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**REPORT No. 79/20**  
**PETICION 347-09**  
ADMISSIBILITY REPORT

SANDRA JUÁREZ DOMÍNGUEZ  
MEXICO

Approved electronically by the Commission on April 24, 2020.

**Cite as:** IACHR, Report No. 7920. Petition 347-09. Admissibility. Sandra Juárez Domínguez. Mexico. April 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Sandra Juárez Domínguez
Alleged Victim	Sandra Juárez Domínguez
Respondent State	Mexico
Rights invoked	Article 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 <sup>1</sup> in relation to Article 1.1 (obligation to respect rights).

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

Date of filing	March 25, 2009
Additional information received during the study phase	October 17, 2016
Notification of the petition	October 25, 2016
State's first response	June 6, 2017
Additional observations from the petitioner	November 29, 2017

**III. COMPETENCE**

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention on Human Rights (deposit of instrument of ratification 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	Article 8 (fair trial), 9 (freedom from ex post facto laws), 21 (right to property), 23 (right to participate in government), 24 (equal protection), 25 (judicial protection) and 26 (economic, social, and cultural rights) of the American Convention in relation to 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, May 23, 2012
Timeliness of the petition	Yes, March 25, 2009

**V. SUMMARY OF ALLEGED FACTS**

1. Sandra Juárez Domínguez (hereinafter “the petitioner”) reports alleged violations of her human rights, alleging that she was removed from the position of Magistrate of the Superior Court of Justice of the State of Tlaxcala through a process not previously established, despite her having met the conditions for her tacit confirmation in the position. She also reports that in the process political evaluations were made of which she was not notified so she could participate in the judicial proceedings affecting her, that the rules governing the evaluation process against her were not adhered to, and that an *amparo* appeal (seeking protection of constitutional rights) she filed was not resolved within a reasonable period of time.

2. The petitioner reports that on January 31, 1999 she was appointed Magistrate of the Superior Court of Justice of the State of Tlaxcala for a period that ended on January 31, 2005. She states that Article 116 of the Mexican Constitution was amended in 1987 in order to promote judicial independence, establishing in paragraph III of the article that “Magistrates shall remain in their position for the time indicated by local constitutions and may be reelected to that position and, if so, may only be deprived of their positions under the

<sup>1</sup> Hereinafter “the American Convention”

<sup>2</sup> The observations made by each party were duly forwarded to the opposing party.

terms determined by the constitutions and laws on the responsibilities of public servants....” She alleges that it was not until 2008 that the State of Tlaxcala complied with its obligation to adapt its regulations to the mandate of the constitutional reform of 1987. For this reason, upon the completion of the period of her appointment in 2005, Tlaxcala had no established procedure for the evaluation and confirmation of magistrates.

3. She states that, while she was carrying out her position, the representatives of the Congress of the State of Tlaxcala conducted a surprise evaluation of the people who were holding magistrate positions, which was later invalidated by the Supreme Court of Justice of the Nation when it resolved a constitutional dispute filed by the Superior Court of Justice of the State of Tlaxcala. She reports that she was neither informed of or called upon to participate in this process despite the fact that it affected her rights. She maintains that, given that there was no valid evaluation of her performance at the time the period of her appointment concluded, what was appropriate according to the jurisprudence of the Supreme Court of Justice of the Nation was that she be tacitly confirmed.<sup>3</sup>

4. She states that on April 26, 2006 the Congress of Tlaxcala issued an agreement approving “the procedure for evaluating Completed Term Magistrates,” the validity of which was confirmed by the Supreme Court of Justice of the Nation in a proceeding in which she did not participate. Later, on March 24, 2007, the Congress of the State of Tlaxcala issued an opinion that she should not be confirmed in her position, following a process unregulated by any legal provision and that left the specific rules for rating the evaluation totally to the discretion of the State Congress. She alleges that in order to recommend that she not be confirmed, the Congress based its opinion on her not having delivered a report on her performance, despite there being no provision that would require her to submit said report. She emphasizes that she noted that the Congress could evaluate her based on the reports submitted annually by the Chief Justice of the Superior Court of Justice, which was available at the premises of the Congress. However, the Congress failed to do this, violating its own agreement providing that the Congress should “avail itself” of all means at its disposal for performing the evaluation. She believes that having delivered the report they requested of her would have represented an endorsement of the illegal procedure to which she was subject.

