

OEA/Ser.L/V/II.  
Doc. 269  
21 September 2020  
Original: Spanish

**REPORT No. 253/20**  
**PETITION 965-09**  
REPORT ON ADMISSIBILITY

JOSÉ PALOMINO CASTREJÓN  
MEXICO

Electronically approved by the Commission on September 21, 2020.

**Cite as:** IACHR, Report No. 253/20, Petition 965-09. Admissibility. José Palomino Castrejón.  
Mexico. September 21, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	José Palomino Castrejón
<b>Alleged victim:</b>	José Palomino Castrejón
<b>Respondent State:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (fair trial), 9 (freedom from <i>ex post facto</i> laws), 10 (compensation), and 25 (judicial protection) of the American Convention on Human Rights, <sup>2</sup> in connection with Article 1.1 (obligation to respect rights) thereof; Articles 4 (inadmissibility of restrictions), 6 (work), and 7 (just, equitable, and satisfactory conditions of work) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights - "Protocol of San Salvador" <sup>3</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	August 3, 2009
<b>Notification of the petition to the State:</b>	November 30, 2016
<b>State's first response:</b>	June 16, 2017
<b>Additional observations from the petitioner:</b>	January 11, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument of ratification on March 24, 1981)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 8 (fair trial), 9 (freedom from <i>ex post facto</i> laws), 23 (participation in government), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, on February 10, 2009
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commission Joel Hernández García, a Mexican national, did not partake in the discussion or the voting on this matter.

<sup>2</sup> Hereinafter "the American Convention."

<sup>3</sup> Hereinafter "the Protocol of San Salvador."

<sup>4</sup> The observations submitted by each party were duly transferred to the opposing party.

## V. ALLEGED FACTS

1. The petitioner (or “the alleged victim” hereinafter) claims that the State violated his rights given his arbitrary removal from the office of Justice of the Superior Court of Justice of Baja California State and some decisions made by the Supreme Court of Justice in the legal proceedings he initiated by means of a complaint against the refusal of an appeal, and a constitutional writ of protection of human rights.

2. The petitioner recounts—as the antecedent and cause of his removal from office—that Mr. José Jesús Espinoza, a former Justice who had not been confirmed in office, presented a constitutional writ of protection of human rights (*amparo* action) that was granted on April 28, 2004. This judgment ordered the State Congress to adopt a new decision confirming Espinoza in office, which Congress did through Ruling No. 16/05 of January 25, 2005. Thus, by virtue of this *amparo* judgment of April 28, 2004, all the decisions adopted subsequent to the non-confirmation of Justice Espinoza were declared null and void, including Ruling No. 355 of 2001, by which the petitioner had been appointed Justice.

3. In view of this, the petitioner lodged a complaint with the Second District Court of Baja California arguing there had been an excess in the execution of the *amparo* judgment; but the complaint was found groundless on January 30, 2006. Subsequently, he filed another complaint, legally called “complaint against a complaint or re-complaint” before the First Collegiate Court for the Fifteenth Circuit (complaint No. 14/2006-I). The remedy was granted on March 22, 2006, and the Congress of Baja California was ordered to annul Judgment No. 16/05 and reinstate the petitioner as a Justice. Therefore, Baja California State Congress issued Decree No. 349 of 2007, reinstating Mr. Palomino as a justice and ordering the payment of the emoluments applicable to his office. However, while Congress complied with reinstating the petitioner to his judicial office, it did not pay his emoluments. Therefore, the petitioner filed an ancillary proceeding for enforcement of a judgment (No. 47/2007) with the First Collegiate Court for the Fifteenth Circuit, which sent it to the Federal Supreme Court of Justice. On July 4, 2007, the Federal Supreme Court annulled the judgment of March 22, 2006, through which the petitioner’s reinstatement as a Justice had been ordered.

