

REPORT N° 30/06
PETITION 2570-02
ADMISSIBILITY
NASRY JAVIER ICTECH GUIFARRO
HONDURAS
March 14, 2006

I. SUMMARY

1. On July 22, 2002, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission" or the "IACHR") received a petition from Nasry Javier Ictech Guifarro (hereinafter "the petitioner" or "the alleged victim") alleging the responsibility of the Republic of Honduras (hereinafter "Honduras" or the "State") for violation, to his detriment, of Articles 23, 24 and 25 of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") in relation to Article 1.1 thereof.

2. The petitioner alleges that the State refused to register his independent candidacy, thereby preventing him from running for Municipal Mayor of the Central District of the Department of Francisco Morazán and being elected in the 2001 election for the period 2002-2006. The State asserts that when the petitioner submitted his candidacy to the National Elections Tribunal, he did not file all documents required by the Electoral and Political Organizations Law. In addition, the State points out, independent candidates for mayor are not allowed under domestic law.

3. Following a thorough review of the positions of the petitioner and the State, the Commission decides to rule this petition admissible under Articles 46 and 47 of the American Convention, as it meets all requirements for admission in that it alleges violation of human rights protected by the Convention. Lastly, the Commission decides to publish this report in its Annual Report to the OAS General Assembly and to notify both parties.

II. PROCEDURE BEFORE THE IACHR

4. The Commission received the petition on July 22, 2002 and assigned it the number 2570-02. On August 12, 2002, the IACHR acknowledged receipt of the petition. On April 4, 2003, after a preliminary review, it conveyed the petition to the State, giving it two months to reply. On June 10, 2003, the Commission acknowledged receipt of the State's reply, which it conveyed to the petitioner on the same date. On September 12, 2003, the Commission acknowledged receipt of the petitioner's comments on the State's reply and conveyed those comments to the latter. On December 12, 2003, the Commission sent to the petitioner the comments from the State. On January 21, 2004, the petitioner filed comments that were relayed to the State on January 23, 2004, giving it one month to reply. On February 27, 2004, the State submitted additional information, which was conveyed to the petitioner that same day. On March 8, 2004, additional information was received from the petitioner and sent to the State on March 31, 2004. The petitioner filed comments on the State's report on April 12, 2004. These were relayed to the State on April 29, 2004. On May 25, 2004, the State asked for a 30-day extension to file its comments, which were received on July 6, 2004, and conveyed to the petitioner on August 18, 2004. On August 25, 2004, the IACHR received additional information from the petitioner. On October 15, 2004, it received comments from the State, which were relayed to the petitioner on November 23, 2004. Subsequently, both the petitioner and the State continued to present information, which was conveyed by the IACHR to the other party.

III. POSITIONS OF THE PARTIES

A. The petitioner

5. The petitioner contends that on August 29, 2001, the National Elections Tribunal decided to reject his candidacy for the office of Mayor of the Central District in the elections of November 25, 2001, for the period 2002-2006, on the basis that it was an independent candidacy and consequently not provided for in the Electoral and Political Organizations Law or in any other national regulations.

6. That decision denied his political right to run for office in democratic elections and to be elected, as guaranteed by the Political Constitution, the Electoral and Political Organizations Law and the American Convention.

7. He indicates that he met all legal requirements, as shown by the legal opinion issued on June 6, 2001, by the Office of the General Adviser to the National Elections Tribunal, which concluded that the documents filed "meet the requirements of the law." That opinion was confirmed by opinion OM-TNE-2001 of August 21, 2001, which states that he met all requirements "established in paragraphs a), b) and c) of Article 49 of the Electoral Law,¹ inasmuch as registration of independent candidates to the office of Mayor does not require presentation of lists of electors referred to in paragraph ch) of that article." The same opinion indicates that his candidacy met the requirements of Article 59 of the Electoral Law, which establishes "formal requirements for applying for registration, which have been satisfied by the applicant."

8. That same advisory office, the petitioner argues, acknowledged in the end that his application met all requirements and conditions prescribed by law in order to be "registered as an independent candidate for the office of Municipal Mayor of the Central District and thus be able to take part in the general elections to elect supreme and municipal authorities on Sunday, November 25," 2001. Consequently, the petitioner asserts, the National Elections Tribunal ignored the advisory office without any legal justification.

9. The Supreme Court of Justice rejected his application for constitutional protection not because it was inadmissible but for strictly political reasons that had no legal basis. He filed an application for review the same day he was notified that his constitutional protection action had been rejected, that is to say, on November 14, 2001. This last legal action was ruled inadmissible by the Constitutional Chamber of the Supreme Court of Justice on February 11, 2002, of which he was notified on May 8, 2002.

