

REPORT N° 38/06¹
PETITION 549-05
ADMISSIBILITY
MERCEDES CHOCRON CHOCRON
VENEZUELA
March 15, 2006

I. SUMMARY

1. On May 15, 2005, the Commission received a petition initiated by the now deceased Yadira Atía López, who was later replaced by Rafael J. Chavero Gazdik (hereinafter "the petitioner"), claiming that the Bolivarian Republic of Venezuela had violated the right to due process (Article 8), the right to participate in government (Article 23.1.c), the right to equal protection (Article 24, and the right to judicial protection (Article 25), a well as rights based on the representative democratic form of government (Article 29.c), considered together with the general obligation established in Article 1.1 and the duty stipulated in Article 2 of the American Convention on Human Rights (hereinafter the "American Convention"), to the detriment of Mrs. Mercedes Chocrón Chocrón (hereinafter the "alleged victim"), who was dismissed from her position as temporary judge on February 3, 2003 in Venezuela.

2. The petitioner alleged that the available domestic remedies were exhausted with the final judgment issued by the Supreme Court of Justice on February 3, 2003. In response, the Venezuelan State requested that the petition be declared inadmissible, since it held that the alleged victim, in her capacity as a temporary judge, did not enjoy the benefits that a judicial career confers on other judges, including stability in the exercise of public functions, hence her rights had not been violated.

3. After analyzing the positions of the parties, the Commission concluded that it was competent to decide on the complaint lodged by the alleged victim and her representative, and that the case was admissible, pursuant to Articles 46 and 47 of the American Convention. Consequently, the Commission decided to notify the parties and to publish this admissibility report and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. On May 15, 2005, the Commission received a petition from Yadira Atía López, who was later replaced by Rafael J. Chavero Gazdik, on behalf of Mercedes Chocrón Chocrón against the Bolivarian Republic of Venezuela. The IACHR assigned the petition number 549/05, forwarded the relevant parts to the State on June 13, 2005, and granted it a period of two months from the date of notification to submit the observations they deemed appropriate in accordance with Article 30 of the Rules of Procedure of the IACHR.

5. On August 15, 2005, the Commission received the observations of the State, which were forwarded to the petitioner on September 1, 2005.

6. On August 26 the Commission received from the petitioner the appendices to the complaint; they were forwarded to the State, which was given one month to submit observations.

7. On September 28, 2005, the Commission requested information from the parties regarding the specific legal framework regulating the appointment and dismissal of provisional judges, alternate judges, and temporary judges, respectively.

8. On October 12, 2005, the IACHR received the response by the petitioner to the report of the State, which was forwarded to the State on October 26, 2005.

9. On December 1, 2005, the petitioners sent additional information, which was submitted to the State on December 15.

¹ Commissioner Freddy Gutiérrez, a Venezuelan national, did not participate in the deliberations and voting on this report, pursuant to Article 17.2.a of the Commission's Rules of Procedure.

10. On December 9 the IACHR received from the Venezuelan State communication No. 01397, requesting an extension for presentation of its observations. On December 15, the IACHR granted an extension of 30 days.

11. On December 26, the State requested another extension. On that occasion, the IACHR granted an additional 20-day extension.

12. The IACHR has not received additional information from the State to date.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

13. The petitioner argues that Mercedes Chocrón Chocrón is a Venezuelan attorney who entered the Venezuelan Judiciary in 1970, and who held various positions (notary's clerk, associate judge of the Twelfth Court, provisional judge). On July 16, 1999, she was appointed judge of the Second Court of First Instance in Criminal Matters for the Transitional Procedural Regime of the Judicial Criminal Circuit of the Metropolitan Area of Caracas, and subsequently to the Fortieth Court of First Instance in Criminal Matters, in control of that Criminal Judicial Circuit.² Her position as a temporary judge was established by a decree of appointment of the Judicial Committee of the Supreme Court of Justice, "until the competitive examination takes place, as stipulated in Article 21³ and subsequent provisions of the Judicial Career Law." By virtue of the foregoing, the petitioner contends that the alleged victim should have remained in that post until the actual competition was held.

14. The petitioner argues that in the instant case, the right to due process and the right to defense of the alleged victim were violated when she was sent notification, by official letter No. TPE-03-0152 from the Judicial Committee of the Supreme Court of Justice, that her appointment as temporary judge was annulled as a result of observations which were received by that Committee but which the alleged victim neither had knowledge of nor access to, nor the possibility to defend herself against.

