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REPORT No. 170/20
PETITION 901-11
REPORT ON ADMISSIBILITY

ALBA AURORA APONTE VERNAZA
PANAMA

Approved electronically by the Commission on July 2, 2020.

Cite as: IACHR, Report No. 170/20, Petition 901-11. Admissibility. Alba Aurora Aponte Vernaza. Panama. July 2, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Alba Aurora Aponte Vernaza
Alleged victim	Alba Aurora Aponte Vernaza
Respondent State	Panama ¹
Rights invoked	Articles 8 (fair trial) and 24 (equal protection) of the American Convention on Human Rights ² in relation to Article 1.1 (obligation to respect rights) thereof

II. PROCEEDINGS BEFORE THE IACHR³

Date of filing	July 6, 2011 ⁴
Notification of the petition	June 27, 2017
State's first response	September 27, 2017

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification 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 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 9 (freedom from <i>ex post facto</i> laws) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, January 11, 2011
Timeliness of the petition	Yes, July 6, 2011

V. SUMMARY OF FACTS ALLEGED

1. Alba Aurora Aponte Vernaza (hereinafter “the alleged victim”) alleges violations of her human rights because, after a disciplinary proceeding, she was removed from office as a judge based on a ground not included in the rules governing disciplinary proceedings and even though the removal from office was not a penalty applicable to these proceedings, under the law.

2. According to the alleged victim, she worked as a judge at the Court for Childhood and Adolescence Matters in Colón province. Allegedly, she had been in the judicial career for over 13 years and had never been faced with sanctions under the disciplinary rules or the judicial code of ethics. She submits that a client of this Court filed a complaint against her with the Superior Court for Childhood and Adolescence Matters on September 20, 2007, and that a misconduct complaint proceeding was filed and held under the norms of Panama’s Judicial Code applicable to disciplinary proceedings. She explains that the trial concluded on December 12, 2008, with the Court’s decision to remove her for a purported violation of judicial ethics.

3. She claims that her removal violated her rights because this penalty was not set forth by article 292 of the Judicial Code, the rule governing disciplinary proceedings. She submitted a copy of the fragment of the Judicial Code containing article 292, according to which the most severe corrective measure is the “unpaid suspension from office for a maximum of fifteen days.” She also claims the violation of her rights because she

¹ In keeping with the provision of 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 voting on this matter.

² The “Convention” or “American Convention.”

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

⁴ The petitioner did not submit additional substantive information. However, she did file several information requests concerning the processing of her petition, the latest one is dated January 3, 2018.

was declared guilty of violating judicial ethics even though the proceeding filed against her was not an ethics proceeding but a disciplinary proceeding. According to the petitioner, she challenged her removal from office by filing a motion for reconsideration, dismissed on January 30, 2009. Then she filed a contentious-administrative remedy of full jurisdiction with the Third Division of the Supreme Court of Justice to request that her removal be declared unlawful. On December 31, 2010, the Third Division found the lower court's decision lawful. The Division dismissed the alleged victim's claims that her conviction and removal from office for the violation of judicial ethics, having been decided after a disciplinary proceeding, were unlawful. The Division considered that "while the complaint proceeding began as a disciplinary proceeding to ensure her right of defense and so that she could submit the remedies she deemed appropriate, the appointing authority retains the competence to impose the penalty it finds suitable to the type of misconduct that has been proven." She says that this decision exhausted her domestic remedies and was notified to her on January 11, 2011.

4. In the alleged victim's opinion, the Third Division's decision violated her right to equal protection of the law as it contravened a long-standing jurisprudential criterion establishing the unlawfulness of the penalty of removal from office following disciplinary proceedings and the prohibition to mingle norms applicable to disciplinary proceedings with those applicable to judicial ethics proceedings. In support, she submitted a copy of several judgments, including one issued by the Third Division on August 7, 2009. In it, the Division establishes that separate sets of rules govern disciplinary proceedings and ethics proceedings and that the penalties to be imposed in a disciplinary proceeding are those established in the applicable rules; that, accordingly, the removal from office, provided in the set of rules governing ethics proceedings, is unlawful when it follows a disciplinary proceeding. Also, the Division quotes in approval a previous decision in which it concluded that "if a proceeding is filed on disciplinary grounds, it is juridically inadmissible for the authority to change the charges and impose a penalty on new grounds (violations of judicial ethics). Such conduct is inadmissible given the clear distinction the law makes between the procedures that are applicable in each case."

