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**REPORT No. 51/20**  
**PETITION 1568-11**  
REPORT ON ADMISSIBILITY

SAMUEL LEONCIO GUERRERO LEÓN  
PERU

Approved electronically by the Commission on February 24, 2020.

**Cite as:** IACHR, Report No. 51/20, Petition 1568-11. Admissibility. Samuel Leoncio Guerrero León. Peru. February 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioners	Elmer Siclla Villafuerte and Samuel Leoncio Guerrero León
Alleged victim	Samuel Leoncio Guerrero León
Respondent State	Peru <sup>1</sup>
Rights invoked	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Article 1.1 (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

Date of filing	October 25, 2011
Notification of the petition	June 26, 2017
State's first response	November 7, 2017
Additional observations from the petitioner	August 13, 2012; February 9, 2018; and March 20, 2019
Additional observations from the State	May 17, 2018

**III. COMPETENCE**

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification on July 28, 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), 23 (participation in government), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes, on September 30, 2010
Timeliness of the petition	Yes, under the terms of Section VI

**V. SUMMARY OF ALLEGED FACTS**

1. Elmer Sicilia Villafuerte y Samuel Leoncio Guerrero León (hereinafter “the petitioners”) denounce alleged violations to the human rights of Samuel Leoncio Guerrero León (hereinafter “the alleged victim”) claiming that he was not ratified in the position he occupied as a prosecutor through an evaluation and ratification process incompatible with judicial independence and the guarantees of due process.

2. The petitioners state that the alleged victim worked as a prosecutor for the province of Sullana, in Piura, for the judiciary until April 23, 2009, when following an evaluation, the National Council of the Magistracy (hereinafter “CNM”) resolved not to reconfirm him in his position. He appealed this resolution through an extraordinary remedy dismissed on July 15, 2009.

3. As a relevant antecedent, they stress that previously, in a friendly settlement agreement approved by the Inter-American Commission, the State acknowledged its international responsibility for not including effective judicial protection in the reconfirmation process for judges and prosecutors.<sup>3</sup> They argue that although the State had amended the process after that acknowledgment, the process, as applied to the

<sup>1</sup> Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Julissa Mantilla Falcón a Peruvian National, did not participate in the discussion or the voting on this matter.

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>3</sup> IACHR, Friendly Settlement, Report No. 50/06 Petition 711-01 *et al.* (Miguel Grimaldo Castañeda Sánchez *et al.*), Peru, March 15, 2006.

alleged victim, still did not meet the requirements established in the American Convention, among other reasons, because: 1) it was not a process where specific charges were brought forward but a disguised vote of confidence where members of the CNM used statutory provisions, like psychometric tests, so that decisions would appear to be reasoned, 2) it did not meet the requirement of double instance of jurisdiction because although now a “special remedy” was included, this only consisted in a review by the same members of the CNM. The petitioners moreover claim the violation of the laws governing the process in his case, as one of the members recused himself from voting on the alleged victim’s case “for the sake of decorum” even though the law does not foresee or allow this ground.

4. On November 6, 2009, Mr. Guerrero León presented an *amparo* action against the resolutions of the CNM, before Court Specializing in Civil Matters No. 1 of the Superior Court of Justice, which found the action inadmissible on December 14, 2009. Subsequently, he challenged this decision before the First Civil Division of Piura Superior Court of Justice on January 13, 2010, which ruled the appeal inadmissible on March 30, 2010. On May 13, 2010, the alleged victim lodged another *amparo* action against the CNM resolutions through a constitutional remedy against the Council of the Magistracy to the constitutional court, which denied the *amparo* action on July 20, 2010<sup>4</sup>. They submit that although the IACHR received the petition electronically on October 25, 2011, the alleged victim had previously mailed it on February 4, 2011, but it did not arrive. They submitted a document referring to a claim that was presented to the mail service for the purportedly lost mail.

