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REPORT No. 28/21
PETITION 309-08
REPORT ON ADMISSIBILITY

ROBERTO ENRIQUE GONZÁLEZ MORALES
CHILE

Approved electronically by the Commission on March 7, 2021.

Cite as: IACHR, Report No. 28/21, Petition 309-08. Admissibility. Roberto Enrique González Morales. Chile. March 7, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Roberto Enrique González Morales
Alleged victim:	Roberto Enrique González Morales
Respondent State:	Chile ¹
Rights invoked:	Articles 8 (fair trial), 24 (equal protection), and 26 (social, economic, and cultural rights) of the American Convention on Human Rights ² in relation to its Article 1.1 (obligation to respect rights)

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	March 13, 2008
Notification of the petition to the State:	February 18, 2014
State's first response:	August 23, 2017 ⁴

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 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	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Article 1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on November 20, 2007
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner and alleged victim (hereinafter also "Mr. González") states that on September 22, 2005, he graduated as a lawyer from the Catholic University of Cuenca, in the city of Cuenca, Ecuador. He claims that said university recognized the studies he had pursued at the Santo Tomás University in Chile; that he received credits for the courses he had approved there; and that he was asked to take other courses dealing with Ecuadorian law, as well as the submission and oral defense of a dissertation. He explains that he had previously undertaken studies to obtain Lawyer degree in Chile, for which he still had to meet certain requirements such as a final graduation examination, the submission of a written memorial and completing 6 months of *pro bono* practice for the State.

¹ In accordance with the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the discussion or the voting on this matter.

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

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ By a letter received on August 23, 2017, the State indicated having sent its first response by a letter dated July 23, 2014. However, the IACHR does not have the aforementioned document.

2. The petitioner states that on January 26, 2007, he filed a request for authorization for foreign-trained lawyers to practice law before the Supreme Court of Justice by virtue of the "Treaty on Mutual Recognition of Professional Qualifications and Degrees", signed by Chile and Ecuador on December 17, 1917, and ratified under Decree No. 961 of July 16, 1937⁵. He claims the Supreme Court denied the request on August 10, 2007, based on Decree No. 490 of August 17, 1988, on the agreement between the governments of Chile and Ecuador interpreting the Agreement of Mutual Recognition of Professional Qualifications and Degrees.

3. He claims that by virtue of Decree No. 490, the Court considered with broad discretion that Mr. González's studies in Ecuador were not "effectively" completed "as required under the treaty governing this matter," and concluded that the reason for obtaining his degree in law abroad "could not have been other than ridding himself of the obligations, requirements, and burdens imposed by Chilean universities." Mr. González claims that the basis of the Court lies on the absence of any impediment that would prevent the applicant from obtaining the degree of Licenciado at the Chilean university where he studied and, in particular, in the periods of stay in Ecuador, which had not exceeded a total of 4 months. Mr. González refers that the Court, in a discretionary attitude protected by a decree interpreting a bilateral treaty, and without notifying him to render allegations on the matter, inferred his particular interests and motivations for obtaining a degree in Ecuador, pointing out that they could not have been other than to avoid university burdens and responsibilities, despite the fact that he fulfilled all the requirements established in the Treaty..

4. He submits that he filed an appeal for review on October 17, 2007, which the Supreme Court concluded on 20 November 2007. On that occasion, the Court denied the appeal, as "the arguments and case law raised were not enough to undermine the grounds of the decision of August 10, 2007". In this regard, he claims that such decision may not be challenged outside of the administrative venue and that no other remedies are available, therefore infringing his right to practice a profession.

5. The State, for its part, argues that the petition is inadmissible as no facts are alleged, or could be deduced, that may involve a violation of rights enshrined in the American Convention; and that it is rather about the unfulfillment of certain requirements established to authenticate the university degree in question. According to the State, the petitioner does not meet the requirements established in the agreement on the interpretation of the Treaty on Mutual Recognition of Professional Examinations and Degrees from 1988 as he did not study the full program in law in Ecuador, as he only spent four months in the said country and undertook some courses. The State highlights that, considering the studies that the petitioner did in a Chilean university, there nothing that prevents him from completing the pending requirements and obtaining his degree in law under the norms established in the Organic Code of Courts of Chile.

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

6. As to the exhaustion of domestic remedies, the petitioner claims these were exhausted as the highest court in the Republic of Chile decided on the matter and no further remedy is allowed. In turn, the State contends that the petitioner should not have resorted to an international body for the protection of human rights since this type of bodies "are competent only when a domestic legal system does not provide remedies to solve a dispute or when the existing remedies prove inadequate or ineffective." The Commission recalls that when a State claims the lack of exhaustion of domestic remedies, it has the duty to point out which are the remedies that have not been exhausted and to establish their adequacy. On this light, the Commission notes that, for the purposes of deciding about the admissibility, the alleged victim has exhausted the remedies available in the domestic jurisdiction and that, thus, the instant petition fulfills the requirement established in Article 46.1.a of the American Convention.

7. As to the requirement of timeliness, the Commission observes that the IACHR received the petition on March 13, 2008, and that the final decision issued by the Supreme Court of Chile on November 20,

⁵ The petitioner claims that Article III of this treat establishes that "*Lawyers, who are citizens of any of the contracting countries, which hold degrees legally obtained in Chile, will be admitted to the free practice of their profession in the territory of the Republic of Ecuador, and respectively Chilean or Ecuadorian citizens who hold degrees legally obtained in Ecuador will be able to assert them in Chile without any requirement other than verifying their nationality, the authenticity of the degree, its legality and the identity of the individual (...)*".

2007. Therefore, the Commission believes that the filing of petition was timely, and that this requirement must be declared met.

VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission notes that the present petition includes allegations regarding the alleged lack of judicial guarantees, the broad discretion of the Supreme Court protected by Decree No. 490 in the process of applying for a law degree, the impossibility of going to an authority in a judicial venue, and the lack of reasoning by the Supreme Court in the decision on the appeal for reconsideration, allegations that the IACHR examined at the substantive stage. In light of these considerations, and after examining the factual and legal elements presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a study of the merits, since the facts alleged, if corroborated as true, could characterize violations of Articles 8 (fair trial) and 25 (judicial protection) of the Convention, in accordance with its Article 1(1).

9. With regard to the State's allegations concerning the so-called "fourth instance" formula, the Commission reiterates that, for the purposes of admissibility, it must decide whether the facts alleged may characterize a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly unfounded" or is "manifestly inadmissible", pursuant to paragraph (c) of that Article. The criterion for evaluating these requirements differs from that used to decide on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. In other words, in accordance with the aforementioned treaty rules, and pursuant to Article 34 of its Rules of Procedure, the analysis of admissibility focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention,

10. In addition, regarding the alleged violation of Articles 24 and 26 of the Convention, the Commission observes that the petitioner has not offered sufficient arguments or support to allow it to consider *prima facie* their possible violation.

VIII. DECISION

1. To declare the instant petition admissible with regard to Articles 8 and 25 of the American Convention, in connection with its Article 1.1;

2. To declare this petition inadmissible with regard to Articles 24 and 26 of the American Convention; and

3. To notify the parties of this decision; to proceed 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 7th day of the month of March, 2021. (Signed): Joel Hernández (dissenting opinion), President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana (dissenting opinion), Commissioners.