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REPORT No. 113/19
PETITION 1378-09
ADMISSIBILITY REPORT

XAVIER AROSEMENA CAMACHO AND ROSA COTACACHI NARVAEZ
ECUADOR

Approved electronically by the Commission on July 3, 2019.

Cite as: IACHR, Report No. 113/19, Petition 1378-09. Admissibility. Xavier Arosemena Camacho y Rosa Cotacachi Narvaez. Ecuador. July 3, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Jorge Sosa Meza
Alleged victim:	Xavier Arosemena Camacho and Rosa Cotacachi Narvaez
Respondent State:	Ecuador
Rights invoked:	Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), and 25 (right to judicial protection) of the American Convention on Human Rights ¹ in connection with Article 1(1) thereof (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 3, 2009 ³
Notification of the petition to the State:	January 27, 2015
State's first response:	May 27, 2015
Additional observations from the petitioner:	May 5, 2017
Additional observations from the State:	December 12, 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 (instrument of ratification deposited 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	Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 23 (right to participate in government), 25 (right to judicial protection), and 26 (economic, social, and cultural rights) of the American Convention on Human Rights ⁴ in connection with Article 1(1) thereof (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception contained in Article 46(2)(a) of the American Convention applies
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Hereinafter "the American Convention."

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

³ Before notification of the petition to the State, the IACHR received an *amicus curiae* brief presented by the Fundación de Derechos Humanos Santiago Nino, on October 28, 2010.

⁴ Hereinafter "the American Convention."

V. ALLEGED FACTS

1. The petitioner indicates that in 2006 the alleged victims were appointed as members of the National Council of the Judiciary (hereinafter “CNJ”) in accordance with the laws in effect at that time, after winning merit-based, open competitions.⁵

2. The petitioner indicates that on October 30, 2006, the Supreme Court decided to remove the alleged victims from their positions on the CNJ upon finding that they had acted in violation and contempt of an order handed down by the Constitutional Tribunal, which had ordered the CNJ to put out a call for nominations of judges to the Superior Court and to district administrative courts and tax courts. The petitioner contends that the Supreme Court’s decision was unfounded, as the alleged victims had acted in accordance with the law as they were abiding by a decision handed down by the Fourth Civil Court of Portoviejo, which had issued an injunction on constitutional grounds (*amparo constitucional*) against the Constitutional Tribunal’s decision. The alleged victims filed an appeal for protection of their rights (*recurso de amparo*), which was granted by the District Tax Court on February 6, 2007, and upheld by the Third Chamber of the Constitutional Tribunal on March 22, 2007.

3. The petitioner indicates that in December 2008 two of the other members of the CNJ, as well as a third person, asked the Constitutional Court for the Transition Period to provide an interpretation of Article 232 of the new Constitution (which had entered into effect in October 2008).⁶ Those members believed that the participation of the alleged victims on the CNJ went against that provision because the alleged victims had been appointed by entities over which the CNJ was supposed to exercise oversight and regulation. On October 1, 2009, the Constitutional Court issued an interpretive decision determining that, in accordance with Article 232, the alleged victims and their alternates were “covered by the ban on continuing to carry out their duties as members of the Council of the Judiciary in the Transition Period,” and ordered them to be replaced.

4. The petitioner alleges that the interpretive decision constituted an attack on judicial independence and was the conclusion of the persecution led against the alleged victims by the Supreme Court and by the other members of the CNJ (who answered to the Supreme Court), who were displeased with the alleged victims’ decision to abide by the injunction granted by the Fourth Civil Court of Portoviejo and with their success in having been granted constitutional protection against the actions brought against them.⁷ The petitioner believes that the decision was in error because the ban in Article 232 did not apply to the alleged victims’ situation. The petitioner also argues that removing them via an interpretive decision and not an administrative proceeding violated the alleged victims’ right of defense and due process, as they were not convened to participate in the interpretive process even though the decision affected their rights.

