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REPORT No. 54/18

PETITION 64-08

ADMISSIBILITY REPORT

LITA NATALIA SÁNCHEZ CASTILLO
PERU

Approved by the Commission in session No. 2127 held on May 5, 2018, 2018.
168 special period of sessions.

Cite as: IACHR, Report No. 54/18. Petition 64-08. Admissibility. Lita Natalia Sánchez Castillo.
Peru. May 5, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Lita Natalia Sánchez Castillo
Alleged victim:	Lita Natalia Sánchez Castillo
Respondent State:	Peru ¹
Rights invoked:	Articles 8 (fair trial), 9 (principle of legality and freedom from ex post facto laws), 23 (right to participate in government), and 25 (judicial protection) of the American Convention on Human Rights, ² in conjunction with its Article 1(1) (obligation to respect rights); and Articles XVIII and XXVI of the American Declaration of the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	January 15, 2008
Additional information received at the phase of initial review:	September 22, 2010
Notification of the petition to the State:	September 26, 2012
State's first response:	December 27, 2012
Additional observations from the petitioner:	May 31 and November 6, 2013; and August 6, 2017
Additional observations from the State:	January 17 and May 20, 2014
Notification of the possible archiving of the petition:	May 26, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	May 31, 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), 23 (right to participate in government), 25 (judicial protection), and 26 (economic, social, and cultural rights) 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, July 31, 2007
Timeliness of the petition:	Yes, January 15, 2008

¹ Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the deliberations nor in the decision in this case, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

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

³ Hereinafter the "Declaration" or the "American Declaration"

⁴ The observations presented by each party were not duly transmitted to the opposing party.

V. ALLEGED FACTS

1. Ms. Lita Natalia Sánchez Castillo (hereinafter the "petitioner" or the "alleged victim") states that after participating in a competitive process, on October 6, 1994, the selection panel appointed her Children and Adolescents Judge of the High Court of Justice of Lima. She later held a series of provisional positions, doing so with honor, probity, and impartiality for more than 22 years. She states that on August 28, 2002, the Plenary of the Council of the Judiciary (hereinafter the "Council" or the "CNM", by the Spanish acronym) ordered she not be confirmed in the position of Specialized Family Judge, nullifying her appointment and removing the title of judge from her. She alleges that this process in which she was not confirmed took place without respecting the rules of due process, in violation of her right to defense and to a hearing, as she was sanctioned, debarred, and prevented from returning to the judiciary as a result of an arbitrary process and a baseless resolution.

2. She states that although the CNM had the authority to confirm judges every seven years, the State was constitutionally required to guarantee tenure to judges, meaning that the confirmation was limited to a well-founded assessment of conduct, eligibility, and the age limit established by law. She states that in the context of her confirmation process, she was not summoned to a hearing to provide the reasons for her dismissal and allow her to exercise her right to defense. She also states that the Council did not assess her professional and occupational achievements, and without any clear rationale, on August 28, 2002, it issued Resolution No. 415-2002-CNM, punishing her by removing her judgeship and title, even though this can only be done through a disciplinary process. She alleges that her unfounded termination was based on alleged unlawful actions she had committed in the course of exercising her duties, an interpretation that is far from the truth. She therefore states that the resolution is baseless and without cause, as well as unconstitutional because it violates fundamental guarantees and rights.

3. The petitioner states that the resolution has caused her both pecuniary and nonpecuniary damages. In general terms, she states that it affected her dignity, as well as her honor and that of her family. She states it has prevented her from pursuing the judicial career to which she had aspired. As far as financial impact, she states that since she was removed from her position, she has only received a severance pension, and since August 2002, she has not received the monthly payments for her work as a judge that she would have received had she continued in that position. She states that the State has neither reinstated her nor compensated her for the damage caused by the unfounded dismissal, in contrast to a number of similar cases involving judges. She alleges that the resolution was arbitrary and based on the subjective judgments of the Council, arguing that it should therefore annul the resolution and reinstate her in her position, restoring her title and the compensation she failed to receive while she was removed from her position.

4. Additionally, the alleged victim indicates that, according to the provisions of the Political Constitution of Peru, the resolution issued by the Council was not appealable. However, in light of the legal flaws in her confirmation process, on December 3, 2002, she filed an action for amparo before the Twenty-fifth Specialized Civil Chamber of the High Court, which was rejected in a judgment issued on June 24, 2004. The decision concluded that no rationale was necessary because the CNM, as a body with discretion, had not given its vote of confidence, and, because she had completed her new 7-year term, tenure and the position was a mere expectation. She states that she later appealed the decision before the Third Civil Chamber of the High Court of Justice. The appeal was dismissed on June 8, 2006. She adds that on March 26, 2007, she appealed the judgment on constitutional grounds before the Constitutional Court, which confirmed that the CNM decision had been based on the Court's prior case law recognizing that because confirmations of judges were administrative actions taken in exercise of the CNM's discretionary authority, they did not need to be substantiated. It states that the change in case law requiring the CNM to provide a rationale for its decisions is binding as of December 31, 2005. However, the alleged victims states that the sanctions resulting from the nonconfirmation, especially the permanent debarment, require it be both substantiated and appealable, as the Constitutional Court's own case law has recognized subsequently.

