

REPORT No. 12/13
PETITION 692-04
INADMISSIBILITY
DORIS ARGELIA ARÉVALO SIERRA
HONDURAS
March 20, 2013

I. SUMMARY

1. On August 3, 2004, the Inter-American Commission on Human Rights (hereinafter the "Commission," "Inter-American Commission," or "IACHR") received a petition lodged by Doris Argelia Arévalo Sierra (hereinafter the "petitioner" or "alleged victim") against the State of Honduras (hereinafter the "State" or "Honduran State," or "Honduras") which states that the Honduran State violated the human rights of the alleged victim by terminating her appointment as public defender without respecting due process, as provided for under the domestic law on the judicial career.

2. The petitioner claims that the Honduran State is responsible for violating the rights embodied in Articles 8.1 (a fair trial), 13 (freedom of expression), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"), in conjunction with the general obligation established in Articles 1.1 and 2 of said instrument.

3. For its part, the State indicates that the petition should be declared inadmissible since the petitioner did not exhaust domestic remedies. Further, it contends that the petitioner's intent is to have the Commission become a court of fourth instance.

4. After examining the positions of the parties, the Commission concludes that it is competent to hear the petition in question and that said petition is inadmissible, in light of Articles 46 and 47 of the American Convention. The Inter-American Commission also decided to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. On August 3, 2004, the Commission received the petition and registered it as No. 692-04. On October 17, 2006, it forwarded the pertinent parts thereof to the State, requesting it to submit its response within two months, in keeping with Article 30.3 of the Rules of Procedure of the IACHR. The State's response was received on December 13, 2006. Said communication was duly forwarded to the petitioner.

6. In addition, the IACHR received information from the petitioner in communications dated March 18, 2005; June 23, 2005; July 24, 2007; July 25, 2008; June 9, 2009; June 29, 2010; August 7, 2010; and February 11, 2011. Said communications were duly forwarded to the State.

II.

7. Likewise, information was received from the State on the following dates: September 26, 2007; November 2, 2007; February 11, 2008; May 8, 2008; August 16, 2008; October 20, 2008; and October 22, 2010. Said communications were duly forwarded to the petitioner.

III. POSITION OF THE PARTIES

A. The petitioner

8. The petitioner, an attorney, claims that on December 7, 2000, in accordance with the Judicial Career Law, she was evaluated for a public defender position and received a score of 96% (on a scale of 1 to 100%). Her appointment did not take place until February 1, 2002, and she was assigned to the city of Tegucigalpa, Francisco Morazán. She indicates that, in her performance evaluation by Public Defense Coordinator, she was rated as “diligent, punctual, collaborative, respectful, highly disciplined, and efficient.”

9. Nonetheless, she contends that the Supreme Court, by Agreement No. 348, dated April 3, 2002, signed by its President, decided to terminate her appointment “as she did not satisfactorily complete the probationary period.” According to the petitioner, this was due to sectarian political interference in personnel matters by the Supreme Court, which dismissed and appointed staff without being subject to the law.

10. She states that, availing herself of the remedies under domestic jurisdiction, on April 9, 2002, she filed an appeal against the dismissal agreement with the Judicial Career Council, to which she presented evidence to demonstrate that said agreement was not only illegal but also unfair and arbitrary. She maintains that, on May 23, 2003, she asked the Judicial Career Council to rule expeditiously on her case, which should have been done within five working days following the hearing for the production of evidence, which took place on October 29, 2002. On May 5, 2004, she requested for a second time that the pending ruling be made. On May 5, 2004, two years after the appeal was filed, despite the fact that the case was not extremely complex, the Judicial Career Council issued a ruling in which it dismissed the appeal and upheld her dismissal from the post of public defender.

11. She asserts that the Supreme Court violated due process in the area of personnel procedure under the Judicial Career Law and Regulations. It violated Article 83 of the Judicial Career Law Regulations, which provides that, for there to be a Dismissal Agreement, the supervisor of the department in which the employee worked during his or her probationary period must make a request and that the Supreme Court may terminate the appointment when a duly justified evaluation report is unfavorable to the employee. On this point, the National Public Defense Coordinator told the authorities that she had never been asked to provide a performance report on the alleged victim. On the contrary, the petitioner says that the existing evaluation reports were favorable to her. Likewise, she claims that the dismissal procedure is supposed to take place within 60 calendar days and that that period ended on April 1, 2002, and thus it was not done in accordance with the law. She claims that the Supreme Court in its ruling stated that the Dismissal Agreement took effect on April 1, 2002, in violation of the principle of legality that expressly establishes that notifications of decisions of this type are to be given personally.

