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REPORT No. 81/19
PETITION 597-10
REPORT ON INADMISSIBILITY

JOSUÉ LUÍS ZAAR
BRAZIL

Approved Electronically by the Commission on May 31, 2019.

Cite as: IACHR, Report No. 81/19. Petition 597-10. Inadmissibility. Josué Luís Zaar. Brazil.
May 31, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioning party	Josué Luís Zaar
Alleged victims	Josué Luís Zaar
State denounced	Brazil ¹
Rights invoked	Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights ² and other treaties ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition	April 23, 2010
Notification of the petition to the State	August 12, 2016
State's first response	November 16, 2016
Additional observations from the petitioner	May 14 and November 9 and 22, 2010; November 7 and 9, 2011; May 29 and October 3, 2014; November 21, 2016; July 14, August 30, September 5, 25, and 27; and November 13, 2017; August 27, 2018
Additional observations from the State	January 23, 2018

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (instrument adopted on September 25, 1992)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF FILING

Duplication of procedures and International <i>res judicata</i>	No
Rights declared admissible	None
Exhaustion or exception to the exhaustion of remedies	No
Timeliness of the petition	N/A

V. SUMMARY OF ALLEGED FACTS

1. Josué Luís Zaar (hereinafter, "Mr. Zaar" or "alleged victim"), attorney, states that as of July 2007 he began suffering circumvention of the exercise of his profession by the Judiciary, after he sent a request for protective measures to the Office of the Inspector-General of the Regional Labor Tribunal of the 9th Region (hereinafter, "TRT9") the month prior, for being treated differently than other attorneys. He states that his cases have been disadvantaged regarding the assignment of hearing dates. He responds that various judges declared recusal from cases in which he was lead attorney without indicating grounds and, as a direct consequence, those cases were tried with significant delays as compared with normal procedure. He claims that this harmed cases even when he was representing persons with disabilities when priority treatment was needed. He adds that his cases were assigned to a specific courtroom within the TRT9, in clear violation of the rule of random-drawing distribution. He concludes that as a result of repercussions from the facts in the city of Cascavel, Paraná, he came to suffer material damages, as he was unable to obtain new clients and moral damages as a result of the ensuing harm to his reputation and professional credibility.

¹ As provided in Article 17.2.a of the Regulations of the Commission, Commission Member Flávia Piovesan, a Brazilian national, did not participate in the debate or in the decision on this matter.

² Hereinafter, "American Convention".

³ Article 14 of the International Covenant on Civil and Political Rights; and Article 8 of the Universal Declaration of Human Rights.

⁴ Each party's observations were appropriately delivered to the opposing party.

2. The alleged victim claims that he communicated the facts to the Bar Association (Order of Attorneys of Brazil), which on February 29, 2008, recognized that the judges were circumventing the exercise of his profession. On February 26, 2010, he filed the first complaint with the National Council of Justice (hereinafter, "CNJ"), which refused the request in a decision dated August 25, 2010, ruling that no actions had been taken by members of the Judiciary to harm him. In 2011, he filed another complaint with the CNJ, which was denied on February 11, 2014, the CNJ finding that there had been no intentional re-direction of appeals filed with the TRT9. In summary, Mr. Zaar asserts that all remedies have been exhausted, given that he filed the complaints with the CNJ, the body responsible for oversight and administrative transparency of the members of the Judiciary, and no further appeals of that ruling are available. Lastly, he states that as a result of these events he has developed psychological disorders that require psychiatric treatment.

3. For its part, the State claims that the alleged victim has not described accurately which acts amounted to the circumvention of the exercise of his profession, which he claims to be suffering, nor has he explicitly described which acts would constitute abuse of authority. Furthermore, the State indicates that domestic legislation provides for recusal by judges and that minor delays and postponements of procedural acts are absolutely natural on behalf of a greater good: a ruling by an impartial judge. The State further asserts that domestic legal remedies were not exhausted, as the facts have only been evaluated administratively, and that Mr. Zaar could have filed a regular action with the first-instance court of the Federal Justice system, or a writ of mandamus with the competent court, which would have been the speediest approach. The State further indicates that the alleged victim did not seek domestic civil remedies as he could have, by filing a lawsuit against the State seeking indemnification for moral and material damages; therefore he did not exhaust all remedies.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

4. Based on the information provided by the parties, the Commission verifies that, as provided by domestic legislation, the alleged victim could have engaged competent judicial mechanisms to analyze the conduct of the judges and obtain compensation. However, he limited himself to the complaint filed with the CNJ, a body with administrative jurisdiction that would not have been able to give the alleged victim what he was seeking. Thus, the Commission considers that this petition does not meet the requirement for exhaustion of domestic remedies under the terms of Article 46.1 of the American Convention.

VII. DECISION

1. To declare this petition inadmissible, under Article 46.1 of the American Convention;
2. To notify the parties about this decision; proceed with the analysis of merits of the matter, and to publish this decision and include it in the Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 31st day of the month of May, 2019 (Signed): Esmeralda E. Arosemena, President; Joel Hernández García, First Vice President; Antonia Urrejola Noguera, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Luis Ernesto Vargas Silva, Commissioners.