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REPORT No. 207/20
PETITION 1113-11
REPORT ON ADMISSIBILITY

OSWALDO SENEN PAREDES
ECUADOR

Electronically approved by the Commission on August 9, 2020.

Cite as: IACHR, Report No.207/20. Petition 1113-11. Admissibility. Oswaldo Senen Paredes.
Ecuador. August 9, 2020.

I. INFORMATION ABOUT THE PETITIONER

Petitioner:	Luis Torres Cobo and Javier Bustos – Law Clinic at the University San Francisco de Quito
Alleged Victim:	Oswaldo Senen Paredes
Respondent State:	Ecuador
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	August 22, 2011
Additional information received during initial review:	April 22, 2013; October 2, 2013; November 5, 2013; November 14, 2013; December 4, 2013; May 5, 2015; May 12, 2016, and; August 29, 2017
Notification of the petition:	May 30, 2017
State's first response:	October 20, 2017

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 October 21, 1977)

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

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 8 (fair trial) and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights
Exhaustion or exception to the exhaustion of domestic remedies:	Yes, the exception established by Article 46.2.b) of the Convention is applicable
Timeliness of the petition:	Yes, as discussed in Section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioners claim that the State is internationally responsible for the violation of the rights to fair trial and judicial protection of Mr. Oswaldo Senen Paredes, on account of the material impediment that he allegedly faces to access justice, with the aim to question judicially two settlements of income tax for fiscal years 2004 and 2005, since he had to post a bond to access a due process, and he couldn't pay it due to his financial capacity.

2. The petitioners explain that on May 23, 2007, the Internal Tax Service (hereinafter, "ITS") requested Mr. Paredes information on his income tax for the 2004 fiscal exercise. Upon the lack of response

¹ Hereinafter, "the American Convention" or "the Convention".

² The observations from each party were duly notified to the other party. On November 29, 2017, the petitioners sent an email to the IACHR requesting information about the petition and expressing their interest on the proceedings.

from Mr. Paredes, the ITS notified him on May 19, 2008, that he had a peremptory term of ten days to submit the requested documents. On June 2, the alleged victim appeared before the ITS and requested an extension of this term; but the ITS denied it on June 5, 2008; and four days later notified the petitioner of an order to pay USD \$ 90,860.38 for the alleged difference in the income tax statement in 2004, providing him with a twenty-day term to pay. The petitioners allege that this sum is clearly erroneous, because it exceeds in a dramatically disproportionate fashion what could be materially generated by Mr. Pérez by his economic activity, which involved growing palm hearts and engaging in retail sale of beef. The petitioners point out that the ITS was assuming that Mr. Paredes had a 97% profit margin over his sales.

3. The petitioners point out that on July 4, 2008, the alleged victim filed an administrative complaint against the order to pay in which it requested that it be vacated, on the grounds that he is registered as taxpayer as a natural person and is not obligated to keep such detailed accounting books of his economic activity. Nevertheless, on December 19, 2008, the ITS confirmed the obligation included in the order to pay and the obligation of Mr. Paredes to fulfill in a twenty-day term.

4. Nevertheless, on January 19, 2009, Mr. Paredes filed a suit before the Tax District Court, questioning the ITS resolution dated December 19, 2008; however, the court established that before starting the proceedings, the alleged victim had to post a bond equivalent to 10% of the amount of the tax obligation, a total of USD \$ 9,086. The petitioners hold that the alleged victim requested the application of the Constitution so that the trial be ordered to proceed or that the proceedings be suspended as he did not have money for the bond; however, the Third Chamber of the N°1 Tax District Court abstained from deciding on the challenge because the bond was not posted. The alleged victim filed before the same court a writ of cassation challenging the order to close the case, but the writ was dismissed. Finally, Mr. Paredes allegedly filed an extraordinary appeal for the protection of constitutional rights before the Constitutional Court, challenging the order of the court about the dismissal of the writ of cassation.

