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**REPORT No. 149/21**  
**PETITION 1699-13**  
REPORT ON ADMISSIBILITY

JOSÉ SALOMÓN PADILLA  
EL SALVADOR

Approved electronically by the Commission on July 8, 2021.

**Cite as:** IACHR, Report No. 149/21, Petition 1699-13. Admissibility. José Salomón Padilla.  
El Salvador. July 8, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	Orestes David Ortez Quintanar, Edwin Alfredo Trejo Ávalos, Julio Alberto López Pérez, and José Salomón Padilla
<b>Alleged victim:</b>	José Salomón Padilla
<b>Respondent State:</b>	El Salvador
<b>Rights invoked:</b>	Articles 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), 16 (freedom of association), 23 (right to participate in government), and 25 (right to judicial protection) of the American Convention on Human Rights, <sup>1</sup> in connection with Article 1.1 (obligation to respect rights) thereof

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	October 14, 2013
<b>Additional information received at the stage of initial review:</b>	October 24, 2013; December 21, 2016, and March 20, 2017
<b>Notification of the petition to the State:</b>	September 5, 2017
<b>State's first response:</b>	January 10, 2018
<b>Additional observations from the petitioner:</b>	June 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 (instrument of ratification deposited on June 23, 1978)

**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 (right to a fair trial), 13 (freedom of thought and expression), 23 (right to participate in government), and 25 (right to judicial protection) of the American Convention, in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
<b>Exhaustion or exception to the exhaustion of remedies:</b>	Yes, according to Section VI
<b>Timeliness of the petition:</b>	Yes, according to Section VI

<sup>1</sup> Hereinafter, "the American Convention" or "the Convention."<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioners allege the international responsibility of El Salvador for the violation of the rights of Mr. José Salomón Padilla given the judgment of unconstitutionality issued over the Salvadoran Legislative Assembly's decree of August 21, 2012, by which Mr. Padilla had been elected justice of the Supreme Court of Justice. The petitioners allege, principally, that the Salvadoran legal framework does not explicitly prohibit justices of the Supreme Court of Justice from becoming members of a political party and that Mr. Padilla could not access an effective remedy to have this decision reviewed by an impartial and autonomous tribunal.

2. The petitioners recount that by Legislative Decree 1070 of April 24, 2012, the Salvadoran Legislative Assembly elected Mr. Padilla justice of the Supreme Court of Justice for the term July 1, 2012 - June 30, 2021. Nevertheless, they report that on May 4, 2012, a claim was filed alleging the unconstitutional nature of this decision in that the Legislative Assembly had infringed the principle of indirect legitimacy of justices of the Supreme Court of Justice. This claim gave rise to constitutional proceedings No. 19-2012, in which the Constitutional Chamber found Legislative Decree 1070 unconstitutional on June 5, 2012, following which the decree was nullified and Mr. Padilla lost his office.

3. The petitioners hold that due to judgment of unconstitutionality No. 19-2012, the Legislative Assembly of El Salvador filed a complaint with the Central American Court of Justice (hereinafter CCJ), which in its ruling of August 15, 2012, found judgment of unconstitutionality No. 19-2012 inapplicable. However, the Constitutional Chamber declared the CCJ's ruling inapplicable. The petitioners claim that owing to the conflicting judgments issued by the Constitutional Chamber and the CCJ, the Legislative Assembly and the president of the Republic of El Salvador mediated and agreed to call another election of justices of the Supreme Court of Justice.

4. Thus, by Legislative Decree 101 of August 21, 2012, the Legislative Assembly for the second time elected Mr. Padilla justice of the Supreme Court of Justice for the term ending on June 30, 2021. He was also elected president of the Constitutional Chamber of the Supreme Court of Justice for the term that finished on July 15, 2015. The petitioners explain that Mr. Padilla took office on August 22, 2012, yet on May 13 and June 18, 2013, two claims alleging unconstitutionality were filed against Legislative Decree 101. These were submitted by Salvadoran citizens who claimed that Mr. Padilla's election was unconstitutional on account that (a) the Legislative Assembly did not justify or demonstrate any outstanding qualifications of the justices elect, including Mr. Padilla, and (b) it purportedly affected the independence of the judges regarding political parties, as Mr. Padilla was affiliated to a political party and had stated his political preference in public. The petitioners hold that the allegation of Mr. Padilla's affiliation to a political party was based on news, television interviews, and newspaper articles only and not documentary evidence.

5. The above claims of unconstitutionality were admitted and joined by the Constitutional Chamber on July 24, 2013, giving rise to constitutional proceedings No. 77-2013/97-2013. The petitioners allege that Mr. Padilla was cited to appear in court to answer the accusations on the claims. Nevertheless, they allege that before the justices of the Constitutional Chamber conducted a legal examination of the claims of unconstitutionality, their resolution was preordained, as this involved political parties, meaning by this that the judgment of unconstitutionality was imminent.

