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**REPORT No. 181/19**  
**PETITION 686-08**  
REPORT ON ADMISSIBILITY

DILIO ARGUETA Y ARGUETA  
GUATEMALA

Approved by the Commission on December 5, 2019, in San Salvador, El Salvador

**Cite as:** IACHR, Report No. 181/19. Admissibility. Dilio Argueta y Argueta. Guatemala.  
December 5, 2019.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Dilio Argueta y Argueta
Alleged victim	Dilio Argueta y Argueta
Respondent State	Guatemala
Rights invoked	Articles 9 (freedom from <i>ex post facto</i> laws), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup>

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

Date of filing	June 5, 2008
Notification of the petition	September 30, 2016
State's first response	December 21, 2016
Additional observations from the petitioner	August 18, 2008; February 2, 2009; September 22, 2014
Notification of the possible archiving of the petition	November 5, 2018
Petitioner's response to the notification on the possible archiving of the petition	November 30, 2018

**III. COMPETENCE**

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes. American Convention (deposit of instrument of ratification on May 25, 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 8 (fair trial), 9 (freedom from <i>ex post facto</i> laws), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes. December 5, 2007
Timeliness of the petition	Yes. June 5, 2008

**V. SUMMARY OF ALLEGED FACTS**

1. Dilio Argueta y Argueta ("the petitioner") alleges purported human violations to his human rights because of his illegal and arbitrary discharge from the National Civil Police of Guatemala ("PNC"). He submits that he was terminated without a prior administrative trial and with disregard for the labor norms that protected him given his participation in a collective labor dispute with his employer, which prohibited his dismissal without prior judicial authorization.

2. He indicates that he was second police lieutenant (*oficial segundo*) at the Directorate-General for the National Civil Police from October 31, 1997, until August 26, 2004, when he and other 80 officers were notified of their discharge under ministerial resolution 1491-2004. According to the resolution, he was dismissed because of "acts that seriously harm the National Civil Police or bring it into disrepute," as set out in article 31.c of the PNC rules. The petitioner applied for his reinstatement before the Seventh Court for Labor and Social Security Matters for the First Economic Zone. On January 20, 2005, the court ordered he be

<sup>1</sup> Hereinafter, "American Convention" or "Convention."

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

reinstated immediately, based on article 380 of the Labor Code, under which workers involved in a collective labor dispute with their employer cannot be terminated from employment unless with prior judicial authorization. The judge also considered that the accused bodies had not proven the grounds for his dismissal.

3. The PNC Directorate-General, the Ministry of the Interior, and the Attorney-General's Office ("the accused bodies") appealed the petition for reinstatement. On April 21, 2005, the Third Division of the Court of Appeals for Labor and Social Security Matters conceded the appeal, revoking the decision of the trial court. The Court of Appeals deemed that article 380 of the Labor Code did not protect the petitioner since article 4.c.1 of the Unionization and Regulation of Strikes by State Workers Act applied in his case given the nature of his job. The court of appeals considered that under this article, state workers might be dismissed without prior judicial authorization, regardless of a collective labor dispute, whenever they meet any of the grounds for dismissal with reasonable cause.

4. Accordingly, the petitioner filed an amparo action with the Amparo and Preliminary Hearings Division (*Cámara de Amparo y Antejuicio*) of the Supreme Court of Justice, which granted the amparo action on November 6, 2006. The Supreme Court of Justice deemed that the petitioner's rights to defense and due process had been violated because he was discharged without the prior statutory administrative trial. The Supreme Court established that although the Unionization and Regulation of Strikes by State Workers Act was in force at the time of his dismissal, on December 27, 2005, the Constitutional Court had temporarily suspended article 4.c.1 of this law due to its probable unconstitutional character.<sup>3</sup> The court also considered a precedent of the Constitutional Court, dated January 13, 1997, under which article 4 should be applied after dismissal proceedings have been lawfully held in the administrative jurisdiction.

5. Subsequently, the accused bodies challenged this decision before the constitutional court. On July 26, 2007, the latter overturned the decision by the Supreme Court of Justice and rejected the petitioner's amparo action. The constitutional court deemed that given their duty, state workers in the national and public security forces should be subjected to swift and efficient disciplinary proceedings and should not be protected by labor courts' prior authorization—unlike the case of other state civil servants. It also considered that the Supreme Court of Justice was not competent to review ordinary courts' juridical criteria. On February 20, 2008, the Third Division of the Court of Appeals for Labor and Social Security Matters notified the petitioner of its decision to close proceedings.

6. The petitioner alleges the violation of his rights as he was dismissed without the administrative trial established in the law and the rules of procedure of the body he worked for, and without a disciplinary complaint having been filed in which he was accused of a criminal offense or administrative fault so that he could enforce his rights and defend himself. He argues that in the case of disputes, the norm that most favors a worker should be applied. Therefore, he believes that he was protected under article 380 of the Labor Code and that the PNC could not lawfully dismiss him without prior judicial authorization. He moreover claims that the constitutional court revoked his petition for an amparo action without providing any explanation.

