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## **REPORT No. 1/24**

### **CASE 12.549**

REPORT ON THE MERITS (PUBLICATION)

NASRY JAVIER ICTECH GUIFARRO  
HONDURAS

Approved electronically by the Commission on March 27, 2024

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## I. INTRODUCTION

1. On July 22, 2002, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," the "Commission," or the "IACHR," received a petition lodged by Nasry Javier Ictech Guifarro (hereinafter "the petitioner") alleging the international responsibility of the Republic of Honduras (hereinafter "the Honduran State," "the State," or "Honduras") for the violation to his detriment of several rights upheld in the American Convention on Human Rights (hereinafter "the Convention," or "the American Convention"), as a consequence of domestic decisions that prevented him from presenting his independent candidacy for the position of municipal mayor in Honduras.

2. The Commission adopted Report on Admissibility No. 30/06 on March 14, 2006.<sup>1</sup> On March 20, 2006, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement; however, the conditions for resolving the matter through such a procedure were not met. The parties were informed of the statutory deadlines for submitting additional observations on the merits. All information received was duly relayed between the parties.

## II. POSITION OF THE PARTIES

### A. Petitioner

3. The petitioner stated that on August 30, 1999 he had sent a note to the National Electoral Tribunal asking to be informed of the requirements and procedures for registering as an independent candidate for the position of Municipal Mayor of the Central District of the Department of Francisco Morazán de Honduras in the elections to be held in November 2001, with a view to holding that office from 2002-2006.

4. He indicated that on November 8, 1999 he had received an official letter from the Secretary of the National Electoral Tribunal informing him of the requirements set forth in the Law on Elections and Political Organizations. He said that, pursuant to those requirements, he had registered his independent candidacy with the National Electoral Tribunal on November 9, 2000.

5. He mentioned that on June 6, 2001, the Office of General Counsel (*Asesoría General*) of the National Electoral Tribunal issued an expert opinion that concluded that his candidacy met all legal requirements, so that he could take part in the 2001 elections. The petitioner stated that, on August 21, 2001, in a new pronouncement, the Chief Clerk (*Oficial Mayor*) of the National Electoral Tribunal notified him that he had yet to show evidence that he was in full possession of his rights and was part of the secular state (*estado seglar*), and that, on August 29, 2001, the National Electoral Tribunal rejected his candidacy because it considered that independent candidacies were not contemplated in either the Constitution or the Law on Elections and Political Organizations. The petitioner alleged that the National Electoral Tribunal had taken nine months and twenty days to issue a resolution and had thereby violated his right to an effective remedy.

6. He stated that, on September 11, 2001, he had appealed that resolution, arguing that his candidacy was indeed in accordance with both domestic law and the provisions of the American Convention and that the refusal to register it violated his right to political participation. He reported that said appeal was denied by the National Electoral Tribunal.

7. He stated that, in light of the above, on September 13, 2001, he had filed an action for enforcement of rights (*recurso de amparo*) with the Supreme Court of Justice of Honduras, and that that appeal was denied on November 8, 2001, on the grounds that the Court considered that it lacked legal substantiation. The petitioner argued that the Supreme Court of Justice should have explained the grounds or reasons of fact or law adduced for it to have denied the appeal. In light of the above, the petitioner stated that he filed an appeal for

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<sup>1</sup> IACHR. Report No. 30/06. Petition 2570-02. Nasry Javier Ictech Guifarro. Honduras. March 14, 2006. In that report, the Commission declared the petition admissible with respect to the alleged violation of Article 23 in conjunction with Article 1.1 and 2 of the American Convention. In the same report, the IACHR also considered that the facts of the case do not constitute a violation of Article 25 of the Convention.

reconsideration (*recurso de reposición*), arguing that his right to be elected and hold public office had been violated. That appeal was dismissed by the Constitutional Chamber of the Supreme Court of Justice in 2002. The petitioner claimed that said ruling was strictly political since it lacked legal grounds and appropriate arguments.

8. He argued that, legally, that constituted a violation of judicial guarantees, the principle of lawfulness (*principio de legalidad*), political rights, and judicial protection. As regards **judicial guarantees**, the petitioner indicated that the State had failed to honor his right to be heard by a competent, independent, and impartial judge, because the magistrates who had rejected his candidacy had not acted independently; they had been influenced by external pressures.

9. With respect to the **lawfulness principle**, he argued that said right had been violated by failure to observe Article 4 of the Law on Elections and Political Organizations, which establishes that both political parties and independent candidacies constitute forms of organization and means of political participation.

10. As for **political rights**, the petitioner argued that said right had been violated because he had been denied the opportunity to opt for public office, be elected, and take part in political life in Honduras.

11. He stated that his **right to judicial protection** had been violated by the unwarranted delay in the proceedings, because he had not received a reply within the time allowed by law and his appeals had not been resolved on appropriate legal grounds.

## **B. State**

12. The State indicated that denying registration of the independent candidacy of the alleged victim did not violate any domestic legal provision or the American Convention.

13. It stated that the alleged victim had requested information from the National Electoral Tribunal of the Republic of Honduras regarding the requirements and procedures for registering with the aforementioned Tribunal his independent candidacy to the position of Municipal Mayor of the Central District of the Department of Francisco Morazán in the elections scheduled for November 2001.

14. It added that, on November 8, 1999, the National Electoral Tribunal had informed the petitioner regarding the requirements and procedures for registering his independent candidacy to the position of Municipal Mayor of the Central District. Subsequently, on November 9, 2000, the alleged victim had formally submitted his application as an independent candidate to the National Electoral Tribunal, without, however, attaching the documents required by law.

15. The State reported that on August 29, 2001, a majority of the members of the National Electoral Tribunal had voted against inscription of the petitioner's independent candidacy, arguing that the expert opinions issued by the Office of General Counsel and that of the Chief Clerk of the National Electoral Tribunal are merely illustrative, not binding, and that, in addition, the petitioner had not complied with the requirements set forth in the Law on Elections and Political Organizations of Honduras. Furthermore, there were no provisions in domestic laws or regulations envisaging independent candidacies. The State reported that, in light of the above, the alleged victim had filed an appeal for reconsideration, which was rejected by the National Electoral Tribunal.

16. It argued that later, on September 13, 2001, the petitioner had filed an action for protection of rights with the Supreme Court of Justice of Honduras, which was denied on November 8, 2001, as the Court considered that no arbitrary or discriminatory act had been committed by not registering the alleged victim's candidacy, since the applicant had not followed the procedure required for registration of independent candidacies.

17. The State affirmed that the Constitution of the Republic of Honduras protects and recognizes political parties as entities through which the right to elect and be elected is exercised. However, it claims that there are no provisions governing independent candidacies for the positions of President or members of Congress, or

municipal mayors. The State argued that Article 49 of the Law on Elections and Political Organizations does provide for the possibility of independent candidacies, but only for the position of President of the Republic, designated representatives of the Office of the President, and deputies in the National Congress.

18. It mentioned that the National Electoral Tribunal could have adopted a broad interpretation of that provision with a view to including independent candidacies to positions as mayors, but in that case it would have had to require the same formalities as those required for candidacies to the positions of President of the Republic, member of Congress, and appointees of the Office of the President, including, in particular, presentation of a list of citizens accounting for at least 2% of the registered electorate nationwide, or of the department concerned, as required by the aforementioned provision.

