

OEA/Ser.L/V/II.151
Doc. 32
25 July 2014
Original: Spanish

REPORT No. 67/14
PETITION 1352-06 and 580-07
REPORT ON INADMISSIBILITY

BERNARDO ROMERO VÁZQUEZ AND RAYMUNDO GIL RENDÓN
MEXICO

Approved by the Commission at its session No. 1995 held on July 25th, 2014
151st Regular Period of Sessions

Cite as: IACHR, Report No. 67-14, Petition 1352-06 and 580-07. Inadmissibility. Bernardo Romero Vázquez y Raymundo Gil Rendón. Mexico. July 25th, 2014.

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I. SUMMARY

1. On December 4, 2006 and May 10, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “the IACHR”) received two petitions: the first submitted by Bernardo Romero Vázquez on his own behalf and on behalf of the Fray Jacobo Daciano Human Rights Center, A.C. (hereinafter, the “Human Rights Center”) and FUNDAR Analysis and Research Center, A.C (hereinafter, “FUNDAR”). Graciela Rodríguez Manzo was appointed as the joint representative of both organizations.² On June 30, 2014 a communication was received from the joint representative of the Human Rights Center indicating that it would be represented henceforth by Mr. Luis Miguel Cano López. The second petition was presented by Raymundo Gil Rendón on his own behalf.

2. The petitions allege violation by the United States of Mexico (“the State”, “the State of Mexico” or “Mexico”) of the rights set forth in Articles 2 (domestic legal effects), 8 (right to a fair trial), 13 (freedom of thought and expression), 23(right to participate in government), 24 (right to equal protection under the law) and 25 (right to judicial protection) in conjunction with Article 1.1 of the American Convention on Human Rights (“the American Convention”).

3. The petitions allege in general terms that the State of Mexico committed a series of violations of their human rights, in that in 2004, the Mexican Senate decided to ratify the then President of the Mexican National Commission on Human Rights (hereinafter, “CNDH”) for an additional five-year term of office, on the basis of a call for candidates and an appointment made in violation of Article 102 B) of the Political Constitution of the Republic.³ That this prejudiced Raymundo Gil Rendón and Bernardo Romero Vázquez, who were candidates for President of the CNDH, and also the Human Rights Center, the organization that proposed Mr. Romero Vázquez as a candidate (hereinafter, the “alleged victims”).

4. For its part, the State indicated that the Senate has the sovereign power to ratify the President of the National Commission on Human Rights, and that the process that led to the ratification in 2004 was conducted in accordance with the provisions of the Constitution and pertinent legislation. Thus, the Senate’s decision does not violate any right protected by the Convention.

5. Having analyzed the positions of the parties, the Commission concluded that it is competent to hear the complaint, and as provided in Article 29.5 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter, “the Rules of Procedure of the IACHR”), the IACHR decided to join the two petitions. In addition, the Commission decided that the complaint is inadmissible under Article 47 b) of the American Convention. It also decided to advise the parties of this decision, and to order its publication in the Annual Report of the OAS General Assembly.

¹ Commissioner José de Jesús Orozco Henríquez, who is of Mexican nationality, did not participate in the deliberations or in the decision on the present petition, in accordance with the provisions of Article 17.2.a) of the Commission’s Rules of Procedure.

² On June 29, 2010, FUNDAR advised the Commission that it wished to withdraw from the petition under analysis.

³ That article states in pertinent part: “(...) the President of the National Commission on Human Rights, who shall also chair the Advisory Committee, shall be elected under the same conditions as in the preceding paragraph. His term of office shall be for five years, he may be reelected for one time only, and may be removed from office only in accordance with the terms of Title Four of this Constitution”.

II. PROCESSING BY THE COMMISSION

Processing of petition 1352-06 (Bernardo Romero Vázquez *et al.*)

6. The Commission received the petition on December 4, 2006, and recorded it as number 1352-06. The IACHR transmitted the pertinent parts of the petition to the State of Mexico on September 24, 2009. The State presented its observations on February 3, 2010, which were duly forwarded to the petitioners.

