

OEA/Ser.L/V/II.152
Doc. 10
August 15, 2014
Original: Spanish

REPORT No. 78/14
PETITION 708-05
REPORT ON ADMISSIBILITY

ALEJANDRO PONCE MARTÍNEZ
ECUADOR

Approved by the Commission at its session No. 2002 held on August 15, 2014
152 Regular Period of Sessions.

Cite as: IACHR, Report No. 78/14, Petition 708-05. Admissibility. ALEJANDRO PONCE
MARTÍNEZ . ECUADOR. August 15, 2014.

REPORT No. 78/14
PETITION 708-05
ADMISSIBILITY
ALEJANDRO PONCE MARTÍNEZ
ECUADOR
AUGUST 15, 2014

I. SUMMARY

1. On June 23, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Alejandro Ponce Martínez (hereinafter “the petitioner” or “the alleged victim”) wherein he contends that the Republic of Ecuador (hereinafter “the State” or “the Ecuadorian State”) violated articles 8 (judicial guarantees), 9 (freedom from *ex post facto* laws), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive development) of the American Convention on Human Rights (hereinafter “the American Convention”), in conjunction with Article 1(1) thereof.

2. The petitioner argues that his rights to work and to a hearing by an independent court were violated following the removal of the Supreme Court justices by virtue of an act of the Congress of December 8, 2004, the subsequent amendment of the Statute of the Judiciary, and the procedure followed to appoint Supreme Court justices, which was carried out by the Qualifying Committee established under the new law. The petitioner further contends that as a litigation attorney, the measures adopted by the State affected his right to practice his profession before independent courts. He also alleges that although he wanted to participate in the proceedings and hearings to challenge the candidates for the Supreme Court of Justice, in many cases the courts did not process the petitions he filed to that end; he argues that even when the courts ruled in his favor, the hearings were never convened. For its part, the State alleges that the petitioner did not exhaust the remedies available to him as he filed his petition with the Commission before the domestic courts had handed down a final decision in his case; hence, the State contends, the petitioner did not comply with the rule stipulating the time period for filing petitions before the Commission. It also maintains that the internal remedies available would have been effective in resolving the alleged victim’s legal situation and that the Commission, whose jurisdiction is subsidiary in nature, does not have the authority to review judgments handed down by the Ecuadorian courts acting within their sphere of competence and in observance of the guarantees of judicial due process.

3. After examining the positions of the parties and in compliance with the requirements set forth in articles 46 and 47 of the Convention, the Commission decided to declare the case admissible for purposes of examining the alleged violation of articles 2 (the obligation to adopt domestic legislative measures), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in connection with its Article 1(1). It also decided to declare the case inadmissible for purposes of the examination of the alleged violation of articles 9 (freedom from *ex post facto* laws), 24 (equal protection) and 26 (progressive development). The Commission also decided to notify the parties of the report and to order its publication in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

4. The complaint was received on June 23, 2005 and registered under number 708-05. Two other complaints were received from the same petitioner on different dates: 712-05, received on August 23, 2005, and 1374-05, received on November 28, 2005. The petitioner sent additional information on December 5, 2005 and May 22, 2008. On June 6, 2009, the Commission decided to join the three petitions under petition number 708-05 seeing that all three dealt with the same issue. On March 25, 2010, the petition was forwarded to the State, which was given two months in which to reply.

5. The State's observations were received on August 6, 2010. Additional information was received from the petitioner on September 14, 2010. On February 8, 2011, additional information was received from the State. The information received was duly forwarded to the respective parties. Finally, on January 13, 2014, still more information was received from the petitioner and forwarded to the State on January 16, 2014, with a request that it present its observations. As of the date of preparation of this report, the State had still submitted the observations most recently requested of it.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner states that on December 8, 2004, the Ecuadorian Congress passed Resolution 25-181 in which it removed the justices on the Supreme Court who allegedly had lifetime appointments as a result of a popular referendum and constitutional amendments enacted in 1997. The petitioner contends that as a consequence of the removal of the justices, his constitutionally-protected right to work had been violated, as he claimed to be litigating a number of cases before the Supreme Court at that time; he also claimed that his right to a prompt and impartial justice had been violated because in his view the new Court was not an impartial body. He further argued that the act of Congress was in violation of Article 202 of the Constitution, which states that by virtue of the system of co-optation, only the Court itself –not the Congress– could appoint justices to fill its vacancies.