19. The State argued that the alleged victim should have registered his independent candidacy using a Municipality Roster (*nómina de Corporación Municipal*), because candidacies to the position of mayor are always submitted via a collegiate process. It argued that the new Electoral Law greatly enhances the chances of submitting independent candidacies. However, the alleged victim did not meet the legal requirements for registering his independent candidacy, which is why its rejection was legally justified.

20. It argued that, legally, that rejection did not constitute a violation of judicial guarantees, the principle of legality, political rights, or the right to judicial protection.

21. As regards **judicial guarantees**, the State denied that that right had been violated, because the alleged victim had had ample procedural guarantees for processing his application and all guarantees of due process had been respected. It also affirmed that the alleged victim had provided no evidence of the alleged lack of impartiality of the Constitutional Tribunal.

22. With respect to the **lawfulness principle**, the State denied that said right had been violated, given that the Law establishes as a general rule that it is necessary to belong to a political party to apply for elective office.

23. As for **political rights**, the State denied any violation of that right because the ruling regarding the alleged victim's application had been handed down in accordance with the Electoral Law and because, according to domestic legal provisions, not all independent candidacies are automatically recognized, regardless of circumstances.

24. Concerning **judicial protection**, the State affirmed that there had been no violation of that right, because the bodies hearing the judicial appeals had rejected inscription of the candidacy because the petitioner did not submit the required documents and failed to obtain the minimum popular support required to present an independent candidacy. In spite of that, the petitioner had had access to a series of remedies.

### III. DETERMINATIONS OF FACT

#### A. Applicable regulatory framework

25. The instant case concerns the refusal to register the alleged victim's independent candidacy, based on application of the Law on Elections and Political Organizations of Honduras. The relevant provisions of that Law established the following:

*Law on Elections and Political Organizations - Legislative Decree No. 53 of April 20, 1981*<sup>2</sup>

Article 4. - Political parties and independent candidacies are the organizational forms and means through which citizens exercise political participation.

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<sup>2</sup> Petitioners' brief of July 29, 2002.

Article 49. - Independent candidacies to take part in elections may be presented by registering them with the National Electoral Tribunal. Independent candidacies shall be those submitted without any ties to legally inscribed political parties. The National Electoral Tribunal register such candidacies when they meet the following requirements:

Formulate and submit a political action program;

Describe, draw and indicate the colors of the symbol or emblem corresponding to the candidacy. which must differ from those of legally inscribed political parties, so as not to confuse the electorate.

Fulfill , where applicable, the obligations incumbent upon political parties set forth in Articles 12, 13, 14, 15, 20, and 21 of the present Law .

Provide the National Electoral Tribunal with lists of candidates accounting for at least two percent (2%) of registered voters in the Department in the case of candidacies for congressional deputies, or of voters registered throughout the Republic in the case of candidacies for the positions of President of the Republic or Appointees to the Office of the President. That list shall contain the full names of the voters, their signature or fingerprint and the number of their I.D, place of birth, and current address. The signatures must be legally certified and the lists shall be submitted in two originals, ordered separately by municipality. The fingerprints must be legalized by notarial deed.

Article 50. - The decision to register independent candidacies shall be based on the application concerned, presented by the applicants themselves, accompanied by documents and meeting the requirements set forth in the foregoing Article. Once the application has been submitted, the procedures to follow shall be those set forth in Articles 26, 27, 28, 29, and 30 of this Law.<sup>3</sup>

## **B. Regarding the Independent Candidacy registration process**

### **1. Request for information regarding requirements and procedures to be followed with the National Electoral Tribunal**

26. According to the information available, on August 30, 1999, the alleged victim asked the National Electoral Tribunal for information regarding requirements and procedures for registering his independent candidacy for the position of Municipal Mayor of the Central District for the 2002-2006 term. On November 8, 1999, that Tribunal informed the alleged victim as follows:

CERTIFICATION: The undersigned Secretary of the National Electoral Tribunal hereby CERTIFIES the RESOLUTION passed unanimously that is contained in Item V.6 of Minutes No. 25-99/200 corresponding to the Meeting of this Electoral Body held on Wednesday, September 29, 1999, which reads as follows: "The National Electoral Authority RESOLVED: To transcribe for citizen NASRY JAVIER ICTECH the opinion issued by Messrs [...] which states in this regard states: FIRST: That the petitioner must abide strictly by the provisions contained in Article 19.1.o.; Articles 22, 24, 25, 27, 28, 29, 30.; Chapter VI, Article 49.a.b.and c; Articles 12, 13, 14, 15, 20 and 21; Articles 50, 51, 56-A, 57, 58, 59, and 60; SECOND: That consequently, and given that those provisions are matters of *ordre public*, the applicant must frame his aspirations within the bounds of the aforementioned articles and once they have been complied with appear before this Electoral Body so that, following analysis and review of the above-mentioned application, a resolution on it can be passed in accordance with law.<sup>4</sup>

### **2. Application for Inscription of the Independent Candidacy**

27. On November 9, 2000, the petitioner applied for registration of his independent candidacy for the position of Municipal Mayor of the Central District for the period from 2002 to 2006. In that application, he stated:

[...] acting in my capacity as a Honduran citizen by birth and in the full exercise of my political and constitutional rights, with all due respect I appear before you, the Honorable Electoral Tribunal, requesting that following analysis and review of the attached documents and of whether I meet the requirements established in Article 49.a .b. and c. of the Law on Elections and Political Organizations,

<sup>3</sup> Law on Elections and Political Organizations - Legislative Decree No. 53 of April 20, 1981

<sup>4</sup> Annex 1. Opinion issued by the National Electoral Tribunal on September 2, 1999. Annex 1 to the original petition of July 22, 2002.

and meeting the eligibility criteria required by law, I be inscribed as an Independent Candidate for the Position of Municipal Mayor of this Central District, once General Elections to elective offices are convened for the 2002-2006 term. I am attaching the following documents to this application: 1) Certificate of residence (*constancia de vecindad*); 2) Political Action Program; 3) Symbol corresponding to my Candidacy; 4) I swear that I meet the obligations incumbent on registered political parties established under Articles 12, 13, 14, 15, 20, and 21 of the Law on Elections and Political Organizations, where applicable.

#### LEGAL ARGUMENTS

I base the present application on Articles 37.2, 45, 51, and 80 of the Constitution of the Republic of Honduras; Articles 4, 49.a, b., and c, 50, 56, 58, 59, 60, 104.i and other applicable articles of the Law on Elections and Political Organizations; Article 24.1 of the Municipalities Law [...].<sup>5</sup>

### 3. Opinion of the Office of the General Counsel of the National Electoral Tribunal

28. On June 6, 2001, the Office of the General Counsel of the National Electoral Tribunal issued an expert opinion on the inscription of the alleged victim's Independent Candidacy to the position of Municipal Mayor of the Central District, in which it stated:

[...] THIRD.- On November 9, 2000, citizen Nassry Javier Ictech Guifarro submitted to this electoral body his application for inscription of his independent candidacy for the position of Municipal Mayor of this Central District, along with documents, and at the same time requesting that said inscription take place once general elections to elective offices have been convened.

FOURTH. - The petitioner attached the following documents to the above-mentioned application: 1) Certificate of residence (*constancia de vecindad*); 2) Political Action Program; 3) Symbol corresponding to my Candidacy; 4) I swear that I meet the obligations incumbent on registered political parties established under Articles 12, 13, 14, 15, 20, and 21 of the Law on Elections and Political Organizations, where applicable.