5. She continues by reporting that in 2007 she challenged the resolution that ordered that she not be confirmed by means of an indirect *amparo* appeal. She reports that the appeal was not resolved until September 17, 2009 (which she feels exceeded the reasonable timeframe) and that, unlike other magistrates who filed appeals for the same reasons, she was not granted suspension of the action being challenged, thus violating her right to equality before the law. She states that the appeal was partially dismissed without entering into the merits of the matter, but ruled as groundless the resolution that determined not to confirm her and ordered that the Congress and the evaluation Commission issue a new well-founded decision on suitable grounds, following certain guidelines such as “availing itself” of all means at its disposal for the evaluation.

6. She states that on September 29, 2011, the full Congress of the State of Tlaxcala issued a new opinion, again deciding not to confirm her. She alleges that this new opinion did not comply with the appeal judge’s order as the Congress again ignored the reports of the Chief Justice of the Superior Court of Justice and utilized her refusal to submit the report as an argument on which to base its decision. She also reports that in its report the Congress criticized her having voted in favor of the reelection of the Chief Justice of the Superior Court of Justice of the State of Tlaxcala, alleging that she acted illegally by voting in the absence of a quorum, ignoring the fact that she had been legally convened to attend the session and that the Supreme Court of Justice of the Nation had already issued its opinion concluding that the reelection of the Chief Justice had not been illegal. Similarly, she stated that the Congress felt that she and her colleagues had abused their power by promoting a constitutional protection case to prevent the evaluation of magistrates before the full court of the Judicial Branch; that case was admitted for processing by the Chief Justice of the Branch and granted by an

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<sup>3</sup> She cites the relevant appeal decision in review 2021/99 of September 11, 2000 indicating that “the assumptions for the operation of tacit confirmation of the Magistrates of the Superior Courts of Justice of the States are : 1) that the position has been carried out for the period provided in the respective Local Constitution; and 2) that upon completion of the period, no evaluation opinion has been issued, by the bodies or bodies charged with proposing and approving confirmation, in which the conclusion regarding confirmation is negative.

examining magistrate appointed for the purpose. She alleges that the real interest of the Congress was to be able to install a magistrate that proved to be convenient for their political purposes.<sup>4</sup>

7. Additionally, she states that the opinion ordering that she not be confirmed also ordered that she be paid an indemnity. However, when she sought that indemnity, the new Chief Justice of the Superior Court of Justice of the State of Tlaxcala refused, indicating that said point in the opinion had been invalidated with the resolution of a constitutional dispute in a proceeding in which she did not participate. She states that after several judicial appeals and petitions she finally obtained payment five years after her non-confirmation became final, causing her economic damages due to the delay and because the payment was made with devaluated currency.

8. The State, for its part, considers that the petition should be ruled inadmissible based on Article 46 of the American Convention in that the petitioner had not exhausted the domestic remedies available under the Mexican Constitution at the time she submitted her petition. It emphasizes that at the time the petition was submitted, resolution of the *amparo* action that was ultimately favorable to the petitioner's interests was still pending. It also points out that on November 24, 2011 the First District Court of the Twentieth Circuit concluded that the new agreement issued by the Congress of Tlaxcala complied with the requirements of the *amparo* decision. It states that the petitioner filed a challenge disputing this decision, which was declared groundless on May 4, 2012, resulting in the archiving of the case on May 23, 2012, given that the *amparo* decision only ordered analysis and issuance of a new confirmation agreement, which could be negative or affirmative.

9. The State alleges that the petitioner's intent is for the Commission to act as a fourth instance of jurisdiction in order to challenge the courts' interpretation of the law as well as the relevant proceedings, issues that belong to the domestic jurisdiction. With regard to alleged delay in the resolution of the *amparo* case filed by the petitioner, the State indicates that the delay was because the file was not properly constituted and the petitioner filed several extensions to the action. It maintains that the fact that the petitioner was not confirmed does not entail a violation of her human rights, emphasizing that the Supreme Court of Justice of the Nation has recognized the constitutionality of the confirmation procedures. The State feels that the non-confirmation of the petitioner was a sovereign act of the Congress of the State of Tlaxcala that does not entail a violation of her rights.<sup>5</sup>

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

10. With respect to the State's question regarding the fact that exhaustion of domestic remedies occurred after submission of the petition, the IACHR reiterates its longstanding position according to which the situation that should be taken into account to establish whether domestic jurisdiction remedies have been exhausted is the situation existing when the decision is made on admissibility. The Commission notes that the State has not indicated that, after the final challenge filed by the petitioner was archived, there were still unexhausted domestic remedies that might have been suitable for addressing the petitioner's claims at the domestic level. In view of this, the Commission concludes that the domestic remedies were exhausted on May 23, 2012 when the petitioner's challenge was archived. Therefore, and given that the petition was submitted on March 25, 2009, the petition complies with the requirements of Article 46.1(a) and (b) of the American Convention.

