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REPORT No. 82/19
PETITION 342-09
REPORT ON ADMISSIBILITY

FLORENCIA HERNÁNDEZ ROMERO ET AL.
MEXICO

Approved electronically by the Commission on May 31, 2019.

Cite as: IACHR, Report No. 82/19, Petition 342-09. Admissibility. Florencia Hernández Romero et al. Mexico. May 31, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Barragán Barragán, Asdrúbal Aguiar-Aranguren
Alleged victim:	Florencia Hernández Romero at al. ¹
Respondent State:	Mexico ²
Rights invoked:	Articles 3 (right to juridical personality), 8 (right to a fair trial), 9 (freedom from ex post facto laws), 16 (freedom of association), 23 (right to participate in government), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights, ³ in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions under domestic law) thereof, as well as Article 8(1) (trade union rights) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	March 24, 2009
Notification of the petition to the State:	April 4, 2014
State's first response:	June 17, 2014
Additional observations from the petitioner:	October 10, 2014 and August 31, 2015
Additional observations from the State:	April 22, 2015

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 of ratification deposited on March 24, 1981) and Protocol of San Salvador (instrument of ratification deposited on April 16, 1996)

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
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¹ The petition concerns 11 victims who are individually identified in an appended document.

² Pursuant to Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or decision in this matter.

³ Hereinafter "American Convention" or "Convention."

⁴ Hereinafter "Protocol of San Salvador"

⁵ The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 16 (freedom of association), 23 (right to participate in government), 24 (right to equal protection), 25 (right to judicial protection), and 26 (economic, social and cultural rights) of the American Convention on Human Rights, in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions under domestic law) thereof; and Article 8(1) (trade union rights) of the Protocol of San Salvador.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, October 1, 2008
Timeliness of the petition:	Yes, March 24, 2009

V. ALLEGED FACTS

1. The petitioners allege violations of the human rights of 11 individuals who belonged to a national political group called *Rumbo a la Democracia* (hereinafter “the group”) as a result of the denial of the group’s request to register as a political party.

2. The petitioners say that the group registered as a national political group on May 12, 2005, and that at a special national assembly on December 21, 2006, it approved amendments to its statute and initiated the process of applying for registration as a national political party. According to the petitioners, on January 29, 2007, the group formally communicated its intention to become a political party to the Federal Electoral Institute (hereinafter “IFE”), which on February 20, 2007, informed them that the unextendable period had begun for the group to meet the legal requirements for its registration as a party.

3. The petitioners say that between May 12 and December 9, 2007, 273 district assemblies were held at which the alleged victims and other persons individually and voluntarily joined the prospective party, approved the basic documents for the party’s incorporation and elected their representatives for a national constituent assembly which was held on December 15, 2007. The petitioners say that attesting officials from the IFE were present at the district assemblies and at the national constituent assembly and that they verified that the assemblies were held in a valid and regular way and fulfilled the legal requirements.⁶ The petitioners said that having carried out all the steps required by the IFE, the group requested the IFE to register it as a national political party on January 28, 2008. The petitioners say that the Political Parties and Prerogatives Committee of the IFE submitted a report without comment on the request submitted by the group, whereupon the IFE General Council instructed the Examining Committee to review the documentation and declared open a period of 120 days for the registration request to be resolved.

4. According to the petitioners, the Examining Committee found that, at eight of the district assemblies held by the group, incidents were reported relating to an alleged offer of groceries or construction materials to those who attended the assemblies. Accordingly, the Executive General Board of the IFE ordered a punitive administrative proceeding, which was ultimately dismissed by the Examining Committee because IFE officials had neither witnessed nor officially verified the incidents. The petitioners say that in that context, the Office of the Executive Director for Political Parties and Prerogatives prepared a draft resolution of the General Council concluding that it was appropriate to approve the group’s registration as a national political party.

5. On June 27, 2008, the IFE General Council adopted a resolution determining that the group’s registration as a political party was inadmissible on the basis that the president⁷ and the secretary general of the group were also the secretary general and alternate secretary general of two trade union organizations.

⁶ In the case of the district assemblies, the petitioners say that 241 of the 273 assemblies that took place were confirmed as having been held in a valid and regular way.

⁷ The alleged victim Rodolfo Bastida Marín.

The Council concluded that this violated Article 41 of the Mexican Constitution, which had been reformed on November 13, 2007. That provision prohibited any form of collective affiliation and the involvement of trade union organizations in the party formation process.⁸ The decision noted that the two trade union leaders had presented all the documentation on behalf of the organization and that they should have been separated from their positions in the trade unions as soon as the constitutional amendment went into force.