7. The IACHR received additional information from the petitioners on: September 23, 2009; May 25, 2010; October 25, 2010; July 28, 2011; September 10, 2012 and June 25, 2013; this information was duly transmitted to the State. The IACHR received observations from the State on: July 16, 2010; February 2, 2011; September 8, 2011; January 31, 2013 and October 29, 2013; these observations were duly forwarded to the petitioners.

Processing of petition 580-07 (Raymundo Gil Rendón)

8. The Commission received the petition on May 10, 2007, and recorded it as number 580-07. On March 3, 2010, the IACHR transmitted parts of the petition to the State of Mexico. The State presented its observations on May 11, 2010, and they were duly conveyed to the petitioner. The IACHR also received information from the petitioners on: June 16, 2010, August 19, 2010, January 31, 2011, March 17, 2011, September 4, 2011, September 29, 2011, December 8, 2011, May 24, 2012 and September 10, 2012; this information was duly transmitted to the State. The IACHR received observations from the State on: May 11, 2010, July 12, 2010, November 3, 2010, March 31, 2011, July 13, 2011, February 8, 2012; these observations were duly forwarded the petitioner.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. According to the petitioners, on September 30, 2004 the Senate Human Rights Committee issued a public call for candidates in compliance with the "Parliamentary Agreement of the Senate of the Republic establishing internal procedures for ratification or election of the President of the CNDH"⁴, so that civil society organizations could present possible candidates for the position of CNDH President. The Agreement provided for the possibility of ratifying the President of the CNDH or proposing to the Senate a slate of candidates to replace him.

10. In response to the call for candidates, a number of civil society organizations presented candidates to take part in the election of the National Ombudsman. In particular, the Human Rights Center and FUNDAR presented the candidacy of Bernardo Romero Vázquez on October 15, 2004. Other civil associations presented the candidacy of Raymundo Gil Rendón on September 30, 2004.

Procedure followed in the case of Bernardo Romero Vázquez

11. On October 22, 2004, petitioner Bernardo Romero Vázquez, along with the Human Rights Center and FUNDAR, presented a writ of *amparo* to the Seventh District Court for Administrative Matters challenging the Parliamentary Agreement of September 21, 2004 that established the internal procedure for the ratification or election of the President of the CNDH and the call for candidates published on September

⁴ That Agreement was adopted on September 21, 2004 and in pertinent part, provides that following the deadline for receipt of opinions and proposals of candidates for President of the National Commission on Human Rights, the Senate Human Rights Committee shall evaluate the suitability of those proposed and verify that the candidates meet the eligibility requirements established in Article 9 of the Law on the National Commission on Human Rights. The Senate Human Rights Committee shall then issue an opinion in which it may propose ratification of the President of the National Commission on Human Rights, if appropriate, or propose a slate of candidates chosen from among those proposed for its consideration.

30, 2004, on the grounds that the appointment process provided for in that Agreement was in violation of Article 102 B) of the Constitution. In the petitioner's view, that Article provides for the possibility of reelection of the President of the CNDH, but not his ratification.

12. They state that the *amparo* was denied on October 26, 2004. The court found that the challenge was to a discretionary sovereign act of the Senate, and that according to Article 73 VIII) the *amparo* is inadmissible if filed "against the decisions or declarations of the Federal Congress or its Chambers, of the State Legislatures or their respective Permanent Committees or Regional Councils on the election, suspension or removal of officials, in those cases in which the respective Constitutions grant them the power to take discretionary or sovereign decisions".

13. They state that on October 28, 2004 the Senate Human Rights Committee approved the *Opinion of the Human Rights Committee in which it proposes Dr. José Luis Soberanes Fernández to hold the office of President of the National Commission on Human Rights for a second term of five years beginning November 16, 2004*, and that on the same day, the full Senate approved the Opinion.

