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REPORT No. 57/17
PETITION 406-04
REPORT ON ADMISSIBILITY

WASHINGTON DAVID ESPINO MUÑOZ
DOMINICAN REPUBLIC

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I. SUMMARY

1. On April 29, 2004, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition filed by Mr. Washington David Espino Muñoz (hereinafter “the petitioner,” “the alleged victim” or “Mr. Espino”) against the Dominican Republic (hereinafter “the Dominican Republic” or “the State”) on the grounds of alleged violations of the due process of law in the framework of disciplinary proceedings.

2. The petitioner claims that he was removed from his office as Magistrate of the Labor Court of the Judicial Department of San Francisco de Macorís through disciplinary proceedings that did not conform to the right to a fair trial. Likewise, he submits that the domestic legal framework of the Dominican Republic does not afford a remedy to challenge a temporary suspension without pay that the Supreme Court of Justice imposed on him for the duration of proceedings. In turn, the State asserts that the petitioner did not exhaust the writ of *amparo* or the action for review, which are available to challenge his unpaid suspension. Moreover, it claims that the disciplinary proceedings did conform to the right to a fair trial and were conducted in a reasonable time.

3. Without prejudging the merits of the complaint, after analyzing the position of the parties and pursuant to the requirements established in Articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and in Articles 31 to 34 of the IACHR’s Rules of Procedure (hereinafter “the Rules”), the Commission decides to declare this petition admissible in order to examine the arguments concerning the alleged violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws) and 25 (Right to Judicial Protection) of the Convention. The Commission decides to declare the petition inadmissible in relation to Articles 11 (Right to Privacy) and 24 (Right to Equal Protection). The Commission moreover decides to notify the parties of this decision and to publish and include this report in its Annual Report to the General Assembly of the Organization of the American States.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on April 29, 2004, and transmitted a copy of the pertinent parts to the State on July 23, 2004, establishing a deadline of two months to submit observations, under Article 30.3 of the Rules then in force. The State’s response was received on September 23, 2004, and was transmitted to the petitioner on September 30, 2004.

5. The petitioner presented additional observations on October 12, 2004 and July 6, 2005. In turn, the State transmitted additional observations on February 28, 2005. The observations presented by each party were duly transmitted to the opposing party. On April 8, 2010, the IACHR requested updated information to the petitioner, who responded on April 19, 2010. Subsequently, the State submitted additional observations on July 14, 2010. Both communications were transmitted to the opposing party.

6. On April 11, 2016 the IACHR requested the petitioner to inform whether the grounds for the petition subsist, informing that if there was no answer, the IACHR could decide to archive the file of the petition, according to Article 48.1(b) of the Convention and Article 42 of the Rules. The petitioner responded on April 20, 2016.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petitioner was a member of the Judicial Career in the Dominican Republic and held the office of Second Judge Deputy Chief Justice of the Labor Court of the Judicial Department of San Francisco de Macorís. He alleges that on August 12, 2003, disciplinary proceedings were filed against him on the grounds of purported violations of Law No. 327-98 concerning the Judicial Career of the Dominican Republic, namely on the grounds that he had allegedly refused to sign a judgment he did not agree with. He asserts that on October 28, 2003, in the framework of said disciplinary proceedings, the Plenary of the Supreme Court of Justice decided to impose on him a temporary suspension without pay, pursuant to Article 171 of the Rules of Procedure of the Judicial Career.

8. He indicates that by removing him from office, the Supreme Court of Justice abused its authority since, according to the Law of the Judicial Career, a Magistrate's suspension without pay is applicable only in cases of crimes and offenses punishable by imprisonment, which was not his case. He also claims that his suspension without pay exceeded the maximum term of three months established for disciplinary proceedings; hence it became a sanction with irreparable moral and economic damages.

9. He submits that his removal from office before there was a conviction affected his dignity and reputation as a public officer before other Magistrates and the society, which damaged his moral integrity and became a wrongful attack against his honor and reputation. He claims that the domestic legal framework of the Dominican Republic does not afford judicial or administrative remedies to challenge the suspension issued by the Plenary of the Supreme Court nor the indefinite extension of the suspension.

