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**REPORT No. 7/18**  
**PETITION 310-08**  
REPORT ON ADMISSIBILITY

ROGELIO MIGUEL ORTIZ ROMERO  
ECUADOR

Approved by the Commission at its session No. 2115 held on February 24, 2018.  
167<sup>th</sup> Special Period of Sessions.

**Cite as:** IACHR, Report No. 7/18, Petition 310-08. Admissibility. Rogelio Miguel Ortiz Romero.  
Ecuador. February 24, 2018.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Rogelio Miguel Ortiz Romero
<b>Alleged victim:</b>	Rogelio Miguel Ortiz Romero
<b>State denounced:</b>	Ecuador
<b>Rights invoked:</b>	Article 8 (right to a Fair Trial) of the American Convention on Human Rights <sup>1</sup>

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

<b>Filing of the petition:</b>	March 10, 2008 <sup>3</sup>
<b>Additional information received at the stage of initial review:</b>	May 9, 2008; April 4, 2014, and April 22, 2014
<b>Notification of the petition to the State:</b>	December 17, 2014
<b>State's first response:</b>	April 15, 2015
<b>Additional observations from the petitioner:</b>	June 15, 2015
<b>Additional observations from the State:</b>	July 18, 2016

**III. COMPETENCE**

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

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (right to a Fair Trial), 13 (freedom of thought and expression), 23 (right to participate in government), and 25 (right to judicial protection) in relation to Article 1.1 (obligation to respect rights) of the ACHR
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, the exception contained in Article 46.2.c of the ACHR applies
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

<sup>1</sup> Hereinafter, "IACHR" or "American Convention."

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

<sup>3</sup> Due to an inadvertent error, notice was given that the petition was received on March 13, 2008 rather than March 10, 2008, which is the correct date according to the case file.

## V. ALLEGED FACTS

1. The petitioner, who at the time of the events in question was a town councilor in the Municipality of Chunchi, alleges irregularities in the 2006 civil action in which he was ordered to pay US\$ 25,000 in non-pecuniary damages to the then-mayor of Chunchi. He submits that this judgment caused him serious economic harm, placing him “on the brink of financial ruin.” Mr. Ortiz Romero indicates that he was sued by the mayor in 2004, for the alleged defamation, insult, and libel [*injurias, ofensas y calumnias*] of the mayor at the sessions of the Cantonal Council, as well as through a social media account belonging to the town.

2. According to the petitioner, the mayor filed the civil action “abusing his power, being represented by the municipal government’s own lawyers,” at a time when judges in Ecuador were subject to political pressure. He also asserted that the mayor acted with the intent to do harm to him, considering him his “political and even personal enemy, just because he had a different ideological stance.”

3. In particular, the petitioner notes that individuals with alleged political and financial ties to the mayor testified in the civil action. He says that he expressed his opinion regarding the way in which the mayor administered the municipality at the sessions of the Cantonal Council of Chunchi, on which he served as a principal town councilor—and from which he was reportedly exempt from liability in accordance with national law. He alleges that the judge refused to conduct a judicial inspection of the minutes of the sessions of the Cantonal Council of Chunchi, which would prove that he did not offend or defame the mayor and other town council members. He further contends that he had no relationship with any media outlet as alleged in the lawsuit, and that the court failed to consider evidence that would demonstrate that he was not the director of the newspaper *Ecos del Chánchán*. The petitioner alleges that the judges who adjudicated the civil action were not impartial, and that the judgment against him failed to state the legal basis for the decision. In particular, he indicates that the judge of the Superior Court of Chimborazo recused himself from hearing the civil action because he had heard a previous case to which the alleged victim and the mayor were parties; however, the Superior Court denied his recusal, stating that it did not meet the necessary requirements.

4. The petitioner maintains that he has exhausted all domestic judicial remedies, “since, at the time, there were no other remedies available to challenge the final decision of the court of appeals.” He recounts that the trial court judge dismissed the mayor’s complaint, but the mayor appealed. On December 14, 2006, the Superior Court of Chimborazo overturned the lower court’s decision, ordering Mr. Ortiz Romero to pay US\$ 25,000 in non-pecuniary damages, as well as court costs in the amount of US\$ 500. The petitioner subsequently filed an extraordinary appeal to the Supreme Court [*recurso de casación*] alleging, *inter alia*, the court’s failure to properly state the legal basis of the judgment against him and the lack of impartiality of some of the appellate court judges who had overturned the trial court’s decision. On September 12, 2007, the Third Civil and Commercial Division of the Supreme Court of Ecuador [*Tercera Sala de lo Civil y Mercantil de la Corte Suprema de Justicia de Ecuador*] declared inadmissible this extraordinary appeal, and did not rule on its merits. The petitioner also filed in 2007 a motion to vacate a final judgment [*acción de nulidad de sentencia ejecutoriada*], which was denied on July 23, 2009 on procedural grounds. Finally, he indicates that, once the appellate court’s decision became final, the mayor’s heirs filed an insolvency claim against him.

5. For its part, the State cites the legal actions filed by the alleged victim, listing the various decisions issued as a result, and indicating that these proceedings were conducted in accordance with the due process standards established in the ACHR. It contends that the petitioner has failed to make a colorable claim that his rights under the ACHR were violated, since he has not stated the grounds on which Article 8 of the American Convention was allegedly violated. It asserts that Mr. Ortiz Romero has failed to comply with the enforcement of the judgment and that he has an insolvency case pending with the heirs of the deceased mayor. With regard to that case, the State indicates that it has been stayed by order of the court until the appeals court issues a ruling on the motion to vacate the final judgment, which has been pending since 2009. The State argues that no final decision has been handed down, and therefore the domestic remedies have not been exhausted.

