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REPORT No. 15/17
PETITION 358-07
REPORT ON ADMISSIBILITY

MIGUEL ÁNGEL LARIOS UGALDE
COSTA RICA

Approved by the Commission on January 27, 2017.

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 JANUARY 27, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Jorge Enrique Infante Rojas and Miguel Ángel Larios Ugalde
Alleged victim:	Miguel Ángel Larios Ugalde
State denounced:	Costa Rica
Rights invoked:	Articles 8 (Right to A Fair Trial) and 23 (Right to Participate in Government) of the American Convention on Human Rights ¹ ; Article 7 of the Protocol of San Salvador; and other sources of International Law on Human Rights

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	March 23, 2017
Additional information received at the initial study stage:	April 10, 2007, and February 15, 2008
Date on which the petition was transmitted to the State:	May 17, 2011
Date of the State's first response:	August 26, 2011
Additional observations from the petitioning party:	January 17, 2012, and May 7, 2015
Additional observations from the State:	September 25, 2012

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 on April 8, 1970) No; Protocol of San Salvador, under the terms of Section VII

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

² The observations presented by each party were duly transmitted to the opposing party.

IV. ANALYSIS OF 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	Articles 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) in accordance with Article 1.1 (Obligation to Respect Rights) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; September 27, 2006
Timeliness of the petition:	Yes; March 23, 2007

V. ALLEGED FACTS

1. The petitioners declare that the alleged victim was a judge at the Court of Pérez Zeledón, which in April 1997 settled criminal case 97-20063-030, sentencing two individuals accused of drug trafficking to 18 years in prison –a decision confirmed by the Court of Appeal. Later, in early 1999, the convicts’ defense counsel filed an ancillary proceeding, by requesting that a more favorable rule be retroactively applied; but the Court of Criminal Enforcement of Alajuela rejected it. The defense appealed said decision to the Court of Pérez Zeledón, which decided to return the case to the enforcement judge and order him to settle said proceeding. However, the enforcement judge did not abide by the Court’s order and declared incompetence, as he considered that his duty was to enforce the punishment imposed not establish another. Consequently, the defense filed another appeal to the Court of Pérez Zeledón. On July 9, 1999, the Court, based on the new provisions of the Criminal Code of Procedure of 1998, accepted the appeal and reduced the convicts’ punishment to 6 years’ imprisonment.

2. The petitioners say that in October 1999, due to information spread by the media concerning alleged acts of corruption, the Full Court ordered to investigate judges and prosecutors who participated in punishment reductions. In this regard and based on the facts above, the alleged victim was subjected to administrative proceedings for hearing a case beyond his jurisdiction and for reducing a punishment significantly. Therefore, on March 20, 2000, under Article 199 of the Constitutional Law of the Judiciary³, the Supreme Court of Justice concluded that the alleged victim had committed a serious error when he settled the case without considering the existing jurisprudence and rules; as a result, it dismissed him from his office as a judge.

3. The alleged victim filed an appeal for review to the Supreme Court of Justice, but it was rejected on May 23, 2000. Afterward, he filed ordinary labor proceedings to the Labor Court of Pérez Zeledón to request that his dismissal from office be declared unjust and his restitution be ordered. On September 10, 2004, the Court rejected both main requests and partially accepted the supplementary request consisting in moving his contributions from the judiciary’s pension plan to the plan of the Social Security Fund. Given the Court’s refusal, the alleged victim filed an appeal to the Court of Southern Pérez Zeledón in which he alleged prescription. On July 15, 2005, the Court rejected the appeal on the grounds that there were no procedural shortcomings, or omissions that could have caused annulment or defenselessness, thus overruling the exception of prescription. Against this decision, the alleged victim filed an appeal for reversal to the Second Chamber of the Supreme Court of Justice to request that his dismissal be declared unjust and his restitution to office be ordered. After analyzing each one of the arguments by the petitioning party, the Chamber rejected the appeal on March 22, 2006, arguing that “there is an impartial situation of absolute mistrust of the

³ The petitioners say that under Article 199 of the Constitutional Law of the Judiciary:

Any complaint exclusively on problems of interpretation of legal rules will be dismissed outright.

However, in the case of unwarranted and serious delays or errors in the administration of justice, the Judicial Inspection Tribunal will immediately inform this to the Full Court in order that, once the case is investigated, said Court decides to retain, suspend or dismiss the officer.

appellant's work as a judicial officer; therefore it is impossible for him to continue in the Judiciary." The decision, which had two negative votes, was notified on September 27, 2006.

4. In addition, the petitioners mention, as context information, that apart from being subjected to administrative proceedings, Mr. Larios Ugalde was criminally accused of incompetence but that on October 8, 2003, he was acquitted of all charges, as it was proved that he and another judge had been deceived and misled by the third judge and the prosecutor. According to the judgment, "after the debate, it is evident that [the alleged victim] did not consciously and willingly issue a judgment contrary to the law" and that judge Pérez González, "who did understand the case file and the same jurisprudence of the Third Chamber fully – which he admitted in the debate, and was proved in the previous analysis–, willingly proceeded to write said judgment, hiding from his colleagues basic information that would mislead them about their duty." The petitioner says that the text of said judgment was presented in the context of the appeal for reversal at the labor proceedings, despite which this remedy was rejected. Moreover, the petitioner says that due to the application of Article 199 of the Constitutional Law of the Judiciary –under which the Full Court can dismiss judicial authorities–, many judges have resorted to the Constitutional Chamber to request that paragraph 2 of said article be declared unconstitutional. Nevertheless, the Court has dismissed all such requests on the grounds that the article fully agrees with the Costa Rican Constitution.

