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REPORT No. 104/17
PETITION 1281-07
REPORT ON ADMISSIBILITY

MIRTA CÁRMEN TORRES NIETO
ARGENTINA

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

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 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Centro Latinoamericano de Derechos Humanos (CLADH)
Alleged victim:	Mirta C�armen Torres Nieto
State denounced:	Argentina
Rights invoked:	Articles 8 (fair trial), 11 (privacy), 23 (right to participate in government), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ¹ in conjunction with its Article 1(1) (obligation to respect rights); and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	September 28, 2007
Date on which the petition was transmitted to the State:	September 27, 2011
Date of the State's first response:	February 28, 2014
Additional observations from the petitioner:	March 25, 2014, and July 18, 2016
Additional observations from the State:	July 5, 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 (ratification instrument deposited on September 5, 1984) and Convention of Bel�m do Par� (ratification instrument deposited on July 5, 1996)

IV. ANALYSIS OF 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
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¹ Hereinafter the "Convention" or the "American Convention."

² Hereinafter the "Convention of Bel m do Par "

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

Rights declared admissible:	Articles 8 (fair trial), 23 (right to participate in government), 24 (equal protection), and 25 (judicial protection) of the American Convention in conjunction with its articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, March 29, 2007
Timeliness of the petition:	Yes, September 28, 2007

V. ALLEGED FACTS

1. The petitioning party alleges that the State is internationally responsible for a series of violations and arbitrary actions suffered by Mirta C armen Torres Nieto, a judge of the 37th National Tribunal of First Instance of Labor, in the framework of administrative and impeachment proceedings carried out against her, culminating her dismissal. The petitioner asserts that the punishment was disproportionate considering that she was charged with administrative infractions not related to the exercise of her judicial duties. The petitioner adds that the characteristics of the removal process and the fact that decision of the Impeachment Jury was not appealable infringe upon the principles of irremovability, autonomy, and jurisdictional independence in favor of arbitrary rulings, without providing the magistrates with adequate recourse for their defense, especially those who are women and politically independent, thereby violating their right to participate in government.

2. The petitioner states that in May 2000, the National Chamber of Labor Appeals reported to the Council of the Magistrature discrepancies between the number of judgments issued and the statistics maintained by the tribunal of which the alleged victim was in charge, even though the normal procedure for these cases was to summon the secretary in charge of the statistics and alert her to the errors. The petitioner therefore claims that the Chamber launched, at its discretion, an administrative proceeding against the alleged victim without an administrative inquiry as provided for in Law 24,939. She was informed of the charges after they had been made and submitted to the Council, at which point she filed an appeal for reconsideration, which was rejected.

3. The petitioner says that the case was submitted to the Disciplinary Committee of the Council of the Magistrature, which had competence to propose disciplinary sanctions to the Plenary Council (warn, admonish, and fine). However, she claims that because one of her superiors accused her criminally of document tampering, the case was arbitrarily transferred to the Charging Committee, which had competence to propose her removal. The petitioner adds that the brother of the investigating counselor in the case, a court reporter with *Clar n*, published the confidential records on the removal proceeding that was in progress, violating the confidentiality of the information and her right to privacy and demonstrating a lack of impartiality on the part of the Counsel.

4. Subsequently, following the proposal of the Charging Committee, the Plenary of the Council of the Magistrature accused the alleged victim of (a) poor performance in the execution of her duties, (b) likely having committed a crime, and (c) lateness, forwarding the case to the jury. The alleged victim claims that one of the two members of the Council told her defense attorney that she had already been convicted and to stop defending herself. On May 30, 2002, the Impeachment Jury of Magistrates of the Nation ruled to remove the alleged victim from her position for "poor performance in the exercise of her duties." The jury dismissed the pleadings of the defense, reasoning that the excessive workload does not explain the failure to verify the statistics; that the administrative inquiry was not required; and judges' unimpeachable conduct must extend beyond properly drafting judgments.

5. In response to the removal, her defense filed for a writ of nullification, which was rejected because the ruling was not appealable. An extraordinary federal appeal was filed next, alleging violation of the right to defense, a failure to weigh all the evidence provided, a failure to rule on the argument that

administrative actions can be punished with disciplinary measures but not removal, and violation of the presumption of innocence, adding as well that the jury did not reach its verdict with all its members present. The defense also alleged discrimination, noting that magistrates from the same court in similar situations were not removed. Upon rejection of the appeal, a remedy of complaint was submitted before the Supreme Court, which rejected it without examining its substance on finding that a violation of structural and constitutional rules on due process was not proven, which strictly limited the scope of what it could address because these rulings were unappealable.

6. The alleged victim claims that her dismissal was the result of years of harassment and violence at the hands of a member of the Chamber, the same one who filed a criminal complaint against her for which she was dismissed. She claims that her superiors excluded her tribunal from the case file transfer and distribution processes that benefited other courts. She alleges that she was forced to make substitutions, that her court had less than half the staff that it needed and faced financial difficulties. She informed her superiors of this regularly, but they did not provide solutions. Despite constant harassment and discrimination, she said that her judgments were upheld 90% of the time, and that her performance as a magistrate was impeccable. She adds that there was an investigation into the person responsible for the statistics, who was punished with a 15-day suspension, while she was dismissed. She notes that the files for that investigation—in which she did not participate—were used against her in her impeachment. She claims that the lack of an administrative inquiry damaged the whole process, resulting in treatment that was differentiated and discriminatory toward her. She said she was judged by impeachment and administrative tribunals composed mostly of men. She therefore alleges that the State violated her rights to due process, defense, privacy, and political rights, arguing that the presumption of innocence was not respected and impartiality was not guaranteed; that she faced discrimination; and that the State failed to comply with its duty to guarantee a life without violence, especially in the workplace and in the public sphere.