14. They argue that on November 8, 2004, they filed an application for indirect *amparo* with the Fifteenth District Court on Administrative Matters challenging the procedure and approval of the opinion of October 28, 2004, and alleging that Article 102 B) of the Constitution, which allows for reelection but not ratification, had not been complied with. They said that the *amparo* request was filed with the Seventh District Court on Administrative Matters, which on November 17, 2005 denied the application in light of Article 73 VIII) of the Law on *Amparo*. On December 2, 2004, the petitioner filed an appeal against that decision with the Thirteenth Collegiate Court on Administrative Matters of the First Circuit, which overturned the lower court denial in a ruling of March 11, 2005, and ruled that the application for *amparo* should be admitted.

15. They say that parallel to this, on November 15, 2004, they filed an appeal against the October 26 decision denying *amparo* against the Parliamentary Agreement of September 21, 2004 and against the call for candidates of September 30, 2004. On March 11, 2005, the Thirteenth Collegiate Court on Administrative Matters of the First Circuit overturned the denial of *amparo* and ordered that it be granted.

16. They maintain that on June 27, 2005, the Seventh District Court on Administrative Matters in the Federal District decided to dismiss both applications for *amparo*: the one filed against the Parliamentary Agreement establishing the internal procedure for the ratification or election of the President of the CNDH and the call for candidates published on September 30, 2003, and the one filed against the opinion of October 28, 2004 in application of Article 73 VIII) of the Law on *Amparo*.

17. They say that appeals were lodged against both these decisions, which were heard by the Thirteenth Collegiate Court on Administrative Matters of the First Circuit. In its ruling of November 25, 2005, that court requested the Supreme Court of the Nation sitting *en banc* to use its authority to take the case. The Supreme Court took up both applications for *amparo* for review on January 20, 2006. On June 2, 2006, the Supreme Court of the Nation confirmed the ruling of the Seventh District Court and found that all of the acts being challenged had been performed by the Senate in the exercise of its powers under the Constitution and that they were discretionary and sovereign in nature.

Procedure followed in the case of Raymundo Gil Rendón

18. The petitioner maintains that on November 22, 2004, he presented an application for a writ of *amparo* in which he challenged the constitutionality of the opinion of October 28, 2004, and the constitutionality of Article 10 of the Law on the CNDH⁵, arguing that the possibility of ratifying the President of the CNDH would not be consistent with the "reelection" established in the Mexican Constitution.

⁵ This article provides that: "The President of the National Commission on Human Rights shall be elected by a two-thirds vote of the Senate members present or, when it is in recess, by the Permanent Committee of the Congress of the Union, by the same two-thirds vote. For these purposes, the pertinent committee of the Senate shall proceed to hold a broad consultation among the social [continues ...]"

19. He states that this application for *amparo* was heard by the Fifteenth District Court on Administrative Matters of the Federal District, which, dismissed the suit on December 20, 2005 in accordance with Article 73 VIII) of the Law on *Amparo*. He lodged an appeal against that decision, and that appeal was heard by the Eighth Collegiate Court on Administrative Matters of the First Circuit. The Court stated that Article 102 B) of the Constitution did not accord the Senate a sovereign or discretionary power to select the President of the CNDH, and that the District Court Judge had used grounds for dismissal that were not expressly provided for in the Constitution, but decided on February 23, 2005 to request the Supreme Court to exercise its authority to take up the case.

20. He indicates that the Supreme Court decided to take up the *amparo* for review, and on November 10, 2006, its Second Division confirmed the District Court's ruling. The Supreme Court found that *amparo* inadmissible pursuant to Article 73 VIII) of the Law on *Amparo* because it addressed a discretionary sovereign act of the Senate. It further stated that because it was acts of the Senate that were being questioned, it would not rule on the constitutionality of Article 10 of the Law on the CNDH since it could not decouple its examination of the act from application of the law in general.