6. Thus, by its judgment of October 14, 2013, the Constitutional Chamber of the Supreme Court of Justice adjudicated claims of unconstitutionality Nos. 77-2013/97-2013 by ruling that Mr. Padilla's second appointment as justice-president of the Supreme Court of Justice, the Constitutional Chamber, and the Judicial Branch was unconstitutional and that, accordingly, the Legislative Assembly had infringed the principle of judicial independence regarding political parties since Mr. Padilla was affiliated to Farabundo Martí National Liberation Front. That judgment stated as follows regarding the incompatibility between being affiliation to a political party and the office of justice of the Supreme Court of Justice:

Bearing in mind that provision, it follows that, based on a literal interpretation (in the manner that the Legislative Assembly, the Attorney General, and lawyer José Salomón Padilla

understand it), Art. 176 of the Const. “does not [explicitly] prohibit” persons eventually elected Justices of the SCJ (who exercise ultimate constitutionality and legality control) from being members of a political party; but in the case of candidates to the office of Justice of the Supreme Electoral Tribunal [TSE], specifically those chosen from the shortlist submitted by the SCJ, such incompatibility does exist.

Accepting such an interpretation would lead to a ridiculous conclusion: Justices of the SCJ can be members of a political party (in full, including members’ duties to the political party concerned), but two of the Justices of the TSE (those elected from the shortlist made by the SCJ itself) may not be so.

If the *raison d’être* of Art. 208 subpar. 1 of the Const. is to protect the independence and promote the impartiality of two of the Justices of the TSE elected from among those shortlisted by the SCJ—which is why they are not allowed to be members of a political party—, *all the more so* the interpretation according to which Justices of the SCJ in general are allowed such membership since Art. 176 of the Const. does not prohibit this, is unacceptable; above all, because Art. 208 subpar. 5 of the Const. enables that proceedings by the TSE are subject to constitutionality controls through “remedies established by [the] Constitution,” which are the responsibility of this Chamber (whose president is lawyer José Salomón Padilla).

7. The petitioners claim that the judgments of unconstitutionality by the Constitutional Chamber are final and cannot be appealed, accordingly. However, they say that in November 2013, Mr. Padilla reported these facts to the Office of the Attorney for Human Rights of El Salvador (PDDH). On August 28, 2015, the PDDH issued a resolution stating that Mr. Padilla’s constitutional right to holding public office had been infringed.

8. The petitioners allege mainly that the judgment of unconstitutionality of October 14, 2013, by the Constitutional Chamber of the Supreme Court of Justice infringed Mr. Padilla’s judicial guarantees, his right to having one’s honor and privacy respected, his freedom of association, and his political rights, because the judgment of unconstitutionality in proceedings No. 77-2013/97-2013 appears to have been based only on the fact that Mr. Padilla was a member of a political party—not to mention the fact that, in El Salvador, there is no law that explicitly prohibits justices of the Supreme Court of Justice from being members of a political party and that his alleged affiliation was not proved with documentary evidence but determined on the basis of Mr. Padilla’s statements in television interviews and newspaper articles. Additionally, the petitioners allege that while in office, Mr. Padilla’s performance was always impartial and that he could not access an effective remedy to present, before a domestic tribunal, his allegations of violations of his judicial guarantees committed in the constitutional proceedings that led to his removal as justice of the Supreme Court of Justice.

9. The State, for its part, contends that the judgment issued by the Constitutional Chamber in ruling upon claims of unconstitutionality 77-2013/97-2013 did not infringe the human rights of Mr. Padilla nor the labor rights of the employees of the Supreme Court of Justice. The State argues that El Salvador has a longstanding structural problem given the Supreme Court’s justices’ lack of constitutional independence from political parties. Similarly, the State alleges that political parties interfere with the election of justices and that their selection process is characterized by political proration in the Legislative Assembly. It also claims that, through its caselaw, the Constitutional Chamber has determined the principle of judicial independence. With respect to this, the State asserts that the judgment of unconstitutionality involved a weighing of the principle of judicial independence against the right to political affiliation, of which, in the public interest, the former prevailed.

10. The State moreover claims that the limitation or incompatibility regarding political affiliation serves a legitimate constitutional and conventional purpose, which is to ensure the judicial independence of the justices of the Supreme Court of Justice and that the secondary legislation, particularly Art. 26 of the Law of the Judiciary, lays down that, “*holding office in the Judiciary is incompatible with participation in party politics,*

*that is, leading or representing a political party or conducting proselytizing activities.*" This indicates that incompatibility does exist between justices' performance in the judiciary and their political activity.