7. The State contends that the alleged facts do not constitute human rights violations. It indicates that the constitutional court has duly argued that in the case of state workers in the security forces, dismissals do not require judicial authorization or prior administrative proceedings. For the constitutional court has established that "given their duty to protect the civil population, in the case of abandonment, omission, or negligence in their performance of duties—when these acts or omissions are serious or reveal

<sup>3</sup> Then, on March 29, 2007, the Constitutional Court declared the unconstitutionality of article 4.c.1 of the Unionization and Regulation of Strikes by State Workers Act on deeming it contrary to the equality principle that these workers are excluded from the protection given to private-sector workers in case of collective labor disputes.

manifest ignorance or unawareness—, as well as in the case of the commission of acts that, without being criminal in nature, seriously harm the institution or bring it into disrepute, involved officers should not be dismissed or suspended for such offenses through procedures prolonging to the detriment of public security. Therefore, officers accused of such offenses should be discharged through swift and adequate procedures.” It stresses that this, as an established criterion of the Constitutional Court, is deemed a “legal doctrine.”<sup>4</sup>

8. The State moreover alleges that the Commission is not competent to review a lawful judgment and that the petitioner seeks that the Commission work as a court of appeals, which violates the subsidiary character of the inter-American system.

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

9. The Commission believes that the final judgment regarding the petitioner’s dismissal was that issued by the constitutional court on July 26, 2007 and notified to the petitioner on December 5, 2007. The petition was filed to the Commission on June 5, 2008. Thus, the Commission finds that the instant petition meets the requirements foreseen in Article 46.1 (a) and (b) of the Convention.

## **VII. COLORABLE CLAIM**

10. In view of the factual and legal elements submitted by the parties and the nature of the matter brought to its attention, the Commission deems that, if proven, the petitioner’s claims of his dismissal without the prior administrative trial required by the law and the institutional rules may establish violations of Articles 8 (fair trial), 25 (judicial protection), and 26 (economic, social and cultural rights) of the American Convention in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).<sup>5</sup> The Commission observes that according to the national courts’ final resolution, the petitioner’s job at the security forces entailed his exclusion from the requirement of prior administrative trial applicable to other state workers and the protection that the Labor Code provides to workers involved in a collective bargaining process with their employer. In the merits stage, the Commission will examine if this differential treatment toward the petitioner based on his duties conformed to the requirement of Article 24 (equal protection) of the American Convention. Similarly, and based on the jurisprudence of the Inter-American Court, the Commission will analyze in the merits stage if the grounds for the petitioner’s dismissal, “acts that without being criminal offenses, seriously harm the institution or bring it into disrepute,” meet the requirements set out in Article 9 (freedom from *ex post facto* laws)<sup>6</sup> of the American Convention.

11. As for the claims submitted by the State regarding a court of fourth instance, the Commission recognizes its lack of competence to review judgments passed by national courts acting within the scope of their jurisdiction in conformity with due process and judicial guarantees. Nonetheless, it reiterates that under its mandate, the Commission is competent to declare a petition admissible and rule on the merits when it concerns domestic proceedings that may violate rights protected by the American Convention.

<sup>4</sup> The State cites article 43 of the Law of Amparo, Habeas Corpus, and Constitutionality, which reads as follows: “The interpretation of the norms of the Constitution and other laws contained in the judgments of the Constitutional Court will establish a legal doctrine which courts must respect when the same Court has ruled in the same way thrice. However, the Constitutional Court may depart from its jurisprudence, following a reasoned analysis for the change, in which case other courts are not obliged to apply this change unless the Constitutional Court passes three similar judgments.”

<sup>5</sup> The Commission recalls that in the past it admitted for a report on the merits a similar case regarding a PNC member purportedly dismissed without due process “for acts that seriously harm the National Civil Police or bring it into disrepute.” (IACHR, Report No. 72/19. Petition 14-09. Admissibility. Luis Armando Castillo Osorio. Guatemala. May 17, 2019).

<sup>6</sup> The Commission recalls that the Inter-American Court has recognized the applicability of Article 9 (freedom from *ex post facto* laws) of the American Convention to matters pertaining to disciplinary sanctions and established that “[t]aking into account that dismissal or removal from office is the most restrictive and severe disciplinary measure that can be adopted, the possibility of its application must be predictable, either because the punishable conduct is expressly and clearly established, precisely, clearly and previously, by law, or because the law delegates its imposition to the judge or to an infra-legal norm, under objective criteria that limit the scope of discretion.” (I/A Court H.R., Case of López Lone *et al.* v. Honduras. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, paras. 257-259).

**VIII. DECISION**

1. To declare this petition admissible regarding Articles 8, 9, 24, 25, and 26 of the American Convention in accordance with its Articles 1.1 and 2; and
2. To notify the parties of this decision; to continue with the analysis on the merits, and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.