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REPORT No. 195/21
PETITION 2377-17
REPORT ON ADMISSIBILITY

EDWIN LEONARDO JARRÍN JARRÍN, TANIA ELIZABETH
PAUKER CUEVA AND SONIA GABRIELA VERA GARCÍA
ECUADOR

Approved electronically by the Commission on September 7, 2021.

Cite as: IACHR, Report No. 195/21, Petition 2377-17. Admissibility. Edwin Leonardo Jarrín Jarrín, Tania Elizabeth Pauker Cueva and Sonia Gabriela Vera García. Ecuador. September 7, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Edwin Leonardo Jarrín Jarrín, Tania Elizabeth Pauker Cueva and Sonia Gabriela Vera García
Alleged victim:	Edwin Leonardo Jarrín Jarrín, Tania Elizabeth Pauker Cueva and Sonia Gabriela Vera García
Respondent State:	Ecuador
Rights invoked:	Articles 8 (fair trial), 23 (right to participate in government), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ¹ and other international treaties ² .

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 28, 2017
Additional information received at the stage of initial review:	March 1, 20 and 21, 2018, September 4, and October 25, 2019
Notification of the petition to the State:	April 20, 2020
State's first response:	December 29, 2020
Additional observations from the petitioner:	January 28, February 8, April 5 and 19, 2021

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 (instrument of accession deposited on October 21, 1977)

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), 23 (right to participate in government), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

¹ Hereinafter "the American Convention".

² Universal Declaration of Human Rights. Articles 7 and 8.

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

V. FACTS ALLEGED

1. Edwin Leonardo Jarrín Jarrín, Tania Elizabeth Pauker Cueva and Sonia Gabriela Vera García, previous members of the Council of Citizen Participation and Social Control (hereinafter “the Council” or “CCPSC”), claim that the State breached their rights to a fair trial, right to participate in government, equality before the law, and judicial protection by being removed from their offices by means of a referendum which did not meet constitutionally foreseen guarantees for said procedures.

2. In terms of context, they explain that, pursuant to article 208 of the Constitution of 2008, the Council is an autonomous body which is part of the function of transparency and social control of Ecuador, one of the five main functions of the structure of the State⁴. Its main attributions are, inter alia: to promote citizen participation, stimulate procedures of public deliberation and to facilitate education in citizenry, values, transparency, to fight against corruption; establish mechanisms of accountability; investigate claims on acts or omissions which affect citizen participation or which generate corruption; to issue reports which determine the existence of signs of responsibility, to formulate the necessary recommendations and to foster the corresponding legal actions; as well as to act as a procedural party in said cases.

3. Likewise, they hold that article 207 of the cited Constitution specifies that the Council is comprised by seven standing Council persons and seven alternates, who will perform their duties during a five-year period⁵. Also, article 205 of said norm stipulates that said officials will have National Court Jurisdiction and shall be subject to political trial by the National Assembly and that, should the trial take place, and the removal be decided, a new appointment process is to be carried out. Under no circumstance will the Legislative Function be empowered to assign the replacements⁶.

4. By virtue of the aforesaid normative framework, the petitioners hold that on July 23, 2015 they were elected as council persons⁷, for the period of 2015-2020. Nonetheless, they argue that on September 19, 2017 the president of the republic at the time announced his intention to summon citizens for a popular consultation and a referendum to address matters of national interest, inter alia the modification of the CCPSC. To that end, they specify that on October 2, 2017 the president, adhering to the procedure foreseen in the

⁴ Political Constitution of the Republic of Ecuador of 2008. “Art. 208.- The Council for Public Participation and Social Control shall have the following duties and attributions, in addition to those provided for by law: 1. To promote public participation, encourage public deliberation processes and foster citizenship training, values, transparency, and the fight against corruption. 2. To establish mechanisms for the accountability of public sector institutions and entities and to contribute to citizen oversight and social monitoring processes. 3. To urge the other entities of the Branch to act obligatorily on matters that merit intervention in the opinion of the Council. 4. To investigate reports about deeds or omissions affecting public participation or leading to corruption. 5. To issue reports that point to evidence of liability, to draft the necessary recommendations and to promote the corresponding legal proceedings. 6. To act as a procedural party in cases filed as consequence of its investigations. When a ruling determines that, in the perpetration of crime, there was improper appropriation of resources, the competent authority shall proceed to seize the personal assets of the sentenced party. 7. To contribute to the protection of persons who report deeds of corruption (whistleblowers). 8. To request from any of the entities or officials of State institutions information that it deems necessary for its investigations or proceedings. The persons and institutions shall cooperate with the Council and those who refuse to do so shall be punishable by law. 9. To organize the process and oversee the transparency in the implementation of the activities of citizen commissions for the selection of state authorities. 10. To designate the principal authority of the Office of the State Prosecutor and the Superintendencies from among the shortlists proposed by the President of the Republic, after the corresponding citizen challenge and oversight process. 11. To designate the principal authority of the Office of the Human Rights Ombudsman, the Office of the Attorney for the Defense of the People, the Attorney General's Office, and the Office of the Comptroller General, after completing the corresponding selection process. 12. To designate the members of the National Electoral Council, the Electoral Dispute Settlement Court, and the Judiciary Council, after completing the corresponding selection process.”