7. On January 16, 2005, the petitioner filed an *amparo* action before the Twenty-Third Civil Court of Pichincha to challenge Resolution 25-181. He argued that he was unable to practice his profession before a *de facto* Supreme Court whose genesis was completely and utterly illegitimate. On January 21, 2005, the Judge of the Twenty-Third Civil Court declined to hear the petition based on Resolution No. 378 of the Supreme Court of June 27, 2001, on the grounds that it was a general resolution; the judge added that the petitioner could file an action before the Constitutional Court challenging the constitutionality of the resolution. The petitioner appealed that decision, but it was denied on February 2, 2005.

8. The petitioner also contends that even if the new Constitutional Court would have taken up the case, it would have been dismissed based on one of its early rulings were it prohibited the filing and hearing of *amparo* actions challenging acts of Congress. Therefore, the petitioner argues that his right under Article 25 of the Convention had not been protected and that he had been denied the right to practice his profession as an attorney before an impartial court, in violation of Article 8 of the Convention.

9. Furthermore, the petitioner alleges that on April 17, 2005, by Resolution 26-021 published in Official Record No. 3 of April 25, 2005, the National Congress nullified the Resolution 25-181 by which the justices of the Supreme Court had been removed. The Congress reasoned that the resolution was unconstitutional and therefore ordered that an instrument be drawn up for "full reconstitution of the Supreme Court." However, the petitioner contends that the problem created by the unconstitutional removal of the Supreme Court justices was not rectified, since the justices were not reinstated to their seats on the Supreme Court bench. He alleges that on April 22, 2005, Congress passed a bill amending the Statute of the Judiciary and that on May 5, 2005 the President of the Republic filed a partial objection to that bill. The petitioner further contends that the bill passed by the Congress amended Article 202 of the Constitution, which provides that by virtue of the system of co-optation, only the Court itself could appoint justices to fill any vacancies that occur on the Court; the petitioner argues that Congress did not have that authority.

10. On May 16, 2005, the petitioner filed an *amparo* action before the Eighth Judge of Pichincha, arguing that the failure to reinstate the Supreme Court justices and the nonexistence of a Supreme Court had violated his right to work and his right to impartial justice; he therefore asked the Court to suspend the effects of the acts of Congress and the President and, by extension, that the Supreme Court be reinstated. On May 25, 2005, the judge agreed to hear the petition and convened a hearing for May 30, 2005; she also

ordered that the law was not to be published in the Official Record. Nevertheless, on May 26, 2005, Law No. 2005-001¹ was published. On June 16, 2005, the judge declared the petition of *amparo* inadmissible.

11. The petitioner appealed this decision, remedy that was granted on July 1, 2005, consequently the records were sent to the Constitutional Court. However, the petitioner argues that there was no Constitutional Court to hear his case, since the resolution that appointed the new members of the Constitutional Court and removed its former members had been nullified.² He further alleges that in Resolution No. 0082-2006-RA of December 7, 2006, the Constitutional Court had subsequently confirmed the Eighth Court's decision to deny the petition of *amparo*; however, the petitioner claims that this decision was neither published nor received in his mailbox; he claims that he learned of the decision when he read the brief of observations presented by the State.

12. The petitioner also claims to have filed 181 objections challenging the candidates to justices previously qualified by the Qualifying Committee created by Law No. 2005-00. However, he contends that all his objections were rejected outright, without any explanation, even though his objections were filed in accordance with the requirements set forth in the rules and instructions issued by the Qualifying Committee.