Allegations by the petitioners

21. Both petitioners allege that the Senate Human Rights Committee's opinion proposing ratification of the then Ombudsman, and its approval by the Senate on the basis of Article 10 of the Law on the CNDH placed the person holding the office of CNDH President at an advantage over the remaining candidates, to the detriment of their right to apply for public jobs in equality of conditions. In particular, they allege that this unequal treatment stems from the fact that the then National Ombudsman, José Luis Soberanes Fernández, was the only person cited to appear in person before that body, and that this also violated their right to be heard and their right to due process.

22. They state that the fact that Article 10 of the Law on the CNDH does not say that the appearance of all of the candidates is a prerequisite does not mean that that article may be interpreted as meaning that the members of the Senate can use their discretion to grant such an opportunity to some candidates and not to others. They argue that when the Supreme Court confirmed the dismissal of their applications for *amparo*, it denied them access to justice because it failed to examine the merits of their candidacies and left them without defense since *amparo* was the only remedy available to them. They say that the use of the inadmissibility grounds of Article 73 of the Law on *Amparo* is a violation of the American Convention since Article 102 B) of the Constitution does not provide that the Senate's power to elect the President of the CNDH is a sovereign or discretionary decision.

23. For his part, petitioner Bernardo Romero Vázquez argues that when no slate of candidates was drawn up that included the candidates proposed by civil society organizations, the right to participate in government was violated. He also alleges that the Senate violated his right of access to information in that the opinion of October 28, 2004 did not give the reasons or grounds leading to ratification of the National Ombudsman, nor did it mention which of the participating organizations and agencies supported or criticized the then President of the CNDH. He also said that he had not been told of the reasons why his candidacy was rejected. He further argues that the opinion did not take account of the binding nature of the consultation with civil society organizations provided for in Article 10 of the Law on the CNDH, which states that the CNDH shall conclude the election on the basis of the outcome of the consultation.

24. Petitioner Raymundo Gil Rendón also alleges that his right to a natural judge was violated, since the appeal for review that he entered against the lower court decision should have been decided by the

[... continuation]

organizations that are representative of various sectors of society, and among public and private organizations that promote or defend human rights. On the basis of these consultations, the pertinent committee of the Senate shall propose to the plenary a slate of candidates from among whom the person will be selected to hold the post or, as pertinent, to ratify the holder [of the post]".

full Supreme Court, since that was the body that had decided to take the case. He also maintains that the Supreme Court violated his right of access to justice when it did not rule on the challenge he presented on the unconstitutionality of Article 10 of the Law on the CNDH.

B. Position of the State

25. The State maintains that the call for candidates of September 30, 2004 had the purpose of consulting civil society about the appointment of the CNDH President, in order to comply with the process called for in Article 10 of the Law on the CNDH, which provides that the pertinent Committee of the Senate shall proceed to hold a broad consultation among the social organizations that are representative of various sectors of society, and that on the basis of those consultations, that committee shall propose to the plenary of the Senate a slate of candidates from among whom the person will be selected to hold the post or, as pertinent, to ratify the holder [of the post].

26. It states that the Senate has the exclusive power to decide on the person who will hold the position of National Ombudsman, and that that does not violate the human rights of the alleged victims. It states that the alleged victims were not called to appear before the Senate Human Rights Committee, because that became unnecessary once the proposal that the then Ombudsman continue in the position had been approved.

27. It further states that the petitioners had access to domestic remedies, which were handled in accordance with domestic law and ruled on by the Supreme Court in properly substantiated rulings. The State indicates that the appeals were denied because the petitioners were attempting to challenge a sovereign act of the Senate carried out in performance of its constitutional duties. It indicates that justice was not denied, inasmuch as the nation's highest court issued properly substantiated rulings. Therefore, the Commission would not be competent to review the decisions of domestic courts, as that would mean it would be taking on the character of a "fourth instance".