FIFTH. - That the aforementioned documents were subjected to detailed scrutiny, analysis, and review by this Office of the General Counsel and were found to comply with applicable legal requirements.

[...] ELEVENTH. - That Article 4 of the Law on Elections and Political Organizations establishes that political parties and independent candidacies are the organizational forms and means through which citizens exercise political participation.

[...] THIRTEENTH. - That to be elected a member of a Municipal Government, a person has to be: a) Honduran by birth; b) at least 21 years old; c) a citizen entitled to the full exercise of his or her rights; d) hold secular status; e) pertain to the municipality he or she is applying to represent and to have lived there for at least the past five years.

[...] In light of the above, this Office of the General Counsel is of the opinion that citizen Nasry Javier Ictech Guifarro meets the requirements and eligibility criteria established by law for registration as an Independent Candidate for the position of Municipal Mayor of the Central District and thus may participate in the general election process to elect supreme and municipal authorities to be held on Sunday, November 25 of this year.

The legal basis for this opinion is established in Articles 1, 37, 45, 51, 70, 80, and 294 of the Constitution of the Republic; 1, 3, 6, 49, 50, 1, 56, 58, 59, and 60 of the Law on Elections and Political Organizations; amended Article 26 of the Municipalities Law, adopted by Decree No. 134-90 of October 29, 1990 as amended by Legislative Decree No. 127-2000 of August 24, 2001.<sup>6</sup>

<sup>5</sup> Annex 2. Letter of presentation of the Independent Candidacy. Annex 2.a to the original petition of July 22, 2002.

<sup>6</sup> Annex 3. Opinion of the Office of the General Counsel of the National Electoral Tribunal. Annex 3 to the original petition of July 22, 2002.

#### 4. Opinion OM-TNE-2001 of the Office of the Chief Clerk of the National Electoral Tribunal.

29. On August 21, 2001, the Office of the Chief Clerk of the National Electoral Tribunal issued another resolution indicating that some requirements still had to be met by the alleged victim in order for his inscription to proceed. In particular, it stated that:

I.- Citizen NASRY JAVIER ICTECH GUIFARRO attached the following to his application for inscription: A Political Action Program; the Symbol corresponding to his Candidacy; 4)A document swearing that he meets the obligations incumbent on registered political parties under Articles 12, 13, 14, 15, 20, and 21 of the Law on Elections and Political Organizations, where applicable: the basic documents needed to certify that he meets the requirements set forth in sub-paragraphs a), b), and c) of Article 49 of the Electoral Law, because in order to register independent candidates to the position of Mayor it is not necessary to present the lists of voters referred to in subparagraph ch) of aforementioned Article 49. In addition, the application also contains the requirements established in Article 59 of the same Electoral Law, that is to say: full name, I.D. number, domicile and home address of the candidate; b) certificate of residence in the area; and c) the position for which he is a candidate, all of which are formal requirements for submitting an application for inscription and that have been satisfactorily met by the applicant.

[...] that in the documentation accompanying the application for inscription citizen NASRY JAVIER ICTECH GUIFARRO provides proof that he is Honduran by birth, over 21 years of age, and has lived in the municipality he is seeking to represent for more than five years. Still needed is evidence that he is entitled to the full exercise of his rights and hold secular status, requirements that the interested party has to meet by producing appropriate proof., as a simple statement to that effect in his application for inscription will not suffice, because his citizenship can be suspended or forfeited in cases listed in Article 41 and 42 of the Constitution of the Republic.

III. - As prescribed by Article 50 of the Law on Elections and Political Organizations, the decision to register independent candidacies shall be based on the application submitted by the interested parties, along with accompanying documentation, and on compliance with legal requirements., whereby the procedure to be followed in that established in Articles 26, 27, 28, 29, and 30 of the Law on Elections and Political Organizations. That procedure was not followed by the National Electoral Tribunal, because it did not deliver the respective certificate [Tr. of receipt of application], nor order publications, nor keep to the requisite deadlines for issuing a resolution.

In light of the above, it is clear that, before any definitive resolution can be issued, the procedural flaws need to be rectified, starting with an order to issue a certificate of receipt of the interested party's application and an order to publish that application at the interested party's expense (*por cuenta del interesado*) in the Official Gazette and in two widely circulated daily newspapers in Honduras, In addition, the applicant must be told to show evidence that he is part of the secular state (*ser del estado seglar*) and is a citizen entitled to the full exercise of his rights, either by presenting documentation to that effect or other valid testimony, and once that evidence has been produced and the time for objections has elapsed without any being filed, a definitive resolution must be issued and duly published, granting the inscription requested by citizen NASRY JAVIER ICTECH GUIFARRO.<sup>7</sup>

#### 5. Resolution issued by the National Electoral Tribunal regarding the Independent Candidacy application

30. On August 29, 2001, the National Electoral Tribunal resolved, by a majority vote, to deny inscription of the alleged victim's independent candidacy. The Tribunal dismissed the opinions issued by both the Office of General Counsel and the Office of its Chief Clerk. The specific reasons adduced were:

<sup>7</sup> Annex 4. Resolution of the Office of the Chief Clerk of the National Electoral Tribunal. Annex 3 to the original petition of July 22, 2002.



CONSIDERING: That in processing the application in question and based on Article 72 of the Administrative Procedure Law, the Offices of the General Counsel and of the Chief Clerk were asked for their opinion as to its admissibility, and that the opinions requested merely serve to throw light on a matter (*son meramente ilustrativos*) and are not binding or obligatory.

CONSIDERING: That this National Electoral Tribunal is of the opinion that the application submitted by citizen NASRY JAVIER ICTECH GUIFARRO, is not contemplated in TITLE II, CHAPTER VI ON INDEPENDENT CANDIDACIES (which is the subject that concerns us) of the Law on Elections and Political Organizations, or in any other Title of said Law, or in any other body of law in force in Honduras.

CONSIDERING: That this National Electoral Tribunal is the competent organ with respect to all electoral acts and procedures, that it is autonomous and independent, with jurisdiction and competence throughout the Republic, organized and operating in accordance with the Constitution and the Law, as established in Article 51 of the Constitution of the Republic,; and based on the foregoing preambular paragraph, this Tribunal is of the opinion that since Independent Candidacies for the position of Mayor were not included in the Law, which only contemplates independent candidacies for the office of President and congressional deputy, no inscription is admissible in the instant case.

CONSIDERING: That this National Electoral Tribunal, exercising the powers vested in it and based on Article 51 of the Constitution of the Republic' Articles 49 and 50 of the Law on Elections and Political Organizations; Articles 7, 120 of the General Law of Public Administration; and Articles 31, 72, 83, 84, and 88 of the Administrative Procedure Law; By a majority of votes of the members of the National Electoral Tribunal (two members voting against), RESOLVES: a) That the request filed by citizen NASRY JAVIER ICTECH GUIFARRO, with the National Electoral Tribunal for inscription of the Independent Candidacy for the position of Municipal Mayor of this Central District is hereby denied, as it is not contemplated in the Law on Elections and Political Organizations, or in any other body of law in force in the country; b) That notification of this resolution shall be made as prescribed by law and that, if no appeal is filed within the time allowed, the present resolution shall be final. LET NOTICE BE SERVED.<sup>8</sup>

## 6. Appeals for reconsideration and protection of rights (*amparo*).

31. As the petitioner pointed out, on September 11, 2011 he filed an appeal for reconsideration with the National Electoral Tribunal, which was subsequently declared unfounded.<sup>9</sup> The Commission does not have a copy of the decision denying that appeal.