5. In parallel, on April 5, 2007, the ITS began another proceeding against the alleged victim for assessment of the income tax, on this occasion concerning the 2005 fiscal year. As a result of this proceeding, on September 5, 2008, the ITS notified Mr. Paredes a sanction resolution which established a duty to pay taxes allegedly owed to the State and corresponding penalties. On November 14 he was notified of the order to pay, which included both items, with the total owed rising to USD \$ 23,322.74

6. The petitioners add that Mr. Paredes filed an administrative claim with the ITS against this order to pay requesting the reassessment of the tax. However, this claim was denied, in view of which the alleged victim filed a suit to challenge the order to pay before the N°1 Tax District Court; which by order of July 1, 2009 established that prior to the procedure it was necessary to pay the bond of 10% of the amount of the tax obligation. The petitioners maintain that the alleged victim submitted a written document to suspend the processing of the case and refer the file to the Constitutional Court for consultation, considering that this bond was unconstitutional; however, the court closed the case, considering it as not filed, as the value of the bond had not been deposited.

7. The petitioners add that Mr. Paredes filed a writ of cassation challenging the writ of prohibition. However, on January 8, 2010, the writ was denied by the 3rd Chamber of the N°1 Tax District Court because the writ —deciding not to submit the case to the Constitutional Court— did not involve a decision on the merits of the case. Mr. Paredes filed a complaint appeal against this decision, which was declared admissible by the Tax Litigation Chamber of the National Court of Justice. Thus, this tribunal decided to allow the writ of cassation to proceed but submitted it to the Constitutional Court for it to decide on whether Article 7 of the Reform Law for Tax Equality in Ecuador, which established the duty to pay the bond challenged by Mr. Paredes. On August 5, 2010, the Constitutional Court decided that said article was constitutional.

8. The petitioners hold that on October 14, 2010, the proceedings were returned with such decision to the Tax Litigation Chamber of the National Court of Justice, which in turn returned them to the 3rd Chamber of the N°1 Tax District Court to notify the alleged victim, admit the complaint and order that the bond be deposited. Thus, on October 30, 2020, by an order, the court declared the complaint filed by Mr. Paredes admissible, summoned the defendant body, allow the production of evidence and also ordered that the bond

be deposited. As Mr. Paredes was not economically capable to deposit such sum, approximately USD \$ 2,332, the proceedings were closed.

9. In sum, the petitioners claim that the alleged victim was not afforded equal access to the judicial review of administrative decisions about tax matters which, in his views, were arbitrary and infringed upon his rights. This claim is based on the fact that the alleged victim was not in a financial situation that allowed him to pay the judicial bonds as a prerequisite for the courts to hear his complaint. Likewise, the petitioners argue that the exception to the exhaustion of local remedies enshrined in Article 46.2.b of the American Convention, referring to the impossibility of the petitioner to have access to and exhaust local remedies, is applicable to the case.

10. For its part, the State claims that the petition must be declared inadmissible in relation to both judicial proceedings. First, with regard to the proceedings to challenge the tax settlement over difference in the income tax statements for 2004, it claims that Mr. Paredes did not exhaust local remedies because he failed to file a complaint appeal challenging the order that declared the writ of cassation inadmissible; and that it is not true, as alleged by the petitioner, that Mr. Paredes filed an extraordinary constitutional appeal.

11. With regard to the proceedings to challenge the tax settlement over difference in the income tax statements for 2005, Ecuador holds that the petitioners do not comply with the rule established on Article 46.1.b of the Convention concerning the six months period for the petition to be lodged, since the petition was received by the IACHR on August 22, 2011, and the last decision on those proceedings was passed by the 3rd Chamber of the N°1 Tax District Court on January 12, 2011, and notified the following day.

12. Likewise, the State holds that the petition does not describe circumstances that constitute violations to the rights enshrined in the Convention, as there is currently no writ of debt being pursued by the tax authority with regard to the 2005 fiscal exercise. After the complaint challenging the tax settlement was declared closed, the writ of debt was extinguished by the failure of the tax authority to collect the debt.

