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REPORT No. 172/18
PETITION P-1540-07
REPORT ON ADMISSIBILITY

HUGO AROLDO AGUILAR BARRIOS
GUATEMALA

Approved electronically by the Commission on December 23, 2018.

Cite as: IACHR, Report No. 172/18, Petition 1540-07. Admissibility. Hugo Aroldo Aguilar Barrios. Guatemala. December 23, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Hugo Aroldo Aguilar Barrios
Alleged victim:	Hugo Aroldo Aguilar Barrios
Respondent State:	Guatemala
Rights invoked:	Articles 8 (right to a fair trial), 9 (Freedom from Ex Post Facto Laws), 17 (rights of the family), 25 (right to judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	December 4, 2007
Additional information received at the stage of initial review:	November 22, 2007 ³ and February 1, 2012
Notification of the petition to the State:	October 5, 2016
State's first response:	January 6, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument made on April 27, 1978)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (right to humane treatment), 8 (right to a fair trial), 23 (political rights) and 25 (right to judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, July 18, 2007
Timeliness of the petition:	Yes, December 4, 2007

V. FACTS ALLEGED

1. Mr. Hugo Aroldo Aguilar Barrios (hereinafter "the petitioner", "the alleged victim" or "Mr. Aguilar") alleges that he worked as the Secretary of the Magistrate's Court of the Municipality of Zaragoza and, that as from April 18, 2000, a controversy started with his superior, Peace Justice Canahuí Padilla, after he could not give her a thirty quetzals contribution for an office party. The petitioner alleges that as a result of this disagreement, he became the victim of persecution and harassment at work and that on December 18, 2002, he was the victim of an arrest during an illegal search conducted on the aforementioned judge's orders.

2. The petitioner filed a complaint against this alleged persecution with the Human Rights Procurator on January 7, 2003, and again on May 28, 2004, with the General Supervisory Body of the

¹ Hereinafter "the Convention" or "the American Convention".

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

³ Date of communication is recorded, as the case file lacks the date of document's receipt. (The petition is dated October 22, and was received on December 4, 2007).

Judiciary on January 17, 2003, and with the Deputy Coordinator of the Disciplinary Regime Unit on March 3, 2003. He also requested a transfer to a different court for reasons of harassment on February 18, 2003.

3. The petitioner indicates that these actions were unsuccessful because the judge was acquitted by the disciplinary board and the persecution did not end. He alleges that the persecution continued and resulted in his superior filing two false allegations in bad faith, one of an administrative-disciplinary nature and the other of a criminal nature.

4. As a result of the administrative-disciplinary complaint lodged by his superior, an investigation was initiated in the Judicial Disciplinary Regime Unit. The petitioner was removed from his position by decision of the Supreme Court of Justice of March 19, 2003. The petitioner filed a motion for annulment of his removal before the Presidency of the Judicial Branch and the Supreme Court of Justice,⁴ which was dismissed on August 7, 2003. He filed an appeal against his dismissal, and on June 2, 2004, the Supreme Court of Justice decided not to hear the merits. The Supreme Court of Justice concluded that "the resolutions issued by this Court as the appointing authority providing for the dismissal of officials and judicial staff, are not subject to any remedies," based on Article 76 of the Civil Service Law of the Judiciary (hereinafter "LSCOJ").

5. The petitioner alleges that the Supreme Court of Justice was obligated to examine the merits of his appeal, because the aforementioned Article 76 of the LSCOJ states in its second paragraph that "that which is decided on the resolution on dismissal will be heard by the Supreme Court of Justice". He considers that the decision of the Supreme Court of Justice barred his right and prevented him from exhausting a remedy provided by law. He also indicates that his dismissal placed him in a precarious economic situation preventing him from fully providing for his family - his wife and four children between the ages of five and twelve.

