

OEA/Ser.L/V/II.
Doc. 80
17 May 2019
Original: Spanish

REPORT No. 72/19
PETITION 14-09
REPORT ON ADMISSIBILITY

LUIS ARMANDO CASTILLO OSORIO
GUATEMALA

Approved electronically by the Commission on May 17, 2019.

Cite as: IACHR, Report No. 72/19, Petition 14-09. Admissibility. Luis Armando Castillo Osorio. Guatemala. May 17, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Luis Armando Castillo Osorio
Alleged victim:	Luis Armando Castillo Osorio
Respondent State:	Guatemala
Rights invoked:	Articles 8 (fair trial), 11 (privacy), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ¹ , taken in conjunction with its Article 1.1 (obligation to respect rights), and Articles 6 and 7 of the Protocol of San Salvador in relation to Articles 2, 3, 4, 5, and 8 thereof.

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	January 4, 2009
Additional information received at the stage of initial review:	August 20, 2014
Notification of the petition to the State:	December 8, 2014
State's first response:	May 31, 2017
Additional observations from the petitioner:	June 26, 2017
Additional observations from the State:	January 4, 2009
Notification of the possible archiving of the petition:	August 20, 2014
Petitioner's response to the notification regarding the possible archiving of the petition:	December 8, 2014
Precautionary measure granted:	May 31, 2017

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 (instrument deposited on May 25, 1978)

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), 25 (judicial protection) and 26 (progressive development) of the American Convention, taken in conjunction with Article 1.1.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, February 20, 2008
Timeliness of the petition:	Yes, November 7, 2008.

V. FACTS ALLEGED

1. Mr. Luis Armando Castillo Osorio, the petitioner and alleged victim, says that his employment relationship with the National Civil Police, an agency under the authority of the Ministry of the

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

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

Interior of the State of Guatemala, began on April 16, 1990. He says that on January 9, 2004, by Ministerial Decision No. 0068-2004, he was promoted to the rank of first officer (*oficial primero*) of the National Civil Police. However, on August 8, 2005, he was demoted to second officer for no reason and discharged from the National Police “for acts that seriously harm the National Civil Police or bring it into disrepute.” Those acts were reportedly to have disregarded a domestic law governing the conduct of active members of the police as a result of having being appointed to a position for which he had not applied through an administrative procedure. The petitioner alleges that the authorities never informed him that he had been appointed and was working without having complied with the proper procedures, and that he was unjustly dismissed without due process or an administrative proceeding, in violation of his rights to a defense and a fair trial.

2. The petitioner says that throughout all his time in service he discharged his duties efficiently without committing any disciplinary or administrative violation. He also says that the authorities did not denounce the act by which he was promoted, despite the act being official and public in nature. He argues that his discharge did not follow due process, given that there was no administrative proceeding in which he was afforded the possibility to be heard, in violation of his right to a defense and in breach of the Police Law, the Disciplinary Rules of same, and the Constitution, which require the appropriate administrative proceeding to be conducted before penalties are imposed. Therefore, he considers that his dismissal was unlawful and arbitrary and that it should be annulled. The petitioner also says that at the time of his dismissal, the National Civil Police was a party in a proceeding concerning a collective economic and social dispute before the Seventh Court for Labor and Social Security Matters in and for the First Economic Zone, and therefore any dismissal of a member of the institution, even for cause, required judicial authorization in accordance with Article 380 of the Labor Code.

3. The petitioner says that upon being notified of his discharge, he filed a motion for reinstatement with the Seventh Court for Labor and Social Security Matters in the context of the collective economic and social dispute. On August 22, 2005, that court ordered the petitioner’s reinstatement in his job together with payment of lost wages since the date of his dismissal, which decision was confirmed on March 28, 2006. In response to that ruling, the Attorney General filed a petition for constitutional relief (*recurso de amparo*) with the Supreme Court of Justice, arguing that the State had no obligation to comply with the judgment issued by the Seventh Labor Court because it was factually and legally unfounded. On July 30, 2007, the Supreme Court denied the petition for constitutional relief as manifestly out of order. The Office of the Attorney General appealed against that decision, arguing that there was no basis for it and that, since the dismissal of the petitioner was not the consequence of the exercise of his trade union rights, but for cause³, no judicial authorization was needed. On January 18, 2008, the Constitutional Court ruled in favor of the State and overturned the Seventh Court’s decision. The petitioner alleges that the Constitutional Court was biased and argues that its decision was unlawful and arbitrary. Accordingly, the petitioner requested the judgment’s clarification and elaboration. On February 20, 2008, the Constitutional Court adopted a decision, of which the petitioner was notified on November 7, 2008, in which it dismissed the request for clarification and elaboration.

