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REPORT No. 152/20
PETITION 453-08
REPORT ON INADMISSIBILITY

FRANCO ESTEBAN ALEGRÍA SEPÚLVEDA
CHILE

Approved electronically by the Commission on June 9, 2020.

Cite as: IACHR, Report No. 152/20, Petition 453-08. Inadmissibility. Franco Esteban Alegría Sepúlveda. Chile. June 9, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Franco Esteban Alegría Sepúlveda
Alleged victim:	Franco Esteban Alegría Sepúlveda
Respondent State:	Chile ¹
Rights invoked:	Articles 11 (right to privacy), 23 (right to participate in Government), 24 (right to equal protection), 25 (right to judicial protection), and 29 (restrictions regarding interpretation) of the American Convention on Human Rights ² in relation to articles 1 (obligation to respect rights) and 2 (domestic legal effects) of the same instrument; and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	April 15, 2008
Additional information received at the stage of initial review:	July 25, August 13 and 21 and September 2, 2008; August 17, 2010, April 13, and November 7 and 30, 2011; April 9, and May 2 and 15, 2012; May 2, October 22, November 6 and 30, and December 6 and 16, 2013; April 7, May 28 and November 13 and 18, 2014
Notification of the petition to the State:	December 19, 2014
State's first response:	June 9, 2015
Additional observations from the petitioner:	January 4 and December 3, 2015; February 24, March 31, April 7 and 11, and May 20, 2016; March 22, May 31 and June 5, 2017; September 28, 2018, May 10 and 13, November 13 and December 3, 2019 and January 8, 2020
Additional observations from the State:	December 19, 2017 and January 30, 2019

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 of ratification made on August 21, 1990)

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, July 8, 2014
Timeliness of the petition:	Yes

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in either the discussions or the decision in the present case.

² Hereinafter "the American Convention" or "the Convention".

³ Articles 3 a), b), c) and n); 17; 18; 45 a), b) and g); 47; 52; 53 e) and 106 of the OAS Charter; Article 5 of the 1902 Mexico Convention; Articles 26, 27, and 31 of the Vienna Convention; Article 1 et seq. of the Covenant on Civil and Political Rights; and the Convention against Discrimination in Education.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petitioner and alleged victim of Chilean nationality, invokes the international responsibility of the State of Chile for the alleged arbitrary and illegal actions of the Ministry of Foreign Affairs and the Supreme Court of Justice (hereinafter “CSJ”) in not qualifying him to practice law in Chile after having obtained his law degree from the Universidad Empresarial de Costa Rica on December 30, 2002. He argues that his right to education, to work, to pursue a dignified professional activity, his right to equality before the law and equal protection of the law in the exercise of his rights and the right to provide a better quality of life for his immediate family have been seriously undermined as a result of an erroneous legal-administrative ruling of the CSJ.

2. The petitioner alleges that on June 7, 2007, the Ministry of Foreign Affairs, after evaluating his academic background and verifying his compliance with the requirements, officially validated his law degree from the Universidad Empresarial de Costa Rica by registering it in the Book of Foreign Professional Degrees and granted him the respective certificate of professional registration. Likewise, he argues that on August 14, 2007, he filed a request for authorization to practice law before the Supreme Court of Justice, which was rejected on January 30, 2008, as the Court considered that the alleged victim failed to meet the requirements of Article 523 of the Organic Court Code (hereinafter “COT”).⁵ He argues that, in light of the Court’s rejection and the misplacement of his original professional degree from the Supreme Court’s archives by administrative officials, he filed a motion for reconsideration before the same authority, arguing that he fulfilled the legal prerequisites, since the Ministry of Foreign Affairs had validated and registered his law degree in accordance with Article 5 of the 1902 Mexico Convention on the exercise of liberal professions (hereinafter, “Mexico Convention”) in connection with Article 526 of the COT; however, he points out that it was rejected. The petitioner emphasizes that he subsequently submitted another request for authorization before the Supreme Court of Justice, which was rejected by a decision of January 7, 2011, as the Court considered that no new information had been provided to justify a reversal of its decision.

3. In particular, the petitioner argues that, on the basis of the validity of Article 526 of the COT in relation to Article 5 of the Mexico Convention,⁶ ratified by Chile and Costa Rica, it is the Ministry of Foreign Affairs, and not the Supreme Court of Justice, that has the exclusive competence to register foreign professional degrees to the effect of authorizing the practice of a profession in Chile. However, he argues that the exercise of the professional practice was illegally conditioned to the authorization of the Supreme Court of Justice, an entity he considers incompetent, in violation of the regulations in force. He argues that although the Ministry of Foreign Affairs denies that Article 5 of the Mexico Convention grants it powers to authorize the foreign professions covered by its provisions, this is not true in factual or legal terms, since the aforementioned Foreign Ministry has acknowledged and authorized professional practice for individuals with foreign professional degrees, and therefore the petitioner argues that he has been discriminated against in the exercise of his profession as a lawyer. The petitioner alleges that the aforementioned international norm only requires registration of the degree in the Book of Foreign Professional Degrees in order to freely practice the foreign profession in Chile. Therefore, by excluding a profession that the rule itself has not discriminated against nor has subjected to other requirements constitutes a breach of equality before the law. In this regard, he insists that Article 521 of the COT⁷ only applies to Chileans graduating from Chilean universities, given that Article

