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REPORT No. 143/17
PETITION 235-07

REPORT ON ADMISSIBILITY

PEDRO ROURA ORTEGA
ECUADOR

Approved by the Commission at its session No. 2104 held on October 26, 2017.
165th Regular Period of Sessions.

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I. INFORMATION ABOUT THE PETITION

Petitioner:	Pedro Roura Ortega and David Cordero Heredia
Alleged victim:	Pedro Roura Ortega
State denounced:	Ecuador
Rights invoked:	Articles 1 (obligation to respect rights), 23 (right to participate in government), and 24 (equal protection) of the American Convention on Human Rights[1]

II. PROCEDURE BEFORE THE IACHR[2]

Date on which the petition was received:	February 28, 2007
Additional information received at the stage of initial review:	March 11 and 12, 2008
Date on which the petition was transmitted to the State:	March 28, 2008
Date of State's first answer:	July 14, 2008
Additional observations from the petitioning party:	September 24, 2008 and April 4, 2016
Additional observations from the State:	November 19, 2008

III. COMPETENCE

Competence *ratione personae:*	Yes
Competence *ratione loci*:	Yes
Competence *ratione temporis*:	Yes
Competence *ratione materiae*:	Yes, American Convention (instrument deposited December 28, 1977)

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 *res judicata*:	No
Rights declared admissible:	Yes, Articles 8 (judicial guarantees), 23 (right to participate in government), 24 (equal protection), and 25 (judicial protection) of the ACHR in relation to its Article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, September 6, 2006
Timeliness of the petition:	Yes, February 28, 2007

[1] Hereinafter "American Convention," "Convention," or "ACHR."
[2] The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners allege that on August 15, 2006 Pedro Roura Ortega (hereinafter "the alleged victim") filed a form before the Supreme Electoral Tribunal (hereinafter "TSE": Tribunal Supremo Electoral) registering candidates for president and vice-president of the republic, as an independent presidential candidate of the Movimiento Revolución Pacífica. They note that the TSE determined that the threshold of signatures needed to be entered as a candidate was 89,903, and that of the 179,376 signatures presented by the alleged victim, 40,260 were subtracted as duplicates in favor of other movements; 12,377 for being duplicates in favor of the same movement; 20,921 for belonging to different persons; and 14,794 that belonged to citizens not on the voter rolls, for a total of 91,024 valid signatures, with which he should have qualified as a presidential candidate. They state that nonetheless the TSE applied an additional and unregulated method, after the time for doing so had passed, and only to the alleged victim, which consisted of making an electronic comparison of the signatures scanned with the signatures handed in, which resulted in the discounting of 31,690 signatures, for a net total of 59,334 valid signatures. They add that under the General Regulation of the Organic Law on Elections (hereinafter "LOE": Ley Orgánica de Elecciones), the time for qualifying candidacies ended on August 24; however, Pedro Roura was notified of the decision that rejected the registration of his candidacy on August 29, 2006, i.e. five days after the other candidates. The petitioners allege that in Ecuadorian Law every petition submitted to the public authority must be resolved within the time indicated by law or otherwise, by administrative silence, it is understood that said application has been approved.

2. The petitioners indicate that two other candidates (Lenín Torres and Marcelo Larrea) filed appeals due to the votes discounted from their totals, and the Constitutional Court decided to return the signatures subtracted as duplication in other movements to the candidates, considering it invalid for the TSE to discount them, enabling both candidates to qualify. They state that on August 31, 2006, the alleged victim went before the Constitutional Court and the TSE at 5:26 p.m. and 5:41 p.m., respectively, to file a motion for appeal (*recurso de apelación*) in the same terms as the candidates referred to. They indicate that on September 6, 2006, the Constitutional Court dismissed the motion for not having been presented directly to the TSE. In this regard, they allege that the motion was filed before the TSE within 48 of the notice of rejection of the registration, and that the domestic legislation establishes that the time runs from the date of notice, and not the date of the decision. They add that at the same time, "he filed a copy of the action with the Constitutional Court for it to take cognizance of the application" and they note that the Constitutional Court asked the TSE, on two occasions, to forward the motion for appeal to it. The petitioners adduce, therefore, discrimination in the application of the system of scanning and percentage elimination, as well as in the refusal of the Constitutional Court to return to the alleged victim the signatures that are duplicates in other movements, unlike what happened with two other candidates; and they add that, mindful of the decision of the Constitutional Court in those cases, the TSE should have returned the signatures that had been discounted.

