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REPORT No. 223/19
PETITION 181-10
ADMISSIBILITY REPORT

SILVANA GRISELL FIESTAS CHUNGA
CHILE

Approved electronically by the Commission on December 5, 2019.

Cite as: IACHR. Report No. 223/19. Petition 181-10. Admissibility. Silvia Grisell Fiestas Chunga. Chile. November 9, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner	Silvana Grisell Fiestas Chunga
Alleged victim	Silvana Grisell Fiestas Chunga
Respondent state	Chile ¹
Rights invoked	Articles 1 (obligation to respect), 2 (duty to adopt domestic legislation), 20 (right to a nationality), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ² and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	February 16, 2010
Additional information received at the stage of original review	November 26 and 27, 2012 and October 15, 2015
Notification of the petition to the State:	January 9, 2017
State's first response:	April 17, 2017
Additional observations from the petitioner	February 2 and 8, 2017 and June 2, 2017
Additional observations from the State	June 6, 2017

III. COMPETENCE

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis:</i>	Yes
<i>Competence Ratione materiae:</i>	Yes, American Convention (deposit of instrument on August 21, 1990)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International res judicata:	No
Rights declared admissible:	Articles 8 (judicial guarantees), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1 (obligation to respect) and 2 (duty to adopt domestic legislation)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of section VI
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

1. The current petitioner and alleged victim, Silvana Fiestas Chunga, a Peruvian national, claims that the State of Chile has violated her rights after having rejected her request to practice law in

¹ Based on Article 17.2.a of the Rules of procedure of the Commission, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision of this matter.

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

³ Article 2, Article 3, Article 4 and Article 14 of the International Covenant on Civil and Political Rights; Article 2, Article 3 and Article 6 of the International Covenant on Economic, Social and Cultural Rights; Article 2 of the International Covenant on all Forms of Racial Discrimination; Article 2, Article 5, Article 19, Article 26 and Article 27 of the Vienna Convention on the Law of Treaties; Article I and Article V on the Convention of the Exercise of Liberal Professions; and Article 10 Convention on Cultural Exchange between the government of the Republic of Chile and the government of the Republic of Peru.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

the Republic of Chile despite the existence of international treaties that allow her to qualify for professional practice such as the Mexican Convention on the Exercise of Liberal Professions,⁵ ratified by Chile in 1909 and by Peru in 1903, and the Convention on Bilateral Cultural Exchange between the Republic of Chile and the Republic of Peru subscribed on May 5, 1978,⁶ and despite the fact that in other cases, the State has granted qualification to exercise said profession by applying the abovementioned treaties.

2. The petitioner asserts that the evaluation of the request contravenes her rights to practice law before tribunals leaving her defenseless by establishing a nationality requirement that should not be applicable as there is an international treaty with the State of the requesting foreigner. She denounces that Chile is asking her to study law again in Chile, change her nationality and that in an unfair and discriminatory manner, the State of Chile would only be applying art. 256 of the Tribunals Code and would be omitting making a statement over the application and existence of the abovementioned treaties, hence discriminating against her on the basis of race, nationality and gender. It contends that the State is responsible for failing in its “responsibility to carry out all necessary activities to make the international norm effective in the domestic law and create the necessary institutions to guarantee said rights”.

3. Specifically, the petitioner highlights that on December 10, 2008 she requested before the Supreme Court of Justice certification to practice law based on the requirements established by said Court for those lawyers whose degree were granted abroad, which was rejected on April 3, 2009 after this Court, considered that the request did not comply with the internal requirements as Mrs. Fiestas Chunga is a alien and studied in Peru. On this point, she indicates that in the text of the decision, the Supreme Court conditioned the granting of the authorization to the compliance with the requirements referred to in domestic law quoting Article 526 of the Organic Tribunal Code and considered that aliens could only practice as lawyers as long as they comply with the requirements of residence and of having completed their law degree in Chile subjecting, in addition, to what is expressed by international treaties.

4. The petitioner maintains that on July 28, 2009 she filed an appeal for reconsideration before the Supreme Court which, without any further grounds and legal analysis, it rejected on September 25, 2009. The petitioner affirms having presented several judicial remedies against these administrative resolutions. In particular, the petitioner describes that in October 9, 2008 she filed an individual protection claim before the Court of Appeals of Santiago against the administrative decision of September 25, 2009, that was declared inadmissible on October 22, 2009 after it was considered that the facts presented could not amount to a violation of constitutional guarantees and that, in addition, this procedure would not have been the appropriate alternative to contest said administrative resolution.

5. On October 23, 2009, the petitioner filed an action for reposition with a supplementary appeal against the previous resolution before the same Court. On October 29, 2009, the court denied the reposition action by arguing that the arguments presented did not alter the previous judgment and on November 6, 2009 resolved that the appeal was inadmissible. On November 11, 2009, the petitioner presented an appeal against the decision on the inadmissibility of the individual protection claim before the Supreme Court which was declared inadmissible on November 18, 2009 to which the petitioner presented a reposition appeal on November 20, 2009 which was also declared inadmissible on November 26, 2009.

6. The petitioner indicates that on October 19, 2009 she filed an action on the inapplicability due to the unconstitutionality of the administrative resolution issued by the Supreme Court on September 25, 2009 together with an amparo -action for protection of constitutional rights- to be granted the possibility to practice law in Chile before the Constitutional Court. On October 27, 2009, the Court determined that it had no jurisdiction to analyze the matter. She describes that on November 2, 2009 she filed an action on the inapplicability due to the unconstitutionality of Article 203 of the

⁵ Article 1: Nationals of any of the States signatory to this Convention may exercise freely in the territory of the other, the profession for which they were qualified with a diploma or title issued by the competent authority in each of the signatory countries; provided that said diploma or degree complies with the requirements established in arts. 4 and 5, provided that the law of the country in which the profession is to be exercised does not require for its exercise the status of citizen.