28. The State indicates that the guarantee of a hearing does not apply to the procedure to elect the National Ombudsman, since the process is not, materially, a matter for the courts, and that the legal persons—the Human Rights Center and FUNDAR—are not rights holders under the American Convention.

29. In particular, with respect to petitioner Bernardo Romero, the State maintains that he did not make use of the remedies available to him under domestic law to request access to public information.

30. As to petitioner Raymundo Gil Rendón, the State alleges that his right to a natural judge was not adversely affected, since the full Supreme Court would have examined only the admissibility of the request that it take up the matter, while the Court's Divisions have the authority to hear the merits of these matters, in accordance with Article 21 of the Organic Law of the Federal Judiciary.

31. The State also contends that the process for the election or ratification of President of the CNDH, which is governed by Article 102 B) of the Mexican Constitution and Article 10 of the Law on the CNDH, meets the standards of reasonableness and objectivity. It also argues that the Supreme Court did not rule on the challenge to the constitutionality of Article 10 of the Law on the CNDH, because having stated the inadmissibility of the specific act being challenged, the Court could not decouple its examination of the claim in the abstract. It explained that the Second Division stated that the power to appoint the head of the CNDH was governed by Article 10 of the CNDH [Law], and that the various acts that took place as part of the procedure that the petitioners wished to challenge were acts of a sovereign nature carried out by the Senate in the performance of a constitutional duty.

32. Lastly, the State noted that a new election for the post of President of the National Commission on Human Rights took place in 2009, and hence the petition is moot.

IV. ANALYSIS REGARDING COMPETENCE AND ADMISSIBILITY

A. Competence

33. In accordance with Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, any person or group of persons, or non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party. In this case, the petition was presented by two individuals, and identifies Bernardo Romero Vázquez, Raymundo Gil Rendón and a civil association, the Fray Jacobo Daciano Human Rights Center as alleged victims.

34. With respect to the latter, the Commission notes that the State contended that it is not a rights holder under the American Convention. However, the Commission observes that even though it is not an individual person but rather a civil association, its members are individuals who can be identified and who can therefore be alleged victims.

35. As to the State, Mexico has been a Party to the American Convention since March 24, 1981, the date on which it deposited its instrument of accession and therefore answers internationally for violations of that instrument. On the basis of the foregoing, the Inter-American Commission is competent *ratione personae* to examine the complaint.

36. The Commission is competent *ratione loci* to hear the petition, inasmuch as it alleges violations of rights protected in the American Convention that purportedly took place in Mexico, a State Party to said Convention. The Commission is competent *ratione temporis* given that the obligation to respect and ensure the rights protected in the American Convention was already in effect for the State on the date upon when the facts alleged in the petition presumably occurred. Lastly, the Commission is competent *ratione materiae*, because the petition denounces potential violations of human rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

37. Article 46.1.a) of the American Convention provides that for a complaint submitted to the Commission to be admissible the remedies under domestic law must have been pursued and exhausted in accordance with general recognized principles of international law. For its part, Article 46.2 of the convention provides that the requirement to previously exhaust domestic remedies is not applicable where: (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) 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 (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

38. In the present case, there is no dispute over the exhaustion of domestic legal remedies by petitioner Raymundo Gil Rendón. Both the State and the petitioner say that he had access to domestic remedies and that they were duly exhausted when the Second Division of the Supreme Court of Justice ruled on the *amparo* application in its holding of November 10, 2006.

39. With respect to the petition concerning Mr. Bernardo Romero Vázquez, the State claimed that this requirement had not been met in the matter of the alleged violation of the right of access to information, since the petitioner had not exhausted the special administrative remedy available to him through the Federal Institute for Access to Information. For his part, the petitioner alleged that those remedies were not the most suitable because they would give access to the information contained in the opinion of October 28, 2004, but that the alleged violation was the lack of information about the specific grounds or reasons of the decision taken to ratify the head of the CNDH.

