

REPORT No. 165/11¹
PETITION 492-08
INADMISSIBILITY
RAFAEL RODRIGUEZ CASTAÑEDA
MEXICO
November 2, 2011

I. SUMMARY

1. On 24 April 2008 the Inter-American Commission on Human Rights (hereinafter, "Inter-American Commission", "Commission", or "IACHR") received a complaint lodged by Graciela Rodríguez Manzo and Luis Miguel Cano López (hereinafter, the "petitioners"), acting as representatives of Rafael Rodríguez Castañeda (hereinafter, the "alleged victim"), against the United States of Mexico (hereinafter, the "State of Mexico", "Mexico", or the "State"). The complaint alleges that the alleged victim's right of access to information was violated because he was denied access to voting ballots for the presidential election held on 2 July 2006 and because there are existing legal provisions that order the destruction of that documentation.

2. The petitioners hold that the State violated, to the detriment of the alleged victim, Articles 8 (judicial guarantees), 13.1, 13.2 (freedom of thought and expression), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter, the "Convention" or "American Convention"), in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions under domestic law) of said international instrument. As concerns the requirements for admissibility, the petitioners indicate that all remedies under domestic law have been exhausted, that the petition was lodged within the proper time period, and that no duplication of proceedings or international double jeopardy exists concerning the matter in the petition.

3. The State claims that the petition is inadmissible. The State manifests that the alleged victim has not exhausted domestic administrative and judicial mechanisms in defending the right that was allegedly violated, and it denies that, as a consequence of the situation underlying the complaint, any violations of Convention rights have occurred.

4. After analyzing the positions of the parties, the Commission concludes that it is competent to hear the complaint lodged by the petitioners and that it is inadmissible, in light of Articles 46 and 47 of the American Convention. Therefore, it removes precautionary measure 102-08 related to the matter contained in this petition. Furthermore, the Commission resolves to notify the parties of this decision, to publish it, and to include it in its annual report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The petition was received on 24 April 2008 and recorded as P-492-08. On 3 July 2008 it was forwarded to the State, which was granted a two-month period in which to respond². The IACHR received Mexico's response on 8 October 2008.

6. The Commission also received information from the petitioners on the following dates: 31 October 2008; 7 January and 17 July 2009; and 17 February 2010. These communications were duly forwarded to the State. For its part, Mexico sent information on 8 April, 26 May, 26 October 2009, and 14 May 2010. Those communications were duly forwarded to the petitioners.

¹ Pursuant to Article 17.2.a of the Regulation of the Commission, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the debate or in the decision on this case.

² On 8 July 2008, the annexes to petition 492-08 were forwarded to the State, therefore the two-month term to respond was calculated as of that date.

- **Precautionary Measures: MC 102-08, Rafael Rodríguez Castañeda**

7. On 3 July 2008, at the request of the petitioners, the IACHR required the State of Mexico to adopt precautionary measures in favor of Rafael Rodríguez Castañeda. Specifically, the Commission asked that the State suspend the destruction of voting ballots from the election of 2 July 2006 until the Commission ruled on the merits of the complaint. On 18 July 2008 the State presented information on the matter. In a communication on 31 October 2008, the IACHR notified the parties of its decision to keep in effect the measures granted³.

III. POSITIONS OF THE PARTIES

A. The Petitioners

8. The petitioners claim that the alleged victim's right of access to information was violated because he was denied access to voting ballots for the presidential election of 2 July 2006, in Mexico, information that, according to the petitioners is public and the dissemination of which is in the public interest. They claim that this right was also violated because domestic provisions existed that ordered the destruction of that documentation.

