

OEA/Ser.L/V/II.167
Doc. 17
24 February 2018
Original: Spanish

REPORT No. 13/18
PETITION 345-08
REPORT ON ADMISSIBILITY

ÁNGEL GARCÍA CASIMIRO
MEXICO

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 13/18, Petition 345-08. Admissibility. Ángel García Casimiro.
Mexico. February 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Ángel García Casimiro
Alleged victim:	Ángel García Casimiro
State denounced:	Mexico ¹
Rights invoked:	Articles 8 (fair trial) and 24 (equal protection) of the American Convention on Human Rights ² in connection with its Article 1 (obligation to respect rights); Article 7 of the Protocol of San Salvador; Articles I and XVIII of the American Declaration on the Rights and Duties of Man

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	March 3, 2008
Notification of the petition to the State:	January 15, 2016
State's first response:	May 3, 2016
Additional observations from the petitioner:	December 5, 2016

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 ratification instrument on March 24, 1981)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; September 17, 2007
Timeliness of the petition:	Yes; March 3, 2008

V. ALLEGED FACTS

1. Mr. Ángel García Casimiro (hereinafter “the petitioner” or “the alleged victim”) claims that the Mexican State is internationally responsible for several violations of his labor rights and due process in light of the executive and legislative authorities’ denial to ratify him as a Supernumerary Judge at the Superior Court of Justice of the Free and Sovereign State of Guerrero. According to the petitioner, this post was assigned to him by the state’s Governor on January 15, 1997 and approved by Congress on February 19, 1997

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the decision on this matter.

² Hereinafter “Convention” or “American Convention.”

³ The observations submitted by each party were duly transmitted to the opposing party.

for a six year term. He claims that the State laws do not foresee a ratification procedure, so the appointment mechanism is reproduced, a procedure in which the Judiciary does not intervene and judges' performance of duties is not considered.

2. The petitioner points out that, although the ratification procedure is not expressly regulated, national and state jurisprudence have been uniform in indicating that ratification, in addition to following the rules of the appointment system, must include an opinion prepared by the Governor that must be founded and motivated in a thorough evaluation of the judicial performance of who is being re-evaluated. It also alleges that, according to said jurisprudence, the Congress is authorized to declare the Governor's proposal as legal or illegal as a result of the evaluation of the antecedents, carried out both by the corresponding Commission and by the Plenary Session of the Congress.

3. The alleged victim denounces that the Governor based his non-ratification ruling of February 11, 2003 on three grounds: (a) salary earnings for his work as a judge from the date of his appointment to the date of approval by Congress; (b) asset declarations indicating that the date of his appointment was the date that he joined the Court; and (c) repeated use of unpaid leave. He also asserts that Congress passed the ruling without discussing it, without assessing his performance of duties as a judge, and without discussing the decision's admissibility or inadmissibility, all which, the petitioner believes, violated his right to a hearing. According to him, this left him in a state of defenselessness and inability to submit evidence to challenge the charges of lack of integrity, falsehood and job instability, which are mentioned in the ruling. This since he was not summoned to attend the administrative procedure as required by the corresponding regulation and was only notified of the result of its non-ratification. The petitioner indicates that the lack of rules and regulation for a ratification procedure is contrary to the Judiciary's autonomy and independence and favors authoritarian, equivocal and unfair resolutions that do not take into account the performance of duties of judges, who are excluded from participating in the process.

4. The petitioner alleges that the main reason for his non-ratification was contradictory because the payment of his non-negotiable remuneration corresponding to the period between the dates of his appointment and approval was made by executive branch officers, namely, the Finance and Administration Secretariat of the Government of the State of Guerrero. According to the petitioner, in many documents, this body expressed that he joined the Superior Court on the date of his appointment to the post, pursuant to the State Constitution. He submits that he was subjected to unfair and discriminatory treatment, since his court colleagues also received that payment and were ratified in their posts and promoted in the same time that his ratification in the post was rejected. Moreover, he claims that the use of the lawful exercise of a labor right protected by the Constitution (unpaid leave) as a supporting argument for his non-confirmation is an arbitrary decision. He indicates that as a judge his performance of duties was irreproachable, that he was never punished or received complaints about his work.

