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REPORT No. 16/18
PETITION 884-07
REPORT ON ADMISSIBILITY

VICTORIA PIEDAD PALACIOS TEJADA DE SAAVEDRA
PERU

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Regular Period of Sessions.

Cite as: IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios
Tejada de Saavedra. Peru. February 24, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Victoria Piedad Palacios Tejada de Saavedra
Alleged victim:	Victoria Piedad Palacios Tejada de Saavedra
Respondent State:	Peru ¹
Rights invoked:	Articles 17 (family) and 26 (economic, social and cultural rights) of the American Convention ² on Human Rights and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	July 10, 2007
Additional information received at the stage of initial review:	June 29, 2011
Notification of the petition to the State:	July 30, 2012
State's first response:	December 1, 2014
Additional observations from the petitioner:	May 14, 2016
Additional observations from the State:	May 18 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 deposited on July 28, 1978)

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), 24 (equal protection), 25 (judicial protection), and 26 (economic, social and cultural rights) of the American Convention, in relation to Article 1.1
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, January 10, 2007
Timeliness of the petition:	Yes, July 10, 2007

¹ In accordance with Article 17.2(a) of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli of Peruvian nationality did not participate in the discussion or decision of the instant case.

² Hereinafter "the American Convention" or "the Convention."

³ Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. Ms. Victoria Piedad Palacios Tejada de Saavedra (hereinafter the “alleged victim” or “Ms. Palacios Tejada”) states that, starting on September 16, 1988, she held different positions in the Peruvian judicial branch, and from 1997 to 2001, she served as a substitute judge in the judicial districts of Huaura and Callao. On September 24, 2001, the chief judge of the Superior Court of Callao ordered that she be terminated from her position as Substitute Judge of the Fourth Magistrates’ Court of Callao and that an associate judge be reinstated in her place, without considering that she was 32 weeks pregnant. She alleges that the authority that ordered her termination was fully aware of her pregnancy, given that on September 13, 2001, she submitted a request for medical leave for several days due to a pulmonary condition, attaching a medical certificate that explained her state of health and her pregnancy.

2. Given this situation, the petitioner filed a request for reconsideration on October 9, 2001, stating that her termination was arbitrary because she had been an employee of the judicial branch for more than thirteen years, in accordance with the grades established in Article 218 of the Organic Law of the Judicial Branch. She also claimed that the termination prevented her from exercising her right to maternity leave. She attached the medical certificate issued by the social security healthcare entity (ESSALUD), establishing that her maternity leave was supposed to have started on September 21 and ended on December 19, 2001. Lastly, she argued that, according to domestic regulations, any termination motivated by pregnancy has no legal effect.

3. This request for reconsideration was denied by the chief judge of the Superior Court of Callao on October 22, 2001. The judge argued that the alleged victim’s status as a substitute judge did not grant her any kind of acquired rights. The alleged victim disagreed with this decision and filed an appeal on October 25, 2001, noting that such decision did not address her maternity leave and benefits claim. On November 26, 2001, the full bench of the Superior Court of Justice denied her appeal and upheld her termination, without prejudice to her right to maternity benefits, so that she could apply for them according to law. On December 14, 2001, the alleged victim filed a motion for review, arguing, firstly, that maternity leave, temporary in nature, was being confused with the permanent employment of a substitute judge and, secondly, that only people who maintain employment relationships are eligible for maternity benefits. She would, therefore, be unable to file for them as held in the disputed decision.

4. On April 26, 2002, the Executive Committee of the Judicial Branch found the above-mentioned motion without merit and upheld the court’s decision, stating that the chief judge of the Superior Court of Justice has the authority to dismiss a substitute judge, who has relative job stability, and that such an administrative action is independent of the possible right to maternity benefits. On May 28, 2002, the alleged victim filed for a writ of amparo for constitutional relief, alleging that the arbitrary termination violated her right to maternity leave and benefits. She states that after almost three years, the writ was granted on February 21, 2005, by the Thirteenth Civil Court in the District of Lima, which determined that her right to maternity and social security protection had been violated. The Court held that, although the substitute judge position was temporary, chief judge of the Superior Court of Justice had become aware of Ms. Palacios Tejada’s pregnancy through the medical certificate attached by her on September 13, 2001 before ordering her termination. Consequently, it declared the September 24, 2001, decision terminating the alleged victim null and void, solely for the purpose of maternity benefits and rights.

5. The petitioner states that, as a result of the challenge filed by the State Attorney of the Judicial Branch, the lower court’s decision granting amparo was overturned by the First Civil Chamber of Lima on March 22, 2006. This court noted that alleged victim did not submit the certificate on September 13, 2001, for the purpose of reporting her state of health, but rather, as proof of a contagious respiratory illness. It also argued that she did not provide notice of the beginning of her maternity leave prior to the dismissal decision and, thus, it denied the writ of amparo.

6. Given this decision, on April 26, 2006, the alleged victim filed an appeal before the Constitutional Court, alleging that the First Civil Chamber of Lima had distorted the probative value of the medical certificate from September 13, 2001, and failed to recognize the rights that protected her due to her

pregnancy. Finally, through a decision on October 19, 2006, the Constitutional Court denied the appeal, establishing that the matter in question was a public labor issue and, as such, should be resolved in administrative proceedings. The petitioner states that she was notified of this decision on January 10, 2007.