10. He claims that the writ of *amparo*, which the State indicates should have been exhausted, is not an appropriate means to challenge a decision by the Supreme Court of Justice given that a court of first-instance or a court of appeals is not competent to review administrative or jurisdictional decisions made by the Supreme Court of the Dominican Republic. He claims that even if the writ of *amparo* was an appropriate means, since a decision on the *amparo* could be impugned through an appeal, and afterwards through an appeal of cassation, and the final judgment would be issued by the initially accused party.

11. He asserts that in the Dominican Republic, disciplinary proceedings against judges are governed by their own legislation and that this legislation does not establish the possibility of filing for a review, which, according to the State, is a remedy that should have been exhausted. He indicates that the remedies established in the legislation are applicable only when the removal has been declared and punishment has been imposed by a court hierarchically lower to the Supreme Court of Justice.

12. He asserts that on October 5, 2004, by means of an interlocutory judgment in the proceedings, the Supreme Court of Justice stated that the decision to suspend him without pay was a result of the confession he issued when providing his statement to the examining judge on December 16, 2003. The petitioner submits that this was impossible since he had already been suspended for two months by the time his statement was taken. He claims that on December 8, 2004, the Supreme Court of Justice issued its judgment, finding him guilty of serious offenses in relation to his functions and removing him from office. He submits that on December 28, 2004, the Supreme Court of Justice declared the petitioner's request for a review inadmissible, putting an end to the disciplinary proceedings.

13. The petitioner indicated that he had to represent himself in proceedings since he was unable to afford a specialized counsel due to the temporary suspension of his pay. Moreover, he asserts that the charges brought against him were not previously transmitted to him, and that during the preliminary inquiry, he was unable to have access to the evidence. He also claims that the proceedings were not conducted in a reasonable period of time.

14. Furthermore, he submits that the Supreme Court of Justice decided to remove him from office on the basis of statements provided by the claimant magistrate and witnesses that were integral and

interested parties in the proceedings. He asserts that on June 9, 2004, the Supreme Court of Justice changed several provisions of the Rules of Enforcement of the Law of the Judicial Career concerning disciplinary proceedings; for example, it eliminated the presentation of indictments on the part of a trial judge and the prescription of alleged offenses on the part of legal officials. The petitioner submits that the latter were retrospectively applied to the disciplinary proceedings against him.

15. Based on the foregoing, the petitioner alleges that the State violated, to his detriment, the rights enshrined in Articles 5, 8, 9, 11, 24 and 25 of the American Convention, in relation to Articles 1 and 2 thereof.

B. Position of the State

16. According to the State, on April 22, 2003, the First Judge Deputy of the Chief Justice of the Labor Court of San Francisco de Macorís ordered an investigation into the situation of said Court. It asserts that on August 18, 2003, the Plenary of the Supreme Court of Justice appointed one of the Magistrates of said Court as the trial judge in connection with the investigation into the facts attributed to Mr. Espino. It claims that on August 19, 2003, the Chief Justice of the Labor Court of San Francisco de Macorís also filed a complaint against the petitioner on the basis of irregular facts sanctioned under the Law of the Judicial Career.

17. The State submits that on October 22, 2003, Mr. Espino was notified of the Supreme Court's decision to initiate disciplinary proceedings against him, and that on October 28, 2003, he was notified of its decision to temporarily remove him from office. It alleges that between October 2003 and January 2004, the trial judge carried out interrogations regarding the investigation into the facts attributed to Mr. Espino. It claims that on August 9, 2004, it was found that there existed sufficient grounds to initiate disciplinary proceedings against the alleged victim on the basis of several violations of the Law of the Judicial Career.

18. It indicates that the temporary suspension imposed on Mr. Espino was ordered by the Plenary of the Supreme Court of Justice in the exercise of its competences as the body of highest authority within the State's judicial branch, and that the measure was of an administrative nature and did not establish a final judgment. It asserts that Mr. Espino's suspension was imposed pursuant to Article 171 of the Rules of Enforcement of the Law of the Judicial Career, under which suspensions shall be imposed on judges subjected to disciplinary proceedings on the basis that their performance of their functions prevents the normal functioning of the jurisdiction to which they belong.