7. For its part, the State asserts that the petition was forwarded late and argues that it is inadmissible because the facts asserted therein have not resulted in rights violations; that the dismissal process adhered to due process standards; and that the jury's verdict was duly reasoned. It states that the discrepancies described by the magistrate in her petition have been duly addressed and dismissed in domestic proceedings. The State therefore asks the Inter-American Commission to declare the petition inadmissible, as the petitioner is seeking for the IACHR to review rulings of domestic judicial bodies that acted within the limits of their competence, which would make it a "fourth instance."

8. The State adds that the alleged victim was acquitted of the criminal charges because her conduct did not fit the criminal offense and argues that this does not prevent her conduct from being legitimately categorized as "poor performance" by the Council of the Judiciary, this not being a "prejudgment." It asked the IACHR to consider that the alleged victim did not exhaust domestic remedies regarding gender-based workplace harassment, hostile persecution, conspiratorial collusion, and impartiality, nor did she take actions to seek damages from the publication of information from the trial process. It highlights that the absence of an investigation, the gender imbalance of the Council of the Magistrature and the Jury, and the unappealable nature of the ruling were not part of her remedy of complaint to the Supreme Court, meaning the alleged harm cannot be admitted because she did not use the suitable and effective resources available in the domestic jurisdiction.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. Regarding the domestic judicial remedies sought by the petitioner, the Commission observes that for the alleged harm related to the rights contained in articles 8 (fair trial), 23 (right to participate in government), 24 (equal protection), and 25 (judicial protection), the petitioner exhausted all available domestic judicial remedies, including extraordinary remedies, and the petition therefore complies with the requirement established in articles 46(1)(a) of the Convention and 31(1) of the Rules of Procedure with regard to the aforementioned rights. The Commission notes that a series of State judicial bodies had an opportunity to hear the arguments of the alleged victim with regard to both seeking a comprehensive review of the ruling to remove her and the rest of the alleged due process violations, including the absence of an administrative inquiry. The courts also heard pleadings on the violation of the guarantee of irremovability, to

the detriment of her right to participate in government, as well as the allegation on discriminatory treatment based on the fact that although they faced similar circumstances, a number of other magistrates were not subjected to disciplinary bodies or sanctions.

10. However, the Commission notes that it does not appear from the information provided that the alleged impartiality of those who were members of the Council of the Magistrature, the harassment, the gender-based violence and discrimination, or the revelation of the confidential records on the procedure against her were alleged by the alleged victim domestically. The Commission therefore concludes that, with respect to the rights protected by Article 7 of the Convention of Belém do Pará, the right to an independent and impartial judge contained in Article 8(1) of the American Convention, and the protection of privacy contained in Article 11, the petition does not meet the requirement established in Article 46(1)(a) of the Convention.

11. Regarding compliance with the deadline for filing the petition, the Commission observes that the petition was submitted within the 6-month period allotted, counting from the date on which she received the final decision from the Supreme Court of Justice of the National on the remedy of complaint on March 29, 2007. This exhausted domestic judicial remedies, as established in Articles 46(1)(b) of the Convention and 32(1) of the Rules of Procedure. Finally, regarding the State's pleading of a delay between the presentation of the petition and that petition being sent to the State, the IACHR notes that neither the American Convention nor the Rules of Procedure of the Commission establish a deadline for forwarding a petition to a State after it is received, and that the deadlines established in the Rules of Procedure in the Convention for other stages of the process are not applicable.⁴

VII. COLORABLE CLAIM

12. Based on the elements of fact and law presented by the parties and the nature of the matter under consideration, the Commission finds that should they be proven, the facts alleged by the petitioner on violations during the procedure to remove the alleged victim, her rights to defense, due process, and the presumption of innocence, could represent violations of the rights protected in articles 8 (fair trial) and 25 (judicial protection) of the Convention. The Inter-American Commission will also analyze whether the pleading that other magistrates tried for similar administrative failings were not removed represents a violation of Article 24 (equal protection) of the Convention. The Commission also finds that, should the petitioner's allegations be proven with regard to the lack of a guarantee of permanence for carrying out public duties because comprehensive review of verdicts to remove are not authorized, there may be violations of Article 23 (right to participate in government) of the American Convention.⁵ These potential violations will be analyzed on conjunction with the general obligations established in articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal effects) of the Convention.

13. Finally, with regard to the State's "fourth instance" pleading, the Commission notes that admitting this petition is not an attempt to supersede the competence of domestic judicial authorities. The question of whether domestic judicial proceedings complied with provision of due process guarantees and judicial protection in keeping with the rights protected by the American Convention will be analyzed during the merits stage of this petition.

VIII. DECISION

1. To declare this petition admissible in relation to articles 8, 23, 24, and 25 of the American Convention, in conjunction with articles 1(1) and 2 of the American Convention;

⁴ IACHR Report No. 20/17, Petition 1500-08. Admissibility. Rodolfo David Piñeiro Ríos. Argentina. March 12, 2017, para. 8.

⁵ IACHR Report No. 60/06, Petition 406-05. Admissibility. María Cristina Reverón Trujillo. Bolivarian Republic of Venezuela, July 20, 2006, para. 32.

2. To declare this petition inadmissible regarding Article 7 of the Convention of Belém do Pará and Article 11 American Convention on Human Rights.
3. To notify the parties of this decision;
4. To continue with the analysis of the merits of this matter; and
5. To publish this ruling 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 in the city of México, on the 7 day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.