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**REPORT No. 199/21**  
**PETITION 1256-14**  
REPORT ON ADMISSIBILITY

AGUSTÍN JARQUIN ANAYA  
NICARAGUA

Approved electronically by the Commission on September 7, 2021.

**Cite as:** IACHR, Report No. 199/21, Petition 1256-14. Admissibility. Agustin Jarquin Anaya. Nicaragua. September 7, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Nicaraguan Human Rights Center (CENIDH)
<b>Alleged victim:</b>	Agustín Jarquin Anaya
<b>Respondent State:</b>	Nicaragua
<b>Rights invoked:</b>	Articles 8 (fair trial), 9 (freedom from ex post facto laws), 13 (freedom of thought and expression), 16 (freedom of association), 23 (right to participate in government), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> in relation to its article 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects)

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

<b>Filing of the petition:</b>	September 10, 2014
<b>Additional information received at the stage of initial review:</b>	August 18, 2017
<b>Notification of the petition to the State:</b>	March 18, 2019
<b>State's first response:</b>	June 3, 2019
<b>Additional observations from the petitioner:</b>	July 22, 2019

**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 accession deposited on September 25, 1979)

**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), 9 (freedom from ex post facto laws), 13 (freedom of thought and expression), 16 (freedom of association), 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)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

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

## V. FACTS ALLEGED

1. The petitioner claims that the State violated the rights of the alleged victim by removing him from his office as deputy, with no respect to due process nor supporting said sanction with any cause for it previously typified by law.

2. The petitioners narrate that Mr. Jarquin Anaya was a political leader of the Christian Democrat Social Unity party of Nicaragua. By means of said platform he subscribed agreements with the Sandinista National Liberation Front (hereinafter, "SNLF"), with the purpose of constituting alliances for different election processes. Thus, on February 12, 2012, the Christian Democrat Social Unity ratified said agreement and decided to participate in the parliamentary elections of 2011 by means of the "Unida Nicaragua Triunfa" alliance, comprised by different political parties.

3. They hold that, at said elections, Mr. Jarquín Anaya was elected as deputy by the "Unida Nicaragua Triunfa" alliance; however, in November 2012 he declared himself as an independent deputy upon observing several breaches set forth in the alliance and for the undermining of institutionality and the Rule of Law in Nicaragua by the government party. Consequently, in June 2013, Mr. Agustín Jarquin Anaya joined the Nicaraguan Democratic Group, installed at the National Assembly in order to assume a common parliamentary agenda. Nonetheless, on July 26, 2013 the Supreme Electoral Council notified a resolution to Mr. Jarquín Anaya in which it cancelled his inauguration ceremony and credential as deputy, and, therefore, superseded him with a replacement. Said resolution stated:

First: Cancelling the Inauguration ceremony and the Credential concerning citizen Agustín Armando Jarquín Anaya, as Deputy before the National Assembly. Second: Consequently, incorporate his replacement Alyeris Beldramina Arias Siezar, as Deputy before the National Assembly, so that she may hold said office with all the rights and prerogatives set forth by the law. Third: It is hereby instructed to the Proceedings Secretary of this Power of the State to notify the present resolution and communicate to the President of the National Assembly, the President of the Supreme Court of Justice and the President of the Superior Council of the Comptroller General of the Republic concerning his office. Fourth: The present resolution is of electoral affairs and is effective as of the present date notwithstanding its latter publication [...].

4. Petitioners hold that this resolution was notified during the time of legislative recess, and that on August 13, 2013, in the resumption of duties of the National Assembly, Mr. Jarquín Anaya attended the National Assembly to perform his duties as deputy. Nevertheless, petitioners assert that the security guards of said body did not allow him to access as instructed by superiors, and that thereby the aggravation became effective to the detriment of the alleged victim and of the party which he represents.

5. Due to this, on August 23, 2013 the alleged victim filed an amparo remedy against said resolution of the Supreme Electoral Council, claiming it had no power to cancel his credentials as deputy. However, that on September 12, 2013 the Civil Chamber No. 2 of the Court of Appeals of Managua declared said remedy inadmissible, in considering that it could not approve a remedy "*against the acts related to the organization of the Powers of the State and the appointment and removal of officials who enjoy immunity*". On September 13, 2013 Mr. Jarquín Anaya filed an amparo remedy based on fact; but, on November 27, 2013 the Supreme Court of Justice declared it as inadmissible; decision which was notified to him on March 25, 2014.

6. The petitioners add that in parallel to said proceedings, on October 3, 2013 the alleged victim filed a second amparo against the President of the National Assembly, for impeding his entry to the premises of said power of the State. However, on October 9, 2013 the Civil Chamber number One of the Court of Appeals of Managua rejected this remedy, in considering that the amparo does not apply against resolutions issued on electoral matters. Upon this, on October 22, 2013 Mr. Jarquín Anaya filed an amparo remedy based on fact; but, on November 27, 2013 the Constitutional Chamber of the Supreme Court of Justice dismissed the remedy, in considering that the pieces of rejection of the previous amparo had not been included. The authorities notified this decision on January 16, 2014.