40. The Commission notes in this regard that according to the petitioner, the alleged violation lies in the lack of sufficient information about the reasons that the Senate Human Rights Committee had for proposing ratification of the President of the CNDH. Here, the Commission finds that his allegation is that the Opinion of October 28, 2004 did not give sufficient grounds.

41. Regarding this claim and the claims related to the alleged violation of his rights as a consequence of the procedure used to decide that the then Ombudsman would continue in his post, the Commission observes that the petitioner filed applications for *amparo* both against the Parliamentary Agreement that established the internal procedure for the ratification or election of the President of the CNDH and the call for candidates of September 30, 2004, as well as against the opinion of October 28, 2004 that ratified the President of the CNDH. Those applications filed with the Seventh District Court on Administrative Matters were denied on October 26 and November 17, 2004.

42. The petitioner filed two appeals from these decisions with the Thirteenth Collegiate Court on Administrative Matters of the First Circuit, which ruled in its judgment of March 11, 2005 that the applications for *amparo* be admitted.

43. Lastly, the Seventh Court handed down final judgments in both *amparo* requests, dismissing them in application of Article 73 VIII) of the Law on *Amparo*. Appeals were filed against these rulings on August 10, 2005. The appeals were heard by the Thirteenth Collegiate Court on Administrative Matters of the First Circuit, which decided in its ruling of November 25, 2005 to request the full Supreme Court of Justice to take the case. Finally, on June 2, 2006, the Second Division of the Supreme Court of Justice of the Nation dismissed both applications for *amparo* and confirmed the District Court's ruling.

44. In view of the allegations made, the Commission finds that domestic remedies were duly exhausted in accordance with the provisions of Article 46.1. a) of the American Convention, and that exhaustion of the special administrative application to the Federal Institute on Access to Information was not required from the petitioner, as the State had said.

2. Timeliness of the petition

45. Pursuant to Article 46.1.b) of the American Convention, in order for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

46. In the present case, according to information provided by petitioner Romero Vázquez and not contested by the State, the final domestic ruling was issued on June 2, 2006, and his petition was filed with the Commission on December 1, 2006. In the case of the petition by Raymundo Gil Rendón, the final domestic decision was issued on November 10, 2006 and his petition was filed on May 10, 2007. The Commission therefore finds that the six-month requirement was complied with in both petitions.

3. Duplication of Proceedings and International *Res Judicata*

47. It does not appear from the record that the subject matter of the petitions is pending in any other international proceeding for settlement, or that it reproduces a petition already examined by this or any other international organization. It should therefore be considered that the requirements established in Articles 46.1.c) and 47.d) of the Convention have been met.

4. Colorable Claim

48. For purposes of admissibility, the Commission must decide whether the facts laid out in the petitions 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.⁶

49. The petitioners in the present matter state that the procedure whereby the Senate selected the head of the CNDH for a second term of office involved a number of violations of their rights. The IACHR observes that the following allegations appear in both petitions: i) violation of the right of the alleged victims to participate in public service in equality of conditions, inasmuch as during the selection process for the Ombudsman, only the then President of the CNDH had the opportunity to appear before the Senate Human Rights Committee; ii) violation of their right to a hearing inasmuch as the candidates were not guaranteed an appearance before the Senate Human Rights Committee; iii) violation of the duty to give proper grounds, because an opinion was approved that did not properly substantiate the reasons for proposing ratification of the President of the CNDH; iv) violation of the right to judicial protection when the applications for *amparo* were decided by the Second Division and not by the full Supreme Court, dismissing the applications as inadmissible without hearing the merits of the complaint. For its part, the State maintained that the petitions must be declared inadmissible because the narrative of the facts does not show any violation of human rights.