7. The State, for its part, holds that the petition is inadmissible, since the Commission lacks competence *ratione materiae* to issue a decision on the possible violations of the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights alleged by Ms. Palacios Tejada. It states that there is also lack of competence in relation to the rights of pregnant mothers to social security and special protection provided in Articles 9 and 15.3(a) of the Protocol of San Salvador. It finds that, since Peru ratified the American Convention, this instrument is its main source of legal obligations and the basis on which the case must be analyzed.

8. The State highlights that domestic remedies have not been exhausted, since the petitioner did not file for administrative proceedings, which was the appropriate and effective remedy, as stated by the Constitutional Court in its October 19, 2006, decision. It also argues that Ms. Palacios Tejada did not serve notice of her maternity benefits claim on the Peruvian social security entity (ESSALUD) and has, therefore, prevented national authorities from hearing the case and issuing a decision.

9. The State also alleges that the petition is untimely, as it was filed on July 11, 2007, i.e., beyond the six-month period set forth by the Convention. It holds that the events in question do not amount to human rights violations, since the national authorities acted in accordance with the law and with respect for the alleged victim's constitutional rights. It also finds that Ms. Palacios Tejada had access to due process of law, effective legal protection, and the right to a defense in the courts that heard her case.

10. Lastly, the State holds that, by virtue of the principle of subsidiarity and complementarity, the IACHR is not an appellate court with the authority to examine alleged errors in practice or in law that may have been committed by the national courts that acted within the scope of their competence. Were it to do so, it would be intervening as a "fourth-level court," which also renders the petition inadmissible.

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

11. The petitioner holds that the October 19, 2006, Constitutional Court decision on appeal exhausted all domestic remedies. The State, nonetheless, alleges that domestic remedies were not exhausted, since the alleged victim should have filed for administrative proceedings and did not do so.

12. The rule on the exhaustion of remedies provided by Article 46.1(a) of the American Convention establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.⁵

13. The Commission notes that in the instant case, after being dismissed from her employment, Ms. Palacios Tejada filed an appeal and request for reconsideration with the chief judge and full bench of the Superior Court of Justice of Lima, and a motion for review with the Executive Committee of the Judicial Branch. She subsequently filed for a writ of amparo which, despite being initially granted, was denied on appeal by the First Civil Chamber in Lima. In light of the foregoing, the petitioner filed an appeal before the Constitutional Court of Peru, which was denied. The IACHR takes into account that the alleged victim's primary claim relates to the decision to terminate her arbitrarily from her position as a substitute judge and,

⁵ IACHR, Report No. 67/12 (Admissibility), Petition 728-04, Rogelio Morales Martínez, Mexico, July 17, 2012, paragraph 34.

in turn, the direct prejudice her right to maternity leave and benefits. The Commission therefore concludes that the motions filed with the national judicial authorities were an appropriate means to seek protection in the situation in question and considers that domestic remedies have been sufficiently exhausted for the purpose of this admissibility stage, thus complying with Article 46.1(a) of the Convention.

14. The alleged victim received notice of the Constitutional Court's decision on January 10, 2007, the IACHR petition was submitted via the electronic form on July 10, 2007, and the written version thereof was sent on July 11, 2007. For these reasons, the Commission concludes that the instant petition meets the requirement established in Article 46.1(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

15. In light of the elements of fact and law presented by the parties and the nature of the matter submitted for consideration, the Commission considers that, if proven that, in the context of Ms. Tejada Palacios' termination, the courts of jurisdiction did not respect the required rights resulting from her status as a judicial employee and her pregnancy, this could amount to possible violation of Articles 8 (fair trial), 24 (equal participation) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights), in prejudice to the alleged victim. The facts in question could also constitute possible violations of Article 26 (economic, social and cultural rights) of the Convention, in relation to Article 1.1.

16. Regarding the claim on the alleged violation of Article 17 (family) of the American Convention, since the harm alleged by the petitioner will be examined within the framework of the above-mentioned articles, the Commission notes that no information has been offered that would allow it to make a *prima facie* identification of any specific or independent content to consider the possible violation of Article 17 of the Convention.

17. In terms of the Universal Declaration of Human Rights and the International Covenant on Economic Social, and Cultural Rights, the Commission lacks competence to determine any violations of the provisions of either treaty. This notwithstanding, it may take them into account as part of its interpretation of the provisions of the American Convention in the analysis on the merits of the instant case, in accordance with Article 29 of the Convention.

18. With respect to the State's arguments referring to Articles 9, and 15.3(a) of the Protocol of San Salvador, the IACHR takes notice that the competence provided for in Article 19.6 of this treaty to issue a decision in an individual case is limited to Articles 8 and 13. In keeping with Article 29 of the American Convention, the Commission may take into account all other articles to interpret and apply the American Convention and other applicable instruments.

19. Lastly, regarding the State's arguments that refer to the fourth-level court, the Commission acknowledges that it lacks competence to review decisions handed down by national courts that are acting within the scope of their jurisdiction and ensuring due process of law and the right to a fair trial. It does, nevertheless, reiterate that under its mandate, it does have competence to find a petition admissible and decide on the merits when such petition refers to domestic processes that could amount to violations of rights guaranteed by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 24, 25, and 26 of the American Convention, in accordance with Article 1.1;

2. To find the instant petition inadmissible in relation to Article 17 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.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.