9. Specifically, they note that on 28 July 2006, in a context of social polarization due to the outcome of the presidential election of 2 July 2006, the alleged victim, director of the weekly, *Proceso*, requested of the *Unidad de Enlace del Instituto Federal Electoral en Materia de Transparencia y Acceso a la Información* [Liasion Unit of the Federal Electoral Institute for Matters of Transparency and Access to Information] (UEIFE) "access to the envelope containing leftover, unused, the valid and null votes in all polling stations installed during the day of 2 July 2006, throughout the country, for the election of the President of the Republic". The petitioners hold that Mr. Rodríguez Castañeda intended to add to the knowledge of historical fact and remove doubts or confrontation having to do with the outcome of the election. They indicate that on 5 September 2006, the Information Committee of the Federal Electoral Institute notified the alleged victim that his request was denied because Article 254 of the *Código Federal de Instituciones y Procedimientos Electorales* [Federal Code of Institutions and Electoral Procedures] (COFIPE), which was in force at the time, provided for the destruction of the documentation he had requested.⁴

10. The petitioners report that on 20 September 2006, Mr. Rodríguez Castañeda filed an application for protection challenging the UEIFE's decision and Article 254 of COFIPE. They indicate that the application was declared out of order by the Fourth District Court for Administrative Matters, on 21 September 2006, noting that [the alleged victim] intended to counter actions in electoral matters using an unsuitable legal recourse. The petitioners add that on 5 October of 2006, that ruling was appealed before the First Appellate Court for Administrative Matters of the First Circuit. Ultimately, the appellate court requested that the Supreme Court of Justice exercise its right of attraction. The nation's highest court upheld the denial of the lawsuit, in a ruling on 11 March 2008.

11. The petitioners hold that this final ruling is the judicial act that exhausted all available remedies under domestic law that were within reach of the alleged victim, given that it was a definitive and uncontestable judgment.

12. The petitioners assert that the appeal for review of matters of transparency and the suit for protection of political and electoral rights of a citizen are not effective or fitting recourses for pursuing the right to information and, therefore, did not need to be exhausted. They claim that exhaustion of these

³ As of that date, the petitioners submitted additional information on 7 January and 20 February 2009, and 25 September 2010. For its part, Mexico, through a communication on 16 December 2008, reiterated the terms of its response of 18 July 2008.

⁴ According to the petitioners, Article 254 was reproduced in Article 302 of the new Federal Code of Institutions and Electoral Procedures.

mechanisms could have allowed the destruction of ballots to take place before rulings could be made on the suits.

13. Additionally, the petitioners state that the petition was lodged with the IACHR within the six-month period stipulated in Article 46 of the American Convention, that no proceedings for international settlements are pending on the matter of the petition, and that the case has not been previously examined by another international body.

14. In matters of characterization, the petitioners argue that the State of Mexico is liable for violating the rights established in Articles 13.1, 13.2, 8, and 25.1 of the American Convention, all of which are related to Articles 1.1 and 2 of that international instrument.

15. With regard to Article 13.1, the petitioners argue that the right of access to information held by the State covers both the right of persons to receive information (in this case, the information contained in the aforementioned voting ballots) and the State's obligation to provide it. In this sense, the petitioners claim that the information contained in vote-count records compiled on election day do not necessarily reflect the contents of the voting ballots⁵, and that therefore allowing access only to those records would be insufficient. They add that, until such time as voting ballots can be compared with information contained in vote-count and tally records, the violation of access to information continues. As relates to Article 13.2, the petitioners argue that the restriction of access to voting ballots does not constitute a permissible restriction against the exercise of the right of access to information as provided in the American Convention or in Article 4 of the Declaration of Principles on Freedom of Expression, because domestic law allows for the destruction of information that is of public interest, namely, voting ballots.

16. The petitioners claim that the State violated Article 8 in that, by declaring the application for protection out of order, the alleged victim was not allowed his due guarantees to be heard. The petitioners add that during the alleged victim's interventions, neither the Supreme Court of Justice nor the Federal Electoral Institute acted according to due legal process⁶. The petitioners further claim that the State violated Article 25, because by denying relief it denied the existence of a simple and effective remedy that would have served to safeguard the right of access to information. The petitioners add that [the State violated] Article 2, because provisions of domestic law that permit voting ballots to be destroyed make any possibility of gaining access to that information illusory, and because the Supreme Court, by establishing in its ruling that the electoral process is not final until the voting ballots have been destroyed, caused a right to be restricted, which is incompatible with the Convention. The petitioners further indicate that the restriction of access to voting ballots deteriorates the building of a democratic regime in Mexico.

B. The Position of the State

17. The State of Mexico asserts that the petition does not meet the requirements of admissibility under the American Convention because there are appeals, administrative and judicial, that have not been exhausted, and because there have been no violations of Convention rights.