5. For its part, the State contends that a disciplinary proceeding was filed against the alleged victim following a complaint by a client who claimed that during a child custody proceeding, the alleged victim had been partial against the complainant to favor the latter's ex-husband. It says that, according to the complaining client, the alleged victim had threatened her with deprivation of liberty to coerce her into signing an agreement to change visitation days with her ex-husband. It says that the complainant also reported that the alleged victim had refused to listen to the children and had delayed the issuing of resolutions declaring the ex-husband in contempt of court.

6. The State says that the claims against the alleged victim were particularly serious as they involved the children's best interests. It submits that, based on the record, in November 2006, the complainant and her ex-husband signed an agreement that contravened the legal requirement of prior notification of the parties' legal attorneys, whose aim is to avoid possible situations of coercion as that reported by the complainant. Moreover, it contends that it was proven that in her resolution, the alleged victim ruled a very flexible communication and visitation schedule without stating why she disregarded the children's will even though one of them had expressed not wanting to see their father. It holds that, therefore, it was proven that the alleged victim violated the rules of the Family Law Code and the Judicial Code, in contravention of the ethical canons governing the conduct of judges and with disregard for the principles of the best interest of the child and due process of law. It claims that the Division that removed the alleged victim from office considered that her conduct was contrary to law and hence incompatible with the disciplinary rules. It also claims that in the motion for reconsideration following which the lower court's resolution was confirmed, no new evidence was submitted that could have led to the latter's annulment.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The Commission observes that, according to the petitioner, the final decision on the subject matter of her petition was that by which the Third Division of the Supreme Court of Justice dismissed her remedy of full jurisdiction. It also notes that the State has not submitted any observations about the requirement of exhaustion of domestic remedies.

8. The Commission believes that prima facie the contentious-administrative remedy of full jurisdiction was appropriate to have the alleged victim's claims remedied at the national level. Neither the State's reply nor the case record suggests the existence of unexhausted domestic remedies that could have been appropriate to remedy the alleged victim's claims. Accordingly, the Commission deems that the domestic remedies were exhausted with the Third Division's dismissal of the alleged victim's remedy of full jurisdiction. Therefore, and since the petitioner was notified of the final decision on January 11, 2011, and since the IACHR received this petition on July 6, 2011, the Commission finds that this petition meets the requirements set forth in Article 46.1 subparagraphs (a) and (b) of the American Convention.

VII. COLORABLE CLAIM

9. The Commission observes that the instant petition involves claims regarding the alleged victim's being subjected to a disciplinary proceeding in which she was found guilty of and punished for a charge that was not typified in the set of rules applicable to her proceeding and that the penalty imposed on her was harsher than the maximum established in the rules applicable to this proceeding.

10. Considering the claims by the parties, the Commission deems it necessary to remember that, as for disciplinary proceedings filed against justice operators, it established that "the law must give detailed guidance on the infractions that trigger disciplinary measures, including the gravity of the infraction which determines the kind of disciplinary measure to be applied in the case at hand."⁵ It further says that "laws that establish administrative disciplinary measures such as dismissal must be subjected to the strictest test of legality. Such laws not only provide for extremely serious penalties and curtail the exercise of rights, but also create an exception to the principle of judicial stability and can compromise the principles of judicial independence and autonomy."⁶

11. Therefore, and having analyzed the legal and factual elements submitted by the parties, the Commission deems that the petitioner's claims are not manifestly groundless and require an analysis of the merits. If proven to be true, these facts may establish violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with Articles 1.1 (obligation to respect rights) and 9 (freedom from *ex post facto* laws) thereof.

12. As for the alleged violation of Article 24 (equal protection) of the American Convention, the Commission deems that considering the alleged victim's claims and the record, there are no elements or evidence to consider prima facie its possible violation. The Commission insists that while the petitioner claims that the resolution issued in the legal proceeding is at variance with a previous jurisprudential criterion, this alone does not suffice to establish a violation of the American Convention or other treaties that establish the competence of the Commission.⁷

VIII. DECISION

1. To declare the instant petition admissible regarding Articles 8 and 25 of the American Convention in accordance with Articles 1.1 and 9 thereof;

2. To declare the instant petition inadmissible in relation to Article 24 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.

⁵ IACHR. Guarantees for the Independence of Justice Operators. OEA/Ser.L/V/II.Doc 44/13, par. 208.

⁶ IACHR. Guarantees for the Independence of Justice Operators, par. 211.

⁷ IACHR, Report No. 91/17, Petition 1400-07. Inadmissibility. Adriana Sonia Peralta. Argentina. July 7, 2017, par. 14.

Approved by the Inter-American Commission on Human Rights on the 2nd day of the month of July, 2020.
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; and Margarete May Macaulay, Commissioners.