32. The petitioner stated that on September 13, 2001, the alleged victim filed an action for enforcement of rights with the Supreme Court of Justice of Honduras against the decision taken by the National Electoral Tribunal on August 29, 2001.<sup>10</sup>

33. On October 10, 2001, the Public Prosecutors' Office (*Ministerio Público*) pronounced in favor of the action for enforcement of rights, based on the following considerations.

1. In effect, the resolution issued by the National Electoral Tribunal (TNE) contravenes Article 37.1 and 2 of the Constitution of the Republic because it curtails citizen NASRY ICTECH's constitutional right to be elected and to stand for public office based on the poor argument that independent candidacies to stand for the position of Municipal Mayor are not contemplated in the Law on Elections and Political Organizations or in any other law, thereby forgetting Article 37 of the Fundamental Charter of the People. The TNE also omit mentions of Article 4 of its own organic law, which establishes that "political parties and independent candidacies are the organizational forms and means through which citizens exercise political participation." That article clearly does

<sup>8</sup> Annex 5. Resolution of the National Electoral Tribunal of August 29, 2001. Annex 3 to the original petition of July 22, 2002.

<sup>9</sup> State's observations brief of June 4, 2003.

<sup>10</sup> Petitioner's brief of July 22, 2002.

not restrict independent candidacies to persons standing for the office of President of the Republic or for the position of deputies in the Sovereign National Congress; on the contrary, its regulatory content is ample and transparent, so that there is no doubt that independent candidacies may be submitted by anyone standing for elective office, including that of Municipal Mayor,

At the same time, citizen NASRY ICTEH,'s candidacy meets the requirements of Article 49 of Law on Elections and Political Organizations, except for that established in paragraph ch), which is required only for the positions of congressional deputy, President of the Republic and appointees to the Office of the President.

Furthermore, the citizen in question meets all the requirements of Article 56 of the Law on Elections and Political Organizations to be elected a member of a Municipal Corporation which were discussed in the contested resolution, so that it is to be assumed that they were deemed to have been accredited by the National Electoral Tribunal .

2. Article 64 of the Constitution, which enshrines the principle of "reasonableness," has not been contravened in the instant case, because the National Electoral Tribunal has not enforced any law or provision regulating the exercise of a declaration or constitutional right by restricting, curtailing, or distorting it.
3. Article 70, which also regulates exercise of the right to liberty, was contravened in the case at hand, because citizen NASRY ICTECH, is being prevented from carrying out something that the law does not prohibit, because the law does not ban the presentation of independent candidacies by persons standing for the office of Municipal Mayor; on the contrary, as explained earlier, it permits it.
4. Article 321 of the Constitution of the Republic, which regulates the "Legality" principle, was not infringed by the resolution issued by the National Electoral Tribunal because that body did not arrogate powers not vested in it. Rather, in exercising those powers, it examined a matter legally within its sphere of competence but failed to apply the law correctly.
5. Nor was Article 323 of the Constitution contravened in the case at hand because the members of the National Electoral Tribunal did not place themselves above the law, since there is no evidence of their having openly ignored or opposed what the law stipulates, i.e., by contradicting what the law says. Rather, what happened is that they made a mistaken interpretation of the law to apply it to the specific case at hand.<sup>11</sup>

34. On February 11, 2002, the Supreme Court of Justice of the Honduran State decided by a majority of votes to deny the Action for Enforcement of Rights brought by the alleged victim as it considered that the resolution issued by the National Electoral Tribunal did not violate constitutional rights. Substantiating that decision, it stated as follows:

CONSIDERING: That the resolution issued by the National Electoral Tribunal on August 29, 2001, denying the request by citizen NAZRY JAVIER ICTECH GUIFARRO for inscription of his independent candidacy for the position of Municipal Mayor of the Central District, filed with the National Electoral Tribunal on November 9, 2000 does not violate the constitutional rights invoked by the appellant, so that the action for enforcement of rights in this case is to be denied. THEREFORE, the Supreme Court of Justice, on behalf of the State of Honduras,, having heard the opinion of the Special Prosecutor, by a MAJORITY OF THE VOTES OF ITS MEMBERS (since two magistrates dissented), and applying Articles: 60, 61, 183 last paragraph, 303, 304, 313.5 of the Constitution of the Republic; 1, 49, and 50 of the Law on Elections and Political Organizations; 1 and 78.5 of the Law of Organizations and Powers vested in the Courts; 1, 4, 5.3, 25 as amended and 32 of the Amparo Law; 6.12. of the Internal Rules of Procedure of the Supreme Court of Justice. ISSUES ITS RULING: DENYING THE ACTION FOR ENFORCEMENT OF

<sup>11</sup> Annex 6. Opinion issued by the Public Prosecutors' Office on October 10, 2001. Annex 4 to the original petition of July 22, 2002.

RIGHTS referred to in this case AND ORDERS: That the file on the case be returned, together with a certificate of this ruling, to the entity it came from, for appropriate legal purposes.

[...] declaring UNFOUNDED, as inadmissible, the appeal for reconsideration filed by Mr. Nasry Javier Ictech.<sup>12</sup>

35. Subsequently, the alleged victim filed an appeal for reconsideration of that ruling that was turned down by the Constitutional Chamber of the Supreme Court of Justice in 2002.<sup>13</sup> The Commission does not have a copy of that decision.

#### IV. LEGAL ANALYSIS

##### A. The duty to substantiate<sup>14</sup>

36. The Commission underscores that decisions adopted by domestic bodies that could affect human rights should be properly grounded, otherwise they would be arbitrary decisions.<sup>15</sup> Therefore, the duty to provide cause ("substantiation") is one of the "due guarantees" included in Article 8(1) to safeguard the right to a fair trial. Both the Commission and the Inter-American Court have pointed out that the duty to substantiate is the externalization of the reasons justifying a conclusion. It is a guarantee associated with the proper administration of justice, which protects the right of citizens to be tried for the reasons that the law provides and lends credibility to legal decisions within the framework of a democratic society.<sup>16</sup>

37. The right to have an effective remedy processed with due guarantees, including the duty to substantiate does not depend on the right in question or if it is conventionally protected. As the Honorable Court pointed out, it would be unreasonable to establish that judicial protection only applies if the litigant (*justiciable*) is required to know beforehand whether his situation will be considered by a judicial body to be supported by a specific right. The Court has stated that, irrespective of whether the judicial authority declares a claim by an appellant unfounded because it is not covered by the provision he or she invokes or because it finds no violation of the right alleged to have been violated, the State is obliged to provide effective remedies that enable people to contest acts by an authority that they deem to be a violation of their human rights embodied in the Convention, the Constitution, or laws. Indeed, Article 25 of the American Convention establishes the right to judicial protection of rights embodied in the Convention, the Constitution, or laws: a right that may be violated regardless of whether or not there is a violation of the right invoked or whether or not the situation giving rise to the claim was within the scope of application of the right invoked.<sup>17</sup>

38. The IACHR stresses that the duty to provide proper substantiation or grounds was especially important in the instant case for two fundamental reasons: First, bearing in mind that both the alleged victim and various authorities understood, in their interpretation, that independent candidacies for the position of Mayor were allowed under the Electoral Law. For example, in its opinion issued on June 6, 2001, the Office of General Counsel of the National Electoral Tribunal of Honduras considered that the alleged victim met the legal requirements for registration of his candidacy.

