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REPORT No. 160/21
PETITION 974-17
REPORT ON ADMISSIBILITY

GABRIE MASS CÁ CERES
HONDURAS

Approved by the Commission electronically on July 14, 2021.

Cite as: IACHR, Report No. 160/21, Petition 974-17. Admissibility. Gabrie Mass Cáceres.
Honduras. July 14, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Red Lésciba Cattarachas (Cattrachas Lesbian Network) and Lawyers Without Borders Canada
Alleged victim:	Gabrie Mass Cáceres
Respondent State:	Honduras
Rights invoked:	Articles 3 (right to juridical personality), 8 (fair trial), 13 (freedom of thought and expression), 18 (right to a name), 24 (equality before the law) y 25 (judicial protection) of the American Convention on Human Rights ¹ in relation to its article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	June 7, 2017
Additional information received at the stage of initial review:	July 12, 2017 and August 22, 2018
Notification of the petition to the State:	May 14, 2020
State's first response:	October 14, 2020

III. COMPETENCE

Competence <i>Ratione persone</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of the instrument of ratification made on September 8, 1977)

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 3 (right to juridical personality), 8 (fair trial), 13 (freedom of thought and expression), 18 (right to a name), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

V. FACTS ALLEGED

1. The petitioner claims that the State discriminated the alleged victim based on his gender identity for not having a remedy or procedure which allows him to adapt his identity information.

¹ Hereinafter "the American Convention".

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

2. The petitioners claim that numbers 4 and 24 of Article 30 of the National Registry of Persons Regulations (hereinafter, "NRP Law") forbids civil officials to order changes of names in the original birth registration, with limited exceptions³.

3. Due to this, they hold that on August 19, 2012 the alleged victim requested a notary to certify that Gabriele Mass Cáceres -his assumed name- and Miriam Gabriela Cáceres Padilla -his legal identity- are the same person. Thus, on September 4, 2013 such notary certified, within his powers to publicly attest, that the two names correspond to the same person.

4. Nonetheless, since the cited document does not grant the same juridical effects as a change of name at the national registry of persons, the alleged victim filed on March 3, 2014 a constitutional complaint, requesting to declare the invalidity of the abovementioned norms of the NRP Law Regulations. Upon the dilation of the proceedings, on May 29, 2014 the lawyer of Gabriele Mass Cáceres filed a request for a prompt response. After not receiving an answer, on October 3, this lawyer filed a complaint before the National Commissioner for Human Rights for the notorious unjustified tardiness of the Constitutional Chamber. However, they hold that such institution did not carry out a due backing to its complaint. They hold that only by March 24, 2015 did the Constitutional Chamber of the Supreme Court of Justice dismissed the constitutional complaint, arguing that the NRP Law Regulations are an administrative act, which is why it pertained the contentious administrative jurisdiction to settle the controversy.

5. Upon this judgment, on May 4, 2015 the alleged victim filed a contentious administrative claim, pursuant to declare that the regulatory norms of the NRP Law are not in accordance with the legal system in force concerning Human Rights. In spite of this, on June 17, 2015, the Contentious Administrative Court declared said remedy inadmissible, arguing expiration of the deadline for the filing of the complaint, since it should have been filed within the 30 working days following April 30, 2005, date in which the questioned regulation was published.

6. The representation of Gabriele Mass Cáceres appealed such decision, for considering that there was a breach to the right to have an effective remedy consecrated in Article 25 of the American Convention; but the Contentious Administrative Labor Chamber rejected this remedy on October 1, 2015. Finally, on October 25, 2015 the representation of the alleged victim filed a cassation remedy, arguing that in the judgment of the controversy, Article 18 of the Constitution was not applied, which stipulates the supremacy of the treaty or Convention above the Law⁴. Nonetheless, on May 16, 2017, the Supreme Court of Justice dismissed such remedy, for considering there was insufficient foundation concerning "*separation and clarity, in order to raise [...] juridical matters in a precise and reasoned manner, pertaining, either by breach of procedural norms or norms of law in their implementation and interpretation*".

