

OEA/Ser.L/V/II.
Doc. 44
18 April 2019
Original: Spanish

REPORT NO. 39/19
PETITION 2000-13
REPORT ON INADMISSIBILITY

BOLÍVAR EDMUNDO GUERRERO ARMIJOS AND FAMILY
ECUADOR

Electronically approved by the Commission on April 18, 2019.

Cite as: IACHR, Report 39/19. Inadmissibility. Petition 2000-13. Bolívar Edmundo Guerrero Armijos. Ecuador. April 18, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Bolívar Edmundo Guerrero Armijos and Claudia Guadalupe Guerrero
Alleged victim:	Bolívar Edmundo Guerrero Armijos and family
Respondent State:	Ecuador
Rights invoked:	Articles 8 (fair trial), 9 (freedom from <i>ex post facto</i> laws), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	November 26, 2013
Notification of the petition to the State:	January 22, 2015
State's first response:	May 20, 2015
Additional observations from the petitioner:	April 13 and May 11, 2016
Additional observations from the State:	December 27, 2016 and December 5, 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 ratification instrument on December 28, 1977)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception established in Article 46, paragraph 2.a of the Convention applies
Timeliness of the petition:	No

V. ALLEGED FACTS

1. The petitioners, Claudia Guadalupe Guerrero and her father, Bolívar Edmundo Guerrero Armijos, claim that on October 2, 1997, the Ecuadorian National Congress appointed Mr. Guerrero as a justice of the Supreme Court of Justice, pursuant to the rules then in force. They indicate that on December 8, 2004, Congress ruled to dismiss all the justices of the Supreme Court. They allege that the decision was arbitrary and wrongful because justices had life-term appointments and Congress was not competent to terminate justices. They also argue that the removals were based on summary proceedings that disregarded due process and the right to defense.

2. They claim that on the same day, December 8, 2004, Congress appointed four of the 31 wrongfully dismissed justices, including the alleged victim, as justices of the Supreme Court. They indicate that the other 27 dismissed justices resorted to the inter-American system and obtained a favorable

¹ Hereinafter the "American Convention."

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

decision.³ The petitioners moreover submit that the new appointment was not connected with Mr. Guerrero's previous wrongful dismissal and that in April 2005, Congress wrongfully dismissed the alleged victim again. The petitioners claim that this has negatively affected Mr. Guerrero's health and damaged his immediate family members.

3. As for the exhaustion of domestic remedies, the petitioners indicate that these were inadequate, so their exhaustion was unnecessary. They submit that the State has not demonstrated the adequacy of administrative proceedings to challenge violations of constitutional rights. They add that, in any case, the members of the Supreme Court of Justice that would have eventually heard the case would not have been impartial or independent. Regarding constitutional amparo proceedings, they indicate that it was impossible to file this remedy because, on December 2, 2004, a resolution by the Constitutional Court established that the only remedy admissible regarding congressional resolutions would be the unconstitutionality action. They argue that an unconstitutionality action was neither adequate nor effective since alleged victims cannot file it by themselves, for it requires the signatures of one thousand citizens or the approval of the Ombudsman's Office. In addition, the Constitution does not entitle the Constitutional Court to grant reparations. They consider that because of the lack of adequate domestic remedies, the requirements of exhaustion of domestic remedies and timeliness set forth in the Convention do not apply to their petition.

4. For its part, the State requests that the instant petition is ruled inadmissible based on Articles 46, paragraph 1.b, and 47, paragraphs b and c of the American Convention. It deems that the petition does not meet the requirements of Article 46, paragraph 1.b as the petitioners filed it nine years after Congress issued the decision allegedly final decision resulting in the dismissal of the alleged victim. It also claims that the facts alleged by the petitioner do not violate the Convention, as Mr. Guerrero's was reinstated to the Supreme Court on December 8, 2004. Therefore, his legal situation differs from that of the justices recognized as victims in the Inter-American Court's judgment of August 23, 2013, as these were not reinstated. The State indicates that the effects of the findings of violation of rights in the said judgment only apply to the 27 justices that the I/A Court recognized as victims. It considers that the petitioner's claim is contrary to the principle of *res judicata* and that a claim based on the principle of equal protection or due process is inadequate to seek the application of the effects of the Inter-American Court's decision to Mr. Guerrero.