39. Likewise, already in connection with the amparo action, the Public Prosecutors' Office pronounced in favor of allowing registration, as it considered that Article 4 of the Law on Elections and Political Organizations recognizes the possibility of presenting independent candidacies, that the law does not prohibit the

<sup>12</sup> Annex 7. Judgment of the Supreme Court of Justice, handed down on February 11, 2002. Annex 5 to the original petition of July 22, 2002.

<sup>13</sup> Petitioner's original brief of July 22, 2002.

<sup>14</sup> Article 8.1 of the American Convention provides: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>15</sup> I/A Court H.R. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, par. 107.

<sup>16</sup> I/A Court H.R. Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2011. Series C No. 227, par. 118.

<sup>17</sup> I/A Court H.R. Case of Castañeda Gutman v. United Mexican States. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008, paras. 100 and 101.

presentation of independent candidacies for the position of Municipal Mayor, and that it establishes additional requirements for the presentation of independent candidacies only when they are for the Presidency of the Republic or congressional deputies.

40. The Commission again points out that, indeed, Article 4 of the Electoral Law establishes that political parties and independent candidacies are the organizational forms and means through which citizens exercise political participation. Likewise, Article 99 of that law established that independent candidacies to take part in elections are permitted. That same article established the requirements for the presentation of independent candidacies and stipulated that in the case of candidacies for the position of congressional deputy lists of citizens must be submitted totaling at least two percent of the department's registered voters or, in the case of candidacies for the Presidency of the Republic, two percent of registered voters nationwide.

41. The IACHR considers that, from the tenor of the Law, the alleged victim's interpretation could be deemed reasonable and plausible, namely that the Law recognizes independent candidacies and only imposes specific requirements for candidacies to the positions of President of the Republic or congressional deputy, implying that the presentation of independent candidacies for other offices was permitted, provided only that they meet the general requirements set forth in Article 49 of the Law. That being so, it was essential for the authorities in charge of the proceedings, to justify the grounds that led to the conclusion that only independent candidacies for deputies and the Presidency of the Republic are recognized.

42. Second, the IACHR underscores the importance of appropriate and careful substantiation in a case such as this, in which political rights were at stake, because they have both an individual and a collective dimension and restrictions on them may impact not just a person's individual right to be elected by the people but also the free expression of the will of voters through universal suffrage and hence democracy itself.<sup>18</sup>

43. Despite the above, the Commission notes that neither the National Electoral Tribunal nor the Supreme Court of Justice provided a minimum of grounds explaining their dismissal of the alleged victim's argument that independent candidacies for the office of mayor were indeed allowed by the Electoral Law. The National Electoral Tribunal merely stated that independent candidacies for mayors were not contemplated in legislation, while the Supreme Court of Justice emphasized that denying the registration of an independent candidacy for the position of municipal mayor did not violate a constitutional right. However, neither body explained the reasons why theirs was the correct interpretation of the law or why the alleged victim's argument had to be rejected. Nor did these bodies justify the reasons why only independent nominations of persons elected to the office of President of the Republic and Deputies would be allowed, or if this resulted in a legitimate difference in treatment.

44. Based on the foregoing, the IACHR concludes that the Honduran State violated the duty to substantiate established in Article 8(1) of the American Convention, taken in conjunction with Article 1(1) of the same instrument, to the detriment of Nasry Javer Ictech Guifarro.

## **B. Political rights<sup>19</sup>**

45. Article 23 of the Convention recognizes political rights and protects political participation through the right to active suffrage as well as the right to passive suffrage, understood to mean the right to submit one's candidacy for elected office, and the establishment of appropriate electoral regulations guaranteeing the exercise of those rights, without exclusions or arbitrary or discriminatory limitations.<sup>20</sup> Article 23.2 stipulates

<sup>18</sup> IACHR, Report No. 130/17, Case 13.044. Merits. Gustavo Francisco Petro Urrego. v. Colombia. October 25, 2017.

<sup>19</sup> Article 23 of the American Convention provides: 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

<sup>20</sup> IACHR, Report No. 92/09, Case 12.668, Merits, Leopoldo López Mendoza, Venezuela, August 8, 2009, para. .64; IACHR, IReport No. 130/17, case No. 13.044. Merits. Gustavo Francisco Petro Urrego. Colombia. October 25, 2017, par. 116.

that the exercise of the rights and opportunities maybe regulated "only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."

46. In the case of *Castañeda Gutman v. Mexico*, the Inter-American Court examined the system whereby candidacies for inscription are presented by political parties, in light of the arguments of the State and the alleged victims and determined that said system did not constitute an illegitimate restriction when regulating the right to be elected established in Article 23 of the American Convention, so that in the aforementioned case it found that political rights were not violated.

47. To reach that finding, the I/A Court of H.R. made a proportionality assessment of the restriction placed on independent candidacies, based on the following considerations:

#### IV. The restriction of political rights in the instant case

174. With the exception of some rights that cannot be restricted in any circumstance, such as the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, human rights are not absolute. As the Court has established previously, the establishment and application of requirements to exercise political rights are not, per se, an undue restriction of political rights. However, the power of the States to regulate or restrict rights is not discretionary, but is limited by international law, which requires compliance with certain obligations that, if they are not respected, make the restriction unlawful and contrary to the American Convention. As established in Article 29(a) in fine of this instrument, no provision of the Convention shall be interpreted as restricting them to a greater extent than is provided for therein.

175. The Court has defined the conditions and requirements that must be fulfilled when regulating or restricting the rights and freedoms embodied in the Convention, and will proceed to analyze the legal requirement being examined in this case in light of them.

##### 1) Lawfulness of the restrictive measure

176. The first step to evaluate whether a restriction of a right established in the American Convention is permitted in light of this instrument consists in examining whether the restrictive measure complies with the requisite of lawfulness. This means that the general circumstances and conditions that authorize a restriction to the exercise of a specific human right must be clearly established by law. The norm that establishes the restriction must be a law in the formal and substantive sense.

177. In the instant case, the alleged victim did not allege that the restrictive measure was not established by law; rather his arguments were designed to prove that the law regulating this matter and its application in his specific case established an undue restriction and, therefore, was contrary to the political rights embodied in the American Convention.

178. The State argued that the "Federal Code of Electoral Institutions and Procedures was the result of a legislative process of drafting, discussion, approval, promulgation and publication, carried out within the framework established in the Constitution and its lawfulness was based on the support of the democratically-elected representatives." It added that "[t]he decision of the Mexican federal legislator to establish that mechanism for exercising political participation respected the standard of lawfulness, because it fell within the powers that the Constitution confers on him."

179. The Court observes that the requirement that it is the political parties that must request the registration of the candidates for elected office at the federal level is established in Article 175 of the COFIPE, which is a formal and substantive law.

