

REPORT N° 60/06¹
PETITION 406-05
ADMISSIBILITY
MARÍA CRISTINA REVERÓN TRUJILLO
BOLIVARIAN REPUBLIC OF VENEZUELA
July 20, 2006

I. SUMMARY

1. On April 13, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition filed by Rafael Chavero Gazdik (hereinafter "the petitioner"), alleging violation by the Bolivarian Republic of Venezuela (hereinafter "Venezuela", "the State" or "the Venezuelan State") of Articles 1(1), 2, 8, 23, 24 and 25 of the American Convention on Human Rights (hereinafter "the American Convention") to the detriment of María Cristina Reverón Trujillo.

2. The petitioner alleges that María Cristina Reverón was acting as a provisional judge while awaiting the competitive exams that would allow her to have tenure in the judiciary. While serving in that status, she was removed by the Commission on the Functioning and Restructuring of the Judicial System, for having committed an alleged abuse of authority, inexcusable judicial error and negligence in the management of the process. However, after an appeal that the earlier decision be vacated due to procedural error, the Political-Administrative Chamber of the Supreme Court of Justice ruled that the decision of the Commission on the Functioning and Restructuring of the Judicial System was partially void because no judicial error had been proven nor had there been any abuse of authority. Nonetheless, the Political-Administrative Chamber did not order the reinstatement of the judge nor that she be paid salary and amounts due. It only voided the decision and ordered that reference to the removal be eliminated from the files of the Commission on the Functioning and Restructuring of the Judicial System. For all these reasons, the petitioner believes that there is a failure to recognize the right to the independence and impartiality of judges, given that provisional judges end up being officials who can be freely appointed and removed without strengthened guarantees like those of tenured judges. In addition, the petitioner claims that in other similar cases the Supreme Court has ruled differently, supporting the reinstatement of provisional judges.

3. The State argues that the alleged victim needed to indicate her desire to participate in the respective competitive examination, given her status as a judge at the time she filed her challenge.

4. After examining the positions of the parties in the light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission decided to rule the case admissible under Articles 1(1), 2, 8, 23(1)(c), 24 and 25 of the American Convention. Consequently, the Commission decided to inform the parties, to publish this Admissibility Report and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The original petition was received by the Commission on April 13, 2005 and recorded as No. 406-05 of 2005. On July 5, 2005, the Commission forwarded the petition to the government of Venezuela, pursuant to Article 30.3 of its Rules of Procedure. On September 8, 2005, a request for an extension was received from the State, which was granted. On December 15, 2005 the State submitted its observations on the case. On December 20, 2005, the State's observations were forwarded for submission of observations by the petitioner. On February 3, 2006, the petitioner sent more information on the petition, copy of which was sent to the State.

III. POSITIONS OF THE PARTIES

¹ As provided in Article 17(2) of the Commission's Rules of Procedure, Commissioner Freddy Gutiérrez, a Venezuelan national, did not participate in the discussion or decision in this case.

A. The petitioners

6. The petitioner reports that Mrs. María Cristina Reverón joined the Venezuelan judiciary in 1982, serving in various positions (judge, prosecutor, public defender). On July 16, 1999, she was appointed as a Judge of First Instance in Criminal Matters for the Criminal Judicial Circuit of the Metropolitan Area of Caracas. The decree appointing her established her status as a provisional judge “until the competitive examination established in Article 21 and following of the Judicial Career Law actually took place.”² For this reason, the petitioner maintains that the judge had the right to remain in the position until the competitive examination was held, even more so given that she entered the judiciary before the 1999 Constitution took effect.

7. The petitioner asserts that the alleged victim, as part of the functions pertaining to her office, heard a case with significant political repercussions in the country, in that the accused (Pablo López Ulacio) was the director of an important media outlet in Venezuela (the newspaper “La Razón”). After that person had refused –on seven occasions – to appear to make a statement, the judge ordered that he be arrested to submit a signed statement before the court. It is alleged that the family of the accused submitted a disciplinary complaint before the Commission on the Functioning and Restructuring of the Judicial System³ and –according to the petitioners – due to undue pressures on that Commission, the judge’s order was ruled to be inexcusable judicial error⁴ and the decision was made on February 6, 2002 to remove her from her position.⁵

8. In response to this situation, an appeal that the earlier decision be vacated was filed before the Political-Administrative Chamber of the Supreme Court of Justice on March 10, 2002. That action alleged that the removal measure represented clear interference by an administrative body in judicial autonomy and independence and that her decision had been based on the law and current jurisprudence. Specifically, the judge maintained that removal was carried out due to the “way in which a legal provision was interpreted, namely Article 271 of the Criminal Procedural Organic Code in effect at the time.”⁶ The petitioner alleged that this constituted a violation of the principle of the independence of judges, in that judges may not be subject to the disciplinary regime except in the case of “inexcusable judicial error.” It was then alleged that what had happened was a “substantive error” that had been corrected by the court and that the accused “never suffered any consequences from that error because he was never arrested by the competent authorities” and “if that conduct were considered an error, the penalty would be a reprimand.” It was also noted that the action being challenged had the defect of being unjustified, in that it omitted any consideration of the arguments put forth in the explanatory brief.

