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**REPORT No. 40/19**  
**PETITION 928-08**  
REPORT ON ADMISSIBILITY

ESTHER VERÓNICA FERMIN LORA  
DOMINICAN REPUBLIC

Approved electronically by the Commission on April 18, 2019.

**Cite as:** IACHR, Report No. 40/19, Petition 928-08. Admissibility. Esther Verónica Fermin Lora. Dominican Republic. April 18, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Esther Verónica Fermin Lora
<b>Alleged victim:</b>	Esther Verónica Fermin Lora
<b>Respondent State:</b>	Dominican Republic
<b>Rights invoked:</b>	Articles 3 (right to juridical personality), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights; <sup>1</sup> and another international treaty <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	July 30, 2008
<b>Additional information received at the stage of initial review:</b>	June 19, 2014
<b>Notification of the petition to the State:</b>	April 8, 2014
<b>State's first response:</b>	June 26, 2014
<b>Additional observations from the petitioner:</b>	February 21, 2016

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument of ratification made on April 19, 1978)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	8 (right to a fair trial), 23 (right to participate in Government), 25 (right to judicial protection) and 26 (progressive development) of the Convention
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes
<b>Timeliness of the petition:</b>	Yes

**V. FACTS ALLEGED**

1. As petitioner and alleged victim, the petitioner alleges the violation of her rights, in the context of disciplinary proceedings where she was dismissed from her position. She points out that she learned of the proceedings on May 8, 2007, when she was summoned to appear at a hearing by the Plenary of the Supreme Court of Justice (hereinafter "Supreme Court") on May 22, 2007. Its purpose was to acquaint her with the disciplinary case against her for alleged serious misconduct committed in the exercise of her functions as a judge. In that sense, she was accused of failing to sign and provide reasoning for her judgments, failing to submit a management report, of ignoring the orders of her hierarchical superiors and of retaining

<sup>1</sup> Hereinafter "the Convention" or "the American Convention".

<sup>2</sup> Article 14 of the International Covenant on Civil and Political Rights.

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

files in her possession, thereby both obstructing the proper administration of justice to the detriment of the public, and bringing the image of the Judiciary into disrepute.<sup>4</sup>

2. The petitioner argues that the charges against her were modified during the course of the proceedings, without giving her sufficient time to prepare her defense. She indicates that on November 7, 2007, the Supreme Court issued a judgment imposing disciplinary sanctions on her. The alleged victim appealed against this decision on November 23 following. She adds that the same Supreme Court dismissed her appeal on January 10, 2008, (decision served on January 30, 2008), on the grounds that the alleged victim had had the right to a defense and that she had been granted the means to defend herself (without specific reference thereto).

3. The petitioner argues that her rights to judicial guarantees and protection were violated inasmuch as: the court that had taken the decision against her, the Supreme Court of Justice, had been the same court initiating the investigation, violating the principle of impartiality; the court accusing and trying her changed the charges in the list of accusations, without giving her the opportunity to prepare; the court accusing and trying her failed to provide reasoned grounds for its decision, violating her right of defense; and the court violated the right of non self-incrimination, as her statements were used against her.

4. The State argues that domestic remedies were not exhausted and confirms that the disciplinary proceedings were carried out in accordance with the law then in force, respecting due process, effective judicial protection and the rights of the defense. The hearing on the merits of the accusations was stayed more than 3 times and for various reasons: for her to become acquainted with the evidence produced by the public prosecutor, for the submission of the brief justifying her conclusions, to summon witnesses and for the appearance of the defense counsel.

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

5. The State points out that the alleged victim has not exhausted domestic remedies by failing to avail herself of the following remedies in the Dominican legal system: 1) the contentious administrative remedy as an action seeking the annulment of measures adopted by the authorities in violation of the legal order and, precautionary measures as an effective mechanism to ensure judicial protection vis-a-vis judicial delay, ensuring the grant of a provisional measure until the contentious administrative remedy is decided; and 2) An *amparo* motion as an autonomous action, enshrined in law, and independent of the exhaustion of other avenues or formalities as an effective remedy to protect fundamental rights under threat. The alleged victim claims that she exhausted the only remedy available to her in domestic law.

6. In this regard, the IACHR notes that the Supreme Court's decision of November 7, 2007, was appealed to the Supreme Court on November 23 of that year. By decision of January 10, 2008, and served on January 30, the Supreme Court upheld the previous decision. The Inter-American Commission has maintained that "if the alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled."<sup>5</sup> Furthermore, the IACHR understands that, due to the level of functions exercised by the alleged victim as an appeal judge, she only had the Supreme Court as the superior and final instance, and that, according to the provisions on dismissals in the statute on judicial service, there was no other superior body that could assess her case or review decisions of the Supreme Court of Justice.

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<sup>4</sup> She points out that she has been accused of specific violations of Articles 41.3, 60, 62 subsection 2 and 4, and 65 subsection 4 and 5 of the Statute on Judicial Service; and Articles 91 and 147 subsections 10, 12, 14, 18 and 19, and Article 158.4 of the Judicial Service Regulations.

<sup>5</sup> IACHR, Report No. 70/04, Petition 667/01, Admissibility, *Jesús Manuel Naranjo Cárdenas et. al., Pensioners of the Venezuelan Aviation Company - VIASA*, Venezuela, October 15, 2004, para. 52

7. The Commission considers that the petition fulfills the requirements of Article 46.1 (a) of the American Convention. In addition, since the petition was received on July 30, 2008, and the petitioner pointed out that the decision of January 10, 2008, was served on January 30, the Commission considers that the petition fulfills the requirements of Article 46.1. (b) of the Convention and is, therefore, admissible.

#### **VII. ANALYSIS OF COLORABLE CLAIM**

8. The Commission considers that if the facts alleged by the petitioner prove to be true, they 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 conjunction with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

9. With respect to the claim alleging a violation of Article 3 of the American Convention, the Commission considers that the petitioner has failed to provide allegations or sufficient evidence to allow prima facie consideration of its possible violation.

#### **VIII. DECISION**

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

2. To find the instant petition inadmissible in relation to Article 3 of the 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 18<sup>th</sup> day of the month of April, 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.