##### 2) Purpose of the restrictive measure

180. The second limit to any restrictions is related to the purpose of the restrictive measure; in other words, that the cause invoked to justify the restriction should be among those permitted by the American Convention, and established in specific provisions included in certain rights (for example, to protect public order or public health, in Articles 12(3), 13(2)(b), and 15, among others), or in the norms that establish the legitimate general purposes

(for example, “the rights of others,” or “the just demands of the general welfare in a democratic society,” both in Article 32).

181. Contrary to other rights that, in the Article embodying them, specifically establish the legitimate purposes that could justify restrictions to a right, Article 23 of the Convention does not explicitly establish the legitimate causes or permitted purposes by which the law may regulate political rights. Indeed, this Article merely establishes certain aspects or reasons (such as, civil or mental capacity and age) on the basis of which political rights may be regulated in relation to their titleholders, but does not determine explicitly either the purposes or the specific restrictions that will necessarily have to be imposed when designing an electoral system, such as electoral districts and others. However, the legitimate goals that the restrictions should pursue arise from the obligations that can be inferred from Article 23(1) of the Convention, which are referred to above.

182. Mexico has invoked some reasons to maintain that the system in operation in that State is a mechanism for the exercise of political rights that conforms to the corresponding international standards, in terms of lawfulness, necessity and proportionality, and that this is clear from the COFIPE. Article 175 of this Code, which establishes that “only the national political parties have the right to request the registration of candidates to elected office,” regulates Article 41 of the Constitution of the United Mexican States which stipulates that “the purpose of political parties is to promote the participation of the people in democratic life, to contribute to the integration of the national representation and, as citizen organizations, to enable them to have access to the conduct of public affairs, in accordance with their programs, principles and ideas, and by means of free, secret and direct suffrage [...]”

183. The Court considers that Article 175 of the COFIPE, which is being examined, was designed to organize the electoral process and the access of citizens to the exercise of public office under equal conditions and effectively. This objective is essential for the exercise of the rights to vote and to be elected in genuine periodic elections, by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters, in keeping with Article 23 of the American Convention.

184. Nevertheless, the fact that a measure is designed to achieve a purpose permitted by the Convention does not imply that it is necessary or proportionate, as will be examined below.

### 3) Necessity in a democratic society and proportionality of the restrictive measure

185. Under the inter-American system there is a third requirement that must be met in order to consider that the restriction of a right is compatible with the American Convention. The Inter-American Court has stated that, for a restriction to be permitted in light of the Convention, it must be necessary for a democratic society. This requirement, which the American Convention has established explicitly in relation to certain rights (of assembly: Article 15; of association: Article 16; of movement: Article 22), as a criterion for interpretation and as a requirement that characterizes restrictions to the rights established in the Convention, including political rights.

186. To evaluate whether the restrictive measures being examined complies with this last requirement, the Court must assess whether: (a) it fulfills an urgent social need; in other words, that it is designed to fulfill an essential public interest; (b) it is the measure that least restricts the protected rights, and (c) it is closely adapted to achieving the legitimate purpose.

#### i) The existence of an essential social need – essential public interest

187. The State argued that the system of nomination for public office by political parties responded to various social needs. First, it responded to a historical and political necessity; that of creating and strengthening a system of political parties where such a system did not exist and where, to the contrary, there had been a hegemonic party or official State party regime. In that respect, the State argued that from 1917 to 1946, independent candidacies were permitted by law. The Electoral Act published on January 7, 1946, established that only the political parties could register candidates, excluding the possibility of citizens aspiring to be elected to public office independently of the political parties at the federal level. Shortly after the publication of that law, the Mexican Party of the Revolution (PRM) was transformed and gave rise to the Institutional Revolutionary Party (PRI) and “[f]or decades, PRI was the party that played a dominant role in the State’s political structure.” The “minimal party system at that time became a model [defined] as the ‘hegemonic party system.’” Consequently, the subsequent constitutional reforms were aimed at “opening up the party system to all the political options that the political plurality of a society requires,” and neither the 1977 reform nor the subsequent reforms incorporated the mechanism of independent candidacies at the federal level, because “the principal objective of all the reforms was, first, to build up a party system where there had been none and, second, to strengthen this party system. These reforms were elaborated based on the premise that “democracy cannot exist without an open, representative, plural, equitable

and competitive party system. This is why a mixed system of party financing was created, although with a predominantly public component, which has provided the political parties with important resources to bring about equity in the electoral processes.”

188. The State also indicated that its system of registering candidacies also responds to the need to organize an electoral process in a society of 75 million voters, in which independent candidacies could “[...] promote the multiplication of those who aspire to public office, so that the popular representation would be fragmented and it could reach a level where the electoral process would be inoperative, owing to the complications that could arise at its different stages.”

189. Lastly, according to the State, the need for the system in force is also related to the predominantly public system of financing the Mexican electoral system. This financing model has three purposes: first, to create conditions of equity in the political campaign; second, to introduce transparency in the resources provided to the electoral campaigns by ensuring the certainty of the origin of most of the money used and, third, to prevent private, lawful or unlawful interests influencing the political campaign. In this regard, the State argued that independent candidacies: (i) would make it difficult to monitor financing, which could lead to private interests predominating over the public interest and even to the possibility of unlawful activities related to certain challenges “facing the country, particularly those relating to large-scale organized crime”; (ii) could lead to the distribution of public funds becoming a system that was impossible to finance, given the predominantly public funding of candidates, with the consequent and evident inequality among the candidates postulated by the political parties and those that eventually run for office independently, and (iii) would establish a system that was very complicated to administer in terms of equality in electoral processes; “it is evident that financial capacity is needed to develop an independent candidacy and recruit voters, which implies inequality as regards those that do not have this capacity.” The introduction of independent candidacies would entail a radical change in the electoral system, which has been conducted successfully over the past decade.

190. The representatives argued the need for independent candidates for the following reasons, among others: only a very small percentage of the population was interested in taking part in a party organization; the limited credibility of the political parties and the legislators; the low rates of participation recorded in some states of the Federation, and the search for alternatives by the citizens. According to the representatives, “[i]ndependent candidacies would operate as an escape valve [...], but also as an incentive for the political parties to seek candidates who represent them better.” The representatives argued that, in Mexico, political democratization “could be classified very broadly into two moments. The first, during which, from a closed and authoritarian system, democratic channels were opened up to the participation of very diverse groups [...]; alternation reached the highest level, the head of the Executive, and the real political competition was less than 10 points between the first and second party in almost 80% of the districts”; and “public opinion was increasingly influential.” However, they argued that, now, the “second phase” was underway, in which “Mexico moved from the political control of a hegemonic party to the political control of three parties” and that there is a “[...] growing tendency to concentrate power in the party leaders, who are not necessarily party militants [...]”.

191. When testifying at the public hearing, the alleged victim indicated that, to continue democratizing Mexican institutions it was important “[...] to introduce more competition into the electoral campaign and, in particular, to allow citizens to be candidates to elected office, not in substitution of political parties, but together with political parties to give the citizens more alternatives, both to be elected and to elect.” He added that, although this matter evidently referred to the fight for his political rights, the case formed part of a long struggle to expand democratic opportunities in the country.

192. The systems that accept independent candidacies can be based on the need to expand and improve participation and representation in the management of public affairs and to enable a greater rapprochement between the citizens and the democratic institutions; while the systems that opt for the exclusivity of candidacies through political parties can be based on different needs, such as strengthening these organizations as essential instruments of democracy, or the efficient organization of the electoral process. These needs must ultimately respond to a legitimate purpose in accordance with the American Convention.