4. The State, for its part, says that the petitioner was discharged for having disobeyed the domestic law that governs the conduct of active members of the National Civil Police, since his promotion failed to meet the administrative requirements to apply for that position. It says that ignorance of the law is not a valid argument and that it was the petitioner’s responsibility to comply with the rules in force. The State also argues that the petition is manifestly groundless and out of order and should be declared inadmissible under Article 47 of the American Convention and Article 34 of the Rules of Procedure. It says that all the decisions adopted in the administrative proceeding against the petitioner complied with the law in force and that the Constitutional Court issued its judgment in a coherent way, consistent with the facts, rights, and the evidence presented. In addition, the State argues that it is clear that the intention of the petition is for the Commission to overstep its powers and review a judgment lawfully issued by Guatemala’s highest constitutional organ, thereby attributing the international body the functions of a court of review and seeking

³ To seriously undermine the reputation of the National Civil Police.

to establish it as a fourth instance. The State recalls that the Commission is a subsidiary organ and, therefore, the petition should be declared inadmissible.

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

5. The petitioner argues that domestic remedies were exhausted with the Constitutional Court's decision of February 20, 2008, of which he was given notice on November 7, 2008. The State, for its part, mentions that the reinstatement requested by the petitioner was definitively resolved by the judgment on the petition for constitutional relief (*amparo*) handed down on January 18, 2008.

6. The Commission notes that the petitioner exhausted the judicial proceedings available at the domestic level with the request for clarification and elaboration to the Constitutional Court. In that regard, the Commission finds that the requirement contained in Articles 46.1.a of the Convention and 31.1 of the Rules of Procedure has been met.

7. In addition, the Commission notes that the decision of the Constitutional Court that brought an end to the proceedings pursued by the alleged victim was issued on February 20, 2008, and that the petitioner was notified of it on November 7, 2008; the IACHR received the petition on January 4, 2009. Therefore, the petition was lodged within the six-month time limit prescribed in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

8. In light of the factual and legal arguments set out by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the allegations regarding the victim's fair trial guarantees and right to a defense in his dismissal could potentially amount to violations of Articles 8 (fair trial), 25 (judicial protection) and 26 (progressive development) of the American Convention, in connection with its Article 1.1. As to the claim concerning the alleged violation of Articles 11 (privacy) and 24 (equal protection) of the American Convention, the Commission considers that the petitioner has not presented any arguments or sufficient grounds to suggest *prima facie* their possible violation. In addition, with regard to the submissions regarding violations of Articles 6 and 7 of the Protocol of San Salvador, the IACHR notes that the competence envisaged in Article 19.6 of that treaty for establishing violations in the context of an individual case is limited to its Articles 8 and 13. With respect to the other provisions, pursuant to Article 29 of the American Convention, the Commission may take them into account in its interpretation and enforcement of the American Convention and other applicable instruments.

9. As regards the State's argument about a fourth instance, the Commission notes that, by declaring this petition admissible, it does not seek to replace the domestic authorities' competence to reverse a judgment unfavorable to an alleged victim or assess possible interpretation mistakes made by the domestic courts, which in principle correspond to the domestic courts. In the merits stage, the Commission will determine if the domestic legal proceedings complied with the right of due process and legal protection and, thus, ensured the victims' right of access to justice.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 25 and 26 of the American Convention, in connection with its Article 1.1;

2. To declare the petition inadmissible with respect to Articles 11 and 24 of the American Convention; and

3. To notify the parties of this decision, to continue with the analysis of the merits, and 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 on the 17th day of the month of May, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García (dissenting opinion), First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli (dissenting opinion), Luis Ernesto Vargas Silva (dissenting opinion), and Flávia Piovesan, Commissioners.