12. The petitioner also alleges that, on June 17, 2005, she requested a copy of the file of her case before the Judicial Career Council, but that said entity refused to provide it—the petitioner does not indicate the date or the circumstances under which she was denied the file— in violation of Article 13 of the American Convention.

13. The petitioner states that on November 15, 2005, she filed an amparo appeal against the termination of her appointment as a defender and the refusal to provide her access to the requested information. The appeal was decided on August 14, 2007, almost two years after it was filed, thus distorting its role as a summary proceeding and a protector of fundamental rights. The Supreme Court ruled that the amparo appeal was time-barred, using as a starting point the date of the decision of the Judicial Career Council and the date the amparo appeal was filed. However, she contends that the Supreme Court should have ruled on the claim regarding violation of her right to information, since the amparo appeal was filed in sufficient time after her right was allegedly violated.

14. The petitioner agrees with the State that she was paid two months of salary, and the amount she was legally entitled to for the period of time she worked was properly calculated, but she refused to receive that amount.

15. As for the exhaustion of domestic remedies, the petitioner invokes the exception provided under Article 46.2.c of the Convention, because of the delay in settling her case. Likewise, she notes that Article 31 of the Internal Regulations of the Judicial Career Council establishes that final rulings of the Council are not subject to any appeals, whether ordinary or extraordinary. Consequently, the petitioner maintains that the alleged victim, after resorting to the Judicial Career Council, is not obliged to pursue any other remedy under domestic jurisdiction because the aforementioned article clearly states that no appeals can be made against the Council's decisions.

B. The State

16. The State alleges that the petition should be declared inadmissible since the petitioner did not exhaust domestic remedies. It states that, on November 15, 2005, the alleged victim, after lodging her petition with the IACHR, filed an amparo appeal against the ruling of the Judicial Career Council dated November 29, 2004, which upheld the termination of her appointment to the public defender post. A ruling on the appeal was issued on August 14, 2007, dismissing the case as it was time-barred and thus allowing the offending act against which she had lodged an appeal. According to the State, by lodging that appeal, the petitioner demonstrated that she had not exhausted all domestic remedies available to her.

17. The State contends that initially the alleged victim argued on grounds that the decision to remove her from the public defender position in the judicial branch, which she occupied for 60 days, was arbitrary, inasmuch as, in her view, it was not consistent with the procedure established by the Judicial Career Law. In time she also asserted that she was denied the right to appeal that decision, although it was confirmed that she subsequently filed an amparo appeal. After that, the State indicates that the alleged victim directed her arguments against the members of the Supreme Court, going so far as to accuse its President of some kind of political persecution against her.

18. In the view of the State, on April 1, 2002, the Supreme Court of Justice decided to terminate the alleged victim's appointment as she had not satisfactorily completed the probationary period, with her employment benefits for the period of time she worked paid to her on April 15, 2002. She was paid her two months of salary, and the rights corresponding under law to the period of time she worked were calculated, but she refused to accept that amount. That payment, according to the State, was made according to the Regulations of the Judicial Career Law.

19. The State emphasizes that the alleged victim was not hired definitively by the Supreme Court and that she was serving a probationary period of 60 working days when her employment relationship was terminated, a period during which either the employer or the employee may end the employment relationship without any liability, since it is an initial period whose purpose is to allow the employer to assess the employee's aptitudes and to allow the employee to observe the suitability of working conditions.

20. The State asserts that it is not appropriate to discuss whether decisions taken by the jurisdictional organs of a State within their spheres of competence are valid or not, as if the IACHR constituted another level of the national judicial system to which recourse could be sought when decisions are not consistent with the claims of the parties concerned.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione personae, ratione materiae, ratione temporis, and ratione loci*

21. The petitioner is entitled, in principle, under Article 44 of the American Convention to lodge petitions with the Commission. The petitioner identifies Doris Argelia Arévalo Sierra as the alleged victim for whom the Honduran State undertook to observe and guarantee the rights established in the American Convention. As for the State, the Commission notes that Honduras has been a State Party to the American Convention since

September 8, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* because the petition alleges violations of rights protected under the American Convention that took place within the territory of Honduras, a State Party to that treaty.