18. As concerns the requirements for admissibility, the State specifies as remedies that should have been exhausted prior to pursuing justice internationally the appeal for review before the UEIFE and the lawsuit for protection of the political and electoral rights of citizens, before the Electoral Tribunal of the Judiciary Branch of the Federation, the jurisdictional body empowered by the Constitution and by domestic law to resolve controversies stemming from any alleged violation of the right of access to public information related to electoral matters. The State holds that these are appropriate and effective mechanisms for complaints about alleged violations of the right of access to information. The State notes

⁵ The petitioners sent a copy of a court ruling in a nonconformity lawsuit filed against the results announced after

⁶ According to the petitioners the alleged irregular actions of the Supreme Court were the following: (i) it considered as an electoral matter an issue that was not an electoral matter; (ii) it asserted that the electoral process had not been finalized; and (iii) at the time it ruled on whether the lawsuit had standing, it chose a broad definition of electoral matter, which was counter to precedent [rulings of the Court].

their pertinence and asserts that both remedies meet the standards indicated in the jurisprudence of the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court") regarding efficacy and accessibility. The State adds that the failure to exhaust these remedies cannot be supported by application of any of the exceptions to the rule on exhaustion of remedies under domestic law, and denies that their exhaustion is, as the petitioners claim, optional in character. The State further indicates that the petitioners cannot allege the nonexistence of an effective remedy without having first exhausted and verified the efficacy of existing legal remedies.

19. The State argues that the alleged victim filed an inadequate contentious remedy because the application for protection is out of order for electoral matters. The State asserts that this is not incompatible with the American Convention because in Mexico there is a special system for protecting political and electoral rights and other associated rights, which provides fast-track and simple remedies and which have been mentioned in the foregoing paragraph. The State adds that the argument set out by the petitioners, that they sought enforcement of protection to prevent the destruction of voting ballots, is wrong given that this was not an action to be imminently performed nor is it a mechanism that is automatically implemented. The State further indicates that for the destruction to take place, the General Council of the IFE must first make a pronouncement, by general agreement, providing proper grounds for the act. The State indicates that if no order existed to destroy the ballots in question, there could not have been an act of execution which should need to be suspended, given that the rule in Article 254 of the then-COFIPE had not been applied⁷. The State adds that because the Superior Council of the IFE decided not to destroy the documentation until all pending trials related to the petition of access to the voting ballots were resolved, there is neither risk nor imminence of destruction of the ballots in this case⁸. Additionally, the State asserts that it was not necessary to contest laws in order to question the alleged denials of access to information, and holds that it is not clear how declaring the rule unconstitutional would allow the alleged victim to have access to the ballots, given that having the rule declared unconstitutional would only have meant that the ballots would not be destroyed.

20. On the other hand, the State recognizes that the right of access to information before the Inter-American System holds importance *per se*, but warns of the impact the right of access to ballots could have on the certainty of electoral processes. The State asserts that the right of access to information related to election outcomes is guaranteed through the vote-count and tally records that reflect voting results⁹, given that the contents of voting ballots are deposited therein. The State also reports that the Information Committee of the IFE, notwithstanding its denial of Mr. Rodríguez Castañeda's request, made available to him the IFE vote-count and tally records that contain the information taken from the ballots to which he requested access¹⁰.

21. Additionally, the State indicates that the results obtained in a presidential election are susceptible to being challenged through a dissent lawsuit. The State further indicates that the information system for election results meets the requirements that it reveal the utmost, that it must be published, that the setting be one of limited exceptions, that it be free of cost and of minimal formality, easy to access, and that it adheres to the principle that there be grounds for revealing the information. The State asserts that as a consequence of this last principle, the exceptions regime is by strict law and that electoral law does not restrict access to information related to election results, in that federal law does not characterize vote-count and tally records as reserved information, but it does prohibit physical access to the material, that is, the voting ballots.

⁷ Concerning this, the State holds that neither Article 254 of the former COFIPE, nor its equivalent in the current COFIPE, Article 302, are rules that are immediately applied, in keeping with the standards of the Inter-American Court.

⁸ Information as of 14 May 2010 (the most recent communication by the State of Mexico).