13. The petitioner alleges that in his case the Committee never held the public hearing that, by law, was to have been convened to hear his objections, thereby denying him his right to a hearing, whilst others who filed objections were given hearings. He also claims to have been the victim of discrimination since the refusal to give him the opportunity to appear before the Committee, in a public hearing, to explain the reasons and grounds for his objections was because he was a member of a group of "Citizens for Democracy", whose main objective was to restore the democratic system of government by reinstating the Supreme Court of Justice. He is therefore claiming a violation of his right to equal protection and non-discrimination, recognized in Article 24 of the Convention.

14. The petitioner claims to have filed petitions seeking *amparo* relief against the Committee's decisions. He alleges that many of the actions he filed were not even admitted because the Committee had exerted pressure on the President of the Superior Court to send a notice to all judges reminding them that under Law No. 2005-001, no remedy could be filed to challenge the Committee's decisions, not even a petition seeking *amparo* relief. The petitioner claims that the courts agreed to hear some of his petitions, only to deny them on the grounds that the petition seeking *amparo* relief was prohibited under Law No. 2005-001; he alleges that in one case the judge had ordered that a public hearing be held with the respective candidate, but the Committee never convened the hearing.

15. The petitioner claims to have appealed the decisions disallowing and denying the petitions seeking *amparo* relief. He alleges that in some cases, the court agreed to hear the appeal and ordered the case referred to the Constitutional Court; in other cases the appeals were denied. He argues, however, that internal remedies were exhausted because there was no Constitutional Court to hear the cases in which his appeal had been granted. He contends that Law No. 2005-001 had arbitrarily curtailed the right to an effective remedy for protection against the human rights violations that resulted from the law's enforcement, as it expressly disallowed *amparo* actions filed to challenge the application of the law, which the petitioner argues violated articles 8 (judicial guarantees), 9 (the principle of freedom from *ex post facto* laws), 24 (equal protection), and 25 (judicial protection) of the Convention, in conjunction with Article 1(1) thereof. He further contends that as an attorney his right to practice his profession before impartial judges had been violated, since the process conducted by the Qualifying Committee, which was not provided for in the Constitution, would not make for efficient and impartial justice. The petitioner argues that only a constitutionally appointed court could be impartial; hence, his right to work had been violated as a function of the State's obligations under Article 26 (progressive development) of the Convention.

¹ The petitioner is referring to Law No. 2005-001, published in Official Record No. 26 of May 26, 2005.

² The petitioner claims that as a result, the Constitutional Court ceased to function for the period from April 26, 2005 to February 22, 2006.

B. Position of the State

16. The State argues that the petition must be declared inadmissible on the grounds that internal remedies were not exhausted. It states that petitioner filed the complaint before the Commission on June 20, 2005, whereas it was not until December 7, 2006 that the Second Chamber of the Constitutional Court delivered resolution 0082-2006-RA in which it confirmed the decision of the Twenty-Third Court and denied the writ of *amparo*. The State therefore contends that on the date the petition was filed, internal remedies had not yet been exhausted, which means that the petition was filed prematurely.

17. The State maintains that under Ecuador's system of justice, Resolution 0082-2006-RA settle the petitioner's legal situation; hence, the State claims to have proven that internal remedies were available to settle the petitioner's case; it was therefore up to the petitioner to prove to the IACHR that he had exhausted the remedies available under Ecuador's domestic laws. The State observes that although the decision by the domestic court was not what the petitioner wanted, this does not mean that his judicial guarantees were not observed or that the domestic courts did not act fairly. The State further points out that the Commission itself has held that a negative outcome to a fair trial is not a violation of the Convention.

18. The State contends that the petitioner is requesting the Commission to sit in judgment of the decisions taken by the domestic courts. It points out that the jurisdiction of the Commission is subsidiary in nature and the Commission cannot therefore review the judgments handed down by domestic courts acting within their sphere of competence and in observance of the guarantees due process. It further argues that the rulings delivered by the domestic courts were objective, and the fact that the decisions did not satisfy the petitioner's subjective demands does not give the IACHR the authority to intervene as a court of fourth instance.