50. As to the first allegation, that is, the alleged violation of the right to participate in public service in equality of conditions, the Commission notes that the parties are in agreement that the process for the selection of the *Ombudsman* was governed by the provisions of Article 102 B) of the Constitution and Article 10 of the Law on the CNDH. Article 102 B) of the Mexican Constitution states that the President of the National Commission on Human Rights “shall remain in office for five years” and “may be reelected for one time only”. Article 10 of the Law on the CNDH provides that “[...] the Senate shall proceed to hold a broad consultation among the social organizations that are representative of the various sectors of society, [...] [and] [o]n the basis of these consultations, [...] shall propose to the plenary a slate of candidates from among whom the person will be selected to hold the post or, as pertinent, to ratify the holder [of the post]”.

51. According to the information available, bearing in mind the preceding laws, the Senate Human Rights Committee issued a call for candidates on September 30, 2004, according to which it could “propose ratification of the President of the National Commission on Human Rights as pertinent, or else, [propose] a slate of candidates chosen from among those proposed to it for consideration”. According to the call for candidates, in the event a slate is proposed, the candidates “shall appear before the Senate Human Rights Committee [...]”⁷.

52. The Commission notes that the parties have not disputed the fact that the President of the CNDH was proposed by the Senate Human Rights Committee for a second term of office, or that the full Senate decided to approve the opinion containing that proposal. Therefore, the IACHR observes that under the terms of the call for candidates of September 30, 2004, to continue at that stage with the procedure for the proposal of a slate of candidates was not pertinent, nor was it pertinent for the candidates to appear before the Senate Human Rights Committee.

53. On the basis of the foregoing, the Commission observes that in the present case, Bernardo Romero Vázquez and Raymundo Gil Rendón could participate as part of a slate and then appear before the pertinent Senate Committee only if the Senate Human Rights Committee did not decide to present an opinion proposing ratification. As a result, based on its initial review, the Commission does not find that the appearance by the then President of the CNDH before the Senate Human Rights Committee represents a possible violation of Articles 23 and 24 of the American Convention in relation to Article 2 of the American Convention to the prejudice of the alleged victims.

⁶ IACHR, Report N° 36/13, Petition 403-02, Admissibility, José Delfín Acosta Martínez and Family, Argentina, July 11, 2013, paragraph 40.

⁷ Call for candidates to hold the position of President of the National Commission on Human Rights, published in the newspapers “El Universal”, “La Jornada” and “Reforma” on September 30, 2004. Annex 4 to the petition of Bernardo Romero Vázquez.

54. As to the allegation regarding the absence of proper grounds for the agreement that proposed that the then President of the CNDH continue in office, and the alleged violation of the guarantee of a hearing, the Commission notes that, according to the petitioners, those guarantees ought to have been observed in the process of selection of the President of the CNDH.

55. Here, the Commission has already stated that pursuant to Article 10 of the Law on the CNDH and the call for candidates, the Senate Human Rights Committee followed a procedure whereby it chose to present a proposal that the President of the CNDH continue in office for a second term. The Commission notes that the opinion in question indicated that “a representative number of social organizations and public and private agencies that promote or defend human rights have stated their support for the current President of the National Commission on Human Rights [...]; and communications were also received from other organizations stating their disagreement with the work of the current President of the Commission, which were also taken into account”. It was stated that the meeting of the Senate Human Rights Committee took into account the role that the then President of the CNDH had played in civil society, as well as the outcomes of his reports on victim rights⁸.

56. By virtue of the foregoing, the Commission observes that from the information provided by the parties, neither the opinion of the Senate Human Rights Committee nor the adoption by the full Senate were legislative acts that were per se punitive and that would therefore require observance of due process guarantees, including the right to a hearing⁹. Although the State must give grounds for certain acts of Government¹⁰, the Commission observes that in the present matter, according to the information provided, the Senate Committee’s opinion did set out reasons and grounds for its decision to propose the President of the CNDH for a new term of office. As a result, the IACHR does not find any reasons that would *prima facie* enable it to consider a possible violation of the guarantee of proper grounds established in Article 8 of the Convention. The Commission also notes that the petitioners did not allege lack of access to the relevant decisions in the procedure, or that they were denied the additional information they had requested, and therefore, it finds that no additional information has been presented that could be characterized as a possible violation of Article 13 of the American Convention.