6. The petitioners say that on July 8, 2008, the group's legal representatives and several of its delegates, among them the alleged victims, filed various applications against the decision of the General Council of the IFE.⁹ They say that on July 31, 2008, the Superior Chamber of the Electoral Tribunal passed judgment, rejecting all the applications except for the one presented by the group's legal representatives; it considered that the rest of the appellants lacked standing to sue directly. However, it overturned the decision of the Council, with the argument that it had made an error by presuming trade union involvement on the basis that three individuals were simultaneously leaders of trade unions and of the group, without any proof that the leaders had pressured members of the trade unions or that the trade unions' resources had been used in the party's incorporation process. Subsequently, on August 14, 2008, the IFE General Council issued a decision again denying the group's registration on the grounds that it had been verified that 17.97 percent of the membership of one trade union and 9.05 percent of the membership of the other had become members of the group, thus proving trade union involvement. On August 25, 2008, the group's legal representatives, together with several of its members, filed suit against that decision invoking protection for the political and electoral rights of the citizen. On October 1, 2008, the Electoral Tribunal again rejected all the applications except for the one filed by the legal representatives. After examining the merits, it upheld the decision of the Council, with the conclusion that the decision was well founded in the "accreditation of various concrete acts by leaders and members of two trade unions" and verification of the use of trade union funds in the party's incorporation process.

7. The petitioners argue that the decisions of the General Council of the IFE and the Superior Chamber of the Electoral Tribunal violated their human rights, *inter alia*, because (1) a prohibition introduced by a constitutional amendment was retroactively applied when the formation process had been largely completed, in accordance with the instructions of the IFE, before that amendment went into force, and the petitioners underscore, moreover, that the changes to the Electoral Code that determined precisely how that prohibition would be applied came into effect mere days before the final request for registration was submitted and they had not been finalized at the time that the national constituent assembly was held; (2) the right to associate for political purposes of all the members of the group was disproportionately restricted based on a supposed trade union interference, even though it was verified that only 0.005 percent of the group's membership belonged to a trade union;¹⁰ (3) the final decision of the IFE Electoral Council was issued based on evidence that it itself had gathered, without affording the alleged victims an opportunity to be heard, challenge that evidence, or present any evidence in their favor, which was later supported by the Electoral Tribunal; (4) the IFE electoral Council issued its second decision in the surprisingly short time of 14 days, violating the applicants' right of defense; (5) the Electoral Law violated the rights to recognition of juridical personality and judicial protection by denying the members of the prospective party the capacity to directly present an application for protection of the political and electoral rights of the citizen;¹¹ (6) the freedom to join a trade union and the right to equal protection of the law of two of the alleged victims were infringed inasmuch as they were denied the possibility of assisting with the formation of a political party because of their membership of a trade union;¹² (7) the decision could adversely impact trade union activity in Mexico overall, as it deters, not only people who wish to pursue a political career from joining a trade

⁸ The Council considered that the prohibition against retroactive application of laws contained in Article 14 of the Constitution did not apply to the Constitution itself or its amendments.

⁹ Appeal and various suits for protection of the political rights of the citizen.

¹⁰ Specifically, the alleged victims Florencia Hernández Romero, Alejandro Flores Borjas, Eduardo Alías Carrizales Hernández, Lya Mayte Romo, Bernardo Yasser Eluani Pérez, Carlos Caramillo Arcos, Estela Moctezuma Tirado, Manuel Filiberto Lopez Rosas, and Hilario Garces Cruz claim to have had no involvement in any trade union.

¹¹ The petitioners consider that this nonrecognition of the personal capacity runs counter to the purpose of guaranteeing individual liberty in the membership process that supposedly justifies the ban on trade union involvement in the party formation process.

¹² Rodolfo Bastida Marín and Enrique Suárez Cuahtencos.

union, but also political parties in the process of formation from including trade union leaders in their initiatives; (8) the decisions assess the economic contributions made to the group by a number of trade union members as evidence of trade union interference, when those contributions were made in a personal capacity and it was not demonstrated that any trade union funds or assets were used; and (9) trade union interference and collective affiliation were presumed based on no other evidence than the fact that some of the group's leaders were also trade union leaders and that a small percentage of the members of the trade unions also joined the group.

8. The State, for its part, requested that the petition be declared inadmissible under Article 47 of the American Convention. It considered that the petitioners were subverting the Commission's subsidiary nature by intending that it act as a fourth instance to review the decisions of the domestic courts and that it perform a fresh evaluation of the evidence and domestic law, for which it lacks jurisdiction. It highlighted that the alleged victims' right to judicial protection was satisfied since they had access to simple, prompt and effective recourse to protect their rights in the form of the suit for protection of political rights.

9. It maintains that the actions of the State had not impinged on the incorporation, structure, or activities of trade unions, and that the law of the State did not prohibit members of trade unions from participation in political parties. It argued that the refusal to register the group as a political party was based, not on the alleged victims' status as trade union leaders, but on the fact that they had used their leadership position and the resources of trade union associations to add members to the political party that they sought to register. It highlights that the prohibition on trade union interference and collective membership in the party formation process satisfied the legality rule inasmuch as it was recognized in the Constitution and the current electoral laws; that its legitimate purpose was to ensure the individual freedom of people to join a party; that it was necessary in the historical and political context of the country where there had been instances in the past of trade union organizations that affiliated [and] coerced their members to support or form political parties; and that it was proportional because it only affected the incorporation of political parties without restricting freedom of association or other ways in which the right to political participation was exercised. It noted that Article 23 of the American Convention obligated States to ensure for persons free and full exercise of their right to participate in government,¹³ and that Article 16 of the Convention recognized that freedom of association could be restricted in order to protect "the rights and freedoms of others."