19. The State indicates that Mr. Espino could have presented a writ of *amparo*, which is a quick and effective remedy against any act committed by public officials, including officials of the Judiciary. It also claims that the petitioner could have lodged a request for review in relation to his temporary suspension since there have been cases where the Supreme Court of Justice accepted such requests concerning a suspension.

20. As to the alleged violations of the right to have his honor respected and his dignity recognized, the State claims that effects on this right depend on several aspects of the case given that to each person their integrity may be affected in different ways and to a different extent. Concerning the purported violations of the right to a fair trial, the State submits that Mr. Espino was heard and questioned about the proceedings filed against him in a reasonable time by the Supreme Court of Justice, which is an impartial, independent and competent court previously established by law. It indicates that the petitioner decided to represent himself in court and that, in this regard, his right to defense was not violated.

21. To conclude, the State asserts that given that the domestic remedies were not exhausted and that the facts described do not establish human right violations, the petition is inadmissible and requests the IACHR to declare it so.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

22. Under Article 44 of the Convention and Article 23 of the Rules, the petitioner is entitled to lodge complaints with the Commission. In the petition, the alleged victim is an individual person whose rights are protected by the American Convention, which the State of the Dominican Republic is bound to abide by. Concerning the State, the Commission declares that the Dominican Republic is a State Party to the Convention since April 19, 1978, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to assess the petition. The Commission is also competent *ratione loci* to assess the petition inasmuch as it describes violations that allegedly occurred within the territory of the Dominican Republic.

23. The Commission is competent *ratione temporis* since the obligation to respect and safeguard the rights protected by the Convention was already in force for the State by the time that the alleged events occurred. Lastly, the Commission is competent *ratione materiae* in relation to the alleged violations of human rights protected by the Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

24. Under Articles 46.1(a) of the American Convention and Article 31.1 of the Rules, for a petition to be admissible, domestic remedies must have been exhausted, in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to consider the alleged violation of a protected right and, if appropriate, resolve the situation before it is heard by an international court.

25. The petitioner submits that the Dominican Republic's legal framework does not afford remedies to challenge the Supreme Court of Justice's decision to impose on him a temporary suspension without pay for the period of the disciplinary proceedings. He asserts that he filed a request for review in relation to judgment of December 8, 2004, in which he was found guilty and removed from his office, and that said request was declared inadmissible by the Supreme Court of Justice on December 28, 2004. The State asserts that Mr. Espino could have filed a writ of *amparo* against the Court's decision to suspend him without pay. The State claims moreover that he could have filed a request for review since there have been cases where the Supreme Court of Justice accepted said remedy in relation to a suspension.

26. Concerning the temporary suspension without pay, the Commission notes that the legal remedies set forth in Law No. 327-08 concerning the Judicial Career and its Rules of Enforcement are applicable only against decisions made by courts hierarchically lower than the Supreme Court of Justice. At the same time, although the request for review is an appropriate means to challenge the judgment of removal from office, it is not applicable in connection with the measures issued during the proceedings, like the temporary suspension. Consequently, the Commission concludes that the exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2(a) of the American Convention and in Article 31.2(a) of the Rules is applicable in relation to the temporary suspension without pay imposed on the alleged victim.

27. With regard to the disciplinary proceedings, the Commission notes that they ended on December 28, 2004, when the Supreme Court of Justice declared inadmissible the request for review filed against the judgment that had removed him from his office as Magistrate. In this regard, the IACHR reiterates its doctrine that the analysis of the requirements established in Articles 46 and 47 of the Convention should be done in the light of the situation prevailing when it decides on the admissibility or inadmissibility of a

petition.¹ Therefore, the Commission concludes that in this case domestic remedies have been exhausted in accordance with Article 46.1(a) of the American Convention and with Article 31.1 of the Rules.