4. Pursuant to that Federal Supreme Court decision, the Congress of Baja California took a series of measures to confirm the petitioner’s removal. The petitioner challenged these with an *amparo* action. By a judgment of February 29, 2008, the Twelfth District Court of Baja California dismissed this action (judgment No. 536/2007) on the grounds that the measures challenged had been taken by Congress pursuant to a ruling of the Federal Supreme Court of Justice. The petitioner lodged an appeal for review against this decision and requested the Federal Supreme Court of Justice to assert jurisdiction over the said remedy. The Supreme Court of Justice granted his application, initiating *amparo* review proceeding no. 559/2008; however, by a judgment of October 29, 2008, the highest national court rejected the appeal for several substantive legal reasons.

5. In sum, the petitioner claims that Baja California Congress’ decision to remove him from office due to an *amparo* judgment favorable to a third party violates his right to work and the right of job stability, and that, afterward, the authorities disregarded the labor guarantees established in Articles 4, 6, and 7 of the Protocol of San Salvador. He denounces that those decisions were made in the context of a defamation campaign that several parties—including some mass media—started against him, which allegedly violated his right to honor and his dignity. As supporting evidence, he cites several news articles about him and other Justices from the same court, written especially around the time of his appointment and subsequent removal and during the abovementioned legal proceedings.

6. The petitioner alleges that the decisions made by the Supreme Court of Justice on July 4, 2007 (ancillary proceeding for enforcement of a judgment no. 47/2007) and October 29, 2008 (*amparo* review proceeding no. 559/2008) violated a series of domestic constitutional and legal norms as well as guarantees contained in the American Convention, due to the following reasons: (a) the Supreme Court’s alleged extralimitation in deciding the ancillary proceeding for enforcement of a judgment, in which it was not allowed to annul the judgment whose implementation was being sought; given that its competence was restricted to determining whether non-enforcement was reasonable; (b) the disregard for *res judicata* that protected the lower-court’s decisions issued in his favor, especially the judgment annulled by the Supreme Court; (c) the violation of the right to a hearing, given the legal regulation of the procedure applied to ancillary proceedings

for enforcement of a judgment, as said procedure does not provide for the participation of the parties involved; and (d) the retroactive application of unfavorable case law to his petition, especially of judgment 2/J.64/2006 on the case entitled “Justices of the Superior Court of Justice of Baja California State. Scope of the effects of the judgment granting their *amparo* action,” issued a month after the favorable judgment that later became the subject matter of the ancillary proceeding for enforcement of a judgment. The petitioner submits other extensive considerations expressing his disagreement with the court resolutions appealed.

7. The State, for its part, asserts that the instant petition should be declared inadmissible on the grounds that the petitioner has resorted to the IACHR as a court of fourth instance to challenge resolutions lawfully adopted by the domestic courts, with which he disagrees, without claiming actual violations of the American Convention. Mexico argues that the petitioner did have access to the legal remedies that best suited his interests, and that these were adjudicated with proper justifications and motivations within a reasonable time. In this regard, it indicates as follows: “*After exhausting the domestic legal remedies, lawfully settled by the competent local courts as well by the highest court in Mexico [...], the petitioner requests the intervention of the IACHR [...].*” The State stresses that the petition does not pose possible violations of the American Convention because the judgments challenged by the petitioner were passed under the relevant legal norms and case law, with whose content the petitioner merely disagrees.

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

8. With regard to the facts alleged in the instant petition, the Inter-American Commission recalls that it has recently declared admissible other petitions from former Justices of the same court of Baja California, affected by resolutions, judicial decisions and other related actions<sup>5</sup> adopted in the same context. In conformity with those admissibility decisions, the Commission considers that in the instant case, the complaints against the refusal of appeal (*recurso de queja*) and the *amparo* action were the adequate legal remedies to have Mr. Palomino’s claims settled by the Mexican courts and that—as the State has recognized—those remedies were exhausted, since all of the means of defense provided for in the applicable procedural legislation were resorted to in the course of each of those proceedings. Thus, the decision that finally settled those interrelated complaints and *amparo* action was the one issued by the Supreme Court of Justice on October 29, 2008, notified to the petitioner by the court of first instance in the respective *amparo* procedure on February 10, 2009, as proven in the case file and without this having been challenged by the State.