13. The State claims that the petition is based exclusively on the disconformity of Mr. Paredes with the judicial decision on his case and not on an alleged violation of his rights, since he had access to judicial remedies through administrative litigation and through the judicial proceedings to challenge the tax settlement, in which the Tax District Court decided on the complaint.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

14. In the instant case, the Commission notes that the facts fundamentally concern the alleged impossibility of the alleged victim to have access to the competent tribunals to challenge the collection of certain tax debts. In this sense, the tax question in itself would not be, in principle, the basis of the alleged violations to the American Convention but, rather, the alleged legal obstacles to file the complaint before the competent tribunals.

15. In this regard, it is clearly established in the information submitted by the parties that, in 2007, two tax proceedings were started against the alleged victim by the competent authority, the Internal Tax Service, which led this body to determine that the alleged system owed the State the amount of USD \$ 90,860.38 and USD \$ 23,322.74 for the 2004 and 2005 fiscal years respectively. Such amounts are established in the orders to pay adopted by the ITS; however, the total amount owed by Mr. Paredes was supposedly USD \$ 152,255.22 as it would include not only the tax itself but also interests, surcharge and penalty fees. It is also established, and acknowledged by the State, that the alleged victim had resorted to the appropriate judicial remedies, that is, to the tax jurisdiction, to challenge in two judicial proceedings the settlement and collection of said sums of money; and that in both proceedings he was requested to deposit a bond in accordance with the value of each order to pay which, as mentioned, amounted to USD \$ 9,086 and USD \$ 2,332. The victim was unable to deposit such sums in both cases and, therefore and independently of remedies which he exhausted later, both proceedings were closed precisely for the failure to pay the bonds.

16. Likewise, the Commission notes that the alleged victim was a natural person whose economic activity was performed in that character and who was engaged, as the petitioners explain, to the sale of palm hearts and retail beef. The petitioners describe the alleged victim as a farmer from the province of Santo Domingo de los Tsachilas.

17. On this question, the Commission has considered that the economic situation of the alleged victim can lead to certain economic prerequisites to access domestic judicial remedies justifying the application of the exception established by Article 46.2.b of the American Convention.³ In the instant case, the Commission considers that such situation is configured since Mr. Paredes is forced to pay a bond to access a judicial due process, and has been denied access to the tribunals, without having the capacity to use the domestic remedies placed by the State. Therefore, he has been denied the possibility to defend his rights. With regard to the timeliness of the petition, the Commission notes that the facts on which the petition is based begun in 2007 with the tax administrative proceedings followed against Mr. Paredes and extended to 2011, when the final judicial decision was adopted in his complaints, and would also extend to the present concerning the writ of debt on the amounts corresponding to the 2004 fiscal year – a fact which the State does not deny. Therefore, the petition meets the requirement concerning the deadline for lodging petitions as established in Article 32.2 of the IACHR Rules of Procedure.

VII. COLORABLE CLAIM

18. In the instant case, the Commission notes that the allegations of the petitioner refer concretely to the alleged procedural impossibility of Mr. Paredes of bringing a complaint before competent tribunal about his tax claims, due to the requirement to deposit certain bonds that he was unable to pay⁴. In this sense, the Commission considers that, if true, the facts could involve violations to the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), to the detriment of Mr. Oswaldo Senen Paredes.

VIII. DECISION

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

2. To notify the parties of this decision; continue with the analysis of the merits; and publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States

Approved by the Inter-American Commission on Human Rights on the 9th day of the month of August, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

³ IACHR, Report No. 125/17, Petition 1477-08. Admissibility. Henry Torres and others. Colombia. September 7, 2017, para. 10.

⁴ In this regard, *see e.g.*, I/A Court H.R. Case Cantos v. Argentina. Merits, Reparation and Costs. Judgement of November 28, 2002. Series C No. 97, para. 54.