15. Petitioner contends that the decision to rescind the appointment of the alleged victim is evidence of the highly political nature of this decision. This contention is supported by the fact that the alleged victim, in her capacity as a criminal judge in charge of the Fortieth Court of First Instance in Criminal Matters, heard a controversial case involving a military dissident in which a judicial inspection was requested in order to determine whether the State was complying with precautionary measures granted by the IACHR in favor of General Carlos Alfonso Martínez. Petitioner reports that the alleged victim ordered that the judicial inspection take place on January 25, 2003, and submits that this is why the judge was summarily removed from her post on February 3, 2003, by an administrative order of the Judicial Committee of the Supreme Court of Justice, an entity which is not competent to adopt such decisions.

16. The petitioner reports that upon receipt of the summary dismissal, the alleged victim filed an administrative motion for reversal of that decision with the Committee that removed her from her post. When the Committee failed to respond, on May 5, 2003, she filed an appeal [*recurso de nulidad*] with the Administrative Political Chamber of the Supreme Court of Justice, to annul the decision of February 3, 2003. The petitioner further indicates that the purpose of that appeal was to challenge the dismissal decision and to request payment of the salaries lost until the time she is effectively reinstated. In addition, the alleged victim claims that the

² By an official letter dated October 20, 2002, the Full Chamber of the Supreme Court of Justice sent a communication to Mrs. Chocrón Chocrón to inform her that on October 28, 2002, the Judicial Committee had appointed her as a temporary judge "to replace Judge Norma Elisa Sandoval Moreno, as a result of the absolute vacancy created by her resignation." Official letter TPE-02-1901 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela.

³ Article 21 of the Judicial Career Law establishes as follows:

Artículo 21. The Council of the Judicature shall organize and direct the competitive examinations referred to in this law, in accordance with the regulations it issues for this purpose.

Judicial Committee of the Supreme Court of Justice did not have the authority to dismiss her, and that it had taken on powers that belonged to the Judiciary's Operations and Reorganization Committee, as stipulated in the Transitional Government Regime. The petitioner argues that in accordance with Venezuelan Law and until the Code of Ethics of Venezuelan Judges is adopted, the Operations and Reorganization Committee is the only entity with competence to issue administrative orders in exercise of disciplinary powers such as the removal of judges.⁴ She reports that on October 19, 2004, the Political and Administrative Chamber of the Supreme Court of Justice declared WITHOUT MERIT the appeal to annul the earlier decision [*recurso de nulidad*], on the grounds that the Judicial Committee had the power to appoint the alleged victim directly, without any intervening competition, and consequently the Committee also had the authority to annul her appointment, without being required to submit it to any procedures, and without any obligation to provide the factual or legal reasons underlying her removal.

17. The petitioner maintains that the way in which the alleged victim was removed violates her constitutional rights of due process, the right to defense, stability in her judicial career, and the guarantees involved in the disciplinary procedure established in the law and the National Constitution for removal or dismissal of judges. This is partly because the administrative order removing her from office provided no explanation as to the comments that were submitted to the office of the Judicial Committee and that led it to decide on her removal. Petitioner argues that provisional or temporary judges may be freely removed from their posts and replaced by other provisional or temporary judges and are constantly under threat of removal by an entirely discretionary act, thereby denying them any type of stability and the minimum guarantees of due process.⁵

18. The petitioner submits that even though domestic case law in Venezuela holds that provisional and alternate judges do not have an absolute right to permanence in their posts, this does not mean that they may be sanctioned, suspended, and removed without any kind of justification, or for opportune or discretionary reasons, without due guarantees. Petitioner argues that the existence of provisional or temporary judges has a negative impact on the independence and autonomy of the judiciary. Petitioner adds that since the entry into force of the 1999 Constitution, there has been a deliberate and premeditated practice of avoiding the competitive examinations for judicial posts, and that at the present time, over 80 percent of Venezuelan judges are provisional (regular, alternate, or temporary). In addition, she maintains that further evidence of the lack of independence of the Venezuelan Judiciary is found in the repeated rotation imposed on temporary or provisional judges, allegedly whenever they issue judgments contrary to the Government's interests.

19. As for violations of the right to a fair trial and judicial protection (Articles 8 and 25 of the American Convention), the petitioner contends that the case in point involves denial of justice as a result of the lack of access by the alleged victim to the comments which the Judicial Committee of the Supreme Court of Justice received and which served as the grounds for her dismissal. The petitioner argues that this act left the alleged victim in a completely undefined state of affairs.

20. With regard to the alleged violation of the right to equality, petitioner contends that she was the victim of discriminatory treatment in comparison with other judges, since she was subject to a procedure without the guarantees established by the American Convention for

⁴ Articles 22 and 24 of the Transitional Government Regime, published in Official Gazette No. 36,920 of March 28, 2000, establish as follows:

Artículo 22.- The Council of the Judicature, its Chambers and administrative offices shall become the Executive Directorate of the Judiciary [*Dirección Ejecutiva de la Magistratura*] attached to the Supreme Court of Justice, in accordance with Article 267 of the constitution approved by the people of Venezuela.