⁹ The State reports that the vote-count and tally record are compiled by citizens, and are public and accessible.

¹⁰ The State indicates that, furthermore, the totality of the vote-count and tally record of the 2006 election are available on the official website of the Federal Electoral Institute.

22. As for the nature of ballots, the State indicates that, pursuant to the standards established by TRIFE¹¹, these are documents that never lose their trait of inviolability, do not belong to the public domain, and are subject to strict security controls and measures for the purpose of overseeing and guaranteeing the effectiveness and authenticity of voting. Another standard of the same tribunal is that ballots constitute unavailable documentation, including subsequent to the close of the electoral process, due to the reserved character they hold during the electoral process, to the existence of legislation that seeks to safeguard the inviolability of the electoral packets until their destruction is approved, and to voting secrecy. The State reports that several countries in the region have legal provisions that call for the destruction of voting ballots and asserts that this act cannot be considered a violation of the right of access to information, given that it is a reasonable measure that has to do with the definitiveness of elections and gets rid of the financial costs that would be incurred if ballots were to be preserved.

23. The State further indicates that the general regime for access to information in Mexico adheres to international standards and that the right of access to information is guaranteed both by law and operationally. The State reports that the right of access to information is guaranteed in the National Constitution and that in 2002 the Federal Law on Transparency and Access to Public Information was adopted, which applies to the three branches of Government. In compliance with that law the Federal Institute for Access to Information (which functions as the administrative tribunal and training body, as well as serving as guarantor of the protection of information that is sensitive and defined by transparency) was created under the Executive Branch.

24. Further, the State requests that the petition also be declared inadmissible because, subsequent to lodging the initial petition, the petitioners modified the grounds that supported the complaint.¹²

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction *ratione personae*, *ratione temporis*, *ratione loci* y *ratione materiae*

25. The petitioners are empowered by Article 44 of the American Convention to lodge petitions before the Commission. The petition indicates as the alleged victim a natural person, with whom the State of Mexico maintained a commitment to respect and guarantee rights enshrined in the American Convention. As for the State, the Commission indicates that Mexico has been a party to the American Convention since 24 March 1981, the date on which it deposited its ratification instrument. Therefore the Commission has *ratione personae* jurisdiction to examine this petition. Likewise, the Commission has *ratione loci* to hear the petition, because it contains allegations that rights protected in the Convention were violated within the territory of Mexico, a party-State to the treaty.

26. The Commission has *ratione temporis* jurisdiction because of its obligation to respect and guarantee the rights protected in the American Convention, given that it was already in force for the State on the date the facts alleged in the petition occurred. Lastly, the Commission has *ratione materiae* jurisdiction because the petition complains of possible violations of human rights protected by the American Convention.

B. Exhaustion of remedies under domestic law

¹¹ Ruling by the Superior Section of the Electoral Tribunal, on 25 April 2007, pertaining to the trials on the protection of the political and electoral rights of citizens, SUP-JDC-10/2007 and SUP-JDC-88/2007, combined.

¹² The State of Mexico, in its communication received on 8 April 2009, indicated: "The State emphatically calls to the attention of the Inter-American Commission the fact that the petitioner [...] has substantially modified the grounds of its initial petition [...] This means that [...] is attempting to have admitted the indefinite modification of his/her petition, changing *ad litum* the grounds that originated it."

27. Article 46.1.a of the American Convention provides that for a complaint lodged with the Inter-American Commission to be admissible, pursuant to Article 44 of the Convention, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to hear about alleged violations of protected rights and, when appropriate, to resolve them prior to their being heard by an international body.

28. As concerns fulfillment of this Convention requirement, according to the petitioners, the appropriate legal remedy for protecting the allegedly violated right was an application for protection and they assert that, because the alleged victim filed an application for protection and was denied, the remedies under domestic law were exhausted. For its part, Mexico rejects this assertion and claims that the alleged victim should have exhausted the appeal for review before the UEIFE and, subsequently, filed a lawsuit for protection of the political and electoral rights of citizens before the Electoral Tribunal of the Judiciary Branch of the Federation.

