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REPORT No. 33/19
PETITION 870-11
REPORT ON INADMISSIBILITY

ANA MARÍA RANTIGHIERI
URUGUAY

Approved electronically by the Commission on March 31, 2019.

Cite as: IACHR, Report No. 33/19, Petition No. 870-11. Inadmissibility. Ana María Rantighieri. Uruguay. March 31, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Ana María Rantighieri
Alleged victim:	Ana María Rantighieri
State denounced:	Uruguay
Rights invoked:	Articles 5 (humane treatment), 8 (fair trial), 11 (privacy), 21 (right to property), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ¹ in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects) thereof; and Articles 6 (right to work), 7 (fair, equitable, and satisfactory conditions of work) and 9 (right to social security) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights. ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	June 23, 2011
Additional information received at the stage of initial review:	April 18, 2017
Notification of the petition to the State:	May 23, 2017
State's first response:	August 8, 2017
Additional observations from the petitioner:	March 5, 2018 and September 18, 2018
Additional observations from the State:	July 10, 2018

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, the American Convention (instrument of ratification deposited on April 19, 1985)

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:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, April 14, 2011
Timeliness of the petition:	Yes, June 23, 2011

V. ALLEGED FACTS

1. Ana María Rantighieri (hereinafter, “the petitioner” or “the alleged victim”) denounces alleged violations of her human rights in the context of disciplinary proceedings brought against her, which led to her dismissal from the post she held as a legal advisor at the Central Bank of Uruguay (hereinafter, “the BCU” or “the Bank”). She also alleges that during these proceedings she was subjected to eleven and a half hours of ongoing questioning, in violation of her human dignity.

¹ Hereinafter, “the American Convention.”

² Hereinafter, “the Protocol of San Salvador.”

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

2. The petitioner notes that in 1994 she began her career as a public servant at the BCU. She subsequently secured the permanent post of Legal Adviser Level 56, and in 2004 she was promoted to the position of Legal Pro Secretary. She states that in 2004 she was instructed to review all resolutions adopted by the Bank's Board of Directors since 2002. The petitioner recounts that when performing this task she realized that Resolution D/307/2003 contained an opinion of hers whose date was subsequent to the Resolution's date and therefore she requested the dossier to review it. She states that she took it apart in order to make photocopies. She left the disassembled dossier on a piece of furniture behind her desk in order to tend to other responsibilities and upon her return she noticed that the dossier was jumbled and the page which contained the part of her opinion revealing the chronological inconsistency was missing. She acknowledges that she proceeded to reprint that page of her opinion and include it in the file. She states that by mistake, however, she printed the page of a previous version of the opinion, which was slightly different from the final version. She adds that she then proceeded to erase the digital file of the report.

3. She explains that as a result of that event, she became the subject of an administrative inquiry, which led to her dismissal on January 31, 2007. She alleges that, although she made a mistake, it did not constitute serious misconduct that justified her dismissal, among other reasons because: (1) it did not alter the advice given; (2) it did not result in any benefit or harm to her, third parties, or the Bank; (3) the case had been finalized and archived; (4) erasing a file from a diskette of one's own does not constitute misconduct; (5) she never sought to conceal what had happened and voluntarily informed the Board of Directors about it.

4. She alleges that at the outset of the inquiry she was subjected to improper questioning, which began at 3:00 p.m. on February 23, 2005 and ended at 2:30 a.m. on February 24, 2005, totaling eleven and a half hours of ongoing interviews. Additionally, the petitioner alleges that the proceedings that led to her dismissal were plagued with irregularities that violated her rights to due process and presumption of innocence, and the right to defend herself. These irregularities included, *inter alia*: (1) the questioning was conducted as part of a administrative inquiry, after which, the investigating official decided to open an investigation [*sumario*] and, simultaneously, to close preliminary investigative proceedings [*investigación del sumario*], separately issuing a report recommending her dismissal without affording her the opportunity to defend herself; (2) when she requested access to the case file she was only authorized partial access, concealing from her the report that recommended her dismissal; the proceedings were unreasonably split into three different cases (the original case of the administrative inquiry, one in which the preliminary investigative proceedings were opened and closed, and another pertaining to a criminal complaint that the BCU subsequently filed against her), of which she only had full access to one and partial access to another; (3) the splitting up of the cases was used to request advice from the Disciplinary Council of the Bank and the National Civil Service Office without providing them access to the rebuttal evidence she had presented; (4) the officials from internal auditing who had already prejudged on the matter recommending her dismissal did not refrain from continuing their involvement in the proceedings and although she filed challenges, these were not processed; (5) the preliminary proceedings were unjustifiably broadened in order to accuse her of misconduct for the content of her advice even though she was protected by technical autonomy and other attorneys before and after had provided the same advice without being punished for it; (6) given the lack of access to information, she was forced to file an appeal on July 21, 2005, relying on partial information; and (7) the Board of Directors and the investigating officials did not consider her rebuttal evidence nor did they rebut her arguments.