## VII. COLORABLE CLAIM

11. The Commission observes that this petition includes allegations to the effect that the petitioner was subjected to an evaluation and confirmation process that was not previously regulated and that evaluated aspects such as her vote in favor of the reelection of a chief justice of the court and her filing of judicial appeals against acts of the Congress; that decisions were adopted that affected her rights without her participation; and that she was affected economically by an unjustified delay in the payment of her indemnity and because she did not receive compensation for the devaluation of the currency.

<sup>4</sup> She also reports that the failure to confirm her left her without funds to cover daily living expenses and affected her honor and dignity in that the opinion attributed characteristics to her that did not apply such as a lack of honesty and professionalism

<sup>5</sup> In support of this argument, she cites the precedent in IACHR Report No. 67/14, Petition 1352-06 and 580-07. Inadmissibility. Bernardo Romero Vázquez and Raymundo Gil Rendón. Mexico. July 25, 2014.

12. With regard to these allegations, the IACHR considers it relevant to recall that it has already stated that in the case of justice operators the principle of freedom from *ex post facto* laws implies “that the disciplinary system must be established by pre-existing law and be predictable as regards the procedures to be followed and the authorities in charge of their enforcement.”<sup>6</sup> Similarly, the Inter-American Court has determined that “the dimensions of judicial independence result in the subjective right of the judge that his removal from office is exclusively for the causes permitted”<sup>7</sup> and the Commission has noted that “the selection of the chairperson by other branches or organs of government can mean interference in the courts, affecting the ability of judges to perform their functions independently.”<sup>8</sup> The Commission has also recognized that “at times, decisions that are formally valid are not used as legitimate resources in the administration of justice; instead they are used to accomplish unstated ends that are not obvious at first sight, and are intended to be an “implicit” sanction, serving a purpose other than the purpose prescribed by law.”<sup>9</sup> In addition, the Commission appreciates that the European Court of Human Rights has deemed that delays in the payment of compensation that render it inadequate due to monetary depreciation may entail a violation of the right to property.<sup>10</sup>

13. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission deems that the allegations made by the petitioner are not manifestly groundless and require a study of the merits in that should the alleged facts be corroborated as true they could characterize violations of Articles 8 (right to a fair trial), 9 (right to freedom from *ex post facto* laws), 21 (right to property), 23 (political rights), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

14. As regards the alleged violations of Article 11 (right to privacy) of the American Convention, the Commission deems that the petitioner has not provided nor does the case file provide elements or supports that would allow the Commission to consider, on even a *prima facie* basis, the possibility of its violation.

15. Regarding the State’s allegations referring to the fourth instance formula, the Commission reiterates that within the framework of its mandate it is in fact competent to declare a petition admissible and rule on its merits when that petition refers to domestic processes that could be in violation of rights guaranteed by the American Convention.

## VIII. DECISION

1. To declare this petition admissible with regard to Articles 8, 9, 21, 23, 24, 25, and 26 of the American Convention in relation to Articles 1.1 and 2 thereof;

2. To declare this petition inadmissible with regard to Article 11 of the American Convention

3. To notify the parties of this decision; continue with analysis of the merits of the case; and 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 24<sup>th</sup> day of the month of April, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Edgar Stuardo Ralón Orellana, Commissioners.

<sup>6</sup> IACHR, Guarantees for the Independence of Justice Operators, OEA/Ser. L/V/II. Doc. 44/13 (“CIDH, Garantías para la Independencia de las y los Operadores de Justicia”) para. 217; See also IACHR. Case 12.600 Hugo Quintana Coello et al. (Supreme Court of Justice) Ecuador (Merits), August 2, 2011, para. 100.

<sup>7</sup> I/A Court H.R. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2013 para 155.

<sup>8</sup> IACHR, Guarantees for the Independence of Justice Operators, para. 114.

<sup>9</sup> IACHR, Guarantees for the Independence of Justice Operators, para. 230.

<sup>10</sup> European Court of Human Rights, *Akkus v. Turkey*, Judgment of 9 July 1997.