10. The state argued that the prohibition of retroactive application of laws envisaged in Article 9 of the American Convention applied to cases that entailed the exercise of the punitive power of the State, not so the application process for registration as a political party, which is a nonpunitive administrative procedure. The State added that in any event there had been no retroactive application of the provision because the amendments to the Constitution and electoral laws were published on November 13, 2007 and January 14, 2008, while the group formally applied for registration as a political party on January 28, 2008. The State also said that, by then, the Mexican Constitution had already established the mandatory requirement that citizens joining political parties be able to do so freely and in an individual capacity, and that the 2007 amendment merely introduced a rule applying that provision to a specific situation.

11. The State notes that the Inter-American Court has recognized in its case law that states can and should establish admissibility criteria and requirements for domestic remedies; therefore, the fact that the law should require anyone who believed that their request to register a political party had been improperly denied to act through the organization's legal representatives, and the fact that the applications that did not meet that requirement had been rejected, did not constitute a violation of human rights. The State also held that the administrative procedure in which the IFE denied the registration was not a process in which differences between the parties were settled or that gave rise to a punitive penalty; therefore, the adversarial principle did not apply to it. It added that the alleged victims had the opportunity to contest the assessment of the evidence in the proceeding before the Electoral Tribunal.

¹³ The State said that the existence of that obligation was recognized by the Inter-American Court of Human Rights in the case of *Castañeda Gutman v. United Mexican States*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 6, 2008, Series C. No. 184, par. 161.

12. It says that the decision was adopted following a comprehensive analysis of the rights in play and of the available evidence, and it highlighted that it was found that: (1) The three individuals who represented the group throughout the registration process held top leadership positions in trade union organizations; (2) those individuals carried out an "affiliation program" for the group; (3) other individuals with various positions in trade unions were involved in the group's district assemblies; (4) a commodatum agreement was concluded in which the State Coordinator of the Political Council of one of the trade unions acted as bailor; (5) a contribution was made in which there was at least the suggestion that it could have come from trade union funds.

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

13. The petitioners have said that the decision issued by the Electoral Tribunal on October 1, 2008, of which they were notified on October 8, 2008, constituted a final decision. Given that the State has not indicated that there are additional remedies to be exhausted at the domestic level and that the petition was lodged on March 24, 2009, the Commission finds that the petition meets the rule of prior exhaustion of domestic remedies and that it was presented in a timely manner, in accordance with Article 46(1) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

14. The Commission observes that the petitioners have put forward various reasons why they consider that the State committed violations of human rights with: the denial—in alleged transgression of the principle of proportionality and fair trial guarantees—of the request from the group *Rumbo a la Democracia* to be registered as a political party; the application of the constitutional and electoral legal provisions that entered into force while the group was pursuing the requisite steps to formalize their request for registration is a political party; and the outright rejection of the applications presented by a number of the alleged victims acting in an individual capacity. The Commission finds that the arguments presented by the petitioners are not manifestly groundless and require an examination as to their merits inasmuch as the submissions could amount to violations of Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 16 (freedom of association), 23 (right to participate in government), 24 (right to equal protection), 25 (right to judicial protection), and 26 (economic, social and cultural rights) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions under domestic law) thereof; and Article 8(1) (trade union rights) of the Protocol of San Salvador.

15. As regards the alleged violations of Article 3 (right to juridical personality), the Commission finds that the petitioners have not provided sufficient arguments or basis to suggest a possible prima facie violation of that right.

16. Finally, with respect to the State's contention that the petitioners are asking the Commission to act as a fourth instance, the Commission notes that in admitting this petition it does not seek to supplant the jurisdiction of the domestic courts. Rather, in the merits stage of this petition it will consider if the decisions and measures adopted at the domestic level were compatible with the guarantees contained in the American Convention.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 8, 9, 16, 23, 24, 25, and 26 of the American Convention, taken in conjunction with Articles 1(1) and 2 of that instrument article 8(1) of the Protocol of San Salvador.

2. To declare this petition inadmissible in relation to Article 3 of the American Convention.

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 31st day of the month of May, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

Alleged Victims

1. Florencia Hernandez Romero
2. Alejandro Flores Borjas
3. Eduardo Elías Carrizales Hernández
4. Lya Mayte Romo
5. Bernardo Yasser Eluani Perez
6. Carlos Caramillo Arcos
7. Estela Moctezuma Tirado
8. Manuel Filiberto Lopez Rosas
9. Hilario Garces Cruz
10. Rodolfo Bastida Marín
11. Enrique Suárez Cuauhtencos