

OEA/Ser.L/V/II.  
Doc. 111  
8 September 2018  
Original: Spanish

**REPORT No. 98/18**  
**PETITION 1345-07**  
REPORT ON ADMISSIBILITY

ROQUE LÓPEZ MENDOZA  
MEXICO

Approved by the Commission electronically on September 8, 2018.

**Cite as:** IACHR, Report No. 98/18, Petition 1345-07. Admissibility. Roque López Mendoza. Mexico. September 8, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Roque López Mendoza
<b>Alleged victim:</b>	Roque López Mendoza
<b>Respondent State:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Article 23 (participation in government) of the American Convention on Human Rights, <sup>2</sup> in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

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

<b>Filing of the petition:</b>	October 16, 2007
<b>Notification of the petition to the State:</b>	September 28, 2011
<b>State's first response:</b>	February 21, 2012
<b>Additional observations from the petitioner:</b>	July 6, October 3 and December 12, 2012; August 2, 2013; May 15, 2014; February 26, March 24 and May 18, 2015
<b>Additional observations from the State:</b>	September 25, 2012; April 5, 2013; February 14, 2014; February 19, April 21 and August 24, 2015; October 2, 2017 and July 24, 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 ratification instrument 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), 23 (participation in government), 24 (equal protection) and 25 (judicial protection) of the convention, in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

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

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

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

## V. ALLEGED FACTS

1. Mr. Roque López Mendoza (hereinafter “Mr. López” or “the petitioner”) claims that election authorities did not allow him to file a petition to run as an independent candidate for governor of the state of Michoacán Ocampo (hereinafter “Michoacán state”), by demanding him nomination by a political party, which violated his political rights. Additionally, he alleges the lack of a legal framework establishing appropriate mechanisms to protect and safeguard the rights of those seeking to run as independent candidates for elected office.

2. The petitioner indicates that on August 4, 2007 he filed his petition to run as an independent candidate for the office of governor before the Executive Secretariat of the Electoral Institute of Michoacán, by submitting the documents required by the Mexican Constitution, the local Constitution and the applicable Voting Law. He claims that on August 28, 2007 the General Council of the Electoral Institute of Michoacán (hereinafter “CGIEM” by its Spanish acronym) notified him that his petition was dismissed because it did “not meet the requirements set forth in the Electoral Code of the State of Michoacán,” stressing that all petitions must be filed by a political party. He affirms that on September 1, 2007 he appealed this resolution before the Electoral Tribunal of Michoacán state (hereinafter “TEEM” by its Spanish acronym), which on September 25, 2007 upheld the dismissal of his petition, without analyzing the merits of the appeal and flatly rejecting his petition. TEEM alleged lack of competence to undertake the control of constitutionality that Mr. López demanded, on the grounds that this is an exclusive function of the Federal Judiciary through the Supreme Court of Justice (hereinafter “SCJN” by its Spanish acronym).

3. The petitioner further explains that from November 13, 2007 to January 14, 2008 several constitutional amendments were introduced in the voting law, and the Law on the Federal Judiciary, under which the Electoral Tribunal of the Federal Judiciary (hereinafter “TEPJF” by its Spanish acronym) is entitled to assess the constitutionality of electoral rules through an action for the protection of political and electoral rights. After these amendments were introduced, the petitioner extended his initial petition, by denouncing that the election authorities rejected his petitions to run for governor of Michoacán state and for president of the State of Mexico, submitted on August 18, 2011 and March 18, 2012 respectively.

4. He claims that on September 5, 2011 CGIEM denied his filing a petition to run for governor because it did not meet the requirement of nomination by a political party; that he challenged this decision before TEEM, and that it rejected the appeal on October 1, 2011. Based on the new powers of the TEPJF, on October 17, 2011 the petitioner filed an action for the protection of his political and electoral rights before said tribunal, and on October 26, 2011 it was dismissed on grounds of untimeliness. Moreover, he asserts that he impugned the decision of the Federal Electoral Institute’s General Council, which on March 29, 2012 had rejected his petition to run for president, by filing an action for the protection of political and electoral rights before the TEPJF, and that this tribunal upheld the dismissal of April 24, 2012 on the grounds that he was not nominated by a political party, confirming thus the constitutionality of the norm requiring said nomination.

5. Mr. López indicates that following the constitutional amendments enabling independent candidates to run for office, with prior compliance with a set of requirements, he filed a new petition on March 16, 2015 to run for governor, dismissed by CGIEM on April 14, 2015. The Council argued that the petition did not meet the requirements established for independent candidates, such as the signature of 2 percent of electors of the state dated no more than 30 days prior to the date the petition is filed. He challenged this decision by filing an action for the protection of citizens’ political and electoral rights before TEEM. Based on the submitted information, in said appeal he alleged several violations of his right to equal protection and to non-discrimination in view of his being required, as an independent candidate, a set of requirements not applicable to those nominated by political parties; and CGIEM’s lack of competence to assess compliance with those requirements or reject independent candidates’ petitions. On May 6, 2015 the Electoral Tribunal of Michoacán confirmed CGIEM’s decision by considering that his petition did not meet the established legal requirements, without analyzing the alleged violation of his human rights. In response to the State’s observation that these supervening facts are not part of the instant petition, the petitioner indicates that these events are closely connected, and must be dealt with and resolved jointly.