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

5. The petitioners believe that the factual and legal situation of Mr. Guerrero is identical to that of the 27 justices that the I/A Court recognized as victims in its judgment of August 23, 2013. Therefore, they seek that the resolutions and effects of that judgment are found applicable to his situation. However, the analysis required of the Commission in the admissibility stage, must be performed independently and unavoidably for each petition. The petitioners do not indicate the filing of any domestic remedies, but only that they attempted to enter a friendly settlement agreement with the authorities. However, they allege the lack of adequate domestic remedies to address the violations referred to.

6. The Commission reiterates that in its report on admissibility 08/07 concerning the petition filed by 27 of the justices wrongfully dismissed by a congressional resolution of December 8, 2004, it found

³ The petitioning party claims that 27 of the justices dismissed on December 8, 2004, filed a petition before the inter-American system, as result of which, on August 23, 2013, the Inter-American Court found the State responsible for human rights violations regarding the 27 justices, ordering the payment of compensation in favor of these. (I/A Court H.R. Case of the Supreme Court of Justice (Quintana Coello *et al.*) v. Ecuador). The petitioners indicate that although the alleged victim and three of his colleagues did not sign the petition, it is clear that the judgment by the Inter-American Court "placed them in the same factual situation of the 27 petitioning justices." They allege that under both the Ecuadorian laws and the Inter-American System rules, judgments can be accorded *inter comunis* effect to protect the rights of people who, despite not being part of the proceedings, were in the same situation of the petitioners. Therefore, they deem that the effects of the judgment of August 23, 2013 apply not only to the 27 initial petitioners but also to all the persons wrongfully dismissed on December 8, 2004 even though not all them signed the petition filed before the Inter-American System. They argue that depriving the alleged victim of the same protection that the inter-American system granted in favor of the 27 justices, would violate the principle of equal protection.

the exception to the requirement of prior exhaustion of domestic remedies established in Article 46, paragraph 2.a of the American Convention applicable because of the following: 1) the Constitutional Court's resolution prevented the filing of amparo proceedings regarding congressional resolutions; 2) the requirements to file an unconstitutionality action (that is, collecting the signatures of one thousand citizens or the approval of the Ombudsman's Office) were excessive; and 3) administrative proceedings were ineffective, because the case would have been decided in the last instance by the Supreme Court whose members replaced the alleged victims.⁴

7. The Commission notes that the instant petition, unlike that giving rise to report 08/07, not only concerns the purported wrongful dismissal of the alleged victim through the congressional resolution of December 8, 2004, but also reports a purportedly second wrongful dismissal of the alleged victim in April 2005, first ruled by an executive decree and then by the National Congress. Still, the Commission deems that the findings of report 08/07 apply to both abovementioned situations. Therefore, it considers that the exception to the requirement of prior exhaustion of domestic remedies set forth in Article 46, paragraph 2.a of the American Convention applies to the instant petition.

8. The State requests that the Commission finds the instant petition inadmissible as it does not meet the requirement of timeliness established in Article 46, paragraph 1.b of the American Convention. Nevertheless, under Article 46, paragraph 2 of the Convention, the six months period does not apply when an exception to the requirement of exhaustion of domestic remedies is found applicable. In such cases, the Commission must analyze if the petition was filed within a reasonable time considering the date of the alleged violation and the circumstances of each case, under Article 32, paragraph 2 of the IACHR Rules.

9. Not disregarding the aforementioned difficulties in exhausting possible domestic remedies, the Commission observes that the petitioners have turned to the system of individual petitions eight and nine years after the facts reported in the petition. According to the Rules, in cases in which it has not been possible to exhaust domestic remedies, the petitioners must file their petitions in a time which, considering the circumstances, is reasonable. The petitioners have not presented the Commission any arguments that explain or justify the lapse between these relevant events and the submission of the petition under study.⁵ Thus, the Commission deems that the instant petition does not meet the requirement of timeliness established in Article 32, paragraph 2 of its Rules.

VII. ANALYSIS OF COLORABLE CLAIM

10. In view of the considerations mentioned in Section VI, the Commission will not rule on whether alleged facts constitute a colorable claim.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 18th day of the month of April, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

⁴ IACHR, Report 08/07 (Admissibility), Petition 1425-04, Hugo Quintana Coello *et al.* (Justices of the Supreme Court). Ecuador. February 27, 2007, paras 29-32.

⁵ IACHR, Report No. 159/10. Petition 1250-06. Inadmissibility. Iris Martínez *et al.* Uruguay. November 1, 2010, paras. 2, 43 and 44.