5. Finally, the alleged victim states that although the State repeatedly expressed its intention to reach a friendly settlement, on October 7, 2015, she was notified of a communication through which the CNM rejected all possibility of payments and public reparation, for the nonconfirmation, offering only to conduct a new, comprehensive evaluation and confirmation process in observance of due

process guarantees that could result in the restoration of her title, which, for the petitioner, is not an acceptable solution.

6. For its part, the State holds that the facts alleged with regard to violations to the alleged victim's right to work are not a violation because it is not protected under the Convention's individual petitions system. It also explains that prior to issuing a positive or negative opinion on confirmation of judges, the CNM takes into account the following elements for its evaluation: (1) conduct and eligibility; (2) productivity from the bench; (3) merits; and (4) reports from bar associations and other bodies representing the legal profession. It adds that the resolution adopted can be appealed through an extraordinary remedy before the Council itself, with the final resolution admitting such judicial remedies as the aggrieved person may deem suitable. The State recognizes the need to provide reparations for the violations alleged by the petitioner, as it has done with 167 judges who were reinstated and 79 judges who were provided with financial compensation.

7. Likewise, the State notes that seven years after the Constitution of 1993 took effect, the initial confirmation processes resulted in resolutions that were not substantiated, and only those chosen exceptionally by the Plenary of the Council were interviewed. In light of this omission, the State stresses that the legal system has been adjusting gradually to the standards and principles of the Constitution and the American Convention in order to guarantee due process. It underscores examples like the Constitutional Procedural Code and the new Rules for Evaluating and Confirming Judges of the Judicial Branch and Prosecutors of the Public Ministry, which provide for a reasonable period of time to conduct the confirmation of prosecutors and require each one undergo a public interview. This Regulation also establishes that the resolutions in processes resulting in nonconfirmation must be substantiated.

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

8. According to the information available, on December 3, 2002, the petitioner filed for a writ of protection before the Twenty-fifth Specialized Civil Court against the nonconfirmation decision. The writ was not granted. She appealed this decision before the Third Civil Chamber of the High Court of Justice. The appeal was also denied on June 8, 2006. Finally, on March 26, 2007, the Constitutional Court upheld the actions of the lower courts on finding that, exceptionally and pursuant to its case law, the CNM was not required to provide justification for its resolutions in confirmation processes due to their discretionary nature. For its part, the State holds that the resolution was susceptible to challenge through an extraordinary measure before the CNM, and that legal challenges could be brought against the final resolution as well.

9. The Commission notes that at the time of the facts, the domestic legal framework established that resolutions adopted by the Council could not be reconsidered by it, nor could they be challenged in court. In this case, the IACHR observes that the petitioner exercised the legal remedies available and considered suitable; therefore, the petition fulfills the requirement established in Article 46(1)(a) of the Convention. Regarding compliance with the deadline for filing the petition, the Commission observes that the petitioner was notified of the final decision exhausting local remedies on July 31, 2007, and the petition to the IACHR was submitted on January 15, 2008, fulfilling the requirement established in Article 46(1)(b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

10. 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 the arbitrary removal of the petitioner from her judicial position, as well as the alleged violation of the right to work, of due process guarantees, of the right to a hearing, of the right to defense, of the right to a well-founded resolution, and of the right to appeal that decision, could represent violations of the rights protected in Articles 8 (fair trial), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the Convention.

11. The Commission also finds that, should the allegations be proven with regard to the lack of a guarantee of tenure for carrying out public duties because comprehensive review of resolutions to remove are not permitted, 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.

12. Regarding the petitioner's allegations on the violation of the rights enshrined in Article 9 (principle of legality freedom from ex post facto laws) of the Convention, the Commission observes that the petitioner has not offered information that would *prima facie* indicate a potential violation.

13. Regarding the alleged violation of provisions of the American Declaration, the IACHR has previously established that, once the American Convention enters into force for a State, it is the Convention and not the Declaration that is the primary foundation of the law applied by the Commission, as long as the petition - as in this case - alleges violation of rights that are substantially identical in both. The Commission will therefore not examine the alleged violations of the Declaration.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 8, 23, 25, and 26 of the American Convention, in conjunction with Articles 1(1) and 2 of the American Convention;

2. To find the instant petition inadmissible in relation to Article 9 of the American Convention on Human Rights; 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 in the city of Santo Domingo, Dominican Republic, on the 5th day of the month of May, 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.

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