitious or fraudulent claims.

⁶ Moreover, based on her *amparo* action, the alleged victim believes that there was no such wrongful application of the law since she filed complaints against officials of the judiciary acting on behalf of it and not as private individuals.

to question an unfavorable court resolution. On June 25, 2009, the alleged victim appealed to the Constitutional and Social Chamber of the Supreme Court, which upheld the resolution on considering that constitutional judges are not competent to adjudicate on the merits of labor proceedings. Eventually, she presented a special constitutional complaint. The constitutional court dismissed it on July 27, 2010, on considering that the decision being challenged was a reasonable judgment and that all the claimant's judicial guarantees had been respected. This resolution was notified to the alleged victim on August 26, 2010. The petitioners believe that these courts violated the alleged victim's right to equal protection given their unreasonable disregard for the criteria that the courts themselves had formerly set regarding the limitations of cassation review proceedings.

8. The State alleges the lack of exhaustion of domestic remedies. It considers that, although the alleged victim filed an *amparo* action claiming the violation of her fundamental right to effective judicial protection regarding her attempts to obtain justice, and her rights to due process and labor, she did not claim the violation of her right to equal protection.

9. It also requests that the petition be declared inadmissible under Article 47.b of the American Convention since the facts alleged by the petitioners do not establish human rights violations. It submits that the court of cassation's judgment was lawful despite being unfavorable to the alleged victim's interests. It denies that the court has not limited its function to the strict and exclusive analysis of the arguments raised by the claimant. It adds that the internal constitutional court confirmed that the court of cassation ruled in accordance with the law because the alleged victim did not prove the violation of her fundamental rights.

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

10. The Commission observes that, based on the case file, the last internal decision was that issued by the constitutional court on July 27, 2010, under which the alleged victim's constitutional complaint was inadmissible. The State has not argued that this was not a final judgment or that other internal remedies might be adequate or suitable concerning the petitioners' claims. Therefore, the Commission believes that the petition meets the requirement of exhaustion of domestic remedies under Article 46.1.a of the American Convention. Considering that the judgment was notified to the alleged victim on August 26, 2010, and that the petition was filed on December 29, 2010, the petition meets the requirement of timeliness set out in Article 46.1.b of the Convention.

11. The Commission also takes note that according to the State, the alleged victim has not exhausted the domestic remedies because, in the internal proceedings, she did not raise her claim regarding a purported violation of equal protection. The Commission observes that the allegation concerning this right mainly refers to the fact that in its final judgments, the constitutional court revealed an unreasonable disregard for its previously established criteria. Given that these are final decisions and that the State has not specified what remedies the alleged victim may file to question their applicability concerning the right to equal protection, the Commission deems itself competent to examine the claims concerning a possible violation of this right only in connection with these final resolutions.

VII. ANALYSIS OF COLORABLE CLAIM

12. The international protection provided by the supervisory bodies of the American Convention is subsidiary in nature and, in democratic societies, where courts of law function in the framework of the rule of law, it is up to the competent tribunals to examine and rule upon the matters brought before them. However, if it is determined that a possible violation of rights protected by the American Convention could exist, it is up to the Commission to examine the matter.⁷ In this case, the Commission considers that, if proven, the facts alleged by the petitioners concerning the alleged victim's termination in reprisal for her complaints against officials of the judiciary and the ineffectiveness of the domestic remedies to redress the situation may establish violations of Articles 8 (fair trial), 23 (participation in government), 25 (judicial protection), and 26 (economic,

⁷ IACHR, Report No. 5/05 (Admissibility), Petition 3156/02, Gustavo Casque Alfonso, Colombia, February 22, 2005, para. 28.

social and cultural rights) of the American Convention in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

13. As to the claim of a possible violation of Article 24 (equal protection) of the American Convention, the Commission considers that the mere citation that other decisions made on the same matter had a different result does not suffice to *prima facie* establish a possible violation of Article 24 of the Convention.⁸

VIII. DECISION

1. To declare this petition admissible with regard to Articles 8, 23, 25, and 26 of the American Convention in accordance with its Articles 1.1 and 2; and

2. To declare the instant petition inadmissible in relation to Article 24 of the American Convention; and

3. 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 24th day of the month of October, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

⁸ IACHR, Report No. 91/17, Petition 1400-07. Inadmissibility. Adriana Sonia Peralta. Argentina. July 7, 2017, para. 14.