6. With regard to the criminal complaint, also filed by his superior, the Public Prosecutor's charges were based mainly on the fact that the petitioner alone signed two orders addressed to the National Police and without the signature of the competent judge. The petitioner acknowledges these facts, but argues that he acted on the orders of his superior, who instructed him to send the orders without her signature, which she frequently did because she was always absent from the court offices. The Public Prosecutor's Office also accused the petitioner of committing an offense by requesting three thousand quetzales from a user of the court system as compensation for the performance of official work.

7. Based on the foregoing, the petitioner was indicted for the offenses of "unlawful assumption of judicial functions" and "receiving bribes". On February 15, 2006, the Criminal, Drug Trafficking and Environmental Sentencing Court of Chimaltenango acquitted the petitioner of the offense of "receiving bribes" - since it was not proven that he had received money in consideration for performing tasks pertaining to his position. Regarding the offense of "unlawful assumption of judicial functions", the court considered that the petitioner's actions corresponded to a different type of offense, and thus reissued the accusation and convicted the petitioner for the offense of "abuse of authority" and sentenced him to "a one year suspended prison sentence at the rate of twenty-five quetzales."

8. The petitioner considers that this decision violated his rights on the basis, inter alia, of the following irregularities: (1) That the reissuance of the accusation from the criminal offense of unlawful assumption of judicial functions to that of abuse of authority was conducted at the last minute during the public debate at the oral phase and that therefore he had no prior and detailed access to the accusation and to be heard with due process guarantees; (2) That the conviction issued against him is unclear and does not specify the time frame for payment of the sum of twenty-five quetzales (i.e. per day or per month); (3) That the Court failed to call the two witnesses that had been duly proposed and admitted, and whose testimony could have been favorable to the petitioner; (4) That the Court failed to assess the evidence correctly, among

⁴ The remedy was filed on the basis of Article 74 of the Civil Service Law of the Judiciary, establishing that the motion for annulment must be filed with the corresponding superior authority and on the basis of Article 9 indicating that the President of the Judicial Branch and the Supreme Court of Justice shall exercise the superior administration of the civil service.

other reasons, because it gave full evidentiary weight to the testimony of Judge Canahuí Padilla, without taking into account the animosity between her and the petitioner.

9. The petitioner challenged the conviction against him through a special appeal, which was dismissed by the Mixed Regional Chamber of the Court of Appeals of Antigua Guatemala on July 18, 2006. The Chamber considered that the contested judgment was duly grounded on the basis of the sound judgment rule of interpretation. The Chamber noted that "even in cases of disagreement with the grounds used by the trial court in its decision, these cannot be censured in the special appeal unless they are unreasonable, contradictory, or based on illegal evidence, because they are within the discretionary powers of the sentencing court".

10. Subsequently, the petitioner filed a cassation remedy on August 8, 2006, which was dismissed on October 25 by the Criminal Chamber of the Supreme Court of Justice, on the grounds that the remedy merely reiterated factual arguments unrelated to the nature of cassation appeal. The petitioner considers that the *in limine* dismissal of this remedy constituted in itself a lack of judicial protection. Finally, on December 29, 2006, the petitioner filed an *amparo* against the decision dismissing his appeal, which was denied on July 18, 2007, by the Constitutional Court. The petitioner also argues that both his cassation appeal and the *amparo* were not decided within the time limits established by law.

11. For its part, the State considers that the petition must be declared inadmissible because it is manifestly groundless under Article 47 of the Convention. It argues that all adequate legal remedies to assert his claim were available to the petitioner and that the authorities dismissed them, on the basis of the law, due process and the principle of legality. With regard to the decision of the Constitutional Court to dismiss the *amparo*, the State considers that this court acted lawfully by analyzing the decision of the Criminal Chamber and concluding that it had lawfully exercised its competence.