193. The Court considers that the State has justified that the registration of candidates exclusively through political parties responds to compelling social needs based on diverse historical, political and social grounds. The need to create and strengthen the party system as a response to an historical and political reality; the need to organize efficiently the electoral process in a society of 75 million voters, in which everyone would have the same right to be elected; the need for a system of predominantly public financing to ensure the development of genuine free elections, in equal conditions, and the need to monitor efficiently the funds used in the elections. All respond to essential public interest. To the contrary, the representatives have not provided sufficient evidence that, over

and above their statements regarding the lack of credibility of the political parties and the need for independent candidacies, would nullify the arguments put forward by the State.

ii) The exclusivity of the nomination and the least restrictive appropriate mechanisms to regulate the right to be elected

194. Among other arguments, the State indicated that the mechanism of exclusive registration of candidacies by political parties complies with the requirement of proportionality because “it does not in any way discriminate against or exclude any person or group of persons from public office using the democratic channels; Mexican federal electoral norms open up non-exclusive and non-discriminatory access channels to candidacies that are open to every citizen [...]” It also indicated that the COFIPE included alternatives by which a citizen could accede to candidacy for elected office: (i) the possibility of joining a political party so that the latter would postulate him as a candidate to elected office; (ii) the possibility of political party postulating him, without his need to belong to it (external candidate); and (iii) the possibility of creating his own political party. In this regard, it added that there is “increasing flexibility in the requirements and procedures to constitute political parties”; this had resulted in two new parties, which were competing for the first time in the 2006 federal elections, legitimizing their registration by obtaining 2% of the national vote and acceding to seats in the Legislature; that the COFIPE obliges “political parties to incorporate in their statutes and internal rules of procedure, the democratic procedures for the renewal of their administrative organs as well as norms for the democratic postulation of their candidates,” and “the Federal Electoral Institute and the Electoral Tribunal are responsible for monitoring and sanction procedures to ensure that everything is carried out in accordance with the law and democratic principles.” Consequently, it concluded that the regulation of this aspect “is not [...] an excessive mechanism or one that curtails the passive right to vote.”

195. The representatives did not expressly allege that the exclusivity of nomination by the political parties was the most restrictive or disproportionate measure to regulate the right to be elected. Their arguments were directed essentially at showing that a provision of domestic law applied in this case was contrary to the American Convention and to justify the need to adopt the system of independent candidacies.

196. To assess the proportionality of the measure that is alleged to be restrictive of the right to be elected, the Court must examine the existing alternatives to regulate this right, which are equally appropriate to the regulation that is considered to violate the Convention, and must define the greater or lesser harm of the human right that is restricted.

197. As indicated, the American Convention, like other international human rights treaties, does not establish the obligation to implement a specific electoral system. Nor does it establish a specific mandate on the mechanism that the States must establish to regulate the exercise of the right to be elected in general elections (supra paras. 149 and 162 to 166).

198. The Court observes that, in comparative electoral law, the regulation of the right to be elected, as regards the registration of the candidacies, may be executed in two ways: by the system of registration of candidates exclusively by the political parties, or by the system of registration of candidacies by the political parties, together with the possibility of registering independent candidacies. In the region, there is a certain balance between the States that have established the system of registration exclusively by parties and those that also allow independent candidacies.

199. The States whose laws recognize the possibility of registering independent candidacies establish various requirements for their registration, some of them similar to those established for candidacies registered by political parties. A common requirement for the registration of independent candidacies is the backing of a certain number or percentage of voters who support the registration of the candidacy, which is essential to organize the electoral process effectively. In addition, the States establish other requirements such as the presentation of the political platforms or plans of government for the period for which the candidacy is postulated, the deposit of financial guarantees or “sincerity policies,” even a management organization similar to that of the political parties throughout the territory of the State, in case of independent candidacies for the Presidency of the Republic. 200. Neither of the two systems: exclusive nomination by political parties or the one that allows independent candidacies is, in itself, more or less restrictive than the other in terms of regulating the right to be elected embodied in Article 23 of the Convention. The Court considers that it is not possible to make an abstract assessment of whether the system that allows independent candidacies is a less restrictive alternative for regulating the right to be elected than the other that does not allow them. This will depend on diverse circumstances, especially on how the above-mentioned aspects of the independent candidacies are regulated or on the regulation of the candidacies presented by parties.



200. Neither of the two systems: exclusive nomination by political parties or the one that allows independent candidacies is, in itself, more or less restrictive than the other in terms of regulating the right to be elected embodied in Article 23 of the Convention. The Court considers that it is not possible to make an abstract assessment of whether the system that allows independent candidacies is a less restrictive alternative for regulating the right to be elected than the other that does not allow them. This will depend on diverse circumstances, especially on how the above-mentioned aspects of the independent candidacies are regulated or on the regulation of the candidacies presented by parties.

201. Independent candidacies can be regulated to facilitate and expand access to the right to be elected, but at times the requirements for registering independent candidacies can be greater than those established for the nomination of a candidate by a political party. The mere fact that independent candidacies are allowed does not mean that this is the least restrictive way to regulate the right to be elected. The essential point is that whichever of the two systems is chosen, it should make accessible and guarantee the right and the opportunity to be elected established in the Convention, under equal conditions.

202. The Court observes that the State justified its affirmation that the regulation contested by Mr. Castañeda Gutman was not disproportionate (*supra par.* 172). Moreover, the alleged victim did not argue or provide any evidence that would allow the Court to conclude that the requirement to be nominated by a political party imposed concrete, specific obstacles that signified a disproportionate, burdensome or arbitrary restriction of his right to be elected. To the contrary, the Court notes that Mr. Castañeda Gutman even had several alternatives to exercise his right to be elected, such as joining a political party and trying, by means of the internal democracy, to obtain the nomination to be postulated by a party; being an external candidate of a party; forming his own party and competing under equal conditions or, lastly, forming a national political group that signs an agreement to participate with a political party. According to the elements in the case file before the Court, the alleged victim did not use any of these alternatives. iii) Proportionality of the interest that is justified and adaptation to the achievement of the legitimate objective.

203. Regarding whether the measure was adapted to achieving the legitimate objective sought, based on the above the Court finds that, in the instant case, the exclusivity of nomination by political parties to elected office at the federal level is an appropriate measure to produce the legitimate result sought of organizing the electoral processes efficiently in order to hold genuine periodic elections, by universal and equal suffrage and by secret vote that guarantee the free expression of the will of the voters, as established by the American Convention.

204. Lastly, the Court considers that both systems, one built on the exclusive basis of political parties, and the other that also allows independent candidacies can be compatible with the Convention and, therefore, the decision on which system to choose is subject to the political decision made by the State, in accordance with its constitutional norms. The Court is aware that there is a profound crisis as regards the political parties, the legislatures and those who conduct public affairs in the region, which calls for a thorough and thoughtful debate on political participation and representation, transparency, and the rapprochement of the institutions to the people, in brief, on strengthening and improving democracy. Civil society and the State have the fundamental responsibility, which cannot be waived, to carry out this discussion and make proposals to reverse the situation. In this regard, the States must assess the measures that will strengthen political rights and democracy according to their particular historical and political evolution, and independent candidacies may be one among many of these mechanisms.