9. On the grounds of the above, the Inter-American Commission finds that the instant petition meets the requirement of exhaustion of domestic remedies outlined in Article 46.1.a of the American Convention. Besides, as the Commission received the petition on August 3, 2009, the petition meets the requirement established in Article 46.1.b of the Convention.

10. On the other hand, the Commission notes that the petitioner has not filed other legal complaints nor initiated judicial courses of action regarding the alleged defamation campaign started against him through the mass media. In view of this, the Commission concludes that, regarding the rights protected by Article 11 of the American Convention, the petition does not meet the requirement set forth in Article 46.1.a of the Convention.<sup>6</sup>

## VII. ANALYSIS OF COLORABLE CLAIM

11. As for the claims by the State about the “fourth instance formula,” the Commission reiterates that, under its mandate, it is competent to declare a petition admissible whenever it concerns domestic proceedings that may be contrary to the rights protected by the American Convention.

<sup>5</sup> IACHR, Report No. 73/18. Petition 1350-07. Admissibility. José Antonio Pérez Pérez. Mexico. June 20, 2018, paras. 8-10; and IACHR, Report No. 77/18. Petition 727-09. Fernando Tovar Rodríguez. Mexico. June 27, 2018, paras. 8-10.

<sup>6</sup> IACHR, Report No. 77/18. Petition 727-09. Fernando Tovar Rodríguez. Mexico. June 27, 2018, par. 9; and IACHR, Report No. 104/17. Petition 1281-07. Admissibility. Mirta Carmen Torres Nieto. Argentina, September 7, 2017, par. 10.

12. In this regard, the Commission notes that, basically, the petitioner denounces to the IACHR his being removed from the office of Justice of the Superior Court of Justice of Baja California, as well as the decisions made by the judges that heard his complaints (*recurso de queja*) and his *amparo* action against the removal from office. In order to support his claim, the petitioner mentions, for instance, several violations of his right to a fair trial, arbitrariness in his discharge or removal from office as it took place before the end of his term in office given the purported enforcement of an *amparo* judgment, and the violation of the basic guarantees of job stability, which in his case were reinforced by virtue of his being a judicial operator.<sup>7</sup> These allegations, along with those already mentioned under the petitioner's position, may *prima facie* constitute violations of the rights protected by Articles 8 (fair trial), 23 (participation in government),<sup>8</sup> 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with the general obligations outlined in Article 1.1. (obligation to respect rights) thereof.

13. As for the alleged violation of Article 9 (freedom from *ex post facto* laws) of the American Convention, the petitioner argues that the Supreme Court retroactively applied unfavorable case law in order to annul the judgment ruling his reinstatement. With regard to this, the Commission reiterates its observations mentioned in the previous paragraphs and adds that, in accordance with them and given the nature of this claim, this allegation will be analyzed at the merits stage of this petition.

14. As for the allegations concerning Articles 4, 6, and 7 of the Protocol of San Salvador, the Commission notes that under Article 19.6 of this treaty, its competence to determine violations in an individual petition is limited to Articles 8 and 13 thereof. However, regarding Articles 4, 6, and 7 mentioned above, the American Convention establishes in Article 29 that the Commission may consider them in interpreting or applying the American Convention.

15. Moreover, the petitioner does not submit claims that may constitute a violation of Article 10 of the American Convention, on the right to compensation in the event of a conviction based on a miscarriage of justice.

### VIII. DECISION

1. To declare this petition admissible with regard to Articles 8, 9, 23, 25 and 26 of the American Convention in accordance with Article 1.1 thereof;

2. To declare this petition inadmissible with regard to Articles 10 and 11 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 States.

Approved by the Inter-American Commission on Human Rights on the 21<sup>st</sup> day of the month of September, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

<sup>7</sup> IACHR, Report No. 38/06. Petition 549-06. Admissibility. Mercedes Chocrón Chocrón. Bolivarian Republic of Venezuela. March 15, 2006, par. 37.

<sup>8</sup> IACHR, Report No. 60/06. Petition 406-05. Admissibility. María Cristina Reverón Trujillo. Bolivarian Republic of Venezuela, July 20, 2006, par. 32.