² Judicial Career Law, Special Official Gazette No. 5.262 of September 11, 1998. Article 21. The Board shall organize and direct the Competitive Examinations referred to in this law in accordance with the regulations it shall issue for the purpose.

³ This body has jurisdiction to conduct disciplinary investigations of judges as of December 29, 1999, the publication date of the Decree establishing the Public Power Transition Regime, passed by the National Constituent Assembly. This decree establishes: Article 23. The judicial disciplinary jurisdiction of the disciplinary courts, pursuant to Article 267 of the Constitution, shall be exercised by the Commission on the Functioning and Restructuring of the Judicial System, in accordance with this transition regime and until the National Assembly passes legislation defining disciplinary procedures and tribunals.

⁴ Article 40(4) of the Judicial Career Law provides as follows: Article 40. Without prejudice to applicable criminal and civil liabilities, judges shall be removed from their positions, after due process, on the following grounds: (...) 4. When they have committed an inexcusable serious judicial error as recognized in a ruling from the Court of Appeals or the Higher Court or the respective Chamber of the Supreme Court of Justice, as applicable, and removal has been requested.

⁵ Commission on the Functioning and Restructuring of the Judicial System, Resolution No. 0033-2002 of February 6, 2002.

⁶ Article 271. Failure to comply. The accused may be the subject of a judicial order of preventive detention when he is outside the area where he must remain according to Article 269, or when although remaining in the same place he fails without justification to appear before the judicial authority or the Public Ministry that summons him. If he cannot be apprehended, revocation of the substitute order may lead to enforcement of the bail bond.

9. In its ruling of October 14, 2004, the Political-Administrative Chamber of the Supreme Court declared the claims made in the appeal partially admissible.⁷ In that decision, the Court ruled that the petitioner had not committed any of the alleged disciplinary errors for which she had been removed. The Political-Administrative Chamber indicated that “in this case there is no element that would lead one to believe that the sanctioned judge has expansively interpreted the provision contained in Article 271 of the referenced Code but, on the contrary, has interpreted it correctly, when seeking to ensure compliance, at least at the beginning of the judicial proceeding she was about to hear. Consequently, that action does not prove that the sanctioned judge committed an abuse or excess of authority nor, therefore, that she exceeded her judicial functions.”

10. With respect to inexcusable judicial error, the Political-Administrative Chamber ruled that the disciplinary body may review court proceedings when there is evidence of error.⁸ In the specific case, it ruled that:

Based on the foregoing, it is demonstrated that the sanctioned judge did not commit a serious and inexcusable error and that her actions were certainly justified, so much so that citizen Pablo López Ulacio never appeared at the preliminary hearing to which he was summoned so many times nor was it possible to execute the preventive detention order issued by the sanctioned judge. Accordingly, the attitude of the accused confirmed the obvious fear on the part of the appellant judge that the accused was not going to appear in her court, and thus her judicial judgment was reasonable and based on a decision issued in the legitimate exercise of her functions, i.e., the provision established in Article 271 of the Criminal Procedural Organic Law, and at no time did it constitute the serious error imputed to her by the Commission on the Functioning and Restructuring of the Judicial System, with the goal of imposing on her the maximum penalty, i.e., removal from her position. Consequently, that Commission invaded areas of jurisdiction proper to the court and in that sense violated the constitutional guarantee of autonomy and independence held by the sanctioned judge at the time she issued the order cited above.

The procedural record indicates that when appellant noticed the error (ordering a place of imprisonment), she officially corrected the error before arrest of the accused was ordered. In addition, she certainly did not cause any damage to the accused, in that the procedural record does not show that he has been arrested to this day. Further, there is no evidence in the record that such action has been repeatedly committed by the sanctioned judge. Therefore, the Chamber is of the opinion that the error committed by the sanctioned judge was a simple error, that it was immediately corrected by the court and caused no damage to the parties involved in the principal case.