5. The petitioner further indicates that the right to judicial protection was violated, as there was no recourse against the interpretive decision. The petitioner also contends that Article 9 of the American Convention was violated with the removal of the alleged victims from their positions based on rules and interpretive procedures established after they were appointed, adding that the rules were intended for the new Council of the Judiciary that would be appointed under the new constitutional order and not the Council of the Judiciary “in transition” to which the alleged victims belonged.

⁵ These competitions were convened by the ministers of the contentious-administrative district courts and tax courts (in the case of Arosemena Camacho) and by the National Federation of Judicial Associations of Ecuador (in the case of Cotacachi Narvaez.)

⁶ This established that “those who may have interests in the areas that will be overseen or regulated by entities that exercise the state authority of oversight and regulation, or who may represent third parties who have such interests, may not serve as employees or members of governing bodies of such entities.”

⁷ On that point, the petitioner alleges that the Supreme Court also brought disciplinary proceedings against the alleged victims for having refused to serve as instruments of persecution against a trade union leader, a case that did not succeed thanks to a constitutional amparo granted by the First Civil Court of Pichincha. The petitioner adds that on March 27, 2007, the plenary of the National Council of the Judiciary decided to reform how its committees were organized, removing Ms. Cotacachi Narvaez from the Human Resource Committee and assigning her to the Administrative-Financial Committee, a move to which the alleged victims were opposed.

6. The petitioner claims that the interpretive decision is final, and no appeal remedies are available other than requests to expand on or clarify the ruling; such requests were filed, but at the time the petition was lodged with the IACHR had not been resolved. The petitioner indicates that even though in theory the interpretive decision has not been implemented because the resolution of these requests is still pending, the decision has in effect been carried out and the alleged victims have been removed from their positions. Therefore, the petitioner indicates that domestic remedies have been exhausted.

7. The State, for its part, requests that the petition be declared inadmissible, based on Article 47 of the American Convention, because it is manifestly groundless and because the facts laid out do not tend to establish human rights violations. The State notes that the motion for interpretation is established at the constitutional level and allows anyone to request interpretation of a constitutional norm. The State indicates that the Constitution adopted in 2008 revoked or annulled provisions issued previously, making some previous norms unconstitutional, and that it was necessary to abide by the new requirements to be members of the Council of the Judiciary. The State contends that the alleged victims' appointment as CNJ members was based on requirements of the Constitution that was no longer in effect and that the change in constitutional norms did not violate any right. The State believes that because the new Constitution emanates from the democratic will of the people, there should be a *juris tantum* presumption that it is valid under the Convention.

8. The State also indicates that the alleged victims' termination was the result of an interpretive ruling of general binding nature and was not a discharge, nor could it be equated with the application of a sanction. The State considers that the petitioner's arguments are limited to his disagreement with the interpretive decision issued by the Constitutional Court and that his intention is for the Commission to act as a court of "fourth instance," in contravention to its subsidiary nature. The State also indicates that the decisions adopted previously by the Supreme Court against the alleged victims did not violate their rights in any way, as it was demonstrated that the alleged victims had access to the remedies established by law and obtained decisions in their favor.

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

9. The petitioner has indicated that the interpretive decision that resulted in the removal of the alleged victims from their positions was a single-instance decision that could not be appealed. The State has not indicated that there are any domestic remedies that could be brought against this ruling. The Commission therefore finds that the exception contained in Article 46(2)(a) of the American Convention applies.

10. Considering that the interpretive decision was issued on October 1, 2009, and the petition was lodged on November 3 of that same year, the Commission deems that the petition was lodged within a reasonable period of time under the terms of Article 32(2) of its Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

11. The Commission finds that if the petitioner's allegations are proved with respect to the claim that the alleged victims were subject to dismissal based on an illegitimate, retroactive application of a norm and carried out without due process, this could constitute violations of the rights contained in Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 23 (right to participate in government), 25 (right to judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in connection with Article 1(1) thereof (obligation to respect rights).

VIII. DECISION

1. To declare this petition admissible in relation to Articles 8, 9, 23, 25, and 26 of the American Convention in connection with Article 1(1) thereof.

2. To notify the parties of this decision; continue with the analysis on the merits of the matter; and publish this decision and include it in the Commission's Annual Report to the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 3rd day of the month of July, 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.