19. Finally, the State argues that if the petitioner believed that a judge's decision had violated his rights, the appropriate course of action would be for petitioner to seek to have the judge disqualified. As for his right to work, the State maintains that the mere fact that the petitioner brought an *amparo* action demonstrates that he was fully able to practice his profession and to turn to the courts without undue delay, which would ensure the rights protected in articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

20. The petitioner is authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition notes as the alleged victim a physical person with respect to whom the State of Ecuador undertook to respect and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Ecuador has been a State party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Hence, the Commission is competent *ratione personae* to examine the petition.

21. The Commission is competent *ratione loci* to take up the petition, inasmuch as it alleges violations of rights protected under the American Convention, said to have occurred within the territory of Ecuador, a State Party to the Convention. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected under the American Convention was already in effect for Ecuador on the date on which the facts alleged in the petition were said to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges potential violations of human rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

22. Article 46(1) of the American Convention establishes as a requirement for the admission of a petition that domestic remedies have been pursued and exhausted, in accordance with generally recognized principles of international law. Both the Commission and the Inter-American Court have indicated that only remedies suitable for remedying the violations allegedly committed must be exhausted. Article 46(2) establishes that this requirement shall not apply when: a) the domestic legislation of the State concerned does not afford due process of law for the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. In the present case, the State is alleging that the petition should be declared inadmissible because it fails to comply with the rule stipulated in Article 46(1)(a) requiring prior exhaustion of domestic remedies; it contends that at the time the petition was filed, a decision was pending on the appeal filed before the Constitutional Court. Whereas the petitioner claims to have exhausted the domestic remedies available, still he contends that exhaustion of domestic remedies was not required since Ecuador does not offer the conditions necessary to safeguard access to justice and guarantee due process.

24. Given the parties' positions, it is up to the IACHR to determine which domestic remedies the petitioner is required to exhaust, based on the jurisprudence of the inter-American system. The Inter-American Court has held that when domestic remedies are not available to a petitioner, either as a matter of law or as a matter of fact, the petitioner is exempt from the obligation to pursue and exhaust them. If the internal remedy is conceived in such a way as to render it virtually inaccessible to the alleged victim, then the latter is certainly under no obligation to pursue it to set right his legal situation.³

25. In the present matter, the Commission will examine the prior exhaustion requirement in three parts. First, the Commission observes that the alleged victim filed a petition seeking *amparo* relief before the Twenty-Third Court against Parliamentary Resolution 25-181, which removed the justices of the Supreme Court. The court denied the petition and instead indicated that petitioner should file an action challenging the resolution's constitutionality. Here, the Commission notes that it is a matter of public knowledge, which the Commission noted in previous cases, that on December 2, 2004, the Constitutional Court issued a resolution wherein it ruled as follows:

To rule that to suspend the effects of a parliamentary resolution, such as No. 25-160, adopted by the National Congress on November 25, 2004, for an alleged violation of the Constitution, in substance or in form, the only action admissible is an unconstitutionality suit, which must be placed before the Constitutional Court, in line with the resolution of the Supreme Court of Justice adopted on June 27, 2001, and published in Official Register No. 378 on July 27 of that year; and that any *amparo* remedy lodged with the country's courts in connection with the aforesaid resolution must be rejected outright and ruled inadmissible by the judges, since to do otherwise would be to admit proceedings against express law, which would lead to the corresponding judicial actions.⁴

26. The IACHR observes that the above resolution expressly stipulates that the *amparo* was not one of remedies available to challenge Parliamentary resolutions like resolution 25-181, in which Congress removed the justices of the Supreme Court.

27. The Commission observes that the State did not state that the alleged victim should have exhausted the unconstitutionality suit. The Commission reiterates that the IACHR is not called upon to identify, *ex officio*, the internal remedies to be exhausted; instead, it is up to the State to specify which internal

³ Cf. I/A Court H.R. Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 17.