12. The State indicates that the petitioner's removal from his position was the result of his administrative offenses. It denies that the complaints filed against him were motivated by reprisals. Similarly, it maintains that the decision of the Supreme Court of Justice to dismiss the appeal was in compliance with the law. It indicates that Article 76 of the LSCIOJ establishes that decisions on removal issued by the Supreme Court of Justice in its capacity as appointing authority, are not subject to any remedies. Finally, the State indicates that the petitioner's legal situation has been subject to a final decision, and in its view, the petitioner seeks –in an undue and unwarranted manner - that the Commission acts as a fourth instance appeal court in excess of its competence, and in contradiction to its subsidiary nature.

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

13. The Commission observes that the last decision adopted in the administrative-disciplinary proceedings against the petitioner, where he was removed from his position, was adopted by the Supreme Court of Justice on June 2, 2004. In the criminal proceedings against the petitioner, he was acquitted of the offense of "receiving bribes" and convicted of "abuse of authority" by the February 15, 2006 decision of the Criminal, Drug Trafficking and Environmental Sentencing Court of Chimaltenango. In response, the petitioner filed various appeals and the final decision was the dismissal of the *amparo* by the Constitutional Court on July 18, 2007.

14. The State, for its part, does not challenge the exhaustion of domestic remedies in the present claim. It argues that the petitioner's legal situation "was finally resolved by the *amparo* issued by the Honorable Constitutional Court, gathered as an Extraordinary Amparo Tribunal on July 18, 2007 ". In view of this fact, and the information in the file referred to above, the Commission concludes that this petition meets the requirement of exhaustion of domestic remedies in accordance with Article 46.1.a of the American Convention.

15. In view of the fact that the decision exhausting domestic remedies was issued on July 18, 2007, and the present petition was received by the Commission on December 4, 2007, the IACHR finds that it was filed within the six-month time limit established in Article 46(1)(b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

16. The Commission considers that, upon proof of the facts alleged by the petitioner about the continuous harassment, which began on the labor realm and continued with two criminal proceedings, as well as with respect to the absence of an effective remedy against his removal from public office, these could characterize violations of Articles 5 (right to humane treatment), 23 (political rights) and 25 (right to judicial protection) of the American Convention in accordance with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

17. In addition, the Commission considers that upon proof of the petitioner's allegations regarding the sudden change in the offense charged; and the lack of respect for the judicial guarantees, among others, to have prior and detailed information about the accusation and to produce witnesses in the criminal proceedings against him, could characterize violations of the rights established in Article 8 (right to a fair trial) of the American Convention, in conjunction with Article 1 (obligation to respect rights). In the same sense, and in light of recent decisions, the Commission will analyze at the merits stage of the present case whether the petitioner was guaranteed his right to a double instance in criminal proceedings in the terms of Articles 8.2.h (right to appeal the judgment to a higher court) and 2 (domestic legal effects) of the American Convention, taking into account the characteristics of the special appeal remedy in Guatemala.⁵

18. In attention to the State's argument regarding the petitioner seeking the Commission to act as a fourth instance, the IACHR recognizes that it is not competent to review judgments issued by national courts acting within their sphere of competence and applying judicial due process and judicial guarantees. However, the IACHR reiterates that within the framework of its mandate it is competent to declare a petition admissible and make findings on the merits when it refers to domestic proceedings that could be in violation of rights guaranteed by the Convention.

19. Regarding the claim on the alleged violation of articles 9 (freedom from Ex Post Facto laws) and 17 (rights of the family) of the American Convention; The Commission observes that the petitioner has not offered allegations or sufficient grounds for a *prima facie* consideration of their possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 23 and 25 of the American Convention, in relation to its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to Articles 9 and 17 of the American Convention; and

3. 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 State.

Approved by the Inter-American Commission on Human Rights on the 23rd day of the month of December, 2018. (Signed): Margarette 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.

⁵ IACHR, Report No. 99/17, Case 11.782, Admissibility and Merits, Miguel Ángel Rodríguez Revolorio and others, Guatemala, September 5, 2017, para. 136; and IACHR, Report No. 158/17, Admissibility, José Luis Villeda Recinos, Guatemala, November 30, 2017, para. 13.