57. As to the alleged violation of the guarantee of a natural judge, the Commission notes from the information provided by the parties that the State provided information on the competence of the Divisions of the Supreme Court of Justice of the Nation to hear cases deriving from its “authority to take a case” (*“facultad de atracción”*), and that for its part, the Second Division itself explained in its decision the reasons why it considered it had jurisdiction.¹¹ The Commission considers that the information presented by

⁸ Senate Human Rights Committee, Opinion on the reelection of the President of the National Commission on Human Rights of October 28, 2004, Annex 10 to the petition of Bernardo Romero Vázquez.

⁹ On this matter, the Commission recalls that Article 8 of the American Convention is not confined strictly to judicial remedies, “but [to] all the requirements that must be observed in the procedural stages,” in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them. In the words of the Court, “due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or of a judicial nature.” I/A Court H.R., *Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72, para. 124.

¹⁰ The Inter-American Court has indicated that “decisions adopted by domestic bodies that could affect human rights should be properly grounded, otherwise they would be arbitrary decisions”. It also indicated that “the argumentation of a ruling and of certain administrative actions should allow one to know what the facts, reasons and regulations are on which it bases the decision-making authority, to therefore rule out any hint of arbitrariness”. Cf. I/A Court H.R. *Case of López Mendoza v. Venezuela. Merits, Reparations and Costs*. Judgment of September 1, 2011 Series C No. 233, para. 141.

¹¹The Commission notes that the State indicated that pursuant to Article 21 No. 2 b) of the Organic Law on the Federal Judiciary, when exercising their authority to take a case the Divisions of the Supreme Court are competent “[...] to hear a review of *amparo* that so warrants it because of its interest and importance”. The IACHR also notes from the information provided that the Second Division ruled on the *amparo* applications and said that it was not pertinent to refer the matter to the full court inasmuch as the act being challenged referred to a decision on the scope of judicial supervision of acts related to the selection of civil servants by “the branches of government in the constitutional state”, which was within its competence. Supreme Court of Justice of the Nation. Second Division of the Supreme Court of Justice of the Nation. *Amparo* review 471/2006. Decision of June 2, two thousand and six. First Preamble Paragraph. Annex 20 to the petition of Bernardo Romero Vázquez. Similarly, Supreme Court of Justice of the Nation. Second Division of the Supreme Court of Justice of the Nation. *Amparo* review 1523/2006. First Preamble Paragraph. Decision of November 10, 2006. Annex to the petition of Raymundo Gil Rendón.

the petitioners on this claim cannot be characterized as a possible violation of Article 8 of the American Convention.

58. Lastly, as regards the claim of an alleged lack of judicial protection, the Commission notes from the information provided by the parties that the petitioners had access to a number of judicial bodies that acted within the areas of their jurisdiction, and that in the end, the Second Division decided, having examined the pertinent legislation and the nature of the acts being challenged, to dismiss the requests for *amparo* and concluded that the petitioners were attempting to question acts of the Senate in exercise of its “sovereign” power to appoint the head of the CNDH. Bearing in mind that in the present report, the Commission has verified that the petitioners have not presented allegations that would translate into possible violations of their rights, and that the complaints presented were decided by various courts and were held to be inadmissible because of the nature of the acts being challenged, the Commission does not find any indications that the decision of the Second Division could be characterized at the merits stage as an alleged violation of Article 25 of the American Convention, and therefore rules the claim inadmissible.

V. CONCLUSIONS

59. Based on the foregoing arguments of fact and law, the Commission finds that the petitions are inadmissible in that they do not comply with Article 47. b) of the American Convention, and accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the petitions under examination inadmissible in accordance with Article 47. b) of the American Convention.
2. To notify the parties of the present decision;
3. To publish this decision and include it in the annual report to be submitted to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 25th day of the month of July, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.