⁴ Approved at a plenary session and published in Official Record No. 477 of December 8, 2004. See IACHR, Case 12,600 Hugo Quintana Coello *et al.* (Justices of the Supreme Court) Ecuador (Merits), March 31, 2011, para. 46.

remedies have to be exhausted and their effectiveness.⁵ Under the Commission's Rules of Procedure and as the Court has stated, "the State submitting such objection must specify the domestic remedies that have not yet been exhausted, as well as show that such remedies were available and adequate, suitable and effective."⁶ The Commission has considered that the requirements for filing an unconstitutionality suit are excessive, therefore it could not be construed as a simple and prompt remedy,⁷ since it requires that the petitioner either to collect the signatures from 1000 citizens or obtain a favorable opinion from the Ombudsman's Office. Thus, given the foregoing and because the State did not provide any information concerning the suitability and efficacy of the constitutionality challenge, the Commission finds that based on the analysis of the requirement set forth in Article 46(1)(a) of the Convention, the alleged victim was not required to exhaust that remedy.

28. Second, with regard to the *amparo* action filed before the Eighth Court to challenge the preparatory acts for the implementation of Law No. 2005-001 and to request that the effects of the acts of Congress and of the President be suspended, the State has argued that the Constitutional Court's final ruling was still pending and that Resolution No. 0082-2006-RA was the appropriate one to settle the petitioner's legal situation. The IACHR must reiterate the standard it has established to the effect that the analysis of the requirements stipulated in articles 46 and 47 of the Convention must be done on the basis of the situation that existed at the time the petition was deemed admissible or inadmissible.⁸ It often happens that while a petition is being processed, the situation regarding the exhaustion of domestic remedies changes. Nevertheless, the petition and case system makes certain that both the State and the petitioner have every opportunity to present information and arguments in this regard.

29. The State also argued that in this case the petitioner should have filed a challenge seeking disqualification of a judge. The Commission notes that the objective of a challenge seeking disqualification is to have a judge temporarily or permanently disqualified from a given case, not to deal with structural situations of the kind being alleged by the petitioner. The Commission notes that the State did not submit specific information regarding the disqualification challenge, and hence did not establish its suitability and efficacy for purposes of having the present matter decided by the domestic courts. The Commission therefore deems that the Constitutional Court's ruling of December 7, 2006, exhausted the internal remedies available with respect to the *amparo* action before the Eighth Court; hence, the requirement established in Article 46(1)(a) of the Convention has been met.

30. Third, with regard to the *amparo* actions brought to challenge the Qualifying Committee's decisions on the candidates for the Supreme Court, the petitioner states that provision nine of Law No. 2005-001 provides that "being a collegiate body, the decisions of the Qualifying Committee shall not be subject to any action seeking a writ of constitutional *amparo*, any action seeking to file a complaint or any judicial action of any kind;" it thus expressly prohibits the filing of any remedy to challenge the Qualifying Committee's decisions and thus was the grounds for denying the 181 objections that the alleged victim entered against the candidates for the office of justice on the Supreme Court.

31. The Commission observes that because the law itself expressly prohibited *amparo* actions or any other judicial remedy filed to challenge the qualifications of the candidates, the alleged victim was denied

⁵ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 23.

⁶ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 19, citing the *Case of Velásques Rodríguez*, para. 91; *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, para. 46, and *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C No. 199, para. 28.

⁷ See, IACHR, Report No. 42/13, Petition 595-05, Admissibility, Carlos Julio Aguinaga Aillon (Member of the Supreme Electoral Tribunal), Ecuador, July 11, 2013, para. 27. Report No. 8/07, Petition 1425-04, Admissibility, Hugo Quintana Coello *et al.* (Justices on the Supreme Court), Ecuador, February 27, 2007, para. 29.

⁸ IACHR, Report No. 108/10, Petition 744-98 and others, Admissibility, Orestes Auberto Urriola Gonzáles *et al.*, Peru, August 26, 2010, para. 54; Report No. 2/08, Petition 506-05, Inadmissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, para. 56, and Report No. 20/05, Petition 716-00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, para. 32.

a simple and effective remedy by which to challenge the Qualifying Committee's decisions or to claim protection of the rights that he alleges were violated during that process. Given the foregoing, the IACHR considers that where these petitions seeking *amparo* relief were concerned, the exception to the rule requiring exhaustion of domestic remedies that applies is the one provided for in Article 46(2)(a) of the American Convention.