7. By virtue of these considerations, the petitioners claim that the Supreme Electoral Council cancelled his credentials of the alleged victim in an arbitrary fashion, as a form of punishment for his political decision to switch groups within the National Assembly. They hold that said decision violates the principle of legality, since that measure was not provided by a previous law. On the contrary, they affirm that the resignation from the SNLF group is part of Mr. Jarquín Anaya's rights as deputy.

8. They add that the decision of the Supreme Electoral Council, apart from violating the political rights of the victim, breached his rights to freedom of expression and liberty of association. Also, that said resolution punished a person only for thinking differently from the government party, sentencing him not only to being expelled from his party, but also from the office he attained by popular vote. All this represented an unjustified unequal treatment to the detriment of the alleged victim, since other deputies, both in the previous legislative period and in the one when the facts occurred, also changed sides and were not punished; neither by the Supreme Electoral Council, nor by the National Assembly.

9. They claim that the alleged victim had no fit remedy available against the argued resolution; because the Supreme Court refused to admit an amparo remedy which intended to conduct a constitutional review of the wrongful action by the Supreme Electoral Council and by the National Assembly. Refusal which had been allegedly based on formalities not typified in the legislation as procedural causes or requirements.

10. Finally, they hold that on February 10, 2014 the constitution went through amendments concerning electoral regulatory matters, in order to consolidate the power of the "SNLF" and the weakening of the Democratic State. In concrete terms, they highlight the modification of article 131, paragraph 2, of the Constitution in order to establish the following: *"The officials elected by universal ballot by closed lists proposed by political parties, who change their electoral option during the exercise of their office, countering the mandate of the voters expressed in the ballot boxes, shall lose their condition of elected and have their office taken by a replacement"*. They argue that the aim of this norm is that no deputy may dissent, speak his or her mind or decide differently from what his or her political party stipulates, breaching the political rights of the representatives freely elected by the people. Likewise, in the petitioner's view, such constitutional modification proves that, para at the time when the reported facts took place, there was no norm that would punish candidates for changing sides within the National Assembly.

11. The State, on its part, replies that the alleged facts do not characterize human rights violations. It argues that it has acted in the exercise of its sovereignty via public bodies, in the performance of its constitutional and legal powers, seeking the preservation of the highest national interests and the respect for people's will expressed in the ballot boxes.

12. It explains that the Nicaraguan Political Constitution and electoral legislation establish a system of closed and blocked lists and, in which only political parties may present candidacies for offices of popular election. In said sense, no deputy is elected directly and by the single candidate system, but they are always elected as part of the lists presented by the aforesaid organizations. Consequently, it argues that the domestic regulation is categorical to determine that the presentation of candidacies is an exclusive right of political parties.

13. Said system intends to privilege the vote for political parties and to instill party discipline; and allows, inter alia, greater simplicity in the voting process and vote counting and equitable distribution of the allocations among parties. Also, such regulation helps fighting "turncoat", a practice that weakens the party system contributes to the lack of credibility of the elector in his or her representatives, especially on those voters who linked the proposals of the candidate to the electoral platform on which he or she ran for office.

14. Based on this, argues that the alleged victim infringed domestic regulations, by departing the party alliance which allowed him to access the Legislative Power. Likewise, it specifies that, on February 28, 2011, Mr. Jarquín Anaya subscribed, by means of a public writ, to the terms of said political platform and, in spite of it, he breached this agreement by deciding to resign said space.

15. On the other hand, argues that the Supreme Electoral Council, in exercise of its constitutional and legal powers, addressed the situation of the alleged victim by means of a duly motivated resolution. On this point, it holds that there was no irregularity in said decision, since article 173, subsection 13, of the Constitution establishes that the Supreme Electoral Council has the attribution to “*watch and resolve conflicts concerning the legitimacy of the representatives and leaders of political parties and as to the compliance of legal stipulations which concern political parties, their statutes and regulations*”.

16. Finally, argues that said reform of article 131 of the Political Constitution of 2014 clarifies and reaffirms the electoral system adopted within the scope of its sovereignty, which proves the legitimacy of its actions. Afterward, in order to develop such constitutional provision, the Organic Law of the Legislative Power incorporated the change of electoral option as a reason for losing the condition of deputy.

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

17. The alleged victim holds that domestic remedies were exhausted with the decisions by the Supreme Court of Justice, which rejected, respectively, the amparo remedies which he filed. On its part, the State has not contested the exhaustion of domestic remedies nor has it referred to the timeliness of the filing of the petition. In light of this and the information present in the casefile, the Commission concludes that the present petition meets the requisite of exhaustion of domestic remedies pursuant to article 46.1.a) of the American Convention.

18. On the other hand, considering that the last decision of the Supreme Court of Justice was notified on March 25, 2014, and that the present petition was received by the Commission on September 10, 2014, the IACHR concludes that it meets the requirement of article 46.1.b) of the American Convention.

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

19. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner’s claims concerning the arbitrary removal of the alleged victim from his office as deputy, and the consequent lack of effective remedies and other accessory affectations, 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), 9 (freedom from ex post facto laws), 13 (freedom of thought and expression), 16 (freedom of association), 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 and ensure rights) and 2 (obligation to abide by domestic legal effects), to the detriment of Agustín Jarquin Anaya.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8, 9, 13, 16, 23, 24 and 25 of the American Convention in connection to its Articles 1.1 and 2; 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 7<sup>th</sup> day of the month of September, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.