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**REPORT No. 190/19**  
**PETITION 1623-10**  
REPORT ON ADMISSIBILITY

EMIGDIA JOSEFINA GÓMEZ OCANDO  
VENEZUELA

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

**Cite as:** IACHR, Report No. 190/19. Admissibility. Emigdia Josefina Gómez Ocando. Venezuela. December 5, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Emigidia Josefina Gómez Ocando and Vilma Castro <sup>1</sup>
<b>Alleged victim:</b>	Emigidia Josefina Gómez Ocando
<b>Respondent State:</b>	Venezuela
<b>Rights invoked:</b>	Articles 8 (right to a fair trial), 23 (right to participate in Government), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	November 10, 2010
<b>Notification of the petition to the State:</b>	January 27, 2017
<b>State's first response:</b>	May 31, 2017
<b>Additional observations from the petitioner:</b>	December 2, 2010

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (from August 9, 1977, date of deposit of instrument)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (right to a fair trial), 23 (right to participate in Government), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive development) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, November 3, 2010
<b>Timeliness of the petition:</b>	Yes, November 10, 2010

**V. FACTS ALLEGED**

1. The petitioners complain of the violation of the human rights of Emigidia Josefina Gómez Ocando (hereinafter "the alleged victim"), who was dismissed in 2006 from her position as Assistant Secretary of the First Court of First Instance for Civil and Commercial Law Matters of the Judicial District of the State of Zulia, by the acting Judge. They state that she lodged the appropriate administrative appeal before the Superior Contentious Administrative Court of the Western Region, and on October 29, 2007, obtained a

<sup>1</sup> Duly authorized attorney for the alleged victim via communiqué of November 26, 2010.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

favorable judgment ordering her reinstatement and the payment of lost wages as compensatory damages. This decision was later appealed by the deputy of the Attorney General of the Republic before the Second Court of Contentious Administrative Matters (located in Caracas), which annulled it.

2. They allege that the Second Court of Contentious Administrative Matters conducted the process behind her back, taking its decision without notifying her of the appeal and without granting her an opportunity to exercise her rights to a defense. On February 8, 2010, she filed an extraordinary constitutional amparo appeal before the Constitutional Chamber of the Supreme Court of Justice against the annulment alleging, *inter alia*, that her rights to a defense and judicial protection had been violated by the lack of notification.<sup>4</sup> She indicates that the appeal was declared inadmissible on November 3, 2010 *in limine litis*, that is, without the Chamber ruling on the merits of the alleged violations of due process. She also complains that after her dismissal she was prevented from returning to any public office because she appears on an internal "black list" of the judicial branch, identifying Venezuelans who, signed in favor of the revocation of the presidential mandate in 2001.

3. The State, for its part, indicates that the alleged victim's dismissal was decided after substantiation of administrative proceedings on the basis of disciplinary offenses committed in the exercise of her functions. Similarly, it indicates that the Constitutional Chamber in fact ruled on the merits of the alleged victim's claim, concluding that "the Second Court of Contentious Administrative Matters, did not act with an abuse of power, *ultra vires* or in usurpation of its functions, that is, it did not act beyond the limits of its competence".<sup>5</sup>

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

4. The petitioner indicates that after the decision declaring the inadmissibility of her amparo appeal, there is no longer any recourse to any authority available to her. The State, for its part, has not indicated that there are additional remedies that could be exhausted at the domestic level. The Inter-American Commission observes that the domestic jurisdiction was effectively exhausted by the decision issued by the Constitutional Chamber of the Supreme Court of Justice on November 3, 2010. Consequently, the Commission considers that the requirement established in Article 46.1(a) of the American Convention is fulfilled. Since the petition was filed on November 10, 2010, it was within the time limit established in Article 46.1 (b) of the Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

5. The petitioner argues<sup>6</sup> that: the State failed to notify her of an appeal filed against a decision in her favor; that her amparo motion was declared inadmissible without the Chamber ruling on the absence of notification and other substantive issues raised; a breach of the legal time limits governing *amparo* proceedings<sup>7</sup>, and that she has been denied a return to public service by reason of political considerations.

6. The State, in turn, argues that the alleged facts fail to characterize violations of human rights because: it is permissible, in view of the principle of procedural economy, for the Constitutional Chamber, after making a substantive or merit assessment, to reject the *amparo* appeal without a complete assessment due to an evident lack of grounds;<sup>8</sup> the alleged victim inappropriately tried to use the *amparo* motion to open

<sup>4</sup> They argue that, in her case, notification to the non-appealing party is especially necessary when the appeals court is located in a different judicial district from the first instance court issuing the decision.

<sup>5</sup> In her case, the Court emphasized that in accordance with Article 4 of the Organic Amparo Law on Rights and Constitutional Guarantees, an *amparo* suit against judicial decisions "is available when the judge has acted "*ultra vires* his/her competence", in such a way as to "breach a constitutional guarantee"; both of these two criteria need to be present.

<sup>6</sup> See the rights invoked in Section I of the present report.

<sup>7</sup> They maintain that the Constitutional Chamber took 8 months to resolve her *amparo* motion, when the law states it should be decided within 48 hours.

<sup>8</sup> They consider this analogous to the situation where the IACHR finds that a petition is inadmissible due to it being "manifestly groundless".

a third instance to challenge the decision to dismiss her, and is now attempting to use the Commission as fourth instance; all the appeals filed by the petitioner were processed and decided within a reasonable period of time and respected the guarantees of due process; and the petitioners have failed to provide evidence or arguments to support the alleged violations of her political rights or her right to equality before the law.

7. In view of the factual and legal elements submitted by the parties, the Commission considers that, if verified, the facts regarding the alleged lack of notification and participation of the alleged victim in the proceedings annulling the decision ordering her reinstatement; the possible ineffectiveness of the *amparo* remedy for the effective protection of the rights claimed by the alleged victim; and the alleged denial of her opportunity to re-enter the public service for reasons of political reprisal, could characterize possible violations of Articles 8 (right to a fair trial), 23 (right to participate in Government), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive development) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

8. Lastly, with regard to the argument of the State on the fourth instance, the Commission observes that by admitting this petition it does not intend to supplant the jurisdiction of the domestic judicial authorities. Rather, it will analyze at the merits stage of the present petition whether the domestic judicial processes complied with the guarantees of due process and judicial protection, and offered due guarantees of access to justice for the alleged victims under the terms of the American Convention.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8, 23, 24, 25 and 26 of the American Convention, in relation to its Articles 1.1 and 2; 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 by the Inter-American Commission on Human Rights on the 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva (dissenting opinion) and Flávia Piovesan, Commissioners.