3. They also state that the complaint appeal (*recurso de queja*) provided for at Article 97 of the LOE is established as a disciplinary remedy whose objective is to punish the officials who violate the law, regulation, or resolutions of the TSE, thus in this case the suitable means for amending the resolution of the TSE was the appeal, after which there are no further remedies, thus it exhausts the contentious-electoral jurisdiction. In view of all the foregoing, petitioners indicate that there were violations of the right to equality, of political rights, and of the right to non-discrimination, as well as of the obligation to respect human rights in the process of qualifying as well as in the administration of electoral justice.

4. The State argues that on August 26, 2006, the Director of IT Systems presented a report to the Chairman of the Legal Committee of the TSE on the verification and validation of signatures of the Movimiento Revolución Pacífica, pursuant to Article 18 of the Instruction for Registration and Qualification of Candidacies of October 15, 2006.[3] It asserts that given that there were 40,026 duplicates with other independent candidacies, two processes were undertaken to validate information, one related to the validity

[3] It indicates that said provision establishes that "a person may not support more than one candidacy from the same district and for the same office. If it is done, the dual support is annulled."

of the ballots filed, and the other with respect to the signatures filed, resulting in the alleged victim having 59,334 valid signatures, falling short of the percentage required by the LOE to qualify. In view of the foregoing, it indicates that the Chairman of the Legal Committee of the TSE recommended to the plenary of the TSE that it deny registration of the candidacy, and the TSE in effect denied registration of the candidacy on August 28, 2006.

5. The State argues that the TSE, without belonging to the administration of justice, has genuine judicial powers, attributed to it by the Constitution and the LOE, on appeal and as a matter of final judgment, and that it limited itself to exercising its power of configuring the fundamental right to political participation through administrative procedures involving the electronic matching of signatures, a procedure that is not contrary to the essential content of the right to elect and to be elected, and it is an administrative power that is part of the function of organizing, directing, and ensuring fundamental electoral procedures. It adds that contrary to what is argued by the petitioners, the TSE cannot overturn its decision on its own initiative, for that procedure is not provided for in the legislation and would be chaotic, for the large number of signatures presented should have been properly checked to ensure the right to political participation for him and his opponents. In addition, it argues that the application for registration of a presidential candidate and the related procedures are not of the same legal nature as the right to petition, thus the alleged victim could not well amend the failure to satisfy the admissibility requirements of a presidential candidate using the procedure of positive administrative silence, which operates in exceptional circumstances that are set out in an exhaustive list.

6. The State also affirms that the Constitutional Court, in a report issued on occasion of the petition before the IACHR, considered that the procedure applied is constitutional, as the result of being submitted to a basic weighing using the test of reasonableness, as a part of which it considered that while electronic verification of signatures of the systems office is not expressly regulated in the LOE, it is not prohibited by it or other laws and, moreover, it is a suitable technical instrument for certifying the seriousness and transparency of the future presidential candidate. In addition, it adds that from a reading of the complaint before the IACHR, it appears that in the first method of exclusion applied, the errors in the signatures supporting candidates Lenín Torres and Marcelo Larrea were ostensibly less than the mistakes found in the signatures in support of Pedro Roura, and that therefore there cannot be equal treatment for situations that are evidently different. In this respect, it notes that the number of signatures annulled in the case of the alleged victim was almost three times the number annulled for Larrea and twice the number annulled in the case of Torres.

