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REPORT No. 95/18
PETITION 545-08
REPORT ON ADMISSIBILITY

MARÍA CRISTINA SAGASTIZADO, CARLOS ROBERTO RIVERA
SAGASTIZADO AND OSCAR ALEXANDER RIVERA
SAGASTIZADO
EL SALVADOR

Approved by the Commission electronically on August 24, 2018

Cite as: IACHR, Report No. 95/18, Petition 545-08. Admissibility. María Cristina Sagastizado, Carlos Roberto Rivera Sagastizado and Oscar Alexander Rivera Sagastizado. El Salvador. August 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Roberto Rivera Sagastizado
Alleged victims:	María Cristina Sagastizado, Carlos Roberto Rivera Sagastizado and Oscar Alexander Rivera Sagastizado
Respondent State:	El Salvador
Rights invoked:	Articles 5 (Humane Treatment), 8 (Fair Trial), 11 (Privacy) and 25 (Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	May 5, 2008
Additional information received at the stage of initial review:	May 3, 2008
Notification of the petition to the State:	May 17, 2013
State's first response:	December 5, 2013
Additional observations from the petitioner:	May 11, 2015
Additional observations from the State:	January 14, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of ratification instrument on June 23, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (Humane Treatment), 8 (Fair Trial), 25 (Judicial Protection) and 26 (Economic, Social and Cultural Rights) of the American Convention, in relation to Article 1.1 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, April 30, 2015
Timeliness of the petition:	Yes, May 5, 2008

¹ Hereinafter "Convention" or "American Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. Mr. Carlos Roberto Rivera Sagastizado (hereinafter “the petitioner” or “Mr. Rivera”) claims that the State of El Salvador violated his right to humane treatment, in relation to his rights to privacy, fair trial and judicial protection, because he sustained “psychological damage” as a result of his mother’s, Ms. María Cristina Sagastizado (hereinafter “Ms. Sagastizado”) being removed from office as Justice of the Peace of the town of Jocoaitique. Mr. Rivera also indicates that, like himself, his brother, Oscar Alexander Rivera Sagastizado, also of legal age, is a victim of the alleged facts.

2. The petitioner asserts that his mother finished her degree in law in 1994 at a private university, being awarded the degree of lawyer on February 22, 1995 by Resolution No. 38-D of the Supreme Court of Justice. Subsequently, after becoming part of the judicial career, she was appointed Justice of the Peace through Resolution No. 189-A of May 28, 1999. As a result of some news spread in 2001 about lawyers at the Judiciary holding degrees that were fake or irregularly obtained, the Attorney General’s Office brought criminal legal actions against several lawyers.

3. In this context, on September 25, 2001 the Republic’s Attorney General Office initiated a criminal investigation against Ms. Sagastizado for the possession and use of a false document. However, following the corresponding proceedings, on April 8, 2002 the Sixth Magistrate’s Court ordered the final dismissal of the case, considering that the charges attributed to Ms. Sagastizado were not a criminal offense. This favorable decision was later upheld by the Fifth Trial Court through a resolution of February 5, 2004 and by the Criminal Chamber of the Supreme Court of Justice through a resolution of July 16, 2004, becoming a final decision.

4. Around the same time of the start of the criminal investigation, on October 18, 2001 the Supreme Court of Justice ordered to open an administrative investigation into Ms. Sagastizado’s professional competence, based on article 54-A of the Law on the Judicial Career, enabling the immediate suspension of judicial officials while an investigation against them lasts. On October 24, 2001 Ms. Sagastizado appealed this administrative decision by lodging an appeal for annulment, but it was dismissed on January 10, 2002. Given this decision, on March 5, 2002 Ms. Sagastizado filed a constitutional appeal, dismissed by the Constitutional Chamber of the Supreme Court of Justice through a resolution of May 17, 2002. Following the issue of said unfavorable decision upholding the investigation, Ms. Sagastizado was officially suspended without pay.

5. On August 27, 2004, following the Supreme Court of Justice Criminal Chamber’s favorable resolution of July 16, 2004, regarding the criminal case, Ms. Sagastizado lodged an application before the Supreme Court of Justice for her reinstatement as a judge and the payment of the unpaid salaries of more than two years that the criminal proceeding lasted. On January 5, 2005 the Supreme Court of Justice ruled that since the administrative proceeding was pending final settlement, her application for reinstatement would be analyzed in the light of said decision. The petitioner indicates that, therefore, his mother was not reinstated as a judge and her unpaid salaries were not paid. Later, Ms. Sagastizado presented an appeal for annulment on April 15, 2005 and two motions to expedite proceedings on September 27 and November 1, 2005 demanding that a decision be made in relation to her case. In solidarity with Ms. Sagastizado, on February 16, 2006 a group of officials of the Supreme Court of Justice also filed an application for the Court to rule on this proceeding.

6. Mr. Rivera alleges that his mother’s health deteriorated after she was diagnosed with breast cancer for lack of access to treatment. She needed a special treatment that should have been provided by the Salvadoran Social Security Institute, which Ms. Sagastizado could not access given that she had stopped contributions in view of her suspension from office. Consequently, and given her financial hardship, Ms. Sagastizado was unable to undergo that medical treatment or go on the special diet she needed. The petitioner claims that, as a result, she died in August 2006.

7. The petitioner indicates that on October 9, 2006 the Human Rights Institute of the Central American University of El Salvador filed, to support the petitioners, an application to the Supreme Court of Justice for a favorable judgment on the proceeding against Ms. Sagastizado to “clear her name,” and demand

the payment of her unpaid salaries. As there was no answer, the petitioner filed another application on July 16, 2007.