29. In order to analyze fulfillment of the requirement that all remedies under domestic law be exhausted, the Commission must identify the appropriate legal recourse to be exhausted under the circumstances, that is, which recourse can resolve the allegedly infringed legal situation¹³.

30. In this case, the Commission observes that by filing the application for protection, the alleged victim made known to Mexican authorities his complaint that his right to information had been violated. To this effect, the case file before the IACHR shows that:

- On 20 September 2006, Mr. Rafael Rodríguez Castañeda filed an application for indirect protection against “the Resolution by the Information Committee of the Federal Electoral Institute, under CI078” and against “the provision contained in the final sentence of Paragraph 2 of Article 254 of the (then-in-force) Federal Code for Institutions and Electoral Proceedings”¹⁴, claiming that these were actions that contravene, among others, the right to information guaranteed in the Article 6 of the Mexican Constitution. The application for protection was identified as Indirect Protection 909-2006;
- On 21 September 2006, the Fourth District Judge for Administrative Matters in the Federal District dismissed the application for protection of rights filed by the alleged victim. The judge explained her decision, indicating that the act of which the alleged victim had complained was “an act ordered by an authority in electoral matters and, therefore, did not constitute an act by an authority that could be contested by means of an application for protection”¹⁵
- On 5 October 2006 an appeal for review was filed against the ruling by the District judge. At that time, Mr. Rodríguez Castañeda claimed that the cause for inadmissibility established in Section VII of Article 73 of the Law of Protection¹⁶, which was employed as the legal grounds for the appealed ruling, was not applicable to the case at hand because “it is not present in actions of the electoral sphere [...and] what is intended is not the protection of political and electoral rights”;

¹³ IACHR, Report No. 22/09, Admissibility, Igmair Alexander Landaeta Mejías, Venezuela, 20 March 2009; Paragraph 45.

¹⁴ Article 254 of the COFIPE that was in force at that time provided as follows: “(1) The Presidents of District Councils will preserve in their power one certified copy of all vote-count and tally record and documentation from each of the district vote-count files. (2) Furthermore, the Presidents will take the necessary measures to deposit at the place designated for this purpose, the envelopes that contain the documentation referred to in Article 234 of this Code until the conclusion of the electoral process. Once the electoral process has been concluded, they will be destroyed.”

¹⁵ Ruling by the Fourth District Judge for Administrative Matters in the Federal District, 21 September 2006, in the suit for Indirect Protection 909/2006; Page 3.

¹⁶ Article 73 of the Law of Protection establishes that: “A application for protection is not suitable: VII – Against resolutions or declarations by bodies and authorities on electoral matters.

- On 11 March 2008, the Supreme Court of Justice of Mexico, after exercising its right of attraction to hear and rule on the appeal for review filed by the alleged victim, upheld the earlier ruling and dismissed the application for protection (Protection under review 1043/2007). The highest domestic court considered that the rule contained in Article 254 was of an electoral character (insofar as it determined the final destination of envelopes containing leftover, unused, the valid and null votes from the election), as was the ruling that denied access to the envelopes containing said ballots and that, therefore, the application for protection was without standing pursuant to, *inter alia*, what is provided in Section VII of Article 73 of the Law of Protection. As for the “argument by the appellant that by filing the application for protection [...] what was being addressed was the violation of the right to information [...] by Article 254, Paragraph 2 of the Federal Code for Institutions and Electoral Proceedings [...] and the denial of the request for access to information in the power of the Federal Electoral Institute”, [the Supreme Court] established that “the electoral nature of the acts of the complaint cannot be different or vary according to what is argued about concepts of violation, particularly in the case at hand because it could determine if the aforementioned denial and the legal provision upon which it was based are or not contrary to the fundamental right to information. The constitutional examination that would have to be undertaken could not be limited strictly to a legal question, but rather to the law being contested, and its application would entail addressing also the governing principles of electoral matters.”

31. The IACHR observes that the complaint lodged by the alleged victim before domestic bodies was in reference to an alleged violation of the right to public information, citing as grounds the ruling by the UEIFE and a COFIPE rule in force at the time. The IACHR also notes that the basis for denial of domestic remedies was that the actions were presumably of an electoral nature.