205. Based on the foregoing arguments, the Court does not find that, in the instant case, it has been proved that the system of registering candidacies for elected office by political parties constitutes an unlawful restriction to regulate the right to be elected established in Article 23(1)(b) of the American Convention and, consequently, has not verified a violation of Article 23 thereof.<sup>21</sup>

48. In the case at hand, the Commission recalls that on August 29, 2001, the National Electoral Tribunal denied the independent candidacy of the alleged victim after dismissing the expert opinions issued by its Office of General Counsel and its Office of the Chief Clerk, because it considered that the law does not contemplate the possibility of registering independent candidacies for the office of Mayor, as it only mentions that possibility for the Presidency and for the position of congressional deputy. Likewise, on February 11, 2002, the Supreme

<sup>21</sup> I/A Court H.R., Case of Castañeda Gutman v. United Mexican States. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, paras. 174-205.

Court of Justice denied the amparo action brought by the alleged victim as it considered that the resolution issued by the National Electoral Tribunal did not violate constitutional rights.

49. The IACHR observes that beyond its disagreement with the denial of its registration, the alleged victim did not present a sufficient argument stating the reasons why, unlike the Castañeda case indicated above, the non-registration of his independent candidacy for Mayor's position would disproportionately affect his political rights. The IACHR does not have sufficient elements to carry out an autonomous assessment regarding the violation of political rights, and considers that the argument presented by the alleged victim regarding this right is subsumed in the analysis referred to in the previous section regarding the duty of substantiate. Based on the foregoing, the Commission considers that the State did not violate the right established in Article 23.1 a) of the American Convention to the detriment of Nasry Javier Ictech Guifarro.

49. The IACHR observes that beyond its disagreement with the denial of its registration and the interpretation of the law given by the judicial authorities, the alleged victim did not present a sufficient argument stating the reasons why the non-registration of his independent candidacy of the position of Mayor, disproportionately affected his political rights. On the other hand, as mentioned, the judicial authorities that ruled in the case did not offer an explanation in relation to the restriction imposed to the alleged victim. In these circumstances, the IACHR considers that it does not have sufficient elements to carry out an autonomous assessment regarding the violation of political rights due to the lack of recognition of an independent candidacy that allows separation from the parameters indicated in the Castañeda case indicated above. Thus, the Commission considers that the argument presented by the alleged victim regarding this right is subsumed in the analysis referred to in the previous section regarding the duty to substantiate.

### **C. Lawfulness principle<sup>22</sup> and judicial guarantees**

50. The IACHR against points out that the alleged victim argued that there had been a violation of the lawfulness principle because of a supposed failure to comply with Article 4 of the Law on Elections and Political Organizations, which established that political parties and independent candidacies are the organizational forms and means through which citizens exercise political participation. The Commission considers that said argument is subsumed and analyzed in the previous section on the duty to provide cause (substantiation).

51. In addition, regarding judicial guarantees, the Commission recalls that the alleged victim mentioned that the magistrates who rejected his candidacy did not act independently and were influenced by external pressures. However, he failed to provide evidence in support of that affirmation. That being so, the Commission considers that it lacks the means with which to make an autonomous pronouncement regarding that aspect.

## **V. ACTION FOLLOWING REPORT No. 166/19 AND COMPLIANCE INFORMATION**

52. The Commission adopted Merits Report No. 166/19 on November 9, 2019, in which it declared the Honduran State responsible for the violation of the right established in Article 8(1) of the American Convention in relation to Article 1(1) of the same instrument, to the detriment of Nasry Javier Ictech Guifarro. Said report comprises paragraphs 1 to 51 above and was transmitted to the State on January 7, 2020. In said report, the Commission recommended:

1. make full reparation for the violation of the duty to state reasons stated in the present report. In particular, to pay compensation for material and non-material damages.

53. In the proceedings subsequent to the notification of the Merits Report, the Commission received several communications from the State regarding compliance with the recommendation established by the IACHR and, in particular, regarding the Agreement on Compliance with Recommendations reached by the parties. During this period, the Commission granted a total of eight extensions to the State for the suspension of the time period

<sup>22</sup> Article 9 of the American Convention provides that no one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

provided for in Article 51 of the American Convention. The State expressly waived the right to file preliminary objections for failure to comply with the deadline in the event that the case was submitted to the Inter-American Court.

54. The Agreement on Compliance with Recommendations was authorized by the Office of the Attorney General of the Republic on August 13, 2021, published in the official gazette *La Gaceta* No. 35,726 on September 23, 2021 and subsequently signed by the parties on December 1, 2021. The agreement states that:

[...] [t]o cover the payment of the agreed economic reparation, the State of Honduras undertakes to make the payment in favor of the beneficiary through the National Electoral Council, which shall initiate the pertinent procedures as soon as it is presented with this duly signed document, and the procedures for the corresponding payment must be fully completed by December 20, 2021 at the latest under the terms agreed in this friendly settlement in compliance with the recommendation issued by the IACHR in Merits Report No. 166/19. [...].

For his part, the beneficiary, Mr. Nasry Javier Ictech Guifarro, undertakes to accompany the stages of execution of this agreement and to cooperate so that it can become effective. [...].

The petitioner considers that compliance with the economic commitment assumed through this friendly settlement in compliance with the recommendation implies full satisfaction of its claims in the case of Nasry Javier Ictech Guifarro (IACHR Case No. 12.549) [...].

The State of Honduras and the beneficiary Mr. Nasry Javier Ictech Guifarro acknowledge and accept as the amount to be compensated the sum of seven thousand United States dollars (US\$7,000) or its equivalent in lempiras, which implies full compliance with the IACHR recommendation. [...].

The State undertakes to pay the aforementioned amount at the request of the petitioner through the National Electoral Council, in a single payment no later than December 20, 2021, which payment comprises in full the agreed financial compensation and therefore the State of Honduras is completely released from any indemnification for the alleged facts and from any subsequent claim. [...].

55. In view of the Compliance Agreement, on January 7, 2022, the Commission decided not to send the case to the Inter-American Court and to proceed with the publication of the Merits Report, as established in Article 51 of the Convention and 47 of its Rules of Procedure.

56. On January 11, 2022, the State informed the IACHR that the National Electoral Council proceeded to make the payment of the amount agreed between the parties through the bank check dated December 14, 2021, paid on December 24 of the same year, providing the corresponding receipt. The IACHR appreciates the State's actions taken to reach an agreement with the petitioner to comply with the recommendations and that this agreement has been fulfilled.

## **VI. FINAL CONCLUSIONS**

57. Based on the foregoing considerations, the Inter-American Commission concludes that the State of Honduras has fully complied with the sole recommendation of its Merits Report No. 166/19.

58. Based on this total compliance, the Commission considers that the matter has been resolved, and therefore it is not appropriate to issue the final report established in Article 47.1 of its Rules of Procedure, but to proceed directly to the publication of the Report on the Merits.

## **VII. PUBLICATION**

59. In view of the foregoing and in accordance with Articles 51(3) of the American Convention and 47(3) of its Rules of Procedure, the IACHR decides to publish this report and to include it in the Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 27th day of the month of March, 2024.  
(Signed): Roberta Clarke, Chair; Carlos Bernal Pulido, First Vice-Chair; José Luis Caballero Ochoa, Second Vice-Chair; Edgar Stuardo Ralón Ochoa; Arif Bulkan, Andrea Pochak and Gloria Monique de Mees, members of the Commission.