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REPORT No. 20/19
PETITION 735-08
REPORT ON ADMISSIBILITY

CARLOS ANDRÉS MENESES RUIZ
VENEZUELA

Approved electronically by the Commission on March 5, 2019.

Cite as: IACHR, Report No. 20/19, Petition 735-08. Admissibility. Carlos Andrés Meneses Ruiz.
Venezuela. March 5, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jose Eliseo Molina Chacón
Alleged victim:	Carlos Andrés Meneses Ruíz
Respondent State:	Venezuela
Rights invoked:	Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights ¹ in relation to Article 1.1 of the same instrument; Article 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 ; Article XVI (right to social security) of the American Declaration of the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	June 24, 2008
Notification of the petition to the State:	June 18, 2014
State's first response:	May 26, 2017
Additional observations from the petitioner:	October 13, 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 (deposit of instrument of ratification made on July 23, 1977)

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	Article 8 (right to a fair trial), 21 (right to property), 25 (right to judicial protection) and 26 (progressive development) of the American Convention in relation to its Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on February 21, 2008
Timeliness of the petition:	Yes, in the terms of Section VI

¹ Hereinafter "the American Convention" or "the Convention".

² Hereinafter "the Protocol of San Salvador".

³ Hereinafter "the American Declaration" or "the Declaration".

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

V. FACTS ALLEGED

1. The petitioner Jose Eliseo Molina Chacón alleges the international responsibility of the Venezuelan State for the arbitrary modification of Mr. Carlos Andrés Meneses Ruiz's right (hereinafter "the alleged victim" or "Mr. Meneses") to receive a pension granted to him by the administration. He alleges that subsequent judicial decisions were groundless and that there has been a violation of his rights of defense and of his access to justice to the consequent detriment of social services received.

2. He alleges that Mr. Meneses served in the public company *Cadafe* and in the Welfare and Social Benefit Institute of the State of Táchira, from July 16, 1961, until July 17, 2000, and held the position of Manager General. On June 1, 2000, the alleged victim requested the Board of the Public Welfare and Social Benefit Institute of the State of Táchira (hereinafter "Institute Board") to grant his retirement in accordance with the provisions of the Constitution of the Bolivarian Republic of Venezuela and the Statute on the Retirement and Pensions Regime for Officials or Employees of the National, State and Municipal Public Administration. On July 17, 2000, in an extraordinary meeting No. 096, the Institute Board granted the benefit of retirement, in accordance with the Retirement System Statute, of more than 14,000,000 *bolivares*, which - with the monetary conversion that took place in Venezuela - amounted to 14,000 bolivars (70% of average salary), a salary to be calculated from the moment the new general manager was appointed.

3. He indicates that on October 13, 2000, the Institute Board appointed the new general manager, but the new authorities of the Board did not take into account the retirement benefit granted and failed to include him in the list of retirees. As a result, the alleged victim requested payment from the new authorities, without receiving a response.

4. On April 24, 2001, the new Board of Directors of the Institute published resolution No. 7 of March 22, 2001, in the newspaper "Diario la Nación", which notified the alleged victim of the correction due to a calculation mistake in the original amount of his retirement amounting to 75,000 bolivars (after the revaluation, more than 75 bolivars). The petitioner argues that under the Organic Law of Administrative Procedure, it was the duty of the authorities of the Institute of Public Welfare and Social Benefit to initiate one of the procedures established by law in the administrative jurisdiction, either the Ordinary Procedure or the Summary Procedure, which would allow the alleged victim to present his arguments of fact and law regarding the reduction of the amount of his retirement. He indicates that by not allowing him to participate in the Administrative Procedure, the Venezuelan State violated his right to a defense and to due process regarding the correction of the amount of his retirement.

5. On November 16, 2001, the alleged victim filed a contentious administrative appeal for annulment against this decision together with a precautionary *tutela* action with the Superior Civil and Contentious Administrative Court of the Judicial District of the Andes Region (hereinafter the "Superior Court"), for violation of his right to a defense and to due process, for being groundless and for lack of personal service. On September 26, 2002, the Superior Court admitted the appeal in conjunction with the precautionary *tutela* action, stating that as there had been a revocation of acts creating subjective rights, there had been a violation of the right to due process by effecting a modification without any proceedings where the affected party could put forward their allegations. The Court ordered that the Institute of Public Welfare and Social Benefit of the State of Táchira pay pension in the amount established in the administrative act of July 17, 2000. On January 23, 2003, the Institute submitted the judgment to the Contentious Administrative Court of Appeals for reconsideration as a "binding consultation". On March 29, 2006, the Second Court of Contentious Administrative Matters, decided to annul the decision issued on September 26, 2002, by the Superior Court, on the ground that as it concerned a "correction of material errors or calculation" by the administration, it was not necessary to have the interested party's participation in the proceedings as his subjective rights would not be affected. This decision was served on May 2, 2006.

6. On September 26, 2006, the alleged victim filed a Constitutional *Amparo* Action with the Constitutional Chamber of the Supreme Court of Justice (hereinafter, "Constitutional Chamber"). On May 8, 2007, in Decision No.868, the Constitutional Chamber admitted the *amparo* action and on February 21, 2008, declared it null and void, alleging that [...] the allegations made by the applicant did not amount to a

constitutional breach, because the alleged lack of evidence has no consequence in the assessment made by the decision under review, on the Organic Law of Administrative Proceedings as applicable to the instant case (article 84), and that it is within its jurisdiction to assess. Therefore, the disagreement of the applicant is, in practice, a challenge to such freedom of assessment that cannot be the object of constitutional protection [...]". The petitioner alleges that this sentence included a separate opinion where one of the Justices considered that the judgment of November 16, 2001, should have been confirmed because "[...] that the amount of the pension was changed due to a modification of the substantive criterion on the type of base salary to be considered as a basis for its calculation; therefore, it was a conceptual rather than a numerical issue: the calculation was based [...] on an intentional act, a voluntary and non-material conduct that demanded the exercise of revocation powers [...]"