22. The Commission is competent *ratione temporis* because the obligation to observe and guarantee the rights protected by the American Convention was already in force for the State at the time when the facts alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of human rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

23. Article 46.1.a of the American Convention provides that for a petition lodged with the Inter-American Convention to be admissible, the remedies available under domestic law must first have been exhausted in accordance with generally recognized principles of international law. Article 47.b of the same instrument establishes that the Commission shall declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights guaranteed by this Convention.

24. In the instant case, the State maintains that the petitioner did not exhaust domestic remedies, as proven by the fact that, after the petitioner lodged the petition, she filed an amparo appeal, which was declared time-barred. For her part, the petitioner states that, in this case, the exception provided for in Article 46.2.c of the Convention is applicable because of the delay in ruling on her case. Likewise, she indicates that, under the Internal Regulations of the Judicial Career Council, no appeals, whether ordinary or extraordinary, may be filed against final rulings of the Council; consequently, under that provision, she was not obliged to apply for amparo or pursue any other domestic remedy.

25. The Commission has held that to satisfy the prior exhaustion requirement, petitioners need only exhaust the suitable remedies; in other words, remedies that are available and effective in correcting the situation denounced. In the instant case, the IACHR notes that the appointment of the alleged victim was terminated on April 3, 2002, in response to which she filed an appeal with the Judicial Career Council on April 9, 2002, which was dismissed on November 29, 2004. In this regard, the IACHR observes that Article 31 of the Internal Regulations of the Judicial Career Council states: "Final decisions of the Council shall not be subject to any appeals, whether ordinary or extraordinary."

26. On November 15, 2005, the alleged victim filed an amparo appeal against the termination of her appointment as a defender and the failure of the Judicial Career Council to give her access to her file. The amparo appeal was dismissed by the Constitutional Chamber of the Supreme Court on August 14, 2007, as it was time-barred. In its reasoning, the Constitutional Chamber of the Supreme Court stated that the only purpose of Article 31 of the Regulations of the Judicial Career Council was to indicate that the Council's ruling "was deemed to have exhausted the governmental or administrative procedure for admissibility, so that the petitioner" could have recourse to "the constitutional jurisdiction through the amparo guarantee in the event that his or her interests were not met by the decision taken by the Judicial Career Council." According to the Supreme Court, any other interpretation in the sense of prohibiting the right to challenge said administrative decision would violate the right to judicial protection recognized in Article 25 of the American Convention."¹

1. The Constitutional Chamber of the Supreme Court expressly stated: "Any other interpretation in the sense of prohibiting the right to challenge said administrative decision would violate the recognized right to judicial protection, which, according to Article 25 of the American Convention on Human Rights, refers to every person's right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his or her fundamental rights recognized by the constitution, by law, or by said Convention, even though such violation may have been committed by persons acting in the course of their official duties." Amparo ruling issued by the Constitutional Chamber of the Supreme Court of Justice, Administrative Amparo Appeal No. 1491-05/47-06, August 14, 2007.

27. The IACHR observes that Article 48 of the 2004 Constitutional Justice Law of Honduras stipulates that amparo appeals must be filed within two months following the date of the last notification to the party concerned or the date on which the party concerned learned of the action or omission that, in his or her opinion, was or could be harmful.² In other words, with respect to the termination of the appointment, the ruling to be challenged was dated November 29, 2004, and the amparo appeal was filed on November 15, 2005. As concerns the petitioner's statements concerning the alleged refusal of the State to provide her with a copy of the file at the internal level, requested on June 17, 2006, the documents provided by the parties have not provided the Commission with sufficient information in that regard.

28. In view of the foregoing and considering that, for a petition to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law, the Commission considers that in the instant case, although the petitioner had access to the domestic remedies offered by Honduran legislation, she exhausted them in an untimely fashion, as established in Article 46.1.a of the American Convention.³

29. Accordingly, the IACHR abstains from examining the other requirements for admissibility contained in the Convention, the question being moot.

V. CONCLUSIONS

30. The Commission concludes that, with respect to the alleged violations of the American Convention, the petitioner was untimely in exhausting the remedies under domestic law, thus failing to comply with the prior exhaustion rule set forth in Article 46.1.a thereof.