7. In short, the petitioner claims that the State discriminated the alleged victim by virtue of his gender identity, since its regulations forbid to rectify his identity information in his original birth registration, affecting his rights to a juridical personality and a name. Likewise, holds that the cited restriction does not allow Gabriele Mass Cáceres to freely exert his expression of gender. Finally, argues that, to this date, the alleged victim does not have access to a suitable and efficient remedy to question such norms and achieve the adaptation of his identity.

8. The State, on its part, argues that the claimed facts do not characterize human rights violations. It holds that authorities guaranteed the right to juridical personality of the alleged victim, since on September 4, 2013 a notary attested that his assumed name and his legal identity respond to the same person.

³ Regulations of the Law of the National Registry of Persons. "Article 30.- Notwithstanding the set forth in the NRP Law and on these Rules, it is forbidden for Civil Officials, the following: (...) 4. To carry out changes of names in the original birth registration, unless it were due to rectifications or additions of letters, names and sex evident from the registry information or when it results from an error attributable to the Civil Registry if proven with merit worthy documents. (...) 24. Rectify or add in a birth registry name, names or other order in the surnames, invoking that the registered has used them throughout his or her whole life."

⁴ Political Constitution of Honduras. "Article 18.- In case of conflict between the treaty or convention and the Law, the first shall prevail".

Likewise, it holds that at no time was the victim limited from access to information on account of his gender identity and/or sexual orientation.

9. Also, that the alleged victim had access to formulating his complaints, which were judged in a duly and legal fashion, with two judgments which analyzed and decided his demands. Finally, argues that the alleged victim has been treated at all times as any other Honduran or whoever seeks to run an errand before a certain state body, which is why no discriminatory act was ever committed against him. The State holds that the law was simply applied, and that the petitioner did not credit any of the causes set forth in the of the NRP Law Regulations so as to achieve the change of name.

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

10. According to the petitioner's allegations, the Commission identifies that the intended by the alleged victim at a domestic level was to question the validity of the regulations of the NRP Law, in order to be able to modify his identification information on his original birth registration, since such regulations limited said possibility to exceptional situations. In spite of this, the domestic instances rejected his demands, for considering that the claim should have been filed within the 30 working days following the date of publishing of the questioned regulation, which means, between May and June 2005, approximately. Likewise, according to the information provided in the casefile, the IACHR observes that, to this date, the alleged victim only has a document that certifies the two names he uses, without the possibility of resorting to any prompt judicial or administrative remedy to achieve the rectification of his identity information in a confidential manner.

11. On this point, the Commission recalls that that the Inter-American Court on Human Rights, on its Advisory Opinion OC-24/17, has established that the States have the duty to adopt expeditious and confidential procedures which allow persons to integrally adapt their identity information according to their self-perceived gender identity⁵. Along these lines, said court stressed that the undesired publicity regarding a change of identity may place the requesting person in a situation of greater vulnerability toward several acts of discrimination against him or her, which is why all rectifications carried out on registrations and identity documents "*must not be of public access, nor can they appear in the same identity document*" (para. 135).

12. By virtue of such considerations, the IACHR concludes that, *prima facie*, the alleged victim would not have a suitable remedy available that meets the aforesaid characteristics, pursuant to protecting the rights he considers infringed. This is why, it considers pertinent to apply the exception to the exhaustion of domestic remedies set forth in Article 46.2.a) of the American Convention.

13. The present petition was received on June 7, 2017, and the facts subject of the complaint had occurred at least since 2014, and some of their effects extend until the present. Therefore, in light of the context and characteristics of the instant case, the Commission considers that the petition was filed within a reasonable time in the terms of Article 32.2 of its Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

14. In view of the elements of fact and law set forth by the parties and the nature of the matter hereby raised, the Commission deems that the allegations by the petitioner, concerning the lack of a procedure to achieve the adaptation of the identity information of the alleged victim, are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 3 (right to juridical personality), 8 (fair trial), 13 (freedom of thought and expression), 18 (right to a name), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1 (obligation to respect rights), to the detriment of the alleged victim.