10. In addition, the petitioner says, Article 37 of the Political Constitution² establishes the right of citizens to be elected; Article 45 bars any action limiting that right, and Article 4 of the Electoral Law prescribes that "political parties and independent candidacies are the political forms of organization and means of participation of citizens."³ Chapter VI of the law mentions independent candidacies and there is no legal provision restricting the right to participate in the country's political life.

11. It is not true, consequently, that political parties are the only way to participate in the country's political life, inasmuch as independent candidacies are included in the current Electoral

¹ Electoral and Political Organizations Law, published in *La Gaceta* No. 23-407, May 19, 1981.

² Political Constitution of Honduras, Decree Number 131, January 11, 1982.

³ Electoral and Political Organizations Law, published in *La Gaceta* No. 23-407, May 19, 1981.

Law. Article 4 of that law, furthermore, does not limit independent candidacies to the offices of President of the Republic and Representatives in the National Congress.

12. Moreover, he argues, the requirements in Article 49 (ch)⁴ of the Electoral Law need to be met only by those running for the office of Representative, President of the Republic and Vice Presidents [*Designados a la Presidencia*], who must file lists of 2% of the voters registered in the department. He argues as well that his candidacy met all requirements in Article 56 of the Electoral Law⁵ for election to membership in a Municipal Corporation. These arguments, he believes, were never discussed by the National Elections Tribunal when it took its decision.

13. The petitioner also states that he has exhausted the internal remedies, having filed an application for constitutional protection against the decision of the National Elections Tribunal that rejected his candidacy. That is the only legal action available under domestic Law to challenge such a decision. In addition, he applied for review but was also turned down.

B. The State

14. The State contends that the alleged victim asked the National Elections Tribunal for information on the requirements and procedures for registering his independent candidacy to Mayor of the Central District of the Department of Francisco Morazán in the November 2001 elections.

15. The alleged victim received all necessary information in Note No. 151-0811-99 TNE, which also advised him that he had to abide by the Electoral and Political Organizations Law.

16. Honduras points out that on November 9, 2000, the petitioner formally applied to the National Elections Tribunal, the body responsible for registering independent candidacies, as an independent candidate in that election. He submitted only the following: a certificate of local residence; a political platform; the symbol of his candidacy and a declaration that he would abide by the obligations imposed on political parties by articles 12, 13, 14, 15, 20 and 21 of the Electoral and Political Organizations Law.⁶

17. On August 29, 2001, the National Elections Tribunal decided, by majority vote, to deny registration of the petitioner's independent candidacy, a decision for which there were legal grounds. The decision taken in the review requested by the petitioner was likewise founded on legal reasons.

18. On September 13, 2001, the alleged victim filed a constitutional protection action with the Supreme Court of Justice. The application was ruled receivable and the refusal to register his candidacy was suspended, but in its final decision the Court found the application inadmissible.

19. The State asserts that it is not clear what "legal tenets" of the American Convention are supposed to have been violated to the detriment of the alleged victim.

20. Honduras maintains, in addition, that its Political Constitution and applicable laws recognize political parties but do not specifically provide for independent candidacies for municipal mayoralties, so that the National Elections Tribunal had no choice but to rule against the petitioner's candidacy.

⁴ *Idem.*

⁵ *Idem.*

⁶ Electoral and Political Organizations Law, published in *La Gaceta* No. 23-407, May 19, 1981.

21. According to the State, Article 49 of the Electoral Law allows an independent candidacy for "President of the Republic, Vice Presidents [*Designados de la Presidencia*] and Representatives to the National Congress." The National Elections Tribunal could have interpreted that provision broadly to include independent candidacies for mayor, but in that case it would have had to require the same formalities prescribed for candidates for President, Representatives and Vice Presidents, especially the filing of a list of citizens representing at least 2% of the registered national or departmental voters, as appropriate, which is what that article prescribes.

22. Consequently, the State asserts that the petitioner's rights were not infringed, that all appeals were properly decided according to law, and that the National Elections Tribunal interpreted the law according to legal interpretation standards, bearing in mind that it would be inconsistent with the spirit of the Electoral and Political Organizations Law to have a candidate in municipal elections registered as such with the backing of no more than one or two citizens, as this would create chaos and electoral anarchy in the country.

23. Lastly, the State contends that the petitioner did not exhaust the internal remedies before bringing the matter to the Commission.