11. Furthermore, the State claims that the Supreme Court of Justice determined that Mr. Padilla had shown preference for a specific political party and that this is why documentary evidence was unnecessary for proving his political affiliation—his statements in public were enough to prove his political preference. Therefore, the State alleges that the judgment issued in constitutional proceedings No. 77-2013/97-2013 did not violate the State's duty to respect political opinions and the right to humane treatment, judicial guarantees, the right to have one's honor respected, the freedom of thought and expression, or the right to participate in government, enshrined in the American Convention, to the detriment of Mr. Padilla.

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

12. As to the requirement of exhaustion of domestic remedies, the petitioners argue that decisions made by the Constitutional Chamber of the Supreme Court of Justice are final per the domestic rules and that, accordingly, they cannot be appealed, which the State does not dispute. This information is relevant in this case because the act which the petitioners claim was damaging was the judgment of October 14, 2013, which is how the Constitutional Chamber of the Supreme Court of Justice decided on claims of unconstitutionality No. 77-2013/97-2013. By this judgment, the Supreme Court found Mr. Padilla's appointment as justice and president of the highest tribunal unconstitutional on account that his election infringed the principle of judicial independence because he was a member of a political party and had expressed his political preference for it. That judgment was due to claims of unconstitutionality filed by third parties who explicitly thought that Mr. Padilla was appointed without proof of possessing outstanding qualifications and that his being affiliated to a political party infringed the principle of judicial independence.

13. Therefore, in this case, the Commission believes that the exception to the requirement of exhaustion of domestic remedies must be applied under Article 46.2(a) of the American Convention. According to Article 46.2 of the Convention, if this exception is applied, the requirement of timeliness set forth in Article 46.1(b) does not apply.<sup>3</sup> Consequently, the Commission follows the standard of filing within reasonable time established in Article 32.2 of the IACHR Rules of Procedure. In view of this provision, the Commission observes that the instant petition was filed to the IACHR on October 14, 2013, that is, on the date that judgment of unconstitutionality No. 77-2013/97-2013 was issued; thus, the Commission finds that this petition was filed within a reasonable time.

14. Regarding the forty-six people who appeared as petitioners initially claiming to be workers supporting Mr. Padilla's performance as justice of the Supreme Court of Justice and alleging violations of their labor rights by judgment of unconstitutionality 77-2013/97-2013. With regard to them, the petitioners do not specify how the rights of these people were affected or whether they were removed from their offices or what domestic remedies they pursued to obtain reparation for the purported damages caused by the said judgment of unconstitutionality. That is, these people do not provide details of the damaging acts they allege or individualized information on this. Accordingly, any claim eventually raised by these people shall be precluded from the facts of this report.

## **VII. ANALYSIS OF COLORABLE CLAIM**

15. The Commission observes that the subject matter of this petition is the judgment of unconstitutionality issued regarding Legislative Decree No. 101 of August 21, 2012—the decree by which the Legislative Assembly appointed Mr. Padilla, for the second time, as justice and president of the Supreme Court of Justice, the Constitutional Chamber, and the Judiciary. This has aroused juridical claims that his election violated the principle of judicial independence due to Mr. Padilla's alleged affiliation to a political party. The petition is also about his lack of access to an effective remedy to present, before a domestic tribunal, his

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<sup>3</sup> In connection with this and as a substantially similar precedent, see: IACHR, Report No. 50/21. Petition 2208-12. Admissibility. Workers of the UPINS Trade Union. Costa Rica. March 6, 2021.

allegations of violations of his judicial guarantees committed in the constitutional proceedings that led to his removal as justice.

16. In this regard, the IACHR considers that these allegations are not manifestly groundless and require an analysis of the merits under the American Convention. Similarly, without prejudging the matter of the petition, the Commission believes that the facts alleged by the petitioners, mainly concerning the lack of a rule that explicitly prohibits justices of the Supreme Court of Justice from political affiliation, may constitute *prima facie* violations of the rights enshrined in Articles 8 (right to a fair trial), 13 (freedom of thought and expression), 23 (right to participation in government), and 25 (right to judicial protection) of the American Convention, in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), to the detriment of Mr. José S. Padilla.

17. As for the alleged violation of the rights recognized in Articles 5 (humane treatment), 11 (right to privacy), and 16 (freedom of association) of the American Convention, the Commission deems that the petitioners have not provided enough elements to enable a *prima facie* consideration of such possible violations, although these may be analyzed in an eventual report on reparations.

### **VIII. DECISION**

1. To declare this petition admissible with regard to Articles 8, 13, 23, and 25 of the American Convention on Human Rights in accordance with Articles 1.1 and 2 thereof;

2. To declare this petition inadmissible with regard to Articles 5, 11, and 16 of the American Convention; and

3. To notify the parties of this decision; to continue with the analysis of 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 8<sup>th</sup> day of the month of July, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.