11. Nonetheless, the Court did not accept the claims for reinstatement and payment of salary not received. Its argument was that “currently a process of judicial restructuring is underway in which it was agreed to submit to competitive examinations all judicial positions, including those carried out by judges on a provisional basis.” Given that it was impossible to agree to reinstate the judge to her position or a similar one in terms of hierarchical level and compensation, the Political-Administrative Chamber ordered “eliminating from the file held in the archives of the Commission on the Functioning and Restructuring of the Judicial System the punishment of removal that was imposed on her.” In addition, the court indicated that “given the appellant’s status as a provisional judge up to the time of filing this appeal and in order to preserve her right to participate in the competitive examinations to which she aspires,

⁷ Supreme Court of Justice, Political-Administrative Chamber, Ruling of October 14, 2004, Case No. 2002-0259, Judge Rapporteur: Yolanda Jaimes Guerrero.

⁸ The decision states: “This Chamber has established on numerous occasions that serious and inexcusable judicial error occurs when the judge’s action cannot be justified on the basis of reasonable legal criteria, which makes it a serious error leading to the maximum disciplinary penalty, i.e., removal. This is an indeterminate and undefined legal concept and thus in each case it is necessary to weigh the attitude of a normal judge and on that basis and on the basis of the specific characteristics of the country’s legal culture establish the inexcusable nature of the court official’s actions. Thus, serious error is inexcusable and demonstrates, without further analysis, an absence of the legal training essential for suitably performing the role of judge.”

provided of course that she meets the requirements in each case, the court orders an evaluation of the entire period of her time in the judiciary as well as her inclusion, should she so wish, in the indicated competitive examinations." Finally, the order indicated that "in that this decision does not order that the judge be reinstated to the position she held, this Chamber refrains from ordering the payment of salary not received as from the date of removal."

12. The petitioner maintains that the result of this decision is that provisional judges in Venezuela can be freely removed from their positions and not even a declaration of the absolute nullification of the action removing them gives them the right to reinstatement to the position they held. This means denying judges any sort of stability, as they would remain in their positions under the threat of being removed for any reason. The petitioner states that this constitutes discriminatory treatment compared to tenured judges. In addition, the petitioner asserts that the same Political-Administrative Chamber has ordered the reinstatement to their position of illegally removed judges, which would indicate another discriminatory situation.⁹

13. The petitioner alleges that to date no competitive examinations have been held for this or any other judicial position, and thus the position is in the hands of another judge with the same provisional status. The petitioner asserts that Mrs. Reverón had been appointed a criminal judge after participating in and winning a competitive examination, unlike the case of the provisional judges who currently hold judicial positions in Venezuela, who are appointed freely at the discretion of the Judicial Commission of the Executive Directorate of the Magistracy. The petitioner then indicates that "thus in the worst case she should have been reinstated to another court at a similar rank."

14. The petitioner also indicates that in the instant case there is a denial of justice because the decision of the Supreme Court does not satisfy Mrs. Reverón's principal claim, her reinstatement and payment of salary not received, even though the illegality of her removal has been recognized. The petitioner insists that this is even more serious because the judge had stability "until the respective competitive examination was held" according to the decree in which she was appointed.

15. Furthermore, the petitioner believes that all of the above implies a failure to recognize the right to take part in the judiciary under conditions of equality, based on Article 23(1)(c) of the American Convention. The petitioner notes that "all persons who satisfy the prerequisites established by the Constitution and the law for serving as judges have the right, once chosen and elected under conditions of equality, to remain in their positions, without that right's being limited by banal excuses such as the 'restructuring' of the judicial branch."

16. With respect to the State's argument according to which Mrs. Reverón had to indicate her desire to participate in the respective competitive examination at the time she filed her challenge, the petitioner indicates that there is no legal provision that requires such a statement of desire. Nonetheless, the petition notes that Mrs. Reverón did indicate her desire to participate in eventual competitive examinations, so much so that the suspension of the effects of the act of removal was sought when the appeal for revocation was filed. This request was denied by the Political-Administrative Chamber.¹⁰ The request would have been made for the eventual holding of the referenced competitive examination, an event that ultimately did

⁹ Offered in support here is the decision of the Political-Administrative Chamber of August 10, 2000, in the Gloria Pinho de Ramírez case. According to the petitioner, this ruling recognized the stability of provisional judges and orders the reinstatement of a provisional judge who had been removed illegally. In that decision, the Court stipulated that "this Chamber must order the Commission on the Functioning and Restructuring of the Judicial System to take the measures it deems advisable to immediately reinstate citizen Gloria Pinho de Ramírez to the position she held in the judicial branch, i.e., as Judge in the Seventh Court for the Transitory Procedural Regime and not to the Court erroneously indicated by the Commission on the Functioning and Restructuring of the Judicial System in the sanction through which it proceeded to remove the petitioner (...). Consequently, the aforementioned judge ... is incorporated in the judicial branch as of this decision, under the same conditions in which she found herself before the removal decision issued by the Commission on the Functioning and Restructuring of the Judicial System, with the duties and rights inherent to the position of Judge and, in particular, her proper participation in the processes of evaluation and competition to be carried out in the Judicial Branch."