5. The petitioners contend that the evaluation and ratification procedure, as it was applied to alleged victim, is incompatible with judicial independence and the requirements of Articles 8 and 25 of the American Convention. They moreover claim the violation of the alleged victim’s rights to work and to have his dignity recognized, as a result of which he was unable to support his family financially.

6. For its part, the State claims that the petitioners unlawfully seek that the Commission work as a fourth instance of jurisdiction; for their petition is based on their mere discontent with the judgments passed by the national courts, which found that none of the alleged victim’s rights were violated. It further contends that the Commission lacks competence *ratione materiae* to rule on the right to work, that the mere fact that a proceeding has led to the termination of the alleged victim does not constitute a violation of his right to have his honor respected, and that the petitioners may not allege a violation of the rights to a fair trial or to effective judicial protection because the alleged victim could and still can file several remedies both in the administrative and the judicial jurisdictions.

7. It considers that the petition does not meet the timeliness requirement and that the date that should be taken onto consideration to decide on the requirement established in Article 46.1.b of the American Convention is October 25, 2011. It moreover claims the non-exhaustion of domestic remedies because the alleged victim did not file a contentious administrative action against the resolution establishing his non-reconfirmation.<sup>5</sup>

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

8. The Commission observes that the petitioners maintain that the domestic remedies were exhausted with the decision notified to the alleged victim in October 2011 and that the petition was timely presented to the Commission through physical mail on February 4, 2011. It also takes note that the State has alleged that domestic remedies has not been exhausted because the petitioner has not initiated a contentious administrative process and the petition is untimely as it was presented on October 25, 2011.

9. The Commission recalls that it has established that the requirement of exhaustion of domestic remedies does not mean that the alleged victims are obliged to exhaust every remedy available to them. Consequently, if an alleged victim pursued the matter through one of the valid and appropriate options in

<sup>4</sup> The petitioners explain that this remedy is decided in a single instance of jurisdiction and that the judgments of the constitutional court cannot be challenged.

<sup>5</sup> By way of example, it cites the case of Daniel García Chávez, in which the contentious administrative jurisdiction admitted a claim even though, previously, he had filed an *amparo* action against the same resolution, and the trial and appellate courts had dismissed it.

accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.<sup>6</sup> In this case, the claim mainly concerns the possible incompatibility itself existing between the reconfirmation process for judges and prosecutors and the rights protected by the Constitution and the Convention. Therefore, the Commission considers that the constitutional jurisdiction, which the alleged victim exhausted, was appropriate to have the State hear his claim at the national level. Therefore, the Commission finds that this petition meets the requirements established in Article 46.1.a of the American Convention.

10. As to the requirement of timeliness, while it is true that the Commission first received the petition on October 25, 2011, the alleged victim submitted documents indicating that he had mailed his petition in February 2011. Accordingly, and considering the principles of good faith and *pro personae* that govern the inter-American system, the Commission finds that this petition meets the requirements established in Article 46.1.b of the American Convention.

## VII. COLORABLE CLAIM

11. The Commission observes that the instant petition includes allegations regarding the evaluation and ratification process, as applied to the alleged victim, is incompatible with judicial independence and due process because it did not establish sufficiently clear criteria to prevent arbitrary decisions and because of the inexistence of effective judicial remedies to appeal the non-ratification decisions.

12. Attending to these considerations and having examined the elements of fact and law brought forward by the parties the Commission considers that the petitioner's allegations are not manifestly groundless and require a study on the merits as the alleged facts, if proven, could characterize violations to Articles 8 (fair trial), 23 (participation in government), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

## VIII. DECISION

1. To declare this petition admissible with regard to Articles 8, 23, 25, and 26 of the American Convention in relation to its Articles 1.1 and 2; and

2. 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.

Approved by the Inter-American Commission on Human Rights on the 24<sup>th</sup> day of the month of February, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

<sup>6</sup> IACHR, Report No. 16/18. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, par. 12.