⁵ Political Constitution of the Republic of Ecuador of 2008. “Art. 207.- The Council shall be comprised of seven standing council persons and seven alternates. The standing members shall elect from among themselves the Chair, who shall be the Council's legal representative for a term that shall extend to the middle of his/her term of office.”

⁶ Political Constitution of the Republic of Ecuador of 2008. “Art. 205.- The representatives of the entities that are part of the Transparency and Social Control Branch shall perform their duties for a period of five years, shall benefit from immunity from prosecution in the National Court and shall be subject to impeachment by the National Assembly. In the event this impeachment occurs, with the ensuing removal from office, a new process to designate the representative shall take place. In no case can the Legislative Branch designate the respective replacement.”

⁷ In the cases of Edwin Jarrín Jarrín and Tania Pauker Cueva, as standing council persons; whereas Sonia Vera García was elected as alternate council person.

Constitution⁸, forwarded two projects to the Constitutional Court in order to assess the constitutionality of the questions which would conform the popular consultation and referendum. In regard to the reforms concerning social participation and institutionality, the petitioner party holds that the third point of the project formulated the following question:

3) Do you agree to amend the Constitution of the Republic of Ecuador to restructure the Council of Citizen Participation and Social Control, as well as terminating the constitutional period of its current members, and that the Council to transitorily assume their functions, be empowered to assess the performance of authorities whose designation depends on them, being able, should the case qualify, to anticipate the termination of their periods, in accordance with annex 3?

5. Likewise, they hold that said project proposed to “*terminate in an early fashion the periods of council persons of the current Council of Citizen Participation and Social Control*” and the instatement of a transitory Council “*comprised by seven members named by the National Assembly from the shortlists sent by the President of the Republic*”. They argue that, according to the proposal, said Transition Council shall carry out its duties in a non-extendable manner until the new CCPSC is established, with the election of the new official persons in the elections, and “*there shall be an assessment of the performance of the authorities designated by the ceased Council of Citizen Participation and Social Control, within six months as of its establishment, with the possibility, should the case so require, to declare the early termination of their terms, in which case it shall immediately proceed to the notice of the corresponding selection processes*”.

6. On October 5, 2018 the Admissions Chamber of the Constitutional Court decided to admit said proceedings; and on November 17, 2017 summoned the procedural parties and the interested persons to a public hearing for November 29, 2017. However, the day of the hearing, with no ruling by the Constitutional Court, the President in office issued Executive Decrees No. 229 and No. 230, by means of which he called for a popular consultation and referendum concerning seven questions based on amendments to the Constitution and matters of national interest, to be held on February 4, 2018.

7. In this context, on November 30, 2017 an organization of the civil society filed a public constitutional complaint against Decrees No. 229 and No. 230, arguing that the call for a referendum and popular consultation violated several constitutional norms, since, according to article 104 of the Constitution, said procedure requires a previous judgment by the Constitutional Court. In addition, said collective also raised a request for a precautionary measure so that the National Election Council would refrain from calling for said procedures. Finally, the petitioners add that, on their part, as members of the CCPSC they filed an *amicus curiae* with the reasons for which said projects should be declared unconstitutional; since, in their view, they altered the fundamental structure of the Constitution and violated constitutional rights. Nonetheless, they hold that to this date the Constitutional Court has not ruled on the cited public constitutional complaint.