¹⁰ This request for suspension was denied by the Political-Administrative Chamber in the interlocutory order dated May 13, 2003. Judge Rapporteur: Yolanda Jaimes Guerrero.

not happen. Suspension of the act would have been sought so that Mrs. Reverón could participate with all the special benefits derived from her status as a judge. The petitioner states that the State's attitude is contrary when it alludes to a competitive examination that has never been called much less held.

B. The State

17. In its brief dated November 10, 2005, the State indicated that pursuant to Article 17 of the Organic Law of the Supreme Court of Justice, the National School of the Magistracy is the training center for judges and other civil servants in the judicial branch. The State emphasized that the orders of the Political-Administrative Chamber, when ruling on the appeal filed by Mrs. Reverón, consisted of the evaluation of the judge during the entire period she was in the judiciary and that her entry into the judicial branch would be ordered after she passed the competitive examination to be opened for that purpose.

18. The State indicates that Mrs. Reverón did not ask to be included in the Special Program for Regularization of Tenure (PET) carried out by the National Magistracy School during the months of August and September 2005. However, the State indicates that once Mrs. Reverón completes her formal evaluation application at that school, she will be included as a participant in the Program for Regularization to be carried out during November and will be called to participate in the Public Competitive Examination provided she meets the requirements established in the Provisions for Evaluation and Competitive Examinations for Entry and Promotion in the Judicial Career now in effect.

19. Further, the State added that entry to the judicial career is based on a system of public competitive examinations, as provided by Article 255 of the Constitution of the Bolivarian Republic of Venezuela.¹¹ Consequently, the State indicates that Mrs. Reverón Trujillo "had to indicate her desire to participate in the respective competitive examination, given the appellant's status as a judge at the time she filed her challenge." On this basis, the State asks that the petition be ruled inadmissible.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

i. The Commission's jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

20. The petitioner is authorized by Article 44 of the Convention to file complaints with the IACHR. The petition indicates as the alleged victim Mrs. María Cristina Reverón Trujillo. Therefore, the Commission has jurisdiction *ratione personae* to examine the petition. With respect to the State, the State ratified the American Convention on August 9, 1977.

21. The Commission has jurisdiction *ratione loci* to hear the petition, in that it alleges violations of rights protected under the American Convention that would have taken place within the territory of a State Party to that treaty.

22. The IACHR has jurisdiction *ratione temporis* in that the obligation to respect and guarantee the rights protected under the American Convention were already in effect for the State on the date on which the events alleged in the petition would have occurred.

¹¹ Political Constitution of the Bolivarian Republic of Venezuela. Article 255. Entry to the judicial career and promotion of judges shall be through public competitive examinations that ensure the suitability and excellence of the participants who shall be selected by the judicial circuit courts, in the manner and under the conditions established by law. The appointment and swearing in of judges is the responsibility of the Supreme Court of Justice. The law shall guarantee citizen participation in the procedure for selecting and appointing judges. Judges may only be removed or suspended from their positions through procedures expressly provided for in the law. The law shall promote the professionalization of judges and universities shall collaborate in this goal, by organizing the corresponding judicial specialization in university law studies. Judges are personally liable, under the terms established by law, for unjustified error, delay or omissions, for substantial failure to adhere to procedural norms, for denial, partiality, and for crimes of corruption and prevarication they commit in the performance of their duties.

23. Finally, the Commission has jurisdiction *ratione materiae*, because the petition claims violations of human rights protected under the American Convention.

ii. Exhaustion of domestic remedies

24. Article 46(1) of the American Convention establishes as a requirement for the admissibility of a complaint the prior exhaustion of remedies available in the State's domestic jurisdiction. The petitioner alleges that the domestic remedies were exhausted through the decision of the judicial closure body (Supreme Court of Justice) dated October 14, 2004. For its part, the State did not submit preliminary objections regarding a failure to exhaust domestic remedies. Consequently, the Commission feels that the Venezuelan State did not invoke a failure to exhaust domestic remedies in the initial phases of the proceeding.