31. Given the foregoing considerations of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case inadmissible.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 20th day of March 2013. (Signed):; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, and Rose-Marie Belle Antoine, Commissioners.

DISSENTING OPINION OF COMMISSIONER JOSÉ DE JESÚS OROZCO HENRÍQUEZ CONCERNING THE INADMISSIBILITY REPORT ON PETITION 692-04, FILED BY "DORIS ARGELIA ARÉVALO SIERRA" AGAINST HONDURAS

² Article 48 of the 2004 Constitutional Justice Law of Honduras.

³ Although the IACHR has stated that Article 31 of the Internal Regulations of the Judicial Career Council, which establishes that "No ordinary or extraordinary remedies may be filed against final rulings issued by the Judicial Career Council" would make it impossible to file for amparo or any other remedy [see Admissibility Report No. 70/11, *Adán Guillermo López Lone et al.* (Honduras), March 31, 2011], it considers that in this specific case an appeal filed at the internal level, such as the amparo appeal, should have complied with the formal regulations for filing, that is, the time period established by law.

1. While fully acknowledging the deep sense of professionalism of the members of the Commission who voted with the majority, I am writing this OPINION pursuant to Article 19 of the Rules of Procedure of the Inter-American Commission on Human Rights to DISSENT from the decision declaring petition 692-04 inadmissible. That petition was filed by "Doris Argelia Arévalo Sierra" against Honduras and was declared inadmissible because, as stated in paragraph 28 of the inadmissibility report, the majority of the Commission deemed that the petitioner had not exhausted the remedies under Honduran domestic law within the prescribed time period, as required under Article 46(1) of the American Convention on Human Rights.

2. In the view of the undersigned, the conclusion dictated by inter-American precedent and standards, established in the judgments of the Inter-American Court and in the Commission's own decisions, should have been that the petition filed in the present matter was admissible and that the petitioner had complied with the rule requiring exhaustion of domestic remedies. The legal reasoning supporting this opinion is as follows:

A. Remedies exhausted by the petitioner:

3. According to the facts recounted in the petition, when the alleged victim's appointment as a public defender was cancelled on April 3, 2002, she filed a petition with the Judicial Career Service Council on April 9, 2002. Her petition was dismissed on November 29, 2004. Under the Honduran legal system, this decision was not subject to challenge. In effect, Article 31 of the Internal Rules of the Judicial Career Service Council provides that:

"The Council's final decisions are not subject to appeal of any kind, either ordinary or extraordinary."

4. On November 15, 2005, the alleged victim filed a petition seeking *amparo* relief, challenging the cancellation of her appointment as a public defender. The Constitutional Chamber of the Supreme Court dismissed the petition of *amparo* on August 14, 2007, on the grounds that it was filed after the legally prescribed deadline. In its reasoning, the Constitutional Chamber of the Supreme Court wrote that had the petition been filed on time, the Chamber could have considered it, since "any other grounds invoked to disallow the right to challenge that administrative decision would be at variance with the right to judicial protection recognized in Article 25 of the American Convention."

B. The majority decision

5. As explained in paragraph 28 of the report and its footnote 3, the majority of the membership of the Inter-American Commission deemed that when, despite the legal prohibition against recourse to extraordinary appeals, the petitioner nonetheless decided to file another appeal with the domestic courts -which in this case was a petition seeking *amparo* relief-, she was still obliged to comply with the formal requirements in order for the appeal to have its intended effects; in other words, the appeal had to be filed within the time period that the law prescribed. Hence, the majority concluded that the petitioner had not exhausted the domestic remedies in the manner required under Article 46(1) of the American Convention.

C. Case law concerning domestic legal restrictions that make it impossible to exhaust remedies and its relevance to the right to judicial protection.

6. In its jurisprudence, the Inter-American Court has taken up cases in which States parties to the Convention have laws establishing prohibitions that make it impossible to exhaust other ordinary or extraordinary appeals to challenge decisions of administrative bodies. In these cases, the petitioners have exhausted the additional remedies subsequent to the normal legal deadline, only to have the courts declare their appeals inadmissible on the grounds that they were filed after the legal time period.