⁵ Article 523 of the Court Code provides that “*The requirements for being a lawyer are as follows: 1) being twenty years of age; 2) possession of the degree of Licenciado in Legal Sciences granted by a University, in accordance with the law; 3) Absence of convictions or ongoing charges for offenses or simple crimes meriting punishment; 4) History of good conduct - the Supreme Court may undertake the inquiries deemed necessary into the applicant’s personal background; and 5) Have satisfactorily completed a professional practice for six months in the Judicial Assistance Corporations referred to in Law No. 17,995, a fact that must be validated by the Director General of the respective Corporation [...]*”.

⁶ Article 5 provides: “*The diploma, degree or certificate of preparatory and higher studies, duly authenticated, and the personal identity document issued by the respective diplomatic or consular agent, duly accredited in the State granting any of these documents, shall have the effects agreed in this Convention once registered at the Ministry of Foreign Affairs of the country where the profession is to be practiced; said Department of State must bring this procedure to the attention of the Ministry of Foreign Affairs of the country from which the degree emanates*”. Likewise, Article 526 of the Court Code provides “*Chileans, and resident foreigners who have completed all their legal studies in Chile, may practice law. The foregoing shall be understood without prejudice to provisions established in international treaties in force.*”

⁷ Article 521 of the COT provides that “*The title of lawyer shall be granted in a public hearing by the Supreme Court in plenary session, after verification and a declaration that the candidate meets the requirements established by Articles 523 and 526*”.

526 of said law applies to Chileans with a foreign professional degree as protected by international treaties in force.

4. The petitioner argues that the Supreme Court rejected his application on the basis of arguments he describes as illegal, disproportionate and contrary to international and domestic law, and that the decision unfairly declined his authorization due to mistakes made by administrative officials. The petitioner alleges that, due to the remoteness of his home, the CSJ failed to inform him in a timely manner about the dates for submission of his certificates of good character and references so that the Court, despite receipt thereof, had already made its decision beforehand without reading them. Additionally, he alleges a violation of his right to a defense; since on October 21, 2013, the CSJ denied him access to his case file due, in accordance with the resolution issued on October 22, 2013, to its size, and the lack of available time, and personnel to deal with his application.

5. Similarly, the petitioner indicates that on January 2, 2014, he requested the Director of the General Directorate of Consular Affairs, Immigration and Chileans Abroad (hereinafter "DIGECONSU") of the Ministry of Foreign Affairs, to issue a certificate of recognition of the registration of the professional degree "with the indication that the interested party proceeds to pay for the professional patent as a prerequisite to the exercise of the legal profession in Chile" under the terms of Article 23 of Decree Law No. 3.063 of 1979 and of Article 3 Decree Law No. 3637 of 1981. However, this authority denied the request on January 3, 2014, since, in its opinion, the Mexico Convention failed to grant it legal powers to authorize all foreign professions. He explains that he then resorted to the authorities at the National Congress of Chile who, after analyzing the legal and legislative aspects, concluded on April 19, 2013, that the Chilean Ministry of Foreign Affairs had failed to comply with the 1902 Mexico Treaty as required by law. As a result, he communicated to the Undersecretary of Foreign Affairs so that the requested document be granted.

6. The petitioner maintains that - given the continued refusal of DIGECONSU's Director to issue the registration certificate allowing him to pay for professional patent to practice law in Chile as a foreign lawyer - he filed a motion for protection before the Court of Appeals of Santiago. He explains that the Seventh Chamber of the Court of Appeals of Santiago issued a judgment on March 5, 2014, stating that the petitioner should request to the Supreme Court for a certification of a law degree in order to practice the profession as a foreign lawyer. He indicates that this judgment was upheld on April 1, 2014, by the Third Chamber of the Supreme Court of Justice.

7. He alleges that in accordance with the aforementioned judgments, on June 6, 2014, he filed his request for recognition of his law degree with the office of the President of the Supreme Court of Justice together with all his original documents. However, he argues that, although all the agencies of the Executive, Legislative and Judicial Branch state that the applicant can exercise the profession of lawyer in Chile because his degree has been validated as from June 7, 2007 by the Foreign Ministry, his request was rejected as inadmissible by resolution of July 8, 2014.

8. For its part, the State indicates that it was not possible for it to verify compliance with the admissibility requirements because the petitioner failed to lodge with his petition sufficient background information to verify compliance with the exhaustion of domestic remedies and, consequently, it considers that the manner in which the State of Chile violated the American Convention has not been demonstrated. It insists that the facts forming the basis of this complaint do not constitute *a priori* a violation of the rights protected by the Convention.