6. With regard to the case for non-pecuniary damages, the State indicates that Mr. Ortiz Romero's complaint "does not, *prima facie*, contain facts that can be characterized as due process violations." The State asserts that the alleged victim had access to all available judicial forums, that his ability to present evidence in a timely manner was not restricted, and that he exercised this right in seven written pleadings. It stresses that Ecuador has an effective system of ensuring trial rights, and that the fact that judgments have been entered against the alleged victim "is not the same as saying that his rights have been violated." In reporting on the different court proceedings used by Mr. Ortiz Romero, it indicates that the alleged victim "has availed himself of appeals without regard for their implications, and furthermore endlessly accuses people of crimes and violations." The State also submits that the petitioner is using the IACHR as an appeals court to challenge judicial decisions. Consequently, it maintains that Article 47 of the ACHR should be applied, and it requests that this petition be found inadmissible.

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

7. The petitioner argues that he has exhausted the appeals available in the Ecuadoran legal system, and therefore the September 12, 2007 decision of the Third Civil and Commercial Division of the Supreme Court of Ecuador dismissing his extraordinary appeal ended the case in which he was ordered to pay US\$ 25,000 in non-pecuniary damages. For its part, the State asserts that the proceedings to vacate the final US\$ 25,000 judgment against the alleged victim, filed by Mr. Ortiz Romero in 2007, would be pending in the domestic courts, and that an insolvency claim was filed on June 23, 2010.

8. Bearing this in mind, the Commission observes from the documentation provided to it that, throughout the process, the petitioner availed himself of the ordinary appeals and attempted to avail himself of the extraordinary appeal that was available to him; however, the Third Civil and Commercial Division of the Supreme Court of Ecuador dismissed the extraordinary appeal without ruling on the merits.

9. The Commission takes note of the State's argument regarding the fact that there is a motion to vacate that has been pending in the domestic courts since 2007. The IACHR observes from its examination of the case file that a decision in this legal action is still pending 9 years later. Therefore, given the characteristics of this petition and the length of time that has elapsed since the motion to vacate was filed in 2007, the Commission deems the exception provided for in Article 46.2.c of the American Convention applicable with respect to the delay in those proceedings. Accordingly, the exhaustion of domestic remedies requirement is waived. In view of the allegations and the characteristics of this case, the Commission additionally finds that the petition was filed within a reasonable period of time, and that the admissibility requirement referring to the timeliness of the petition has been met.

## **VII. ANALYSIS OF COLORABLE CLAIM**

10. In this petition, the Commission identifies three principal allegations made by the petitioner: a) the violation of due process in the civil action filed against him with respect to aspects related to evidence, lack of impartiality of the judges who ruled on the civil action, and failure to state the legal basis for the judgment against him; b) the violation of his right to speak, in his capacity as a member of the Cantonal Council of Chunchi, about matters of public interest that formed part of the political debate; and c) the judgment ordering him to pay US\$ 25,000 in non-pecuniary damages, which caused serious and disproportionate financial harm, according to the petitioner.

11. In view of the legal and factual elements presented by the petitioner and the nature of the matter brought before it, the Commission deems it necessary to examine at the merits stage of this case the possible violation of Articles 8 (right to a fair trial), 13 (freedom of thought and expression), 23 (right to participate in government) and 25 (right to Judicial Protection) of the American Convention, in relation to the general obligation enshrined in Article 1.1 thereto.

12. The IACHR recalls, as it and the Inter-American Court have consistently held, that in a democratic society speech referring to the suitability of public servants enjoys a greater degree of protection.

The IACHR and the Court have also established that civil judgments in cases involving freedom of expression must be strictly proportionate, so as to not have a chilling effect on that freedom, since “the fear of a civil penalty, in view of [a] claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to compromise the personal and family life of an individual who accuses [...] a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”

13. Finally, with regard to the State’s allegation that the Commission would be acting as a fourth instance in this case, the IACHR recalls that, in rendering decisions on domestic court outcomes, the Commission does not act as a fourth instance for the review of judgments handed down by domestic judicial authorities; rather, it determines whether those courts have, in their decisions, committed any violations of the human rights or international obligations recognized in the treaties that are within the purview of its competence.<sup>4</sup> Thus, in the instant case, the Commission will examine at the merits stage of this petition the alleged violation of the rights to a fair trial and judicial protection provided for in Articles 8 and 25; the “conventionality” of the civil penalty imposed against the alleged victim—that is, whether it met the requirements of legality, necessity, and proportionality established in Article 13 of the ACHR; as well as whether the right provided in Article 23 of the ACHR was respected.

### VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 13, 23, and 25, in conjunction with Article 1.1 of the American Convention, in relation to Rogelio Miguel Ortiz Romero; 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.

Done and signed in the city of Bogotá, Colombia, on the 24<sup>th</sup> day of the month of February, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

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<sup>4</sup> Most recently, in the order Monitoring Compliance with Judgment *Case of Fontevecchia and D’Amico v. Argentina*, the Inter-American Court of Human Rights reaffirmed that “in rendering decisions on domestic court outcomes, the Inter-American Court does not act as a fourth instance for the review of judgments handed down by domestic judicial authorities; rather, it determines whether those courts have, in their decisions, committed any violations of the human rights or international obligations recognized in the treaties that are within the purview of this Court’s competence.” See I/A Court H.R., *Case of Fontevecchia and D’Amico v. Argentina* (Monitoring Compliance with Judgment). October 18, 2017, para. 31.