7. The State indicates that the alleged victim had the opportunity to file adequate and effective remedies and failed to do so. It notes that the motion for appeal filed by the alleged victim was to be submitted in the terms of Article 276(7) of the Constitution and Article 64 of the LOE, within two days of its notice to the authority that issued the decision appealed, i.e. the TSE *en banc*, which did not happen in this case, for the alleged victim filed the request "to the Constitutional Court, for it to overturn the resolution adopted by the Court *en banc* in which it denied the registration of our candidacies." It adds that one cannot determine the veracity of the assertion by the alleged victim that he filed the appeal with the TSE and only a copy to the Constitutional Court, for it to be informed. It notes that there are indicia that the brief was not delivered to the TSE on the corresponding date and that it appears that the brief that contains the appeal to the Constitutional Court was received on August 31, 2006, which is why the Constitutional Court did not rule on the merits and dismissed the appeal.

8. In addition, it states that he was able to pursue the complaint appeal provided for in Article 97 of the LOE for electoral infractions, or of the TSE, which is in order when the appeal is denied. It indicates that the legislation provided for the preventive *amparo* to require the electoral authority to issue a pronouncement on his application to register candidacies, but that the alleged victim set this legal institution in motion improperly, opting to make an inadequate use of the right of petition, accordingly one should apply the principle that "no one can argue his own negligence to his or her own benefit." It adds that the petitioners seek to use the IACHR as an organ to review, on the merits, electoral processes that have concluded lawfully, which is not within the scope of its competence.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIME FOR FILING

9. The petitioners state in their complaint that the suitable remedy to exhaust is the appeal (*recurso de apelación*), with respect to which no further challenge is allowed, thus it exhausts the contentious electoral jurisdiction, and that the complaint appeal (*recurso de queja*) that the State refers to was not suitable in this case given that it is a disciplinary remedy. The State argues that the alleged victim did not exhaust domestic remedies, as he failed to pursue a complaint appeal, and that he made improper use of the appeal (*recurso de apelación*), by filing it directly with the Constitutional Court and not with the TSE.

10. The IACHR considers that based on the antecedents set forth by the parties, as well as the documentation submitted, the appeal (*recurso de apelación*) is the suitable remedy for the purposes of exhausting domestic remedies. In addition, the State does not refute the petitioners' argument on the inapplicability of the complaint appeal (*recurso de queja*) in this case. The petitioners argue that the appeal was filed with the TSE at 5:41 p.m. on August 31, 2006, within the time required, and they submit a document that supports what is claimed. The State, for its part, argues that one cannot determine the veracity of what is argued by the petitioners, yet it does not present information or documentation to controvert what is presented by the petitioner.

11. Mindful of the foregoing, the Commission concludes that the alleged victim exhausted domestic remedies by the judgment of September 6, 2006, in keeping with Article 46(1)(a) of the Convention and Article 31(1) of the Rules of Procedure. Considering that the petition was submitted on February 28, 2007, it meets the requirement established at Article 46(1)(b) of the Convention and Article 32(1) of the Rules of Procedure.

VII. COLORABLE CLAIM

12. In view of the elements of fact and law set forth by the parties and the nature of the matter put before it, the Commission considers that the fact that the alleged victim's candidacy was allegedly submitted to a review of votes not contemplated by the law and applied exclusively to his candidacy and not with respect to other candidacies, together with the dismissal of an appeal filed allegedly in the same conditions as other candidates, without that court analyzing the merits, tends to establish possible violations of the rights enshrined in Articles 8 (judicial guarantees), 23 (right to participate in government), 24 (equal protection) and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1) (obligation to respect rights) of that treaty.

VIII. DECISION

1. To find this petition admissible in relation to Articles 8, 23, 24, and 25 of the American Convention, in relation to Article 1(1) of that same instrument;

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. To publish this decision and include it in its Annual Report to the General assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Montevideo, Uruguay, on the 26th day of the month of October, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.