8. The petitioner claims that his mother was a victim of unequal treatment because other judges in a situation similar to hers were absolved of administrative liability and reinstated to their jobs. He alleges that the unwarranted delay on the part of the Supreme Court of Justice in ruling on the administrative investigation of her mother caused irreparable harm to his family. The petitioner claims that his mother's death could have been avoided had she been given access to appropriate health-care services—which she lacked due to her alleged arbitrary suspension from office and the unwarranted delay in the administrative proceeding. Moreover, he submits that the State has not paid the benefits that he and his brother were entitled to, such as Ms. Sagastizado's life insurance policy and unpaid salaries. In addition, the petitioner claims that both he and his brother assisted their mother all throughout the judicial proceedings.

9. For its part, the State of El Salvador remarks that its Constitution sets forth the powers of the Supreme Court of Justice, one of which is the naming of justices of the peace, and that this function is regulated by the Law on the Judicial Career. It alleges, thus, that the administrative proceeding against Ms. Sagastizado was carried out in accordance with the right to a hearing, a competent and impartial court and the principle of freedom from *ex post facto* laws; and that her right to bring legal action and file legal remedies was always guaranteed.

10. In its reply of December 5, 2013, the State refers to an official statement from the Supreme Court of Justice issued in regard to the instant petition. In it the Court indicates that special committees had been appointed to analyze the resolutions adopted by the former members of the Court in relation to cases involving the alleged use of false university degrees, brought by the Attorney General's Office of El Salvador. The statement reads that "as for the particular case of Judge Sagastizado's death, there has been a discussion but no decisions have been made yet." Later, in its last communication, dated January 14, 2016, the State affirms that through a resolution of April 30, 2015, the Supreme Court of Justice ruled to stop processing Ms. Sagastizado's case file in view of her death, and to archive it.

11. In relation to Ms. Sagastizado's sons' claim on her life insurance policy, the State alleges that under the applicable legal procedure heirs had to demonstrate their status as such prior to having their application processed by Supreme Court of Justice. Likewise, as for the payment of unpaid salaries, it indicates that to date Ms. Sagastizado's heirs have not filed proceedings before the domestic courts to obtain said benefits, considering that this concerns labor rights.

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

12. As for the domestic legal proceedings filed in relation to the claims in the instant petition, the Commission observes as follows:

(a) The criminal proceeding against Ms. Sagastizado starting in 2001 was settled in her favor through the resolution of July 16, 2004 of the Criminal Chamber of the Supreme Court of Justice. On this respect, the petitioner does not allege possible violations to the detriment of Ms. Sagastizado.

(b) In the administrative proceeding filed against Ms. Sagastizado in 2001, she presented several remedies to challenge her prosecution and her suspension, without pay, from her job as a justice of the peace, such as an appeal for annulment and a constitutional appeal, the latter being rejected by the Constitutional Chamber of the Supreme Court of Justice on May 17, 2002. Following her acquittal in the criminal proceeding, in 2004 and 2005 Ms. Sagastizado formally demanded her reinstatement to her job and the settlement of the administrative proceeding. After she died, her family members requested the settlement of the proceeding, filing the last applications in mid-2007. Based on the information submitted by the State, on April 30, 2013 the Supreme Court of Justice decided to archive the case file on the administrative proceeding against Ms. Sagastizado in view of her passing away. Consequently, the administrative proceeding finished on April 30, 2016 and domestic remedies were exhausted. Based on the foregoing and as the petition was received at the

IACHR on May 5, 2008, the Commission finds that, on this respect, the instant petition meets the requirement of prior exhaustion of domestic remedies and timeliness set forth in Article 46.1 paragraphs a and b of the Convention.

(c) Finally, as for the alleged lack of payment of the benefits corresponding to their mother's life insurance policy and unpaid salaries, in favor of the petitioner and his brother, the State alleges that they have failed to exhaust judicial and administrative remedies aimed at obtaining the payment of these through the applicable procedures. The Commission observes that the petitioner has not submitted observations or information to contest this claim. Likewise, from the analysis of the petition's case file there is nothing to indicate that the petitioner has filed judicial remedies to claim these benefits. Therefore, the Commission believes that, in relation to this allegation, domestic remedies have not been exhausted under the terms of Article 46.1.a of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR finds that, if proven, the claims regarding Ms. Sagastizado's arbitrary suspension from office as Justice of the Peace and the excessive delay in the administrative proceeding against her, and her lack of access to the necessary health-care services as a result of the foregoing all could establish possible violations of the rights enshrined in Articles 5 (Humane Treatment), 8 (Fair Trial) 25 (Judicial Protection) and 26 (Economic, Social and Cultural Rights) of the American Convention, in connection with Article 1.1 thereof, to the detriment of Ms. María Cristina Sagastizado. Likewise, the alleged facts might establish violations of the rights provided for in Articles 5, 8 and 25 of the American Convention, in relation to Article 1.1 thereof, to the detriment of Carlos Roberto Rivera Sagastizado and Oscar Alexander Rivera Sagastizado.

14. Article 26 of the Convention broadly refers to economic, social and cultural rights, establishing that these must be determined in connection with the OAS Charter; thus, this treaty is to be considered in the merits stage. Moreover, based on its practice and by virtue of the rules of interpretation foreseen in Article 29 of the Convention, in that stage the Commission will also consider other relevant treaties which the concerned State is a party to, in order to determine the scope and the content of Article 26 of the Convention.

15. With respect to the claim on the purported violation of Article 11 (Privacy) of the American Convention, the Commission observes that the petitioners have not submitted allegations or evidence sufficient for a *prima facie* consideration of said possible violation.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 8, 25 and 26 of the American Convention, in relation to Article 1.1 thereof; and

2. To declare the instant petition inadmissible in relation to Article 11 of the American Convention;

3. 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.

Done and signed on the 24th day of the month of August, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.