7. Thus, in the *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, the Inter-American Court observed that Article 9 of Decree Law No. 25640 expressly prohibited petitions of *amparo* filed to challenge decisions to dismiss employees, taken by an administrative commission created for the purpose of cutting staff in the Congress of the Republic. In that case, the lack of legal certainty as to which remedies could be invoked caused some petitioners to wait two years before filing their petition seeking *amparo* relief. In the end, those petitions were deemed inadmissible on the grounds that the petitioners had not filed within the legally prescribed time period.

8. The Court wrote that the legal provision prohibiting recourse to other remedies “constituted a norm of immediate application, since the people it affected were prevented *ab initio* from contesting any effect they deemed prejudicial to their interests.”⁴ As to the effect that the prohibition had on the victims’ rights, the Court held that:

a norm containing a prohibition to contest the possible effects of its application or interpretation cannot be considered a valid limitation of the right of those affected by the decree to a genuine and effective access to justice, which cannot be arbitrarily restricted, reduced or annulled in light of Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 thereof.⁵

9. As for the domestic court’s finding that the petition seeking *amparo* relief had been filed late, the Inter-American Court wrote that the lack of judicial protection and the legal uncertainty created when Article 9 of Decree Law No. 25640 entered into force, was evident from the fact “that for more than two years, the alleged victims did not attempt to file an action for *amparo*.” The Inter-American Court held that while “in any proceeding or process that exists under the State’s domestic system there should be extensive judicial guarantees, which should include the formalities that must be observed in order to guarantee access to these guarantees,” “[w]hen a State has ratified an international treaty such as the American Convention, the judges are also subject to it; this obliges them to ensure that the *effet util* of the Convention is not reduced or annulled by the application of laws contrary to its provisions, object and purpose.”⁶

10. As the Court held in the *Case of the Dismissed Congressional Employees*, the rule prohibiting the pursuit of additional remedies had the effect of limiting the right of access to justice contained in articles 8 and 25 of the Convention. The Court wrote that domestic courts were not to limit their “conventionality control” to the merits phase of a case, confining it exclusively to what the plaintiffs did or said in the proceedings. In the *Case of the Dismissed Congressional Employees*, the laws that prevented the victims from challenging the evaluation procedure and their ultimate dismissal had created a “climate of legal uncertainty” in which the victims were unclear about what proceeding they should or could use to claim the rights they believed were violated.⁷

11. Therefore, given the failure to check whether the provision prohibiting the pursuit of additional remedies in the domestic courts complied with the American Convention (“conventionality control”) and given the failure to make allowance for the fact that the late filing was due to the climate created by the prohibition established in law, the Inter-American Court held that the existing internal remedies were not effective in ensuring that the dismissed Peruvian Congressional employees had adequate and effective recourse to justice, as required under the American Convention.

⁴ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 119.

⁵ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 119.

⁶ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 128.

⁷ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 128.

12. In that case, the Court also mentioned how important it was that the remedies offered by a State be adequately guaranteed. Here, the Court cited the case of *Akdivar v. Turkey*, where the European Court of Human Rights found, *inter alia*, that the existence of domestic recourses must be sufficiently guaranteed, not only in theory, but also in practice; if not, they could not offer the required accessibility and effectiveness. The Court also wrote that the existence of formal recourses under the legal system of a State should be taken into account, as should the general political and legal context in which it operates and the personal circumstances of the petitioners or plaintiffs.⁸

D. Application of the above standards to the petition under study

13. In the matter in question, Article 9 of the Internal Rules of the Honduran Judicial Career Service Council provided that the Council's final decisions were "not subject to appeal of any kind, either ordinary or extraordinary." Despite this provision, the petitioner decided to exhaust the remedy of *amparo*, which the domestic court held was filed after the legally prescribed deadline. In so doing, the domestic court declined to address the petition's merits.

14. In the section of the inadmissibility report that concerns the question of exhaustion of domestic remedies, the conclusion should have been that the requirement was satisfied because the remedies offered under domestic law were, *prima facie*, ineffective. For admissibility purposes, the ineffectiveness of the domestic remedies is obvious from the fact that the Honduran court failed to exercise "conventionality control" in order to strike down the provision that prohibited the pursuit of judicial remedies and by so doing correct a possible violation of the right of access to justice. As part of this control, and following the Inter-American Court's *ratio decidendi* in its judgment in the case of the Dismissed Congressional Employees (*Aguado Alfaro et al.*), the Honduran Court should have agreed to examine the merits of the petition, recognizing that the provision of the Internal Rules of the Judicial Career Service Council in which appeals of its final decisions were prohibited had the effect of creating a "climate of legal uncertainty" in which the petitioner was unclear about what path she could take to claim the right that she believed had been violated; that legal uncertainty was a decisive factor in the timing of her appeal.