8. The petitioners deem that this circumstance explains that on December 1 and 7 of 2017, respectively, the National Election Council declared the beginning of the electoral period for the popular consultation and referendum 2018; calling the citizens to vote, by means of resolutions No. PLE-CNE-4-1-12-2017 and No. PLE-CNE-3-1-12-2017. Upon this, they hold that they filed appeals against said decisions; however, on December 21 and 27, 2017 the Contentious Election Tribunal dismissed said remedies on account of lack of active legitimation of the claimants.

⁸ Political Constitution of the Republic of Ecuador of 2008. “Art. 104.- The corresponding electoral body shall convene a referendum as ordered by the President of the Republic, the supreme authority of decentralized autonomous governments or citizen initiative. The President of the Republic shall instruct the National Electoral Council to convene a referendum on matters he/she deems advisable. (...) In all cases, a previous ruling by the Constitutional Court on the constitutionality of the proposed questions shall be required.”

9. Thus, between February 1 and 4, 2018 the popular consultation and referendum took place. Petitioners hold, that although the third question obtained the necessary votes for its approval, on February 28, 2018 the appointment of seven members of the council persons of the transition CCPSC became public, who were designated by the National Assembly.

10. The petitioners claim that in the practice the cited Transitory Council has assessed authorities not designated by the previous CCPSC⁹. They add that, in a more serious case, it has also appointed the members of the Constitutional Court, although pursuant to article 434 of the Constitution of Ecuador, said officials are named by a qualifying commission, comprised by members of the Legislative, Executive functions and by Transparency and Social Control. Consequently, petitioners hold that the Transition Council acted beyond its own functions and removed, as a form of political and management control, officials subject to control by the National Assembly, with no authorization for it.

11. By virtue of the abovementioned considerations, petitioners highlight that the constitutional amendments of articles 112, 205 and 207 of the Political Constitution, affected their rights to participate in government and to equality before the law, since said amendments caused the Transitory Council to have them undergo an indictment, as a result from question 3 of the referendum.

12. In addition, the petitioners claim that the Election Tribunal disregarded the Constitution, violated the Rule of Law and seriously affected their constitutional rights by ratifying the allegedly arbitrary acts of the President and the National Election Council. Likewise, they argue that there was an unjustified delay by the Constitutional Court, making the constitutional complaint filed on November 30, 2017 to result ineffective. And that after their removal, they have suffered acts of persecution and harassment, by part of the press and other authorities, causing them to have to migrate to other countries. -However, in regard to these facts they do not provide a complete narration, but disperse data-

13. The State, on its part, raises that in the petition's casefile there are several documents including writs and annexes submitted by different lawyers and organizations, and therefore the lack of structure affects the juridical discussion of admissibility. It adds that the possibility to fragment the documents and present additional writs in other dates directly compromises the right to defense of the State because, first of all, it cannot clearly identify the writ of petition regarding which it has to refer its observations, and also, it implies construction through time, adding new petitions *ad-infinitum* allowing a continuous exhaustion of domestic remedies.

14. Additionally, in response to the allegations by the petitioner party, it holds that, on November 29, 2017, the President in office at the time provided the call for a referendum, without waiting for the response by the Constitutional Court, in considering that "*the 20-day period set forth by article 105 of the Organic Law of Jurisdictional Guarantees and Constitutional Control had been long expired for the maximum body of control on constitutional affairs of the country, to issue a resolution as to the constitutionality of the project of Referendum [...]*". Along these lines, the cited authority concluded that "*it is imperative to apply the legal effects foreseen upon this omission, which is, it shall be deemed that a favorable resolution was provided [...] for which reason [...] what proceeds is to summon the Ecuadorian citizens to a Popular Consultation in the terms raised [...]*".

15. Based on said considerations, the State claims that the petition must be declared inadmissible for three reasons: i) lack of *ratione personae* competence; ii) absence of juridical elements which conform a violation of human rights; and iii) because it is intended that the Commission act as, a so-called "fourth instance".

16. In regard to the first point, Ecuador holds that there is no clear determination of the victims, and that this would qualify as an *in abstracto* claim due to the lack of identification and determination of the victims, since the writs mention several persons and ex-officials, as well as sectors of the population who had

⁹ As an example, the petitioners that the Transitory Council removed the Superintendent of Communications, the Superintendent of Popular and Solidary Economy, the Ombudsman, the members of the Judiciary Council and twenty-three provincial prosecutors, among other officials.

been allegedly affected with the institutional and normative changes derived from the popular consultation and referendum of February 2018. Also, it holds that there is no record anywhere in the writs filed of any mention of the concrete facts which allegedly caused damage upon the persons for violation of their rights.

