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REPORT No. 218/20
PETITION 1499-10
REPORT ON ADMISSIBILITY

MIGUEL ANGEL ZELONKA VELA
MEXICO

Approved electronically by the Commission on August 30, 2020.

Cite as: IACHR, Report No. 218/20, Petition 1499-10. Admissibility. Miguel Angel Zelonka Vela.
Mexico. August 30, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Graciela Rodriguez Manzo and Luis Miguel Cano Lopez
Alleged victim:	Miguel Angel Zelonka Vela
Respondent State:	México ¹
Rights invoked:	Articles 8 (fair trial), 9 (freedom from ex post facto laws), 11 (privacy), 24 (equal protection) 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)

II. PROCEEDINGS BEFORE THE IACHR³

Date of receipt	October 25, 2010
Notification of the petition to the State:	August 15, 2017
State's first response:	March 19, 2018
Additional observations from the petitioner	September 12, 2018
Advisement of possible archive	November 21, 2016 and April 18, 2017
Response of the petitioner to possible archive	June 15, 2017

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 (instrument of accession deposited 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 (participate in government), 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)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of Article 46.2.a) of the American Convention is applicable
Timeliness of the petition:	Yes, in the terms of Section VI

¹ Pursuant to Article 17.2.a of the Commission's Regulations, Commissioner Joel Hernández García, a Mexican national, did not participate in the debate or decision 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.

V. ALLEGED FACTS

1. The petitioners claim the international responsibility of the Mexican State for the violation of the rights of Mr. Miguel Ángel Zelonka Vela to judicial guarantees, legality, honor and dignity, equality before the law and judicial protection, allegedly violated on account of the imposition of the disciplinary penalty of suspension from the exercise of his office as Judge of the Federal Judicial Power without access to salary or benefits during 1 year, and of the administrative process that was conducted against him before the Federal Council of the Judiciary and resulted in the imposition of said penalty.

2. The petition states that Mr. Zelonka was serving as a judge of the Tenth Collegiate Court on Labor Matters of the First Circuit; and that, upon the presentation of two complaints against him for labor harassment and sexual harassment, the Federal Council of the Judiciary initiated a disciplinary process against him, after which he was imposed the penalty of suspension from office for a year without the right to salary or benefits. This penalty was adopted by a resolution of June 2, 2010 of the Plenary Chamber of the Federal Council of the Judiciary, having found him responsible for the sexual harassment of a judicial officer. The petitioner explains that by virtue of the judicial interpretation that the Supreme Court of Justice has consistently given to article 100 of the Constitution and to the Organic Law of the Federal Judiciary, there is no possibility of appeal against the decisions of the Federal Council of the Judiciary that impose the sanction of suspension of judicial officials - neither the administrative review appeal nor the amparo appeal, since such resolutions have been classified as definitive and unchallengeable administrative decisions. In application of this uniform jurisprudential rule, the administrative review appeal filed by Mr. Zelonka against the decision to suspend him from office was rejected by the Supreme Court of Justice in a decision of November 10, 2010, and the petitioner thus had to comply with the penalty that was imposed on him, which caused him and his family several economic and moral damages. In the petitioner's view, his rights to an effective remedy, to judicial protection and to a fair trial, as well as the principle of legality, were violated. Petitioners also allege that with the imposition of a penalty for alleged sexual harassment in these conditions, his right to honor and dignity was violated.

3. Mr. Zelonka holds that given the inadmissibility of any judicial remedy against them, the resolutions that impose judges the disciplinary penalty of temporary suspension of office receive an unjustifiably different legal treatment than that given to the resolutions in which the same Federal Council of the Judiciary adopts the decisions of appointment, assignment, ratification or removal of judges, against which it is possible to file an administrative review appeal before the Supreme Court of Justice - a situation that, in the petitioner's view, constitutes a hypothesis of legal discrimination which is contrary to the right to equality before the law, since it is an unjustified difference in legal treatment. Mr. Zelonka also contests before the IACHR the treatment that was given to the evidence during the processing of the disciplinary proceedings, and the assessment of the evidence that was made in the resolution of the Federal Judicial Council that imposed the suspension penalty, for various factual and legal reasons.

4. The State, in its response, holds that the petition must be declared inadmissible because no possible violations of human rights stem from it. It argues that the petitioner incurred in grounds for disciplinary responsibility which were duly established in the applicable legislation; that his right to an adequate defense was respected throughout the disciplinary proceedings; and that after following a procedure that was fully respectful of the fair trial guarantees, a sanction was imposed as provided for in the legislation, in accordance with the grounds for responsibility in which it was declared that he had incurred. For this reason, the State declares that the procedure instituted against Mr. Zelonka was conducted with strict adherence to the applicable legislation and with full respect for his human rights, "so that the fact that it was not favorable to the petitioner does not translate into the existence of violations of his human rights".

