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**REPORT No. 69/21**  
**PETITION 1231-11**  
REPORT ON ADMISSIBILITY

ROBERTO VINICIO GUIZAR LÓPEZ  
MEXICO

Approved electronically by the Commission on March 7, 2021.

**Cite as:** IACHR, Report No. 69/21. Petition 1231-11 Admissibility. Roberto Vinicio Guizar López.  
Mexico. March 7, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Oscar Eduardo Guizar López
<b>Alleged victim:</b>	Roberto Vinicio Guizar López
<b>State denounced:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> , in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); and Articles I, II, III, and VII of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Reception of petition:</b>	September 8, 2011
<b>Notification of the petition to the State:</b>	May 5, 2016
<b>State's first response:</b>	May 24, 2017
<b>Additional observations from the petitioning party:</b>	September 4, 2017

**III. COMPETENCE**

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

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

<b>Duplication of procedures and International res judicata:</b>	No
<b>Rights declared admissible</b>	Articles 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, on May 9, 2011
<b>Timeliness of the petition:</b>	Yes, on September 8, 2011

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner argues that the State committed discrimination on the basis of disability against Roberto Vinicio Guizar López (hereinafter also "the alleged victim" or "Mr. Guizar"), for having been discharged from the Mexican army as a result of injuries sustained in a car accident that left his legs motionless and put him in a wheelchair. In addition, the petitioner denounces the violation of his rights to judicial protection and to a fair trial, considering that the courts did not decide on the merits of his case and for the alleged lack of an effective remedy to challenge the incompetence of certain courts.

2. The petitioner narrates that Mr. Guizar entered the Mexican Army in September 1993 as a Cadet of the Military School, and that he ascended to the rank of Lieutenant of Cavalry on September 1, 1999.

<sup>1</sup> Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the debate or decision on this matter.

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

<sup>3</sup> The observations presented by each party were duly transmitted to the opposing party.

On March 31, 2008, when he was driving from his house to work at the 15th Motorized Cavalry Regiment in Chiapas he had a car accident that caused serious damage to his spinal cord, and he was diagnosed with definitive post-traumatic spastic paraparesis, having to be permanently in a wheelchair.

3. Consequently, on September 10, 2008, the General Directorate of Military Justice of the Secretariat of National Defense of Mexico [*Dirección General de Justicia Militar de la Secretaría de la Defensa Nacional de México*] (hereinafter "DGJM") initiated the administrative procedure for the discharge of Mr. Guizar from the armed forces and on March 7, 2009 issued a provisional discharge statement under number SGB-I-489, in order to discharge him from the Mexican Army. The DGJM indicated in said letter that the alleged victim was incapacitated for service and prevented from performing any function as a lieutenant, since he could not move his lower extremities. It added that his condition is a reason for retirement under the Social Security Institute Law for the Armed Forces (hereinafter "LISSFAM"). Against this statement, on April 8, 2009, Mr. Guizar presented to the DGJM a letter of disagreement arguing that the decision to remove him from his post was simply based on his disability, violating international treaties to which Mexico is a party. However, on April 20, 2009, the DGJM issued Mr. Guizar's final declaration of discharge (No. SGB-I-8375) based on article 226, first category, section 95 of the LISSFAM, stating that the armed institute cannot and should not hire or maintain employment for military personnel with disabilities who are prevented or hindered in any of the daily activities considered normal due to alterations in intellectual or physical functions, since said institution protects national security, which is one of the most important legal assets of society.

4. Due to this, Mr. Guizar filed a request for an indirect amparo writ on May 26, 2009 before the Third District Court on Administrative Matters in the Federal District (file No. 604/2009). In this action, he stated that his right not to be discriminated against for reasons of disability and health was violated, alleging the unconstitutionality of article 226 of the LISSFAM and his right to work. Likewise, he argued that the DGJM violated national and international treaties on the rights of people with disabilities. The aforementioned court, by judgment of August 31, 2010, denied the protection requested, indicating that the contested legal provision was not unconstitutional, since it did not violate the right of the alleged victim not to be discriminated against for health reasons. It also considered that this provision was a proportional and reasonable rule based on the special regime for the military.