17. As for the second point, the State holds that the writs submitted by the petitioners fail to exhibit in the slightest way, elements which allow to characterize breaches of rights contained in the Convention, and stresses that there appears to be a context of persecution and political and ideological disagreement with the changes raised in the popular consultation and referendum of 2018 which had majoritarian support by Ecuadorians. It highlights that upon the allegations of the petitioners which suggest a sort of pattern detrimental for human rights and an alleged political persecution by the State, there is no record or claim whatsoever. The State adds that the petitioners portray a surreal surrounding of the political and juridical situation of the country in order to justify their personal interest linked to obtaining political asylum and underscores that after the popular consultation and referendum of February 2018 no institutional fracture whatsoever to the Rule of Law has taken place in Ecuador and the division of powers has been ensured as a substantial element of the acts by the public power.

18. Concerning the third point, the State holds that there is an evident and constant inconformity with the decided by domestic judges and courts which is why it is intended that the Commission rules as an alleged “fourth instance” on domestic mechanisms countering the principle of subsidiarity. Finally, the State holds that the popular consultation and the referendum constitute mechanisms of direct democracy through which the will of the rulers is heard.

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

19. The petitioners hold that domestic remedies were exhausted by means of the appeals filed against: i) resolution No. PLE-CNE-4-1-12-2017, which declared the commencement of the election period for the popular consultation and referendum 2018; and ii) resolution No. PLE-CNE-3-1-12-2017, which called for popular consultation and referendum in 2018; which were dismissed on December 21 and 27, 2017 by the Contentious Election Tribunal. They add that third parties filed a public constitutional complaint on November 30, 2017 before the Constitutional Court; but that to this date there is an unjustified delay since said judicial instance still had not ruled. On its part, the State has not contested exhaustion of domestic remedies nor has it referred to the timeliness of filing of the petition.

20. Considering the above, and the applicable precedents in which the exhaustion of domestic remedies was recognized after the filing of the appeal before the CET¹⁰, the Commission considers that the present petition formally meets the requirement of exhaustion of domestic remedies set forth in article 46.1.a) of the American Convention. Likewise, concerning the timeliness of the filing, the Commission observes that the Contentious Election Tribunal denied the appeals of 21 and 27 of December 2017, and the petition was filed before the IACHR on December 28, 2017; therefore, it meets the time of six months provided in article 46.1.b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

21. First of all, the IACHR observes that the identification of the victims has been clear since the initial petition filed on December 28, 2017, being petitioners and alleged victims, the three persons identified as of the beginning of the present report: Edwin Leonardo Jarrín Jarrín, Tania Elizabeth Pauker Cueva and Sonia Gabriela Vera García; previous members of the Council of Citizen Participation and Social Control. There is no record in the casefile of the present petition that these petitioners have intended to incorporate other alleged victims.

¹⁰ See on this matter, IACHR, Report No. 143/17. Admissibility. Pedro Roura Ortega. Ecuador. October 26, 2017, para 9 through 11.

22. In view of these considerations, and after examining the factual and legal elements set forth by the parties the Commission deems that the allegations of the petitioners concerning their removal as members of the CCPSC are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 8 (fair trial), 23 (right to participate in government), 24 (equality before the law) and 25 (judicial protection) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (duty to adopt domestic law provisions), to the detriment of Edwin Leonardo Jarrín Jarrín, Tania Elizabeth Pauker Cueva and Sonia Gabriela Vera García, in the terms of the present report.

23. Upon the allegations by the State related to what it refers to as a fourth instance, the Commission recalls that by admitting a petition it does not intend to supersede the competence of domestic judicial authorities. But within the scope of its mandate, it is competent to declare a petition admissible and to rule on its merits when it refers to domestic proceedings which may violate rights safeguarded by the American Convention. In the present case, the IACHR shall strictly assess the possible in compliance by the State of the abovementioned norms of the American Convention, in regard to the alleged victims individualized in the present report; it is not the duty of the IACHR to decide on unrelated aspects own of the political context of the time at which the facts occurred.

24. Finally, in regard to the other international instruments claimed by the petitioners, the Commission lacks competence to establish violations to the norms of said treaties, notwithstanding the possibility of taking them into account as part of its interpretative exercise of the norms of the American Convention at the merits stage of the present case, in the terms of article 29 of the American Convention.

VIII. DECISION

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

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 7th day of the month of September, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.