32. Invocation of the exceptions to the rule requiring exhaustion of domestic remedies, provided for in Article 46(2) of the Convention, is closely linked to the determination of possible violations of certain Convention-protected rights, such as the guarantees of access to justice. However, given its nature and purpose, Article 46(2) stands separate and apart from the Convention's substantive provisions. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies apply to the case in point must be done prior to and separate from the analysis of the merits, because it relies on a standard of assessment that is different from the standard used to determine possible violations of Articles 8 and 25 of the Convention. It is worth noting that the causes and effects that prevented exhaustion of domestic remedies will be examined in the report that the Commission adopts on the merits, to determine whether violations of the American Convention have occurred.

2. Timeliness of the petition

33. Under Article 46(1)(b) of the American Convention, for the Commission to declare a petition admissible the latter must be lodged within six months of the date on which the alleged aggrieved party was notified of the final decision in his or her case. The IACHR observes that domestic remedies in the case of the *amparo* action filed before the Eighth Court were exhausted with the December 7, 2006 final decision of the Constitutional Court. Therefore, considering that the petition was filed before the Commission on June 23, 2005, and as the requirement must be examined on the basis of the situation existing at the time the Commission delivers its decision on the petition's admissibility, the Commission deems that the requirement stipulated in Article 46(1)(b) of the Convention has been met.

34. The Commission pointed out that the exception provided for in Article 46(2)(a) applied in the case of the *amparo* action heard by the Twenty-third Court and in the case of the *amparo* actions against the decisions of the Qualifying Committee. Article 32 of the Commission's Rules of Procedure provides that 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.

35. The Commission therefore finds that the petition was presented within a reasonable period of time given the context and the specific circumstances of Ecuador's system of justice at the time, where the petitioner was unable to exhaust any additional remedies; this admissibility requirement is therefore deemed to have been met.

3. Duplication of proceedings and international *res judicata*

36. There is no evidence in the case file indicating that the matter the petition addresses is subject to any other international settlement proceeding, or that it reproduces a petition that has already been reviewed by this or any other international body. Therefore it is deemed that the requirements provided for under Articles 46 (1) and 47 (d) of the American Convention have been fulfilled.

4. Colorable Claim

37. For purposes of admissibility, the Commission must decide whether the facts laid out in the petition could tend to establish a violation, as stipulated in Article 47 (b) of the American Convention, whether the petition is "manifestly groundless" or "obviously out of order" in terms of subparagraph (c) thereof. At this procedural stage, the Commission is to undertake a *prima facie* evaluation, not for purposes of establishing alleged violations of the American Convention, rather for examining whether the petition

denounces facts that may potentially constitute violations of rights ensured under said instrument. This review does not imply any prejudgment or foreshadow any opinion on the merits of the case.⁹

38. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Inter-American Commission, although petitioners may do so. It is for the Inter-American Commission, based on the system's case law, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

39. In the instant case, the petitioner contends that the victim's right to work and to a hearing by an independent court were affected when the Ecuadorian Congress introduced a series of changes in the Judicial Branch concerning the removal of the justices of the Supreme Court and the subsequent amendment of the Statute of the Judiciary. The petitioner argues that the ouster of the Supreme Court justices and the subsequent procedure conducted by the Qualifying Committee created under Law No. 2005-001 to screen and qualify candidates for seats on the Supreme Court bench, affected his right as an attorney to be able to practice his profession before independent judges. He further alleges that he was denied his right as a citizen to participate in the hearings that, by law, were to be held to entertain objections to the candidates nominated. The petitioner contends that the internal remedies he pursued seeking protection of his rights were ineffective, firstly because the legal system itself prohibited such remedies and secondly because the necessary judicial guarantees were not observed when the decisions were handed down.