5. As a consequence, on September 21, 2010, Mr. Guizar filed an appeal for review (file No. RA 346/2010) before the Third Collegiate Court on Administrative Matters of the First Circuit of Mexico (hereinafter "Third Collegiate Court"). He denounced the lack of substantive analysis of the alleged discrimination based on disability and the omission of the analysis of the international treaties to which the State is a party, basing the court its decision solely on the legislation of the special regime for the military. In addition, he requested that his case be sent to the Supreme Court of Justice of the Nation (hereinafter "SCJN"), considering that it was the competent court to decide the substantive issues, as it referred to the possible unconstitutionality of an article of the LISSFAM. However, the Third Collegiate Court decided on February 28, 2011 to deny the amparo because it considered that the cause for discharge established in the LISSFAM was due to a type of illness and not a disability, for which reason the complaints presented were inoperative. In the same sense, it pointed out that, despite the fact that the analysis of discrimination on the basis of disability had been omitted, his complaints were also inoperative since the contested legal provision was not unconstitutional as it was a disease. The petitioner notes that no pronouncement was made regarding international treaties relating to persons with disabilities.

6. On March 25, 2011, the alleged victim presented an incident of nullity of proceedings for incompetence of the Third Collegiate Court, since it considered that it was not the competent body to rule on constitutional problems, which in his opinion corresponded to the SCJN. On March 30, 2011, the President of the Third Collegiate Court issued a ruling dismissing the nullity incident outright, considering that the alleged victim was challenging the final judgment issued in the appeal for review.

7. Mr. Guizar filed an appeal before the plenary of the Third Collegiate Court on April 6, 2011 to question said decision. He alleged that with the annulment incident he did not dispute either the meaning of the sentence or the merits study that had been carried out in the review, but rather the competence of the court that issued the decision. Said plenary, by resolution of April 29, 2011, declared the appeal unfounded, considering that the complaints indicated by the alleged victim were inoperative because they refuted issues unrelated to the premises that support the decision. The alleged victim was notified of this decision on May 9,

2011. The alleged victim argues that there is no effective remedy in the Mexican legal system to challenge the incompetence of a Collegiate Circuit Court.

8. In view of all the above, Mr. Guizar asserts that his paraparesis carries a disability by causing a physical deficiency in his motor functions of the lower extremities and considers that he was discriminated against for having said disability, when he could have participated in the Army in administrative or teaching tasks. He also denounces that he was separated from his only means of livelihood, affecting his right to have a decent life project. He indicates that he has not been able to find another economic activity to support his family or pay for his medical needs. Likewise, he argues that international treaties have been violated regarding not being discriminated against on the basis of disability, since LISSFAM contains discriminatory regulations. He also denounces that the jurisdictional bodies that heard the appeals that he filed failed to evaluate all the arguments raised and that there is no effective remedy to denounce the incompetence of the Collegiate Circuit Court, since he considers that it was the SCJN that should decide on LISSFAM's unconstitutionality, however he could never access said court despite expressly requesting it. In addition, in response to the State's argument, the petitioner indicates that although he was retired due to his forced discharge from the Army, this is only a direct consequence of the separation and does not exempt the State's responsibility for the discrimination he suffered.

9. For its part, the State requests that the petition be declared inadmissible, arguing that it lacks a basis and does not consider that it presents human rights violations. Furthermore, it indicates that the IACHR cannot constitute a fourth instance or review the internal actions of the authorities, which were processed and resolved in accordance with human rights standards.

10. The State maintains that Mr. Guizar's separation from the military was justified and did not constitute an act of discrimination against him. It asserts that the legislation applied pursues a legitimate purpose since military service is a public function that requires the physical, mental, and professional fitness of the person who performs it. The State affirms that the relocation of Mr. Guizar would result in an excessive burden for the State since he presents an incurable disease that completely diminishes his physical capacity to perform the functions of a military man.