5. The petitioner likewise denounces that the auditors summoned 14 witnesses to make statements, yet she was never summoned to any of the hearings. She argues that examination of witnesses and questions must be simultaneous; thus, it is not enough to say that she was entitled to read the statements and request that witnesses be called again. The petitioner acknowledges that BCU rules of procedure did not require that witnesses be questioned when the subject of the investigation was present, but alleges that it was required pursuant to constitutional principles and international law. She adds that it would not have been effective to request witnesses' appearance months later because it would have been very difficult for them to refute what they had stated previously. Furthermore, BCU rules of procedure did not ensure witnesses' appearance; rather, it left this decision up to them. The petitioner alleges that although the BCU Office of Legal Counsel detected the existence of irregularities in the proceedings, it just provided "friendly

advice” to the auditors regarding how to go forward with the proceedings. She notes that the irregularities were likewise detected by the advisers to the Office of the President and the Civil Service Office.

6. The petitioner alleges that the BCU proceedings seriously harmed her mental and moral integrity. She further alleges that her personal and professional reputation were compromised given the nationwide press coverage that the proceedings brought against her received, thus violating her right to privacy. She states that her earnings as a BCU advisor represented the lion’s share of her family’s livelihood and her dismissal therefore caused her to lose all her savings, leaving her in a precarious economic situation, in violation of her right to property. She also points out that her right to equal protection was violated and she received discriminatory treatment because the proceedings brought against her were differentiated and prejudicial as compared to how BCU disciplinary proceedings are normally conducted. She adds that her unlawful dismissal caused her to lose access to the Uruguayan banking sector’s specialized social security, underscoring that she had contributed for years to the Banking Pension Fund [*Caja Bancaria*] and that, if her dismissal were not to be reversed, she would lose her right to receive pension from the Fund.

7. The petitioner points out that subsequent to her dismissal she filed the applicable administrative appeal, which was unsuccessful. She then filed an action in the Contentious-Administrative Court, petitioning the Court to set aside her dismissal. This petition was denied pursuant to Judgment No. 981 of November 23, 2010. She filed an appeal for review with the same Court, which was dismissed pursuant to Judgment of 2011. She states that with that decision, of which she was notified on April 14, 2011, all legal and administrative remedies were exhausted, and therefore she presented her petition in a timely manner.

8. The petitioner indicates that, subsequently, she was subject to a criminal conviction, but considers that this has nothing to do with her petition. She acknowledges that in the criminal jurisdiction she only exhausted the remedy of appeal, but not the cassation appeal; however, she underscores that failure to exhaust the criminal cassation appeal does not mean domestic remedies have not been exhausted with respect to her dismissal, which is the subject of the petition. She alleges that the outcome of the criminal proceedings does not validate the outcome of the administrative proceedings because the criminal judges erred in trusting the BCU and considering its claims as truthful when many were false.

9. The State, for its part, points out that the petitioner’s dismissal was the result of the BCU legitimately exercising its disciplinary authority given her serious misconduct. The State notes that the decision to dismiss the petitioner was made subsequent to an administrative investigation in which all the guarantees of due process were respected—a decision that was later upheld by the competent bodies of the State that conducted the judicial review in the administrative and criminal jurisdictions. The State highlights that the judicial branch is an independent branch of government in the Uruguayan State.

10. The State points out that the Contentious-Administrative Court considered that, while there had been irregularities in the proceedings brought against the petitioner, these were corrected in due course and did not have an impact on the administration’s final decision nor did they impede the petitioner from defending herself, submitting evidence, or presenting her rebuttals. Furthermore, the Court decided that the failure to comply with form should not be evaluated in and of itself, but, rather, based on the injury it causes and that “no harm at all was perpetrated, and there is no nullity without harm.” As for the witnesses, the Court concluded that the petitioner had the opportunity to examine evidence submitted once the entire proceedings had been made available for this purpose and at that time could have requested statements from the same witnesses and from others, but failed to do so. With respect to the allegation that her objections to the officials were ignored, the Court concluded the petitioner simply requested that the “disciplinary proceedings brought continue under an official who was suitable or impartial in the matter,” which does not constitute a formal objection. The Court did not find that the proceedings had been vitiated by bias, prejudgment, or persecution either, and determined that the change from an inquiry to an investigation could not be objected to by itself, given that the petitioner had confessed to her misconduct. The Court likewise concluded that the lengthy questioning of the petitioner was due to her evasive and indecisive answers.