Until the Supreme Court of Justice organizes the Executive Directorate of the Judiciary, the powers to govern and manage, inspect and monitor the courts and the public defender offices, and the powers granted under current legislation to the Council of the Judicature in its Full and Administrative Chambers shall be exercised by the Operations and Reorganization Committee of the Judicial System.

Article 24.- The judicial disciplinary authority to be exercised by disciplinary courts pursuant to Article 267 of the approved Constitution shall be exercised by the Operations and Reorganization Committee of the Judicial System in accordance with the present transitional regime, until such time as the National Assembly adopts legislation on disciplinary procedures and courts.

⁵ When Mrs. Chocrón Chocrón was dismissed, she was replaced by another temporary judge.

adequate defense and respect for due process. The petitioner indicates that this procedure was applied to another group of judges in the same circumstances, in accordance with Article 49 of the Constitution of the Republic.

21. The petitioner argues that by removing Judge Chocrón Chocrón from her post, the State violated the right to the guarantee of permanence in public service established in Article 23(c) of the American Convention. The petitioner submits that the right of the alleged victim to have access to public service on conditions of equality was violated, because of the absence of stability and conditions of equality in the public service. She suggests that since she was appointed as a temporary judge until a competitive examination could be convened, the alleged victim had a reasonable expectation that she would be confirmed as a career judge through a public competitive examination, as established by law.

22. Insofar as the requirement of exhaustion of domestic remedies and other admissibility requirements are concerned, the petitioner argues that domestic remedies were exhausted by the decision of the judicial organ (Supreme Court of Justice) dated October 19, 2004, of which notification was given on November 15, 2004. The petition was lodged on May 15, 2005, namely, within the six-month period.

B. Position of the State

23. The State submits that the process for removal of the alleged victim was conducted in accordance with the law and that therefore the petition should be declared inadmissible.

24. The State indicates that the Judicial Committee of the Supreme Court of Justice is the organ that has the power to make temporary appointments, eminently discretionary in nature, in order to ensure continuity in the administration of justice, in the absence of the regular holder of the office, and of alternate judges appointed by the competitive examination. The State submits that Mrs. Chocrón Chocrón was serving as such a temporary judge at the time of her dismissal.

25. The State maintains that although Mrs. Chocrón Chocrón joined the judiciary when she was appointed as a temporary judge, she did not do so by the only constitutional channel provided for persons to embark on a judicial career, which is through a public examination. Therefore, at the time of her dismissal, the judge did not have the benefits conferred upon career judges, including first and foremost, stability in the public service. As a result, the State concludes that it is evident that the organ with the power to appoint judicial officials regulated by the judicial career may consequently proceed freely to rescind such an appointment if they should deem that advisable. In such cases, the decision on removal is not considered a disciplinary act but rather an act based on reasons of expediency which may not be challenged and are not subject to review. In this context, the State argues that the petitioner's allegation to the effect that only the Operations and Reorganization Committee of the Judicial system could decide to revoke the post of temporary judge of the alleged victim does not apply, because the act was not a disciplinary one.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

26. The petitioner is authorized by Article 44 of the Convention to lodge petitions with the IACHR. Since the petition indicates that the alleged victim is Mercedes Chocrón Chocrón, the Commission has jurisdiction *ratione personae* to examine the petition. As for the State, it ratified the American Convention on August 9, 1977.

27. The Commission has jurisdiction *ratione loci* to consider the petition, because it alleges violations of the rights protected under the American Convention which took place within the territory of a State party to that instrument. Moreover, the IACHR has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected in the American

Convention was already in force for the Venezuelan State on the date when the acts alleged in the petition occurred.

28. With regard to jurisdiction *ratione materiae*, the IACHR notes that the petitioner maintains that the State violated the following rights protected by the American Convention, to the detriment of Mercedes Chocrón Chocrón: the right to due process (Article 8); the right to participate in government (Article 23); the right to equal protection (Article 24); and the right to judicial protection (Article 25), all considered in conjunction with the general obligation stipulated in Article 1.1 and the duty established in Article 2.

B. Admissibility requirements

1. Exhaustion of domestic remedies

29. Article 46.1 of the American Convention establishes prior exhaustion of remedies under the domestic law of a State as a requirement for admissibility of a petition. The alleged victim submitted that available domestic remedies were exhausted by the final judgment issued by the Supreme Court of Justice on October 19, 2004. The State did not submit preliminary objections in relation to failure to exhaust domestic remedies. Consequently, the Inter-American Commission is of the view that the requirement of exhaustion of domestic remedies has been met.

