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REPORT No. 124/18
PETITION 178-11
REPORT ON ADMISSIBILITY

ANA MATILDE GÓMEZ RUILOBA
PANAMA

Approved electronically by the Commission on October 16, 2018.

Cite as: IACHR, Report No. 124/18. Petition 178-11. Admissibility. Ana Matilde Gómez Ruiloba.
Panama. October 16, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Ana Matilde Gómez Ruiloba, Academy on Human Rights and Humanitarian Law American University–Washington College of Law, Panamanian Center for Constitutional Law, Panamanian Center for Research and Social Action
Alleged victim:	Ana Matilde Gómez
Respondent State:	Panama ¹
Rights invoked:	Articles 5 (Humane Treatment), 8 (Fair Trial), 9 (Freedom from <i>Ex Post Facto</i> Laws) and 25 (Judicial Protection) of the American Convention on Human Rights, ² in relation to Articles 1.1 and 2 thereof

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	February 16, 2011
Additional information received at the stage of initial review:	March 14, November 1, 2011; May 17, 2012 and July 1, 2013
Notification of the petition to the State:	August 16, 2016
State's first response:	November 16, 2016
Additional observations from the petitioner:	July 26, 2017
Additional observations from the State:	November 10, 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 (deposit of ratification instrument on June 22, 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 5 (Humane Treatment), 8 (Fair Trial), 9 (Freedom from <i>Ex Post Facto</i> Laws), 22 (Participation in Government), 25 (Judicial Protection) and 26 (Economic, Social and Cultural Rights) of the American Convention, in relation to Articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception set forth in Article 46.2.a of the Convention applies
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Esmeralda Arosemena de Troitiño, a Panamanian national, did not partake in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

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

V. ALLEGED FACTS

1. The petitioners indicate that Ms. Ana Matilde Gómez Ruiloba (hereinafter “the alleged victim” or “Ms. Gómez Ruiloba”) was appointed Federal Attorney General on December 20, 2004 for a ten-year term. They argue that the Supreme Court of Justice of Panama (hereinafter “the Supreme Court”) conducted a criminal proceeding against her with disregard for her judicial guarantees, as a result of which she was arbitrarily removed from office.

2. They submit that in August 2005 Mr. M.A.Z. filed a complaint before the Prosecutor’s Office alleging that, in the framework of an investigation against his daughter for events relating to drug trafficking, the prosecutor in charge of the case asked him for money in exchange for a ruling that would favor the defendant. Therefore, an investigation was open against said prosecutor for offenses against public administration. On August 17, 2005 the alleged victim, as the Attorney General, authorized the wiretapping of the claimant’s telephone lines, Mr. M.A.Z. They affirm that this authorization was based on the Supreme Court’s constitutional interpretation of 2005, under which members of the Public Prosecutor’s Office are judicial authorities entitled to authorize wiretappings for investigation purposes. They remark that the denounced prosecutor’s telephone lines were never wiretapped nor were his conversations overheard. They also assert that a covert operation was organized in cooperation with the claimant and the Police, in which bills were marked before being handed over to the denounced prosecutor, these being found in his hands when he was arrested.

3. They indicate that on January 7, 2007 the denounced prosecutor filed a constitutional appeal against the resolution whereby the alleged victim authorized the wiretapping. On July 17, 2007 the Supreme Court admitted the appeal on the basis that the concept of judicial authority mentioned in article 29 of the Panamanian Constitution refers to magistrates and judges exclusively. In addition, they submit that according to this judgment there were retroactive effects only in regard to the wiretapping operation.

4. They allege that on July 15, 2009 the accused prosecutor filed a complaint against the alleged victim on charges of abuse of power, claiming that she had authorized wiretappings in the proceeding held against him even though she was not legally entitled to do so. They indicate that the Administration’s Attorney General in charge of undertaking the investigation procedures recused himself because he alleged having given his opinion in the proceeding on the constitutional appeal lodged by said prosecutor. His recusal was accepted by the Supreme Court on August 18, 2009; consequently, the Attorney General’s personal deputy was appointed to investigate the case.

5. The petitioners affirm that the Deputy Attorney General must be appointed only by the President of the Republic with the consent of the Cabinet Council, and that his or her confirmation must be made by the National Assembly. However, they assert that in this case it was the Attorney General himself who appointed his personal deputy. Thus they claim that the proceeding was not conducted by a competent authority. They indicate that on September 29, 2009 the Administration’s Attorney General’s Office decided to open an investigation and admitted the criminal charges. The alleged victim filed an appeal against that resolution before the Supreme Court on October 20, 2009, in which she claimed that the plaintiff was not entitled to bring said charges because his telephone lines were never wiretapped. Another appeal was filed on October 21, 2009 to question the lack of summary evidence. They submit that the Supreme Court did not resolve any of these appeals.

6. They allege that political interference in the proceeding and the government’s interests in removing the alleged victim from office were evident. They indicate that two magistrates of the Supreme Court—elected by the then president of the Republic—took office on January 4, 2010 and that on the following day, on January 5, 2010, the Administration’s Attorney General’s Office requested the Supreme Court to grant precautionary measures against the alleged victim. They explain that such request had to be analyzed by two other magistrates who had previously been investigated by Ms. Gómez Ruiloba. Therefore, she filed two challenges to the judges, the last of which was dismissed five months later, on June 18, 2010, when the requested precautionary measures had already been enforced.