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

5. The inadmissibility of any type of administrative or judicial appeal against the disciplinary decision of temporarily suspending a Mexican judicial official constitutes, in the opinion of the Inter-American Commission, the exception to the rule of exhaustion of domestic remedies provided for in Article 46.2.(a) of the

American Convention, in accordance with which petitioners are not bound to exhaust such domestic remedies when "the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated". In a recent case concerning Mexico, similar to the present one, in which the petitioner had been imposed a disciplinary sanction by the Federal Council of the Judiciary against which no appeal was possible, the IACHR declared said conventional exception applicable. In the Commission's words,

the petitioner filed an action for administrative review before the Supreme Court of Justice, which was rejected on the grounds that judgements by the Federal Council of the Judicature are final and incontestable. Consequently, based on this information, the Commission believes that in the domestic venue no remedies are available to challenge the disciplinary punishment imposed on the alleged victim and that, as a result, the exception set forth in Article 46.2(a) of the Convention and Article 31.2(a) of the Rules applies in this case.⁴

6. Following this precedent, and bearing in mind that the temporary suspension from office penalty was imposed on Mr. Zelonka on June 2, 2010, that his appeal for administrative review was denied by the Supreme Court of Justice on November 10, 2010, and that the petition was received by the IACHR on October 25, 2010, the Commission concludes that the petition was presented within a reasonable time, in accordance with Article 32.2 of the Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

7. The petitioner argues that the treatment given to the evidence during the proceedings by the Federal Council of the Judiciary, and that the evidentiary assessment and legal reasoning embodied in the resolution that imposed him the temporary suspension from office, are inconsistent with the provisions of the American Convention, for different reasons. The Inter-American Commission has adopted a uniform and consistent stance in the sense that it is competent to declare a petition admissible and decide on its merits in cases related to domestic proceedings that may violate the rights protected by the American Convention. However, in the case under examination, the petitioner requests the IACHR to review the content of definitive administrative decisions adopted in the course of a disciplinary procedure, which are final. The claims are directed against the orientation and the evidentiary support of decisions that were validly adopted by the Federal Council of the Judiciary, and seek a new assessment of the evidence collected in the course of the respective process, as well as a critical examination of its content and of the reasoning embodied in the final resolution that imposed the penalty. After analyzing the information provided by the parties, the Commission concludes that the petitioner's arguments regarding the evidence and the reasoning set forth in the resolution of the Federal Council of the Judiciary do not contain elements that may prima facie constitute possible violations of the American Convention in the terms of article 47.b of said instrument. For this reason, such allegations will not be incorporated into the factual and legal framework of the present inter-American proceedings. For the same reason, Mr. Zelonka's allegations regarding the violation of his right to honor and dignity by virtue of the content of the resolution that penalized him will not be admitted.

8. On the other hand, the petitioner alleges that the inadmissibility of any administrative or judicial appeal against the decision to impose a disciplinary penalty on him violates his procedural guarantees under Article 8 of the American Convention, and his right to an effective judicial remedy protected under Article 25 of said instrument. Petitioner has also argued that the difference in legal treatment given by the Mexican legal system to the hypotheses of provisional suspension of office, as compared to other hypotheses of administrative or disciplinary decisions in the sphere of the judiciary, constitutes an unjustified differentiation embodied in the legislation and developed through consistent judicial interpretations, which violates the right to equality before the law under article 24 of the Convention insofar as it is discriminatory. For the IACHR, these are substantive allegations that must be examined and resolved on their merits in subsequent phases of the present proceedings, bearing in mind that Mr. Zelonka's suspension from the exercise of public office as a judge may have borne a direct impact upon his political rights under Article 23 of the American Convention. In light of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a thorough

⁴ IACHR, Report No. 69/17. Petition 570-08. Admissibility. Hector Marcelino Flores Jimenez. Mexico. May 25, 2017, para. 5.

study on the merits, since the alleged facts, if corroborated, may constitute violations of Articles 8 (fair trial), 23 (political rights), 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), to the detriment of Mr. Miguel Angel Zelonka Vela.

VIII. DECISION

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

2. To notify the parties of this decision; to continue with the analysis of the merits of the matter; 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 30th day of the month of August, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.