11. The Contentious-Administrative Court also examined the merits of the matter, concluding that the misconduct had been proven and had been acknowledged by the petitioner. It found that broadening

the investigation had not been decisive in the offender's dismissal because other facts had been confirmed which by themselves warranted the penalty adopted. The Court considered that the misconduct was not merely a formal matter because the petitioner had replaced the original opinion with another that was less emphatic. The Court also concluded that the punishment for this misconduct was not disproportionate and the administration had not misused its powers.

12. The State alleges that the fact that the petitioner was later convicted pursuant to a final judgment in a criminal court for the same misconduct validates the proceedings brought by the BCU and the Contentious-Administrative Court. It considers that the petitioner acted in bad faith and in breach of the principle of transparency by failing to inform the Inter-American Commission that she had been the subject of a criminal conviction that had reached the stage of *res judicata*. The State argues that the petitioner cannot allege that there were errors in the criminal conviction when she did not file a cassation appeal. It alleges that the failure to file such an appeal shows that the petitioner accepts the veracity of the conviction's content and lacks legal arguments to rebut it. It does not consider valid the argument that since the sentence was served under economic hardship or need, this justified the petitioner not filing the cassation appeal, inasmuch as she had access to free legal defense from the Office of the Public Defender and if the cassation appeal had been successful, she would have been acquitted and been provided financial compensation.

13. The State underscores that the impairments to the petitioner's rights to work and to property are the logical consequence of her justified dismissal. It highlights that the petitioner has not been prevented from looking for another job or from practicing her profession. The State also notes that it did not violate the principle of equal protection because it applied the same proceedings and rules of procedure to the petitioner that are applicable to any BCU official who engages in misconduct. It adds that the principle of confidentiality was respected, as all proceedings were kept secret until there was a final judgment, and therefore, the penalty meted out in the legitimate exercise of the administration's disciplinary authority cannot be considered an undue infringement upon honor and dignity.

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

14. The Commission takes note that the State has indicated that in the criminal jurisdiction the petitioner failed to exhaust the cassation appeal without justification. The petitioner has underscored that this is irrelevant because her petition refers to the administrative proceedings that led to her dismissal. The Commission deems that, given the petition's subject matter, the relevant domestic remedies are those that were exhausted with respect to the administrative decision for her dismissal. In this regard, there has been no dispute about the fact that the decision issued by the Contentious Administrative Court at the review stage is a final decision. Therefore, the Commission finds that the petition meets the requirements of Article 46(1)(a) of the American Convention. Given that the petitioner was notified of the decision on April 14, 2011, and the petition was presented on June 23, 2011, said petition met the filing deadline provided for in Article 46(1)(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIMS

15. The Commission recalls that it is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the judicial safeguards. In the present case, the petitioner has made reference to a number of alleged irregularities that would have occurred in the context of the administrative proceedings leading to her dismissal. The State has indicated that the situation was duly examined by the domestic judicial authorities who concluded that, while there were irregularities in the initial stages of the process, these were timely corrected and did not hamper the petitioner's right to her defense. The petitioner has no contributed elements of fact or law that indicate that the proceedings before or the decision from the domestic judicial authorities are tarnished in a manner that implies a violation of the American Convention. Therefore, The Commission concluded that the instant petition results inadmissible with base on article 47(b) of the American Convention, given that no prima facie violation of the Convention emerges from the facts presented.

16. The Commission notes that with regard to the allegations of violations of Articles 6 (right to work), 7 (just, equitable, and satisfactory conditions of work), and 9 (right to social security) of the San Salvador Protocol, the competence provided for under the terms of Article 19(6) thereof to find violations in the context of an individual case is limited to Articles 8 and 13. As for the remaining Articles, in keeping with Article 29 of the American Convention, the Commission can take these into account to interpret and apply the American Convention and other applicable instruments.

VIII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of this decision 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 on the 31st day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.