15. On the question of admissibility, the Inter-American Commission's practice has been that the Commission cannot consider a petition admissible if the domestic remedies have been denied on reasonable, not arbitrary grounds.⁹ The Commission has also written that for the purposes set forth in Article 46(1)(a) of the Convention, "if the alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled."¹⁰ The Commission has also acknowledged that there may be cases that do "not reveal any particular circumstances that would acquit the petitioner of the obligation to file his petitions in timely fashion, in accordance with generally recognized principles of international law."¹¹

16. For all the foregoing reasons, it is my considered opinion that for purposes of the present petition's admissibility, the membership of the Inter-American Commission should have considered how the provision contained in the Internal Rules of the Judicial Career Service Council prohibiting appeals of its final

⁸ Cf. Eur. Court. HR. *Akdivar and others v. Turkey*, judgment (Preliminary Objections) of 16 September 1996, Reports 1996-IV Court (Grand Chamber), paras. 66 and 69. See also, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, para. 27; *Johnston and Others v. Ireland*, judgment of 18 December 1986, Series A no. 112, p. 22, para. 45, and *Van Oosterwijck v. Belgium*, judgment (Preliminary Objections) of 6 November 1980, Series A no. 40, pp. 18, para. 35. Cited in I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 130.

⁹ IACHR, Report No. 90/03, Petition 0581/1999, Inadmissibility, Gustavo Trujillo González (Peru), October 22, 2003, Paragraph 31. IACHR, Report No. 48/04, Petition 12.210, Inadmissibility, Félix Román Esparragoza González and Nerio Molina Peñaloza (Venezuela), October 13, 2004, paragraph 56.

¹⁰ IACHR, Report No. 70/04 (Admissibility), Petition 667/01, Jesús Manuel Naranjo Cárdenas *et al.*, (Venezuela), October 15, 2004, paragraph 52; IACHR, Report No. 57/03 (Admissibility), Petition 12.337, Marcela Andrea Valdés Díaz, (Chile), October 10, 2003, paragraph 40.

¹¹ IACHR, Report No. 02/01, Case 11.280, Juan Carlos Bayarri, January 19, 2001, paragraph 37.

decisions affected the timing of the petition filed seeking *amparo* relief; it should have also considered the *prima facie* ineffectiveness of the domestic remedies, given the court's failure to adequately ensure that the domestic law was consistent with the American Convention ("conventionality control") in order to guarantee that the right to judicial protection had its *effet utile*.

17. The case law of the Inter-American Court holds that if a State alleges non-exhaustion of domestic remedies, it must show that the domestic remedies not exhausted are adequate and effective.¹² In the present matter, the State never produced any information proving that the remedy of *amparo* was, in practice, effective in situations similar to the petitioner's and that the petition of *amparo* had been admitted despite the legal prohibition expressly established in Article 9 of the Internal Rules of the Judicial Career Service Council. This assertion is not refuted by the claim made by the Constitutional Chamber of the Supreme Court to the effect that had the petition of *amparo* been filed on time, the Chamber could have considered it, since "any other grounds invoked to disallow the right to challenge that administrative decision would be at variance with the right to judicial protection recognized in Article 25 of the American Convention." This was more than a matter of exercising "conventionality control" in the absence of an effective remedy by which to challenge the Judicial Career Service Council's decision; it was also a matter of the domestic courts correcting a violation of the right to judicial protection caused by the lack of legal clarity and the corresponding legal uncertainty created by Article 31 of the Internal Rules of the Judicial Career Service Council.

18. Finally, although the petition was filed before the Constitutional Chamber of the Supreme Court issued its ruling, Article 32 of the Rules of Procedure of the Commission provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time. In my opinion, the time period in which the present petition was filed should have been deemed reasonable under the provision set forth in Article 46 of the American Convention.

19. Therefore, because all the requirements set forth in Article 46 of the American Convention were satisfied, I believe the present petition should have been declared admissible by the full membership of the Inter-American Commission on Human Rights.

¹² Inter-American Court of Human Rights, *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, paragraph 60.