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REPORT No. 56/18
PETITION 835-08
REPORT ON ADMISSIBILITY

BLANCA IMELDA ARRIAGA CÉSPEDES
PERU

Approved by the Commission at its session No. 2127 held on May 5, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 56/18. Admissibility. Blanca Imelda Arriaga Céspedes. Peru.
May 5, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Blanca Imelda Arriaga Céspedes and <i>Centro de Asesoría Laboral del Perú</i> (CEDAL, by the Spanish acronym)
Alleged victim:	Blanca Imelda Arriaga Céspedes
Respondent State:	Peru ¹
Rights invoked:	Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ² in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	July 17, 2008
Additional information received at the stage of initial review:	January 21, July 16, and August 24, 2009; and February 7 and 9, 2011
Notification of the petition to the State:	April 15, 2013
State's first response:	January 17, 2014
Notification of the possible archiving of the petition:	May 26, 2017
Petitioners' response to the notification regarding the possible archiving of the petition:	June 29, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (instrument of ratification deposited on July 28, 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 (right to a fair trial), 13 (freedom of thought and expression), 23 (political rights), , 25 (judicial protection) and 26 (economic, social, and cultural rights) of the American Convention, in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; March 25, 2008
Timeliness of the petition:	Yes; July 17, 2008

¹ In compliance with the terms of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in discussing or deciding this case.

² Hereinafter "the Convention" or "the American Convention."

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

V. FACTS ALLEGED

1. Mrs. Blanca Imelda Arriaga Céspedes (hereinafter, “the alleged victim”) and *Centro de Asesoría Laboral del Perú* (CEDAL, by the Spanish acronym) claim that on October 21, 1996, the alleged victim was appointed Senior Criminal Prosecutor of the La Libertad Judicial District. They contend that after she had held that position for seven years and as the result of an evaluation process, on February 7, 2004, the Plenary of the Magistrature Council (hereinafter, “the Council” or “the CNM”, by the Spanish acronym) groundlessly and arbitrarily ordered that her posting not be ratified, thus voiding her appointment and canceling her position as a prosecutor, even though she had discharged her duties efficiently and with probity. They state that the failure to ratify her in her position was punitive in nature, since in addition to canceling her appointment, it prevents her from rejoining the Public Prosecution Service. They contend that the administrative procedure that led to her non-ratification failed to observe due process by denying her the right of legitimate defense and by issuing a resolution that was not fully reasoned or grounded. In addition, they claim her right to receive information on her non-ratification process was curtailed, which constitutes a serious violation of her Convention-protected rights.

2. The petitioners state that the Constitution of Peru does not free the CNM of the obligation of explaining its resolutions whereby prosecutors are not ratified in their positions, despite its discretionary powers. Nevertheless, the petitioners maintain that resolution No. 058-2004-CNM of February 7, 2004, whereby the alleged victim was punished with the cancellation of her appointment as a prosecutor, failed to indicate the reasons and circumstances that led to her dismissal from that position. The petitioners contend that the resolution does not contain a considered analysis of the evaluation parameters set forth in the Organic Law of the CNM and, consequently, that the alleged victim was unable to question and challenge them. Since there were no specific charges made against the alleged victim, the petitioners hold that she was unable to present the necessary evidence to exercise her right of defense. Thus, the petitioners contend that the Council acted beyond the constraints of constitutional control.

3. They state that the Law Organic of the CNM provided for “the confidentiality of information on the results obtained in processes to appoint, ratify, and remove magistrates of the Judicial Branch and of the Public Prosecution Service.” They claim that this exceptional and restriction provision intended to protect the privacy of the people involved was arbitrarily extended by the CNM and applied to other documents in the alleged victim’s evaluation process, with which she was denied access to contents of the report adopted by the Evaluation and Ratification Commission. They contend that this measure was disproportionate, unconstitutional, and in breach of the Convention, given that neither the Constitution nor the Law on Transparency and Access to Public Information provided for such a restriction. As regards the exercise of this right, they claim that the precedents set by the Constitutional Court are emphatic in that no legal provision excludes the CNM from the obligation of providing magistrates with all the information available on their ratification processes, and that failure to abide thereby entails a violation of basic rights.

4. Furthermore, the alleged victim claims that the Constitution provides no legal opportunity at a judicial venue for questioning the measure adopted by the CNM. She states that she lodged a remedy for reconsideration with the CNM, which was ruled inadmissible on the grounds that no appeals were allowed. In response, she lodged an amparo proceedings relief with the Fifty-ninth Civil Court of the Superior Court of Justice, requesting that she be restored to her position and denouncing the Council for denying her access to the information about her non-ratification process, but that suit was rejected on March 8, 2006. She reports that she later lodged an appeal remedy with the Sixth Civil Chamber of the Superior Court; that remedy was dismissed on January 15, 2007, on the grounds that the motivation was unnecessary. Finally, she adds that she filed a constitutional remedy with the First Chamber of the Constitutional Court, which was rejected on December 19, 2007, in a decision that supported the CNM’s actions and of which she received notice on March 25, 2008. Consequently, the alleged victim contends that the remedies she filed proved fruitless and that the State failed to provide her with effective judicial protection. Finally, she claims that the State made payments to some magistrates who were not ratified by the Council, which constitutes unequal treatment with respect to the alleged victim, whose rights were also thus violated.