⁶ Article 10: “(...) Likewise, they recognize the validity of certifications and professional degrees, duly legalized, as well as partial and complete studies of Higher Education, within the norms established in the Convention of Mexico on the Exercise of Liberal Professions”.

Procedural Civil Code⁷ which was rejected on December 1, 2009 as there was no judicial process pending in which the inapplicability request could proceed. By means of this appeal, the petitioner argued that the Appeals Court in the decision issued on October 22, 2009 regarding the individual protection claim, it didn't rule on the appeal filed in subsidy and if said rule were applied, she may occur to the respective superior.

7. Lastly, the petitioner affirms that on October 16, 2009 she filed for a review before the Commission on Constitution, Legislation and Justice of the House of Representatives of the National Congress against the resolution of the Supreme Court and an amparo to be granted qualification to practice law. On November 11, 2009, the Commission considered that it was not possible to rule on a resolution of the Supreme Court or submit it for review, for which reason it was forwarded to the Presidential Advisory Commission. In view of this, on November 17, 2009, the petitioner filed an appeal for review with the Presidential Advisory Commission for the protection of the rights of the people of the Republic of Chile, which issued an official notice on November 25 addressed to the Supreme Court, which on January 14, 2010 responded by transcribing the resolution of September 25, 2009.

8. For its part, the State notes that the description of the facts set forth in the petition does not reveal the violations of the alleged rights established in the American Convention, and points out that some of the violations alleged by the petitioner are based on international treaties, both multilateral and bilateral, regarding matters not pertaining to human rights that are not under the competence of the IACHR. The State observes that there is a lack of information to determine the existence of an alleged violation of the right to equality before the law, since the petitioner only alleges that her application has been dismissed by the Supreme Court on the same day as the request of an Ecuadorian citizen, who completed his studies in Ecuador, was accepted under the application of international treaties and bilateral agreements. For its assessment in the specific case, more information is required to determine a possible violation under the competence of the IACHR, which does not occur in this complaint.

9. It points out that the petitioner had at its disposal all the procedural tools existing in the legal system and effectively used each of them with the purpose of reversing the ruling of the Supreme Court but obtained an adverse result. Therefore, the State affirms that it is not facing a case of violation of due process, but of disagreement with the result of the judgment, whose revision was requested by different judicial and administrative means. The State infers that the complaint only seeks a new instance of review that amends the ruling of the Supreme Court that rejected her request.

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

10. From the documentation available in the file, it appears that, against the rejection of her application to qualify as a lawyer before the Supreme Court of Justice, the petitioner filed a series of administrative and judicial appeals before different instances to dispute the alleged discrimination and the alleged omissions of the judicial authorities in administrative functions. In this regard, the State does not question the exhaustion of domestic remedies nor did it refer to other appropriate remedies to remedy the alleged violations. Therefore, the Commission concludes that this petition complies with Article 46.1.a of the American Convention.

11. As for the requirement of timeliness, according to information in the case file, the last official letter of the Supreme Court of Justice that ended the appeal for review before the Presidential Advisory Commission for the protection of the rights of the citizens of the Republic of Chile is from January 14, 2010, and this petition was received on February 16, 2010. Therefore, the Commission considers that it meets the requirements established in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

12. Based on the factual and legal arguments presented by the parties and the nature of the matter brought to their attention, the IACHR considers that, according to the information provided by the parties, the facts denounced by the petitioner could *prima facie* be considered potential violations of the rights enshrined in Articles 8 (judicial guarantees), 24 (equality before the law) and 25 (judicial

⁷ Art. 203: If the lower court denies an appeal that has been granted, the aggrieved party may occur to the respective superior, within a period of five days counted from the notification of the refusal, to declare the appeal admissible.

protection) of the American Convention, in accordance with its Articles 1.1 (obligation to respect) and 2 (duty to adopt domestic legislation) to the detriment of Mrs. Silvana Fiestas Chunga.

13. On the other hand, regarding the claim about the alleged violation of Article 20 (right to nationality) of the American Convention, the Commission notes that the petitioner has not offered allegations or sufficient support to allow *prima facie* consideration of its possible violation.

14. Regarding the other international instruments cited by the petitioner, the Commission lacks competence to declare violations of their norms. However, the IACHR may consider them when interpreting the rules established in the American Convention at the merits stage of this case, in accordance with Article 29 of the American Convention.⁸

15. Lastly, with respect to the State's fourth instance allegation, the Commission notes that by admitting this petition, it is not claiming to supersede the competence of domestic judicial authorities; rather, it will examine at the merits stage of the instant petition whether domestic judicial proceedings complied with all of the guarantees of due process and judicial protection and offered proper protection of access to justice for the alleged victim, as provided for under the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8,24 and 25 of the American Convention, in accordance with Articles 1.1 and 2; and

2. To find the instant petition inadmissible in relation to Article 20 of the American Convention; and

3. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 on the 9th day of the month of November, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Margarette May Macaulay, Luis Ernesto Vargas Silva (dissenting opinion), and Flávia Piovesan, Commissioners.

⁸ IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and family. Colombai. March 18, 2017, par. 9.