25. The Inter-American Court has established on numerous occasions that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed."¹²

26. Therefore, the Commission feels that the Venezuelan State waived the objection asserting non-exhaustion of domestic remedies, in that it did not submit it at the first procedural opportunity it had, i.e., in its response to the petition that started the procedure.

iii. Timeliness of the petition

27. In the petition under consideration, the IACHR has concluded that the State of Venezuela tacitly waived its right to file an objection asserting non-exhaustion of domestic remedies, for which reason Article 46(1)(b) of the American Convention does not apply. Nonetheless, the provisions of the Convention that require prior exhaustion of domestic remedies and the submission of the petition within a period of six months from the date of the final decision in the domestic jurisdiction are independent. Therefore, the Inter-American Commission must determine whether the petition in question was submitted within a reasonable period of time. In this respect, the IACHR notes that the final decision of the judicial closure body (Supreme Court of Justice) was rendered on October 14, 2004. The petition was filed on April 13, 2005, for which reason the Commission considers that it was submitted in a reasonable period of time.

iv. Duplication of proceedings and international *res judicata*

28. The file does not indicate that the subject of the petition is pending in any other proceeding in the international arena, nor does it reproduce a petition already examined by this body or another international body. Therefore, it is appropriate to rule that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

v. Characterization of the alleged facts

29. For purposes of admissibility, the IACHR must decide whether the petition presents facts that could be characterized as a violation, as stipulated by Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," as indicated in Article 47(c).

¹² The Inter-American Court has stated: [The] objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed." See: Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 88; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, para. 87; Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, para. 90; Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991, Series C No. 12, para. 38; Neira Alegria et al. Case, Preliminary Objections, Judgment of December 11, 1991, Series C No. 13, para. 30; Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, Series C No. 24, para. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

30. The standard for evaluating these points is different from that required regarding the merits of a complaint. The IACHR must perform a *prima facie* assessment to examine whether the complaint provides the foundation for an apparent or potential violation of a right guaranteed under the Convention and not to establish the existence of a violation. That assessment is a summary analysis that does not involve a prejudgment or preliminary opinion on the substance of the case.¹³

31. The Commission does not find that the petition is “manifestly groundless” or “obviously out of order.” Consequently, the IACHR believes that the petitioner has, *prima facie*, demonstrated the points required under Article 47(b) and (c).

32. Based on the foregoing, the Inter-American Commission believes that if the facts reported with respect to the violation of the judicial guarantees of the affected provisional judge are proven, this case depicts a possible violation of Article 8 of the Convention, with respect to the guarantee of independence and impartiality of the judicial branch. Specifically, the Commission repeats that the guaranteed tenure of judges is part of that guarantee.¹⁴ Further, the Inter-American Commission finds that if the facts relating to different treatment accorded to tenured judges and the existence of cases where the reinstatement of illegally removed provisional judges has been ordered are proven, the instant case describes a possible unreasonable difference in the treatment given to the former provisional judge involved. The Commission will examine whether these allegations constitute a violation of Article 24 of the Convention. In addition, it must be pointed out that Mrs. Reverón’s allegation that she did not have the judicial protection required by her status as a judge represents a possible violation of Article 25 of the Convention. The Commission also believes that if the petitioner’s allegations are proven with respect to not having access and guaranteed tenure in public office under generally equal conditions, this could constitute violations of Articles 23 (1) (c) and 24 of the American Convention.

33. The possible violations will be analyzed as they relate to the general obligations established in Articles 1 and 2 of the American Convention. Finally, in view of the allegations made by the petitioner, it should be pointed out that Article 29 of the Convention will be used, in its entirety, in this as in all matters, as the guideline for interpretation of the State’s obligations under the Convention.

V. CONCLUSIONS

34. Based on the factual and legal considerations presented, and without prejudging as to the substance of the matter, the Commission concludes that the instant case satisfies the requirements for admissibility stated in Articles 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the petition under study admissible as they relate to Articles 1(1), 2, 8, 23(1)(c), 24 and 25 of the American Convention.
2. To inform the State and the petitioner of this decision.
3. To initiate proceedings on the substance of the matter.
4. To publish this decision and include it in the Annual Report for submission to the General Assembly of the OAS.

Done and signed in the city of Guatemala, Guatemala, on the 20th day of the month of July 2006. (Signed): Evelio fernández Arévalos, President; Florentín Meléndez, Second Vice-

¹³ IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, para. 33.

¹⁴ I/A Court HR, Case of the Constitutional Court, Judgment of January 31, 2001, Series C No. 71.

president; Clare Kamau Roberts, Freddy Gutiérrez, Paolo G. Carozza and Victor E. Abramovich, members of the Commission.