9. In this regard, the State maintains that the petition is manifestly groundless because the petitioner has failed to fulfill the requirements established by Chilean law to obtain a law degree. It points out that the CSJ, in accordance with national and international norms, denied the request because the petitioner obtained his degree by way of a distance-learning course, without having resided in Costa Rica. This, in the Supreme Court's opinion, "generates far greater advantages over legal education carried out in the country" contrary to the provisions of Article 1, second paragraph of the Mexico Convention. In addition, the petitioner has a record as a perpetrator of repeated and extensive fraud, as he illegally practiced the legal profession, and as perpetrator of forgery of public documents in breach of the requirement of good conduct.

10. The State reiterates that the Supreme Court is the only institution authorized to authorize lawyer to practice their profession, upon verification of compliance with the requirements established in Articles 523 and 526 of the Organic Court Code. It explains that, although lawyers with degrees from States with which there is a mutual professional recognition treaty in force, are not required to take an oath, they are required to apply for authorization of their degree. The State argues that the law degree obtained by the petitioner was registered on page 544/2007 in the Book of Professional Degrees obtained abroad, and that the certificate of registration thereof, in turn, stated in its third paragraph “that the present entry in no way enables the interested party the free exercise of the legal profession in Chile, since in accordance with the provisions of Article 521 of the COT the degree of lawyer can only be granted or authorized by the Supreme Court of Justice of Chile”.

11. Finally, the State argues that the petitioner has failed to exhaust all domestic remedies and, in view of the arguments raised, emphasizes his refusal to enter into a friendly settlement agreement despite the petitioner's interest.

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

12. With respect to the exhaustion of domestic remedies, the petitioner argues that he has exhausted the remedies in the domestic jurisdiction, since the highest court of the Republic of Chile issued its ruling that does not allow further appeal. In this regard, the State questions the exhaustion of domestic remedies; however it does not refer to other available remedies to rectify the alleged violations. The Commission notes that according to the information submitted by the petitioner and not contested by the State, there is no appeal against the decision of the CSJ. However the petitioner filed a motion for reconsideration against the rejection of his request for authorization of his law degree before the Supreme Court of Justice. Likewise, the petitioner submitted the request for authorization to the CSJ on two subsequent occasions and filed various administrative requests to several authorities in order to challenge the decision of the Supreme Court of Justice with respect to his request for the authorization of his law degree. In view of the foregoing, the Commission concludes that the alleged victim has exhausted remedies available under domestic law and that, therefore, this petition fulfills the requirement established in Article 46.1.a of the American Convention.

13. With respect to the timeliness of submission, the Commission observes that the official letter of the Supreme Court of Justice completing the last request for authorization of the professional law degree was issued on July 8, 2014, and that the petition was received on April 15, 2008. Therefore, the Commission considers that the requirement established in Article 46.1.b of the Convention has been met.

VII. ANALYSIS OF COLORABLE CLAIM

14. For the purposes of admissibility, the IACHR observes that the present claim is essentially based on a discrepancy by the petitioner with respect to the interpretation given by the judicial authorities of the rules governing the authorization of law degrees obtained abroad and the relevant treaties in force on the subject, which he alleges have affected several of his rights.

15. In the present case, the Commission notes, according to the allegations and information available, that the Supreme Court of Justice denied the petitioner's request for qualification as a lawyer on the basis that the petitioner had failed to meet the requirement of good conduct established in Article 523 subparagraph 4 of the COT and that, in accordance with the provisions of Article 1 of the Convention on the practice of liberal professions⁸ and Article 526 of the COT, distance-learning without residence in Costa Rica, has far greater advantages over legal studies in Chile.

⁸ This article provides in part of its text “*Certificates of preparatory or higher studies, issued in any of the countries concluding this Convention, in favor of nationals of one of them, shall have in all other contracting countries the same effects attributed to them by the law of the Republics from which they originate, provided that there is reciprocity and there are no advantages over and above those recognized by the legislation of the country in which those certificates are to be used.*”

16. In that regard, the Commission understands according to the information available, that professionals who have obtained their law degrees in a country that has an international treaty with Chile must initiate a process of recognition at the Ministry of Foreign Affairs, in particular before the Titles Section of the Directorate-General of Consular Affairs and Immigration, which then issues a certificate of registration upon completion.⁹ Thus, after obtaining the aforementioned certificate of registration, foreign national professionals or Chileans who have obtained their professional law degree abroad must apply to the Supreme Court of Justice, which must verify that each applicant meets the requirements established by articles 523 and 526 of theCOT.

17. In view of the grounds supported the alleged violations of Articles 11, 23, 24, 25, and 29 of the American Convention in relation to Articles 1 and 2 invoked before this international instance, and upon examination of the elements present in the case file, the Commission considers that the petitioner has failed to provide sufficient evidence to consider a prima facie violation of his rights as established in the American Convention. Consequently, due to the absence of elements indicating that the resolutions of the CSJ have been adopted on arbitrary grounds or contrary to rights enshrined in the American Convention, the facts raised by the petitioner do not tend to characterize a violation of said instrument. Consequently, the IACHR concludes that the petition fails to satisfy the requirement established in Article 47.b) of the American Convention.

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 9th day of the month of June, 2020.
(Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

⁹ The Commission notes that the certificate of registration granted by the authority designated in the Ministry of Foreign Affairs expressly states that it provides no entitlement to professional practice, which only occurs after the Supreme Court grants the corresponding title of lawyer.