5. The State, in turn, holds that as provided for in the Constitution, the CNM carries out the ratification of prosecutors every seven years in consideration of their conduct and suitability, taking the following elements into account: (1) jurisdictional output, (2) merit, and (3) reports from bar associations and other bodies representing the legal profession. It states that an adopted resolution can be challenged by lodging a special remedy with the Council itself, with the final resolution admitting such judicial remedies as the aggrieved person may deem suitable. It acknowledges that since 2000, the CNM has issued ungrounded resolutions in its non-ratification processes. Peru notes, however, that prosecutors' evaluations observed the legal and constitutional rules in force, and that the dismissals were not a punishment and did not deny the prosecutors their acquired rights.

6. In addition, the State indicates that it has implemented a number of measures to provide redress to those who, like the alleged victim, claim to have been harmed by their ungrounded dismissals as a result of the CNM's evaluation and ratification process. It reports that 167 magistrates have been reinstated and that 79 judges have received economic compensation. It notes that the regulations have been gradually brought into line with the provisions and principles of the Constitution and of the American Convention, in order to ensure due process. As examples it cites the Constitutional Procedural Code and the new Regulations for the Evaluation and Ratification of Judges of the Judicial Branch and Prosecutors of the Public Prosecution Service, which provide a reasonable time for processing the ratification of prosecutors and require that public interviews be conducted with each. The Regulations also require that non-ratification resolutions be duly grounded.

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

7. According to the available information, the alleged victim presented a reconsideration remedy against the CNM's resolution No. 058-2004-CNM with the administrative justice system, which was ruled inadmissible because the resolution was not eligible for reconsideration. Subsequently, on April 28, 2004, within the constitutional justice system, she filed for *amparo* relief with the Fifty-ninth Civil Court of the Superior Court of Justice, but her filing was rejected. She lodged an appeal against that resolution with the Sixth Civil Chamber of the Superior Court, which was denied on January 15, 2007. Finally, on December 19, 2007, the Constitutional Court rejected the constitutional remedy lodged by the alleged victim. The State, in turn, maintains that the resolution could be challenged by means of a special remedy lodged with the CNM and that judicial remedies were admissible against the final resolution.

8. The Commission notes that at the time of the facts, the domestic legal framework provided that the Council's resolutions admitted no reconsideration remedies filed with the CNM or challenges lodged at a judicial venue.⁴ The IACHR notes that in the case at hand, the alleged victim lodged a reconsideration remedy with the Council and, later, presented the judicial remedies that were available and that she deemed suitable, both to challenge her non-ratification and to denounce the violation of her right of access to information, and so the petition meets the requirement set in Article 46.1.a of the Convention.

9. Regarding the filing deadline, the Commission notes that the Constitutional Court's final decision whereby domestic jurisdiction was exhausted was notified on March 25, 2008, and that the petition was lodged with the IACHR on July 17, 2008, thus meeting the requirement set in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

10. In light of the elements of fact and law set out by the petitioners and of the nature of the matter placed before it, the Commission believes that the petitioners' claims regarding the alleged victim's arbitrary dismissal from her position in the Public Prosecution Service, the alleged violation of the guarantees

⁴ Resolution No. 241-2002-CNM of the National Council of the Magistrature (April 13, 2002):

Article Seventeen: No reconsideration by the members of the Council shall be admissible against the result of a ratification vote. No challenge shall be admissible against it or its execution. No judicial review of the process or its results shall be admissible, as provided for by the Constitution.

of due process, of the right of defense, of being given a grounded resolution, and of being able to appeal against that decision, together with the alleged restriction of access to information regarding her non-ratification process, could tend to establish possible violations of the rights protected in Articles 8 (right to a fair trial), 13 (freedom of thought and expression), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in light of Articles 6 (work) and 7 (just, equitable, and satisfactory conditions of work) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

11. In addition, the Commission believes that if the alleged impediment to rejoining the Public Prosecution Service as a result of the cancellation of her appointment is proven, it could tend to establish a violation of Article 23 (political rights) of the American Convention.⁵ The possible violations will be analyzed in conjunction with the general obligations enshrined in Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 13, 23, 25, and 26 of the American Convention in conjunction with Articles 1.1 and 2 thereof; 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 in the city of Santo Domingo, Dominican Republic, on the 5th day of the month of May, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁵ IACHR, Report No. 60/06, Petition 406-05. Admissibility. María Cristina Reverón Trujillo. Bolivarian Republic of Venezuela. July 20, 2006, para. 32.