⁵ IHR Court. Gender identity, and equality and non-discrimination to couples of the same sex. State obligations concerning change of name, gender identity, and rights derived from the bond between couples of the same sex (interpretation and scope of Articles 1.1, 3, 7, 11.2, 13, 17, 18 and 24, in relation to Article 1 of the American Convention on Human Rights). Advisory Opinion OC-24/17 November 24, 2017. Serie A No. 24, para. 160.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 8, 13, 18, 24 and 25 of the American Convention in connection to its Articles 1.1 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 14th day of the month of July, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana (dissenting opinion), Commissioners.

DISSIDENT VOTE,
COMMISSIONER STUARDO RALÓN ORELLANA
Report on Admissibility N° 160/21 Petition N° 974-17 “Gabrie Mass Cáceres c/
Honduras”

In the present report on admissibility, I must respectfully raise my dissident vote. While valuating the arguments of the majoritarian vote, I believe that the petition filed fails to meet with the requirement of admissibility set forth in article 46.1 letter a) of the American Convention. This requisite demands from every petitioner to file and exhaust the remedies provided by national legislation to enforce his or her rights. That being said, the jurisprudence itself of this Honorable Commission has established that said exhaustion supposes that the referred remedies be exerted in the time and in the form set forth by domestic legislation. Therefore, technically, **there cannot be exhaustion since there is a situation in which the procedural instance that domestic law recognizes as competent refuses to hear the matter since the claimant has exerted his right beyond the timeframe set forth by law, or has failed to meet the minimum requirements of procedural nature.**

This is, precisely, the situation of the present case. Upon the decision of the competent notary, who certified, in terms of the vote of the majority that the names of Miriam Cáceres and Gabrie Cáceres “correspond to the same person”, the petitioner filed a constitutional complaint before the Constitutional Chamber of the Supreme Court of Honduras in 2013. This, although Honduran procedural regulations have established a contentious-administrative claim as an efficient and suitable remedy to contest the cited decision. Evidently, this led the Constitutional Chamber of the Supreme Court of Honduras to decide to declare the remedy inadmissible in 2015. Next, the petitioner deducted the corresponding contentious-administrative claim, yet it was also declared inadmissible for it being filed in an untimely fashion. This sentence was contested by means of remedies of appeal and cassation. With the first being rejected, the second was declared, again, inadmissible in attention to a procedural matter. In fact, the terms of the referred remedy were not founded with sufficient *“separation and clarity, in order to raise [...] juridical matters in a precise, reasoned, and pertinent manner for infringement of either procedural or legal norms in their implementation and interpretation”*. It is well known that the cassation remedy is a quite strict one which requires, precisely, a high level of accuracy and foundation to be heard on its merits. According to the criterion of the Honduran Supreme Court, the petitioner failed to meet the standard demanded by the applicable domestic procedural law.

By virtue of the above, the Court refused to acknowledge the alleged error of law in which inferior tribunals had incurred by not judging the case of the petitioner pursuant to the set forth in article 18 of the Honduran constitution. This provision allowed the case of the petitioner to be resolved considering the pertinent international human rights norms. This is the situation which, precisely, the petitioner is intending to redress by resorting to the Honorable Commission.

In light of the procedural background, it is possible to conclude, first of all, that there was no exhaustion of domestic remedies in the present case. In fact, with independence from the criterion that each one may hold concerning the existence of an Inter-American standard applicable in the concrete case, the specific fact is that, should that standard be judged to exist, it would have resulted applicable to the case of the petitioner pursuant to the reading of article 18 of the Honduran Constitution. The problem is that national courts did not offer the procedural opportunity to apply said standard, should it exist, to the concrete case of the petitioner. This, simply because the cassation remedy which intended to oblige the judges of the merits to apply the standard, was worded in completely deficient terms pursuant to the conclusion which, on the matter, was formulated by the Honduran Supreme Court. That being so, it is totally evident, in light of the same doctrine developed by this Honorable Commission, that there has been no exhaustion of domestic remedies and, therefore, the petition should have been declared inadmissible.

On the other hand, it is not the duty of the members of this Honorable Commission either, to assess how correct or incorrect was the interpretation that the Honduran Supreme Court adopted concerning the applicable procedural norms to resolve the cassation remedy filed. Otherwise, we would turn this Honorable Commission into a “fourth instance” court, which, in light of the doctrine of this body itself, is completely counter to the mandate received by the American Convention.

For the reasons raised in this vote, I respectfully dissent.