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REPORT No. 123/20
PETITION 562-10
REPORT ON INADMISSIBILITY

CARLOS JULIO GOVEA MARIDUEÑA
ECUADOR

Approved electronically by the Commission on April 25, 2020.

Cite as: IACHR, Report No. 123/20, Petition 562-20. Inadmissibility. Carlos Julio Govea Maridueña.Ecuador. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Carlos Julio Govea Maridueña
Alleged victim	Carlos Julio Govea Maridueña
Respondent State	Ecuador
Rights invoked	Articles 8 (fair trial), 9 (freedom from ex post facto laws), 24 (equality before the law), and 25 (judicial protection), of the American Convention on Human Rights in relation to Articles 1 and 2 thereof; Articles I (Right to life, liberty and personal security), Art. XVIII (Right to a fair trial) and Art. XXIV (Right of petition) of the American Declaration of the Rights and Duties of Man Sections 6, 7, and 9 of the Additional Protocol to the American Convention on Human Rights in the Area Of Economic, Social And Cultural Rights "Protocol Of San Salvador"

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition	April 16, 2010
Additional information received during initial review	April 17, 21, 22, 29 2010
Notification of the petition	April 10, 2017
State's first response	August 10, 2017
Additional observations from the petitioner	February 9, 2018
Additional observations from the State	June 21, 2018
Notification of the possible archiving of the petition	January 27, 2017
Response to the notification regarding the possible archiving of the petition	January 28, 2017

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (instrument deposited on December 28, 1977)

¹ The observations submitted by each party were duly transmitted to the opposing party.

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	N/A
Exhaustion or exception to the exhaustion of remedies	Yes
Timeliness of the petition	Yes

V. SUMMARY OF ALLEGED FACTS

1. This petition deals with the right to due process following an alleged unlawful termination of employment.

2. According to the petitioner (and alleged victim) he was employed by the State between 1993 and 1999 as a Fiscalizador (Tax Auditor) to work in the City of Guayaquil. By way of background, the petitioner states that (a) he was initially employed specifically by the Dirección de Rentas (Department of Income Tax); (b) that by law, in or about 1997, the Dirección de Rentas was superseded by a new entity – El Servicio de Rentas Internas (Internal Revenue Service); (c) in 1998, following an evaluation of staff (including the petitioner) conducted by the firm of Price Waterhouse, the petitioner was advised by the then Director General of El Servicio de Rentas Internas (hereinafter “SRI” that he (the petitioner) was qualified to continue working in the same capacity in the new entity (SRI).

3. Despite this assurance, the petitioner claims that in January 1999 he was unlawfully dismissed from his position by a new Director General, and given a termination payment². According to the petitioner he was aggrieved by both his dismissal and the amount of his termination payment. The petitioner alleges that he was entitled to greater compensation given his rank in the civil service and also given that his continued employment with the SRI was based on a favourable evaluation. As a consequence, the petitioner alleges that in February 1999 he filed suit before the Tribunal Distrital No. 2 de lo Contencioso Administrativo de Guayaquil (hereinafter “the Tribunal Distrital”). On July 21, 2003, the petitioner asserts that the Tribunal Distrital ruled that (a) his termination was illegal, and that he should be reinstated within eight days – subject to the repayment of the termination payment; (b) the petitioner was not, by law, entitled to the payment of any other remuneration/compensation³.

4. Dissatisfied with the refusal of the Tribunal Distrital to award additional remuneration/compensation, the petitioner did not return the termination payment, but filed a “Recurso de Casacion” (appeal) before the Sala Contencioso Administrativa de la Corte Suprema de Justicia (hereinafter “the Corte Suprema”). According to the record, this Recurso de Casacion was dismissed by the Corte Suprema on March 14, 2007, primarily on the ground the petitioner’s claim did not legally qualify for consideration by the Corte Suprema.

5. Subsequent to the ruling of the Corte Suprema, the petitioner’s claim was given further consideration by the Tribunal Distrital (between April 2007 and July 2008) –during which (a) the petitioner returned the termination payment to the SRI; (b) the SRI advised the Tribunal Distrital that it was unable to comply with the order to reinstate the petitioner, because there were no positions available for this purpose;

² 53,055.851 sucres (or US\$5555.55). The petitioner also claimed additional compensation on the basis that he was a career civil servant but this was ultimately rejected by the Tribunal Distrital.

³ See footnote above.