7. In this regard, they claim that on January 28, 2010, by five to four votes, the Supreme Court ruled, as a precautionary measure, to remove the alleged victim from office. They moreover affirm that this resolution constituted a prejudgment in that the Court considered the reported alleged act “unpardonable.” They remark that the magistrates voting against the resolution warned this in their abstention from voting. They submit that in the notification procedure of said resolution, on February 5, 2010, the alleged victim filed an appeal for review. They indicate that, a few hours later, a judge in relation to whom a challenge was pending resolution, acting as the Single-Judge Court, ruled the appeal inadmissible on the grounds that such remedy was appropriate only in relation to prosecution and discontinuance proceedings. In view of this, Ms. Gomez Ruiloba presented an appeal in the framework of the notification procedure of that decision; yet, again, a few hours later that day, the Single-Judge Court dismissed the appeal.

8. They claim that on February 12, 2010 the alleged victim filed an appeal for factual and legal review through which she requested that the Plenary of the Court examine the appeal for review she had filed against the resolution granting the precautionary measures. They allege that on March 29, 2010 the Supreme Court turned down the appeal on the grounds that there was not a rule providing for the filing of appeals against resolutions adopted by the majority of the Plenary, like the resolution of January 28, 2010.

9. They indicate that on February 9, 2016 the Supreme Court authorized the continuation of the investigation. In view of this, the alleged victim presented an action for annulment on February 19, 2010 in which she claimed that, apart from other procedural defects, she would be tried by a non-competent authority, for the Administration’s Attorney General had unlawfully appointed a personal deputy to be in charge of the case. They submit that on March 31, 2010 the Supreme Court dismissed that remedy because it considered that the appointment by the Administration’s Attorney General should be analyzed as an administrative act through an administrative proceeding. In addition, they allege that later, on July 7, 2010, the Supreme Court ruled to open a criminal case against Ms. Gómez Ruiloba. The alleged victim appealed this decision by lodging an appeal for review that was rejected by the Supreme Court on July 28, 2010 on the basis that given that the commission of the reported criminal offense was proven and that so was her criminal liability, her guilt or acquittal would be discussed in the plenary phase.

10. They submit that on August 12, 2010 the Supreme Court convicted the alleged victim on the charges of abuse of power, by ordering her permanent removal from office and imposing a six-month term in prison (replaced by the payment of four thousand Panamanian balboas) and a four-year term of ineligibility to hold public office. This judgment was notified on September 10, 2010. They assert that there is no remedy that can be filed against the decisions of the Supreme Court, except for appeals for review, a mechanism that is appropriate in relation to very specific and restricted causes. Therefore, they claim that the alleged victim was unable to challenge or to obtain a review of her conviction. Lastly, the petitioners allege that the arbitrary removal has caused the alleged victim moral and psychological damage, and affected her dignity.

11. For its part, the State claims that Ms. Gómez Ruiloba did not file an appeal for review that the domestic legal framework provides for as an appropriate remedy. Moreover, it affirms that the criminal proceeding held against the alleged victim conformed to all the judicial guarantees established in the American Convention. It indicates that the different stages in it were conducted by a competent authority; that it ensured that appropriate technical defense was available for her from the first procedures; and that there were no defects leading to nullity. Additionally, it argues that Ms. Gómez Ruiloba had the possibility to challenge her conviction by filing an appeal but that she failed to so.

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

12. The petitioners indicate that the Panamanian legislation does not provide for an appeal to challenge guilty judgments issued by the Supreme Court. Consequently, they affirm that the decision of August 12, 2010 concluded the judicial proceeding filed against the alleged victim. For its part, the State claims that Ms. Gómez Ruiloba did not present the appeal for review that the domestic legislation establishes as the appropriate remedy.

13. The Commission observes that under article 2495 of the Panamanian Code of Judicial Procedure the only available remedy that can be filed against resolutions issued by the Plenary or the Second Chamber of the Supreme Court of Justice is an appeal for review. With respect to this, the IACHR observes that the action for review foreseen in article 2454 of said legislation is a special remedy with eight strictly-established causes that is applicable against final resolutions, thus it cannot be considered an appropriate remedy that ensures review or appeal of a conviction before it becomes final.⁴ Consequently, the State did not provide the alleged victim with a remedy that would enable her to obtain protection of the allegedly violated rights, which, under the terms of Article 46.2.a of the American Convention constitutes one of the causes of exception to the rule of prior exhaustion of domestic remedies.

14. Furthermore, the petition to the IACHR was received on February 16, 2011 and the Supreme Court's judgment of August 12, 2010 was notified on September 10, 2010. Therefore, in view of the context and the characteristics of the instant case, the Commission believes that the instant petition was filed within a reasonable time and that the requirement concerning the timely presentation of the petition must be declared met.

VII. ANALYSIS OF COLORABLE CLAIM

15. Considering the factual and legal elements presented by each of the parties, and the nature of the matter brought to its attention, the Commission deems that, if proven, the allegations of the alleged victim's arbitrary removal from office as Federal Attorney General in the framework a judicial proceeding that violated her judicial guarantees, including the retroactive application of a judgment whose constitutional interpretation was less favorable, and which was allegedly conducted under political pressure all could tend to establish possible violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 9 (Freedom from *Ex Post Facto* Law), 23 (Participation in Government), 25 (Judicial Protection) and 26 (Economic, Social and Cultural Rights) of the American Convention, in connection with Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of the alleged victim.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 9, 23, 25 and 26 of the American Convention, in connection with Articles 1.1 and 2 thereof; and

2. 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 on the 16th day of the month of October, 2018. (Signed): Margarete May Macaulay, President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁴ IACHR, Report No. 62/16, Petition 4449-02. Admissibility. Saulo Arboleda Gómez. Colombia, December 6, 2016, par. 28.