6. Based on the foregoing, the petitioner claims that despite the legal and constitutional amendments, the law is unequal and unfair, since independent candidates are required to file petitions as legal persons along with other requirements limiting independent candidates' filing for office. He indicates that pursuant to Article 23 of the Convention the State must accept that independent candidates file for office, without limitations, by the mere fact that it is a human right that Mexico has undertaken to protect. He also alleges the lack of a legal framework providing for mechanisms that effectively protect and safeguard the political rights of those seeking to file, as independent candidates, for office, which he considers discriminatory. Finally, he submits that there are no effective means to challenge decisions by CGIEM.

7. For its part, the State claims that the petition is inadmissible for being out of order, in view of the supervening information, in accordance with the causes set forth in Article 34 paragraphs b and c of the IACHR Rules. The State indicates that after the petition was lodged and in light of the decision of Inter-American Court of Human Rights issued on the case of *Castañeda Gutman v. Mexico*,<sup>4</sup> the Mexican election law has been substantially amended, expanding the protection of political rights. In that regard, it submits that following the decision ruling to reform the access to an effective remedy on electoral matters, the State reformed the Law on Contesting Electoral Matters and the Law on the Federal Judiciary, allowing electoral tribunals to control the constitutionality of electoral rules in particular cases. The State also indicates that although the filing of independent candidates was a paradigmatic issue at the time the petition was lodged, it was no longer so after the issue of the judgment on the case of *Castañeda Gutman*.

8. In addition, the State argues that on August 9, 2012 article 35 of the Mexican Constitution was amended to explicitly include citizens' right to file petitions to run as independent candidates. Likewise, on February 10, 2014 a decree amending article 116 of the Constitution was passed, which requires the regulation of the system applicable to independent candidates running for office. Therefore, in view of these reforms, it requests that the instant petition be declared inadmissible for being moot.

9. Lastly, the State submits that the alleged denial of the petitioner's filing as a candidate for president of Mexico in the 2012 elections is a separate matter from the events that gave rise to the instant petition, a self-standing one taking place in another time and in connection with other rules, the alleged infringement of which is attributable to other authorities. As a result, the State believes that such is a separate case.

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

10. The petitioner alleges that several were the times he submitted his petition to run, as an independent candidate, for governor, all of which were rejected and that so were the remedies he presented to challenge that decision. In turn, the State does not submit observations on the compliance with the requirement of prior exhaustion of domestic remedies.

11. Based on the available information, the petitioner appealed all the decisions ruling to dismiss his petitions to run as an independent candidate for the office of governor of Michoacán state, submitted in 2007, 2011 and 2015, and his petition to run for the office of president of Mexico in 2012, and that these appeals were dismissed. The last appeal he lodged was dismissed on May 6, 2015. Therefore, the Commission observes that the petitioner exhausted the appropriate domestic remedies available to remedy the alleged violations; hence the petition meets the requirement established in Article 46.1.a of the Convention.

12. As for the requirement of timeliness, the petition was lodged before the IACHR on October 16, 2007 and the remedies were exhausted on May 6, 2015 by the resolution dismissing an action for the protection of political and electoral rights when the petition was under admissibility study. Based on the IACHR doctrine, the analysis on the requirements set forth in Article 46.1.b of the Convention and Article 32.1

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<sup>4</sup>1/A Court H.R., Case of *Castañeda Gutman v. México*. Judgment of August 6, 2008. Series C No. 184.

of the Rules must be made in light of the situation existing at the time the Commission rules on the petition's admissibility or inadmissibility. In view of the foregoing, this requirement must be declared met.

## VII. ANALYSIS OF COLORABLE CLAIM

13. The Commission observes that according to the petitioner's allegations and despite the legal amendments on electoral matters, made following the judgment on the case of Castañeda Gutman, Mexico lacks a legal framework establishing appropriate mechanisms to guarantee independent candidates' political rights, since they are required to comply with a set of requirements not applicable to those nominated by political parties, creating a situation of unequal treatment. Therefore, the Commission believes that the instant petition is not out of order and that, if proven, the allegations concerning limitations on independent candidates' filing petitions to run for elected offices, their being subjected to unequal treatment, and the lack of a legal framework providing for appropriate mechanisms to protect independent candidates' political rights, and the lack of effective mechanisms to contest decisions of CGIEM all could establish violations of Articles 8 (fair trial), 23 (participation in government), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof, to the petitioner's detriment.

14. As for the State's requests to exclude from the analysis those events reported after the initial petition was filed, the Commission notes that neither the Convention nor the Rules establish a time for closing the discussion and that, on the contrary, "the bodies of the system have had the need to integrate and assess new and later facts, as long as these are connected with, and reasonably a part of, the case under assessment."<sup>5</sup> The Commission observes that in the instant petition the facts mentioned are part of a series of events allegedly caused by an act attributable to the State, connected with the alleged denial of the petitioner's filing a petition to run as an independent candidate and the ineffective remedies submitted to obtain access to said filing of a petition.

## VIII. DECISION

1. To find the instant petition inadmissible in relation to Articles 8, 23, 24 and 25, in connection with Articles 1.1 and 2 of the American Convention; and

2. 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 8<sup>th</sup> day of the month of September, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Antonia Urrejola, and Flávia Piovesan, Commissioners.

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<sup>5</sup> IACHR, Report No. 144/17, Petition 49-12. Admissibility. Ernestina Ascencio Rosario *et al.* Mexico. October 26, 2017, par. 11.