32. Taking into consideration the criteria established by the Supreme Court as these relate to the nature of the resolution and the contested rule, the IACHR observes that the alleged victim could have chosen mechanisms available in the electoral sphere. However, from the information available it appears that, at the time of the facts, the TRIFE could not declare a law unconstitutional, a power this body acquired following the constitutional reform of 2007, and only related to electoral laws¹⁷. Consequently, and in line with what both the Commission and the Inter-American Court have indicated, the application for protection of political and electoral rights of citizens did not constitute, at the time of the facts, an efficacious recourse to which the alleged victim could have turned to challenge the constitutionality of the rule in question¹⁸.

33. Because the mechanisms of electoral jurisdiction were not suitable, the IACHR observes that the only available recourse for the alleged victim was the application for protection, based on the alleged violation of his right of access to information in the context of transparency. From the analysis *supra*, it becomes apparent that the alleged victim lodged his complaint about the alleged violation of his right and exhausted whatever avenues were available to him by applying for protection.

34. The Commission concludes that with the ruling by the Supreme Court of Justice on 11 March 2008, all remedies under domestic law were exhausted.

¹⁷ In this sense, the Supreme Court of Justice of Mexico in its ruling of 11 April 2008 regarding the Indirect Protection suit [...] is the maximum jurisdictional authority on electoral matters and the specialized body of the Judiciary Branch of the Federation, with exception as provided in Section II of Article 105 of the Constitution itself, as relates to the challenges to the constitutionality of federal and local electoral laws, which are of the exclusive jurisdiction of the Supreme Court of Justice of the Nation” and that, as of the constitutional reform decree published on 13 November 2007 in the *Diario Oficial de la Federación*” the Electoral Tribunal is empowered to resolve the non-application of laws in electoral matters that are contrary to the Constitution”.

¹⁸ IACHR, Report No. 113/06, admissibility and merits, case 12.535, Jorge Castañeda Gutman, Mexico, 26 October 2006, Paragraphs 93-101; Inter-American Court of Human Rights, *Case: Castañeda Gutman vs. United States of Mexico. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of 6 August 2008. Series C No. 184, Paragraphs 118-131.

2. Time period for lodging the petition

35. As provided by Article 46.1.b of the Convention, for a petition to be admitted, it must be lodged within a period of six months as of the date within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment at the national level. The six-month rule ensures certainty and juridical stability once a judgment has been entered.

36. The IACHR established that the ruling by the Supreme Court on 11 March 2008 exhausted the domestic remedies in this case. Because the petition was lodged on 24 April 2008, the requirement established in Article 46.1.b of the Convention is satisfied.

3. Duplication of proceedings and international double jeopardy

37. In order to declare a petition admissible, Article 46.1.c of the Convention requires that subject of the petition or communication not be pending in another international proceeding for settlement and, Article 47.d requires that the petition does not reproduce the content of a petition already examined by this or any other international body. In the case at hand, the petitioners assert that the facts of the petition have not been introduced in complaints before any other international body, and no evidence has arisen to prove otherwise. Therefore, the IACHR considers that the requirements established in Articles 46.1.c and 47.d of the Convention have been satisfied.

4. Characterization of the alleged facts

38. For purposes of determining admissibility, the Commission must decide whether or not the alleged facts, if proven, can be characterized as a violation of rights, as stipulated in Article 47.b of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order”, according to Article 47.c. The criteria for evaluating these requirements are not the same as those applied to determine the merits of a petition. The Commission must perform a *prima facie* evaluation to determine if the petition establishes the grounds of a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a rights violation. This determination is a preliminary analysis that does not prejudice the merits of the case.

39. In the case at hand, the petitioners claim that the alleged victim’s right of access to information was violated because he was denied access to the voting ballots of the presidential elections held on 2 July 2006, and because national legislation existed that provided for the destruction of the documentation being sought. They further claim that vote-count and tally records do not necessarily reflect the contents of the voting ballots and that to permit access only to the latter is insufficient. In response, the State denies that Convention rights have been violated and asserts that the right of access to information as it relates to election outcomes is guaranteed by the vote-count and tally records, which reflect voting results. Further, the State asks that the petition be declared inadmissible because the petitioners have “substantially modified the grounds of their initial petition” in subsequent communications.