5. The petitioner asserts that on March 4, 2003 he challenged the Governor's decision of non-ratification of February 11, 2003 and the Congress' approval of February 13, 2003, by filing a "writ of amparo" to the District First Court, which was granted on January 31, 2006. He indicates that on November 8, 2006, the Twenty-first Circuit First Collegiate Court for Administrative and Criminal Matters, in review, ordered to send back the of the proceeding in order to the President of the Congress Government Commission submit to the District Judge the record of the session in which the non-ratification decision was discussed and approved; but the record was not found. On January 15, 2007 the District Judge, in compliance with the judgment, again granted the "writ of amparo" in favor of the alleged victim, but the parties challenged this resolution to the First Collegiate Court. On September 17, 2007, this Court notified its decision to overturn the "writ of amparo", on the grounds that the petitioner should have known the difference between appointment and approval; that he cannot claim that he was forced to receive the salary at issue; that it was dishonest to use unpaid leave; and that the petitioner's performance of duties did not meet the principles of excellence required for ratification; that, therefore, the claims of violation of rights are invalid. The petitioner submits that this resolution proves that there are no effective remedies to protect his rights.

6. The State, for its part, holds that the petition should be rejected because the denounced facts did not lead to human rights violations to the detriment of the petitioner. It also asserts that the Governor's

non-ratification decision was well-founded and justified and, consequently, Congress approved it pursuant to the powers established by the State Constitution and the laws. In addition, it submits that the petitioner filed judicial remedies to challenge the rulings, but his claim was dismissed by the corresponding judicial authority who confirmed that the non-ratification decision conformed to the legal framework in force. Therefore, the State requests the Inter-American Commission to declare this petition inadmissible in view of the petitioner's intent to have the IACHR review judgments lawfully issued by Mexican courts, which would lead to a fourth instance.

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

7. Based on the available information, on March 4, 2003 the petitioner initiated "writ of amparo" against the non-ratification ruling, which was granted on January 31, 2006. To impugn this resolution, the parties lodged an appeal for review that was settled on November 8, 2006, after which the send back of the proceeding was ordered. On January 15, 2007, the District Judge issued a new resolution in favor of the petitioner, which was appealed in review to the Twenty-first Circuit First Collegiate Court for Administrative and Criminal Matters. On September 17, 2007, this Court revoked the "writ of amparo" on the basis that the petitioner's rights were not violated. For its part, the State does not submit any observations on the requirement of exhaustion of domestic remedies. Therefore, the Commission notes that the petitioner exhausted the domestic remedies available in the domestic jurisdiction; and that the petition thus meets the requirement established in Article 46.1.a of the Convention and Article 31.1 of the IACHR Rules.

8. As to the presentation requirement of timeliness, the Commission notes that the final resolution by which the domestic remedies were exhausted was notified on September 17, 2007 and that the petition before the IACHR was presented on March 3, 2008. Thus, the petition meets the requirement set forth in Articles 46.1.b of the Convention and Article 32.1 of the Rules.

VII. ANALYSIS OF COLORABLE CLAIM

9. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the alleged due process violations in the procedure of ratification, the absence of regulation of the procedure of ratification or re-election of the Supernumerary Magistrates and the consequent affectation to the independence of the judicial function⁴, could characterize possible violations of the rights protected in Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to the general obligations set forth in its Articles 1.1 and 2.

10. In relation to the allegations of the petitioner regarding the violation of the right enshrined in Article 24 (equality before the law) of the Convention, following an alleged unequal treatment with respect to his colleagues in the same court, the Commission observes that the petitioner has not offered sustenance that allows to consider prima facie its possible violation. In this regard, the IACHR considers that the alleged arbitrariness may be analyzed as possible violations of the rights protected in articles 8 (judicial guarantees) and 25 (judicial protection) of the Convention in connection with the general obligations set forth in its articles 1.1 and 2.

11. In regard to the alleged violation of the provisions of the American Declaration, the IACHR has previously established that once the American Convention becomes effective in a State, the Convention, not the Declaration, becomes the main source of law to be enforced by the Commission provided that the petition concerns an alleged violation of substantially identical rights established in both instruments, like in

⁴ In this context, the Commission recalls that one factor contributing to judges' lack of job security is the possibility that in order to remain in their posts they may be subject to confirmation or may even face the prospect of having to be re-elected. IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, December 5, 2013, par.86.

this case. As a result, the Commission will not rule on the purported violations of the Declaration.⁵ As to the claims concerning Article 7 of the Protocol of San Salvador, the IACHR notes that the competence foreseen in the terms of Article 19.6 of said treaty, to rule in the context of an individual case is limited to Article 8 and 13. With regard to said article, the Commission may consider it for the interpretation or the enforcement of the American Convention, under Article 29 of the Convention.

12. Finally, as to the State's claim of the establishment of a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to replace the domestic authorities' competence. However, the Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victims' right of access to justice under the terms of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in connection with its Articles 1.1 and 2;

2. Declare the instant petition inadmissible in relation to Article 24 of the Convention; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁵ IACHR, Report No. 47/10, Petition 1325-05. Admissibility. *Estadero "El Aracatazzo" Massacre*. Colombia, March 18, 2010, par. 43.