7. For its part, the State argues that the petitioner has failed to comply with the timeliness for submission established in Article 32.1 of the IACHR's Rules of Procedure, because the petition before the IACHR was filed on June 24, 2008, despite the fact that the decision issued by the Second Contentious Administrative Court on March 29, 2006, was the one that exhausted the ordinary and appropriate domestic judicial remedy. The State argues that this decision generated formal and material *res judicata*, so that there could be no judicial appeal against it.

8. In addition, the State argues that the petition must also be declared inadmissible inasmuch as it does not state facts tending to establish a violation of human rights and, in that sense, it is manifestly groundless, in accordance with the provisions of Article 34.a and b. of the IACHR's Rules of Procedure. The State maintains that there has been no violation of the alleged victim's right to the social security recognized in Article XVI of the American Declaration of the Rights and Duties of Man, since the alleged victim enjoys, receives and benefits from a pension granted by the Institute of Public Welfare and Social Benefit of the State of Táchira. It argues that through his claims before the IACHR, the alleged victim intends to benefit unduly, illegitimately and illegally from an error committed by the Board of Directors of said Institute, as the amount of retirement granted by mistake and from which he intends to take advantage to the detriment of public patrimony, represented approximately 10,000% more than the minimum wage in force at that date.

9. On the other hand, the State argues that the alleged facts also fail to establish a violation of the right to a fair trial, since the only thing evident from the petition is that the alleged victim disagrees with the content of the sentences issued by the jurisdictional organs contrary to his claims. The State argues that the Commission is being made to believe that the actions of the Superior Civil and Contentious Administrative Court were illegal and arbitrary, without taking into account that according to national law any decision contrary to public patrimony must be submitted to binding consultation before the competent Superior Court. In addition to the foregoing, the State maintains that the decisions of the domestic courts were duly reasoned, and as such the petitioner's allegation is groundless.

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

10. The State alleges that the petition must be declared inadmissible due to its lack of timeliness. The moment in the procedure closing discussions on the controversy in the domestic courts occurred with the ruling of the Second Administrative Contentious Court, which was served on May 2, 2006. It submits that the petition was filed with the IACHR on June 24, 2008, that is, almost two years after the notification of the decision exhausting the ordinary domestic judicial remedy, so the petition fails to fulfill the timeliness period of six months established in Article 32.1 of the IACHR's Rules of Procedure. On this point, as a result of the fact that the extraordinary appeal for a Constitutional *Amparo* was admitted for consideration by the Constitutional Chamber of the Supreme Court of Justice, the Commission considers that it was a suitable way exercised by the alleged victim in order to raise his allegations at the domestic level. Nothing leads the Commission to regard filing this appeal to have been manifestly unreasonable or reckless.⁵ In light of the

⁵ See IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alexander Santillán Hermoza. Peru. April 15, 2016, paras. 25 and 26. IACHR, Report No. 156/17. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 17.

foregoing, the IACHR considers that the petition complies with the six-month timeliness period because the complaint before the Commission was filed on June 24, 2008, and domestic remedies were exhausted on February 21, 2008, with notification of the decision of the Constitutional Chamber of the Supreme Court of Justice resolving the Constitutional *Amparo* Action.

VII. ANALYSIS OF COLORABLE CLAIM

11. In light of the factual and legal elements submitted and the nature of the matter brought to its attention, the IACHR considers that if proven, the allegations raised by the petitioner relating to the alleged violation of due process rights, rights to judicial protection, as well as the right to social security, could constitute a prima facie violation of Articles 8 (right to a fair trial), 21 (right to property), 25 (right to judicial protection) and 26 (progressive development) of the American Convention in relation to Article 1.1 (obligation to respect rights) of the same instrument to the detriment of Mr. Carlos Andrés Meneses Ruíz.

12. With regard to the allegations of violations of Article 9 (right to social security) of the Protocol of San Salvador, the IACHR points out that the competence provided for in the terms of Article 19.6 of said treaty to establish violations in the context of an individual case is limited to Articles 8 and 13. With respect to the other articles, in accordance with Article 29 of the American Convention, the Commission may take them into account in order to interpret and apply the American Convention and other applicable instruments.

13. With respect to the claim for the alleged violation of Article XVI (right to social security) of the American Declaration, the Commission has previously established that once the American Convention enters into force with respect to a State, the Convention and not the Declaration becomes the primary source of law to be applied by the Commission, provided that the petition alleges violations of substantially identical rights enshrined in the two instruments. Considering that Article 26 of the Convention makes a general reference to economic, social and cultural rights, and that these must be determined in connection with the OAS Charter and other applicable instruments, the Commission establishes that in cases alleging any specific violation of the Declaration related to the general content of Article 26 referred to above, the analysis of their interrelationship and identity should be made at the merits stage.⁶

14. Finally, with respect to the State's arguments regarding the fourth instance formula, the Commission recognizes that it lacks competence to review decisions issued by national courts acting within their competence, pursuant to due process and judicial guarantees. However, it reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits whenever such decisions pertain to domestic proceedings that could violate rights enshrined in the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 21, 25 and 26 of the American Convention in relation to its Article 1.1;

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 on the 5th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

⁶ See IACHR, Report No. 34/18, Petition 1018-07. Admissibility, Guillermo Juan Tiscornia and family. Argentina. May 4, 2018, para. 22.