IV. ANALYSIS

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

24. The petitioner is empowered under Article 44 of the American Convention to file petitions with the IACHR. The petition names as the alleged victim an individual whose rights under the American Convention the Republic of Honduras has undertaken to respect and guarantee. As for the State, the Commission points out that Honduras is a party to the American Convention since September 8, 1977, when it deposited its instrument of ratification. Consequently, the Commission has jurisdiction *ratione personae* to hear the petition.

25. The Commission has jurisdiction *ratione loci* because the alleged violations took place within the territory of a State party to the Convention--Honduras in this case. The Commission has jurisdiction *ratione temporis* because the alleged events occurred when the obligation to respect and guarantee the rights established in the Convention was already in force for the State. Lastly, the Commission has jurisdiction *ratione materiae* because the petition complains of violations of human rights protected by the Convention.

B. Other admissibility requirements

1. Exhaustion of internal remedies

26. Under Article 46.1.a of the Convention, the admissibility of a petition filed with the Commission requires "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

27. It needs to be noted that the State mentioned the failure to exhaust internal remedies but did not indicate the legal actions that are pending.

28. Under Article 29 of the Electoral Law, the constitutional protection application filed by the petitioner with the Supreme Court of Justice of Honduras was the last legal action available to challenge the decision of August 29, 2001, by the National Elections Tribunal. The petitioner, in addition, decided to file an application for review as a last attempt to register his candidacy. That

application was ruled inadmissible by the Supreme Court on November 14, 2001. Consequently, internal remedies were exhausted with this final ruling, as prescribed in Article 46.1.b of the Convention.

29. For the above reasons the Commission decides that the required exhaustion of internal remedies has taken place in this case.

2. Filing deadline

30. Article 46.1.b of the Convention provides that, for a petition to be ruled admissible, it must be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."

31. In this case the petition was lodged on July 22, 2002, that is to say, more than two months after the petitioner was notified of the inadmissibility of the last legal action he filed namely, the application for review, which notification took place on May 8, 2002. The Commission accordingly decides that the petition was lodged in a timely fashion consistent with the provisions of the Convention and the Rules of Procedure of the Commission, which is to say within the prescribed six months.

32. The Commission believes that there is no reason in this case to depart from the clear text of the American Convention as regards the filing deadline.

3. Duplication of procedures and international *res iudicata*

33. There is no indication in the record that the case is pending in another international procedure or duplicates a petition previously examined by this or another international body. Accordingly, the requirements of Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the events alleged

34. The petitioner contends that the State violated his rights under Articles 23 and 25 of the Convention in relation to Article 1.1 thereof. The State argues that violations of the Convention have not been specified and that its government bodies acted according to law.

35. The Commission finds that, in the decisions taken in this case, the Electoral Tribunal and the Supreme Court of Justice interpreted the Electoral Law to mean that it does not allow independent candidacies for the office of mayor. It finds as well that although the Electoral Law does recognize the existence of independent candidacies generically, it neither deals specifically with independent candidacies for mayor nor regulates their requirements; it simply provides for and regulates (Article 49(ch)) independent candidacies for President of the Republic, Representative and Vice President [*Designado Presidencial*]. Consequently, in light of the recent case law of the Inter-American Court of Human Rights,⁷ the Commission finds sufficient evidence to believe that the events alleged in this petition may qualify as a violation of Articles 23 and 24 of the Convention in relation to Article 1.1 thereof, something that will need to be established when the substance of the matter is examined. In application of the principle *iura curia novit*, the Commission also rules finds petition admissible in relation to Article 2 of the Convention.

36. As regards Article 25, the right to judicial protection, the Commission believes that the petitioner made use, under the Electoral Law, of the possibility of challenging the decision by

⁷ I/A Court H. R., *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127, para. 215.

the Electoral Tribunal through a constitutional protection action. Consequently, the events complained of do not qualify as a violation of Article 25 of the Convention.⁸

V. CONCLUSION

37. The Commission concludes that the case is admissible and that the Commission has jurisdiction to hear the petitioner's claim concerning alleged violations of Articles 23 and 24 in conjunction with Article 1.1 and 1.2 of the American Convention, as prescribed in Articles 46.1, subparagraphs c and d, 46.2.c and 47.b thereof and Articles 28 to 37 and 39 of the Rules of Procedure of the Commission.

38. Based on the above facts and law and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible in relation to Articles 1.1, 2, and 23 of the American Convention.
2. To convey this report to the petitioners and the State.
3. To begin examining the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.

⁸ In the *Case of Yatama* the Court found a violation of Article 25 based on the inexistence of a procedure to appeal the decision by the Electoral Tribunal. See I/A Court H. R., *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127. paragraph 175.