11. The State affirms that the petitioner had access to effective remedies, in accordance with Mexican law, and that the Commission cannot act as a court of appeal to examine alleged errors of fact and law. It mentions that the fact that the results sought by the petitioner were not obtained does not mean that his human rights were violated.

12. The State adds that from the beginning of the administrative processes within the DGJM, the alleged victim was informed of the benefits that corresponded to him for a discharge credit calculated based on the position he held at the time of his separation; and that he benefits from medical assistance services as part of the retirement. The State argues that the petition would be inadmissible regarding this point, since domestic remedies would not have been exhausted. The State argues that the petitioner could have presented a writ of amparo before the District Courts aimed at modifying the amount for the retirement if he considered that it had been miscalculated.

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

13. With regard to suitable judicial remedies, the Commission observes that the alleged victim went to court through the indirect amparo remedy to denounce his discharge from the armed forces under an alleged discriminatory decision based on his health and disability, based on an article that he considers to be unconstitutional for being discriminatory and not respecting the precepts of international treaties on matters of people with disabilities. The final decision regarding said amparo was notified to the petitioner on May 9, 2011. Likewise, and in response to the State's argument that the alleged victim was able to judicially challenge the amount of his retirement, the Commission observes that the alleged victim does not raise any complaint regarding his retirement credit in the petition. Therefore, the objection made by the State regarding a matter that, for the purposes of this report, would not form part of the factual framework of the petition is not suitable.

14. In line with the foregoing considerations, and also taking into account that the State does not question the exhaustion of domestic remedies related to the allegation of a discriminatory discharge raised by Mr. Guizar as the object of his petition, the Commission concludes that this petition satisfies the requirement

established in Article 46.1.a of the American Convention. With respect to the filing deadline, the Commission observes that the petition was received within six months after the date on which the alleged victim was notified of the decision that exhausted domestic remedies. That decision was notified on May 9, 2011, and the petition was received on September 8, 2011, thus complying with the requirement established in Article 46.1.b of the Convention.

## VII. COLORABLE CLAIM

15. Regarding the State's arguments regarding the "fourth instance formula," the Commission reiterates that, for the purposes of admissibility, the IACHR must only resolve if it sets forth facts that, if proven, would characterize violations of the American Convention as stipulated in article 47.b of the same, and if the petition is "manifestly unfounded" or if its total inadmissibility is evident, according to subsection (c) of the same article. The criteria for evaluating these requirements differs from that used to rule on the merits of a petition; The Commission must carry out a *prima facie* evaluation to determine whether the petition establishes the basis for the violation, possible or potential, of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a primary analysis, which does not imply prejudging the merits of the matter<sup>4</sup>.

16. Thus, in view of the factual and legal elements presented and the nature of the matter brought to its attention, the IACHR considers that, if proven, the allegations referring to the alleged discrimination on the basis of disability suffered by the alleged victim when he was separated from his work in the Mexican Army; and the alleged violation of his right to judicial guarantees and due process as a consequence of the alleged denial of a merits study of his complaints and the inability to access the court in charge of reviewing the unconstitutionality of a norm, if proven in the merits stage of the present case, could characterize violations of the rights protected in articles 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights in relation to its 1.1 (obligation to respect rights) and 2 (domestic legal effects).

17. Regarding the alleged violations of Articles I, II, III, and VII of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, the Commission is not competent to hear individual cases referring to violations of this treaty. However, the Commission may consider it at the merits stage in order to interpret and apply the American Convention under the terms of Article 29 of the American Convention.

## VIII. DECISION

1. To declare this petition admissible in relation to Articles 8, 24, and 25 of the American Convention, in relation to its Articles 1.1 and 2; and

2. To notify the parties of this decision; to continue with the analysis on the merits of the matter; 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 7<sup>th</sup> day of the month of March, 2021. (Signed): Joel Hernández, President; 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>4</sup> IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48.