5. The petitioners argue that the alleged victim's dismissal violated his rights to judicial independence, to work, and to access and hold public office, inasmuch as the Supreme Court analyzed his judicial decisions, interpretations and judgments only to impose the highest punishment on him, going beyond its disciplinary powers and based on an ambiguous and arbitrary rule that does not describe reprehensible conducts.

6. The State argues that the petition is inadmissible under provisions in Article 47 (b) of the Convention. It says that the events reported do not establish a violation of human rights, because the legal proceedings carried out regarding this case were heard by competent, independent and impartial courts in accordance with the rules of due process. Therefore, it emphasizes that the fact that the final judgment –both in disciplinary terms and judicial terms concerning labor law– has been detrimental to the interests of the alleged victim cannot be considered a violation of the American Convention.

7. The State argues that before the criminal investigation, the Second Chamber of the Supreme Court of Justice established that there was serious negligence that led the alleged victim to issue a judgment wrongly; therefore, under the domestic law, it was lawful to impose a disciplinary punishment on him for failing to comply with his duties as a judge. In this regard, the State declares that on March 20, 2000, the Full Court agreed to dismiss the alleged victim as a judge due to serious and unwarranted errors (serious legal malpractice) in his administration of justice inasmuch as he took over jurisdiction in a matter out of his competence instead of presenting the conflict of jurisdiction to the Full Court. Regarding the alleged violation of his right to judicial independence, the State argues that the Full Court believed that said right is not unconditional because to settle cases brought to them, judges must abide by the rules of the legal system.

8. Concerning the judgment of the Second Chamber of the Supreme Court of Justice of March 22, 2006 that confirms the decision appealed by the alleged victim, the State emphasizes that the Chamber applied Article 199 of the Constitutional Law of the Judiciary. According to said article, the Judicial Inspection Tribunal shall outright reject any complaint exclusively concerning problems of interpretation of legal rules; however, "in the case of serious and unwarranted delay or errors in the administration of justice, it shall immediately inform this to the Full Court so that the latter, based on investigation of the case, decides whether to retain, suspend or dismiss the officer." The State also emphasizes that in said judgment, the Second Chamber considered that "the Court of Pérez Zeledón acted wrongly, since by acting as a court of second instance, it took over jurisdiction in the proceedings to reduce the punishment of the convicts even when there was not a judgment of first instance in that regard."

9. Therefore, it argues that, given the principle of subsidiarity and complementarity, the Commission is not a supervisory court competent to analyze alleged errors of fact or law that the domestic

courts might have committed while acting within the scope of their competence; otherwise, the Commission would intervene as a “fourth instance.”

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. The petitioners declare that the alleged victim exhausted the administrative and judicial domestic remedies, as he contested the resolution of March 20, 2002 under which he was dismissed from his job as a judge, by means of an appeal for review that the Supreme Court of Justice overruled on May 23, 200. Subsequently, in order to denounce his dismissal, he filed ordinary labor proceedings that the court of appeal rejected on March 22, 2006; this decision was notified on September 27, 2006. In turn, the State does not refer to the prior exhaustion of domestic remedies or contradict the petitioner’s statement in that regard. As a result, the Commission concludes that the alleged victim exhausted the domestic remedies through the sentence that he was notified of on September 27, 2006, in accordance with Article 46.1 (a) of the Convention and Article 31.1 of the IACHR Rules. Given that the petition was lodged on March 23, 2007, the petition meets the requirement set forth in Article 46.1 (b) of the Convention and Article 32.1 of the Rules.

VII. COLORABLE CLAIM

11. In view of the elements of fact and law filed by the parties, along with the nature of the matter brought to its attention, the Commission believes that whether the disciplinary proceedings whereby the alleged victim was dismissed as a judge respected the rights protected by Articles 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in accordance with its Article 1.1, will be analyzed in the assessment of merits.

12. Concerning the petition for the alleged violation of the right set forth in Article 23 of the Convention, the Commission notes that the petitioner does not refer to or prove the purported violation; therefore, said petition must be declared inadmissible. Lastly, regarding Article 7 of the Protocol of San Salvador, the IACHR stresses that Article 19.6 of said treaty embodies a limited rule on competence so that the bodies of the Inter-American System can rule on individual petitions connected with the rights established in Articles 8 (a) and 13. In this regard, the Commission is not competent *ratione materiae* to rule on the possible violation of Article 7 of the Protocol of San Salvador.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention in accordance with the obligation set forth in Article 1.1 of said treaty;
2. To find the instant petition admissible in relation to Articles 23 of the American Convention and 7 of the Protocol of San Salvador;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of San Francisco, California, on the 27 day of the month of February, 2017.
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.