28. The IACHR notes that Article 46.2 of the Convention, given its nature and purpose, is a rule with autonomous content *vis-à-vis* the substantive provisions of the Convention. Therefore, the decision of whether exceptions to the requirement of exhaustion of domestic remedies established in that provision are applicable to this case in particular shall be made prior to, and separately from, an analysis of the merits of the matter since it depends on a standard of assessment different from that used in determining violations of Articles 8 and 25 of the Convention. It should be clarified that the causes and the effects that have hindered the exhaustion of domestic remedies in this case will be analyzed, as appropriate, in the report that the Commission adopts on the merits of the matter, in order to assess whether these actually establish violations of the Convention.²

2. Timeliness of the petition

29. Under Article 46.1(b) of the American Convention and Article 32.1 of the Rules, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. In this regard, under Article 46.2 of the Convention and Article 32.2 of the Rules, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

30. Concerning the disciplinary proceedings, domestic remedies were exhausted on December 28, 2004 through the decision of the Supreme Court of Justice, while the petition was under admissibility assessment. According to the abovementioned doctrine of the IACHR, the analysis concerning the requirements set forth in Articles 46.1(b) of the Convention and Article 32.1 of the Rules shall be done in light of the situation existing at the moment when it decides on the admissibility or inadmissibility of the petition.³ In light of this, the Commission finds that this requirement has been met.

3. Duplication of procedures and international *res judicata*

31. From the case file, there is nothing that indicates that the subject matter of the petition is pending in another international proceeding or that it duplicates a petition already examined by this or another international body. Therefore, the inadmissibility conditions set forth in Articles 46.1(c) and 47(d) of the Convention, and in Articles 33.1(a) and 33.1(b) of the Rules do not apply.

4. Colorable claim

32. The Commission must decide if the denounced facts tend to establish a violation of protected rights, under Articles 47(b) of the American Convention and Article 34(a) of the Rules, or if the petition is 'manifestly groundless' or 'obviously out of order,' under Article 47(c) of the American Convention and Article 34(b) of the Rules. The admissibility assessment criterion differs from the criterion used in the assessment of the merits of the petition since the Commission only undertakes a *prima facie* assessment to determine whether the petitioners have established the apparent or possible violation of a right protected by the Convention. It is a general analysis not involving a prejudgment of, or issuance of a preliminary opinion on the merits of the matter.

¹ IACHR, Report No. 15/15, Petition 374-05. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 39.

² IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015, par. 56.

³ IACHR, Report No. 15/15, Petition 374-05. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 41. Accord I/A Court H.R., Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297. paras. 25-28.

33. Moreover, the corresponding legal instruments do not require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. Based on the system's jurisprudence, it is for the Commission to determine in its admissibility report which provisions of the relevant Inter-American instruments apply and could be found to have been violated if the alleged facts are proven by sufficient elements.

34. The petitioner claims that the State violated Article 25 of the Convention since the legal framework of the Dominican Republic does not afford a legal remedy to challenge the decision that temporarily suspended him without pay, as a precautionary measure for the period of the disciplinary proceedings. He alleges violations of Articles 5 and 11 given that his suspension affected his moral integrity and his reputation as a public official, his honor and his dignity. He asserts that he was unable to access the evidence and that the proceedings did not conclude in a reasonable time, thus violating Article 8 of the Convention. He submits that provisions of the Law of the Judicial Career were applied retrospectively to his detriment, thus violating Article 9 of the Convention. Finally, he alleges violations of Article 24 of the Convention, but does not provide information in that regard.

35. The State indicates that when Mr. Espino was suspended without pay, he could have challenged the measure through a writ of *amparo* or a request for review, and that the proceedings conformed to the right to a fair trial and were carried out in a reasonable time by an impartial and competent court.

36. In view of the elements of fact and law presented by the parties and given the nature of the matter brought to its attention, the IACHR believes that, if proved, the facts denounced by the petitioner may establish violations of the rights protected in Articles 5, 8, 9 and 25 of the American Convention in connection with Articles 1.1 and 2 thereof. As to the petitioner's claim regarding the alleged violation of Articles 11 and 24, the Commission notes that the petitioner does not present arguments or evidence to substantiate the alleged violation; hence it is declared inadmissible.

V. CONCLUSIONS

37. Considering the abovementioned elements of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements established in Articles 31 to 34 of the Rules and in Articles 46 and 47 of the American Convention, and without prejudgment on the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition admissible in relation to Articles 5, 8, 9 and 25 of the American Convention on Human Rights, in connection with Article 1.1 and 2 of the same legal instrument;
2. To find the instant petition inadmissible in relation to Articles 11 and 24 of the American Convention on Human Rights;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved electronically by the Commission on the 5th day of the month of June, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena

Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.