2. Timeliness of the petition

30. Article 46.1.b of the Convention establishes that all petitions must be lodged within a period of six months from the date on which the petitioners were notified of the final judgment that exhausted domestic remedies. The petitioners allege that domestic remedies were exhausted by the judicial decision of the Supreme Court of Justice dated October 19, 2004, and that notification of said judgment occurred on November 15, 2004. The petition was lodged on May 15, 2005. Therefore, the Commission concludes that the petition was lodged within the period established by Article 46.1.b of the Convention.

3. Duplication of proceedings and *res judicata*

31. The case files do not contain evidence that the petition is pending in another international proceeding or that it is identical to a petition already examined by this or another international organization. Consequently, the requirements established in Articles 46.1.c and 47.d of the Convention are considered to have been met.

4. Characterization of the alleged facts

32. Article 47.b of the Convention establishes that the Commission shall declare inadmissible any petition or communication submitted that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention."

33. The State submitted arguments to the effect that the petition should be found inadmissible since removal of Mrs. Chocrón Chocrón from office as a temporary judge is a discretionary power of the entity that so decided and is not subject to review. In addition, the State indicated that the characteristics of the office of temporary judge do not include the benefits available to career judges, and so the alleged victim did not have equal guarantees.

34. The petitioner, on the other hand, contended that under the Venezuelan Constitution itself and the laws of the country, and by virtue of the protections of rights contained in the American Convention, no citizen may be deprived of the minimum guarantees of due process. The petitioner submitted that the dismissal of Mrs. Chocrón Chocrón was part of a policy of harassment of judges who issued decisions allegedly opposed to the interests of the country's political administration in highly controversial cases. Secondly, the petitioner argued that to dismiss a provisional judge, whether regular, alternate, or temporary, it is necessary to provide justification or to invoke the restrictive causes contained in the judicial career law and

the organic law of the Council of Judges, and that there are no constitutional, legal, or regulatory provisions that allow the discretionary dismissal of judges, whether regular, alternate, temporary, or provisional. And, thirdly and finally, the petitioner questions the power of the Judicial Committee of the Supreme Court of Justice to dismiss judges, arguing that this is the exclusive purview of the Operations and Organization Committee of the Judicial System.

35. The Commission is of the opinion that in this stage of the proceedings, it is not appropriate to establish whether or not there is a violation of the American Convention. For the purposes of admissibility, the IACHR must decide whether the facts set forth characterize a violation, as stipulated in Article 47.b of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of that Article.

36. The standard for assessing these allegations is different from the one required to decide on the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the petition provides grounds for the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This evaluation is a summary analysis which does not entail a prejudgment of or an advance opinion on the merits. The Commission's Rules of Procedure, on establishing two distinct stages of admissibility and merits, reflect this distinction between the evaluation required of the Commission in determining the admissibility of a petition and the examination required to establish a violation.

37. The Commission considers that in view of the importance of the stability of judges to ensure the independence and impartiality of the judiciary in a democratic society, even provisional, alternate, or temporary judges should enjoy minimal due process before being removed.⁶ The Commission believes that if the allegations are proven to be true, namely that the alleged victim was dismissed by an organ that was neither authorized to do so nor impartial, and that the guarantees of due process for challenging such a decision were not observed, these acts could characterize violations of Articles 8 and 25 of the American Convention, all of which would be considered in connection with the general obligations specified in Articles 1 and 2 of that instrument, in light of the case law of the inter-American system. The Commission is also of the opinion that in the event that the petitioner's allegations, to the effect that she did not have access to public office on conditions of equality, are proven to be true, they could also constitute violations of Articles 23.1.c and 24 of the American Convention. Finally, in view of the petitioner's allegations, it is important to point out that Article 29 of the Convention will be used in its entirety in this as well as in all matters, as a guide for interpreting the obligations of the State under the Convention.

38. Therefore, the allegations of the petitioner do not appear to be manifestly groundless or obviously out of order.

V. CONCLUSIONS

39. The Commission concludes that the case is admissible and that it is competent to examine the complaint lodged by the petitioner regarding the alleged violation of the right to a fair trial (Article 8), the right to participate in government (Article 23), the right to equal protection (Article 24), and the right to judicial protection (Article 25), all considered in the context of the general obligation established in Article 1.1 and the duty established in Article 2 of the Convention, and in accordance with the requirements established in Articles 46 and 47 of that instrument.

40. On the basis of the factual and legal arguments set forth above, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

⁶ See I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71.

1. To declare admissible the petition under consideration, in relation to Articles 8, 23.1.c, 24, and 25, considered in the light of the general obligation established in Article 1.1 and the duty set forth in Article 2 of the American Convention.
2. To notify the State and the petitioner of this decision.
3. To begin procedures on the merits of the case.
4. To publish this decision and include it in the Annual Report to be submitted to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15th day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Paolo Carozza and Víctor E. Abramovich, Commissioners.