40. Before analyzing the characterization of the facts of the complaint, the Commission deems it important to address the matter the State has raised about the alleged modification of the grounds of the petition. The Commission observes that a study of the file does not reveal that the petitioners have modified or altered the grounds of their petition, but rather have reinforced or added to their written observations arguments related to the debate surrounding the admissibility or inadmissibility of the petition, concerning which the State was sought that it might present its position in response. Consequently, the IACHR rejects Mexico’s request because the parties are empowered to present considerations about the admissibility of the petition until such time as the IACHR makes its decision on that question, in keeping with Article 30.6 of its Regulation.

41. With that point settled, it is fitting to determine if a possible violation of Convention rights arises from the facts of the complaint. The IACHR has manifested in numerous reiterations that the right of access to information is a fundamental right protected by Article 13 of the American Convention, which

can only be subject to limitations that are in strict compliance with the requirements contained in Article 13.2 of that instrument, that is, true exceptionality, legal enshrinement, legitimate objectives, necessity, and strict proportionality. According to what has been reported by the parties, the Commission considers *prima facie* that the case at hand does not necessarily refer to a presumed application of limitations to access to information. On the contrary, the IACHR considers that what must be examined is whether or not the information that was made available to the alleged victim, that is, the vote-count and tally records, have sufficient importance to satisfy the right of access to information held by the State.

42. According to the information provided by the parties and to the electoral laws that were in effect at the time the facts occurred, the vote-count and tally records prepared at each polling station where citizens cast their votes recorded the number of votes cast in favor of a candidate or political party, the number of null votes, and the total number of leftover, unused ballots. To this end, electoral legislation provided a mechanism for identifying and separating ballots by category under which they would be considered, for tallying, and for verifying the results. Those responsible for performing this procedure were the members of the “polling station boards”, an electoral body made up of four citizens chosen through a mixed-selection mechanism. Furthermore, the political parties that had candidates, formulae, or lists on the ballot could certify representatives with the polling station boards. These representatives had the right to observe and monitor the voting proceedings and to present written protests after the votes had been counted. Additionally, domestic law provided for the possibility that, in the event of irregularities or doubts concerning results posted in the vote-count and tally records, higher authorities could call for a new vote count and tally.

43. The foregoing indicates that vote-count and tally records systematically reflect the information contained on the voting ballots. By making these vote-count and tally records available to citizens, the State was ensuring access to that information, as processed data.

44. In some situations, access to information includes both the access to processed data and access to the gross information, for example, in archived cases that contain information about serious human rights violations¹⁹. However, in the case under study, access to the vote-count and tally records would have satisfied or could have satisfied the need of individuals interested in matters related to access to information and, while at the same time preventing the potential contamination of the gross data used to prepare those records. The petitioners have not provided evidence to show why this information would not have met their needs. Because the information in the file before the IACHR shows that the vote-count and tally records prepared by the Federal Electoral Institute were made available to the alleged victim²⁰, the Commission considers that there are no elements that would allow a *prima facie* characterization of a possible violation of rights protected by the Convention.

V. CONCLUSIONS

45. By virtue of the arguments of fact and law exposed above, the Commission concludes that it is competent to hear the complaint lodged by the petitioners and that the petition is inadmissible, in keeping with Article 47.b) of the American Convention. Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible pursuant to Article 47.b) of the American Convention.

¹⁹ IACHR Special Rapporteur for Freedom of Expression, “The right of access to information in the Inter-American framework”, OAS/Ser. L/V/II, IACHR/RELE/INF. 1/09, 30 December 2009, Paragraph 81.

²⁰ Resolution by the Information Committee of the Federal Electoral Institute CI078. Second Resolved Point: “(...) the diverse vote-count and tally records issued by the Federal Electoral Institute since election day and through the district count have been made available to C. Rafael Rodríguez Castañeda.”

2. To lift precautionary measures 102-08, given that having them in force justified the need to preserve the protected material until the IACHR issued its ruling on the petition.

3. To transmit this report to the petitioners and to the State of Mexico.

4. To publish this report and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of November, 2011.
(Signed): Dinah Shelton, President; Rodrigo Escobar Gil, Second Vicepresident; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, members of the Commission.