(c) the Tribunal Distrital accepted this submission from the SRI, and ordered the payment of compensation to the petitioner in lieu of reinstatement. Dissatisfied with this ruling, the petitioner appealed to the Corte Constitucional (Constitutional Court), which dismissed his appeal in October 2009.⁴

6. The State contends that the petition is inadmissible principally on the ground of (a) failure to state facts that prima facie establish any violations; and (b) extemporaneity. The State does not generally dispute the allegations of the petitioner, but argues that his complaint has ultimately been resolved domestically by the payment of compensation⁵ to the petitioner in lieu of reinstatement. Regarding the issue of extemporaneity, the State contends that the petitioner's resort to the Corte Constitucional was inappropriate⁶ for redressing his complaint; and that for the purpose of exhausting domestic remedies, this occurred with the decision of the Corte Suprema in 2007.⁷ The State argues the petition ought to have been filed no later than six months later (by September 2007), but was not filed until April 2010. Accordingly, the State concludes that the submission of the petition is untimely.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. There is divergence between the parties on the issue of exhaustion of domestic remedies and timeliness. On the one hand, the petitioner contends that exhaustion of domestic remedies occurred with the conclusion of his appeal to the Corte Constitucional in 2009. On the other hand, the State argues that resort to the Corte Constitucional was inappropriate; and that exhaustion effectively took place with the decision of the Corte Suprema in 2007. In the Commission's view, to accept the State's submission would be tantamount to penalizing the petitioner for exercising his right to resort to the Corte Constitucional. The IACHR is unable to accede to this view. Accordingly, the Commission holds that the decision of the Corte Constitucional brought an end to the proceedings pursued by the petitioner and reflects due exhaustion of domestic remedies in accordance with Article 46.1.a. of the American Convention. The petitioner was notified of this decision on October 26, 2009 and the IACHR received the petition on April 16, 2010. Therefore, the petition was lodged within the six-month time limit prescribed by Article 46.1.b of the Convention.

VII. COLORABLE CLAIM

8. The Commission notes that this petition raises allegations of unlawful termination and failure of the State to provide appropriate judicial redress. The Commission further observes that the petitioner has invoked provisions not only of the American Convention but also of the American Declaration. As it relates to the American Declaration, the Commission has previously established that, once the American Convention enters into force in relation to a State, this and not the Declaration becomes the primary source of law applicable by the Commission, provided that the petition refers to an alleged violation of rights that are identical in both instruments and do not deal with a situation of continuous violation. In the instant case, there is similarity in the subject matter as between the provisions of the Declaration and the Convention invoked by the petitioner. Therefore as regards those alleged violations of the American Declaration, the Commission shall refer only to the provisions of the Convention.

9. With regard to the submissions regarding violations of Articles 6, 7, and 9 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. As for other articles and treaties, in compliance with Article 29 of the American Convention, the Commission may take them into consideration to interpret and apply the American Convention and other applicable instruments.

10. The petitioner's complaint is rooted in his dismissal as a Tax Auditor in 1999, which was found to be unlawful by the Tribunal Distrital. The Tribunal Distrital initially ordered his reinstatement but declined to award other compensation claimed by the petitioner. After an unsuccessful appeal to the Corte Suprema,

⁴ According to the petitioner, he was notified of this decision on October 26, 2009.

⁵ The compensation referred to by the State is US\$ 20, 630, which it claims was paid in compliance with the order of the Tribunal Distrital.

⁶ According to the State, recourse to the Corte Constitucional is an extraordinary remedy that (a) need not be exhausted; and (b) is neither appropriate nor effective for redressing the petitioner's complaint.

⁷ According to the State, the ruling was issued on March 14, 2007 and notified to the petitioner on the same day.

the Tribunal Distrital modified its order of reinstatement, and awarded compensation to the petitioner based on the State's submission that there was no post available for the purpose of reinstating the petitioner. Being dissatisfied with this latest ruling of the Tribunal Distrital, the petitioner unsuccessfully appealed to the Corte Constitucional. While the Commission appreciates that the petitioner is dissatisfied with the specific outcomes of the judicial decisions, the IACHR considers that the petitioner comes before the Commission as a fourth instance tribunal because he does not agree with the decisions of the national courts. The Commission recalls that it is not competent to review judgments handed down by national courts acting within the scope of their competence and applying due process and judicial guarantees. Therefore the Commission considers that the alleged facts do not tend to characterize violations of the rights enshrined in Articles 8 and 25 of the American Convention. As to the claims concerning the alleged violation of Articles 9 (freedom from ex post facto laws) and 24 (equal protection) of the American Convention, the Commission considers that the petitioner has not presented any arguments or sufficient grounds to demonstrate prima facie violations of these provisions.

VIII. DECISION

1. To declare the present petition inadmissible; and
2. To notify the parties of this decision; to publish this decision, and to 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 25th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.