40. The State, for its part, claims that the facts do not constitute possible violations of the Convention. It argues that the decisions by the domestic courts were taken in accordance with the guarantees of due process and the fact that those decisions were not favorable to the petitioner does not give the Commission the authority to issue decisions pertaining to the judgments delivered by the Ecuadorian courts acting within their sphere of competence and in observance of the guarantees of due process.

41. Based on the foregoing, the Commission considers that the situation denounced by Mr. Ponce Martínez concerns a potential violation of the guarantees for the independence of the judiciary as a result of the removal of the Supreme Court justices and the subsequent selection of new justices to serve on Ecuador's highest court. The specific allegation is that the alleged victim's right to work and his right to an independent judiciary were violated. The Commission understands that in exercising his right to a suitable and effective recourse for the domestic authorities to examine his legal situation, Mr. Ponce Martínez asserted these claims by filing a series of remedies that he claims were denied.

42. The Commission considers that the facts set forth in the petition concerning the impediment established in the Constitutional Court's ruling prohibiting actions filed to challenge congressional resolutions, the provision in Law No. 2005-001 prohibiting actions filed against the decisions of the Qualifying Committee, and the fact that Mr. Ponce was allegedly not given the public hearing that, by law, was to be granted to those who wanted to challenge the Qualifying Committee's decisions,¹⁰ could tend to establish violations of the rights protected under articles 8 and 25 of the American Convention, to the petitioner's detriment. In the merits phase, the IACHR will consider, in light of the obligation set forth in Article 2 of the Convention, the allegations to the effect that Law No. 2005-001 provides that the decisions of the Qualifying Committee are not subject to challenge.

43. The Commission also considers that the petitioner has not provided sufficient information or evidence to show how the Law No. 2005-001 violates the principles of legality and non-retroactivity of the law or how he was discriminated for his membership in the group "Citizens for Democracy". Therefore the

⁹ See, IACHR, Report No. 21/04, Petition 12,190, José Luis Tapia González *et al.*, Chile, February 24, 2004, para. 33.

¹⁰ Law No. 2005-001, PROVISION FIVE: "(...) Once the time period for filing applications has ended, the Qualifications Committee shall, within a period of eight days not subject to extension, publish the list of candidates who meet the requirements established in the Constitution of the Republic and this Law, whereupon the 15-day period for receiving challenges to the candidates shall commence. The Qualifications Committee shall organize public hearings, with the citizenry, monitors and the media participating, to hear the challenges, which may also be filed in writing (...)."

petitioner considers that the facts presented do not tend to establish a possible violation of Articles 9 and 24 of the American Convention. On the other hand, regarding the supposed setback that the alleged victim claims affected his ability to practice his profession as an attorney in the presence of impartial judges, the Commission considers that the facts do not tend to establish a violation of Article 26 of the Convention; therefore, this claim is also inadmissible.

44. Finally, given the facts alleged by the petitioner, it should be noted that Article 29 of the Convention will be used, in its entirety, in this and all matters as the guideline for interpreting conventional obligations of the State.

V. CONCLUSIONS

45. The Commission concludes that it is competent to review the claims presented by the petitioner regarding the alleged violations of Articles 8 and 25 of the Convention in accordance with Articles 1(1) and 2 of the Convention, and that these are admissible in keeping with the requirements set forth in Articles 46 and 47 of the American Convention. It further concludes that the petition is inadmissible as regards Articles 9, 24 and 26 of the Convention.

46. Based on the factual and legal arguments provided for above and without this implying any prejudgment of the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Declare this petition admissible with regard to Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to Article 1(1) and 2 of the American Convention:

2. Declare this petition inadmissible in relation to an alleged violation of Articles 9 (the principle of legality and non-retroactivity of the law), 24 (equal protection) and 26 (progressive development) of the American Convention:

3. Notify the parties of this decision;

4. Continue analyzing the merits of the matter:

5. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Mexico, on the 15th day of the month of August, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.