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REPORT No. 194/20
CASE 12,730
REPORT ON THE MERITS

STEVEN EDWARD HENDRIX
GUATEMALA

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I. INTRODUCTION

1. On November 5, 2004, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," the "Commission," or the "IACHR") received a petition submitted by Steven Edward Hendrix (hereinafter "the petitioner") alleging the Republic of Guatemala (hereinafter the "Guatemalan State," the "State" or "Guatemala") was internationally responsible for the violation of a series of rights enshrined in the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention") as a consequence of administrative decisions and a judicial decision preventing him from exercising the profession of notary despite having the corresponding university degree obtained in Guatemala on the grounds that he was not a Guatemalan citizen.

2. The Commission approved admissibility report 101/09 on October 29, 2009.[1] On November 20, 2009, the Commission notified the parties of the report and made itself available to help them reach a friendly settlement, but the conditions were not met for resolving the case through that process. The parties were given the time provided for in the Rules of Procedure to submit additional comments on the merits. All the information received was duly transferred between the parties.

II. POSITIONS OF THE PARTIES

A. Petitioner:

3. The petitioner stated that he was a U.S. citizen and received the degree of Juris Doctorate from the University of Wisconsin, United States, in 1987, as well as the degrees of Doctor of Laws and Lawyer of the Universidad Mayor de San Andrés, Bolivia. He stated that he did his doctoral work and studied law and the notary profession at the Universidad de San Carlos de Guatemala (USAC), and said that after taking the corresponding exams, on September 18, 2000, the Board of the School of Law of the USAC of Guatemala granted him the titles of "Attorney and Notary."

4. He stated that on November 22, 2000, he filed a request to register as an attorney and notary with the Association of Lawyers and Notaries of Guatemala. However, on February 6, 2001, its governing board resolved only to register him and swear him in as a lawyer, as domestic legislation establishes that all notaries must be Guatemalan by birth.

5. He stated that he appealed this decision to the Assembly of Presidents of the Professional Associations of Guatemala, which denied his appeal on April 22, 2002. In response to this, he filed a writ of *amparo* before the Third Chamber of the Court of Appeals, which denied it on June 25, 2002, finding there was no evidence of any of the alleged violations.

6. He stated that lastly, he filed a writ of *amparo* against this resolution before the Constitutional Court, which, on April 21, 2004, denied it. However, it found he could register as a notary if he underwent the naturalization process to become a Guatemalan citizen. He argued that the State could not require him to change his citizenship in order to exercise the profession for which he was educated, trained, and sworn in the country.

7. He stated that according to the State, the justification for prohibiting a foreigner has to do with the fact that notary is a public office and that this was the Latin notary system, and therefore, precedents cannot be invoked as in the US common-law system. In this regard, he stated that the notary profession in Guatemala is a public function, although notaries are not public officials, and that precedents in the United States prohibiting restrictions on access to the exercise of notary work based on national origin also apply to Latin notary systems in the United States, such as in Puerto Rico and Louisiana, which are members of the

[1] IACHR. Report No. 101/09. Petition 1184-04. Steven Edward Hendrix. Guatemala. October 29, 2009 In that report, the IACHR found the petition admissible with regard to the alleged violation of Article 24, in conjunction with articles 1(1) and 2 of the American Convention. In the report, the IACHR also found the petition inadmissible with respect to the alleged violation of Articles 20 and 26 of the American Convention.

International Union of Notaries. It also added that the Commission of the European Communities has found that a nationality requirement for the exercise of notary work is not applicable, even in countries with a civil law history in which the notary profession involves a public social function.

8. As far as rights, he alleged the violation of the **right to nationality**, arguing that denial of his registration by the Association of Lawyers and Notaries was discriminatory and arbitrary based on his nationality.

9. He also alleged a violation of the **principle of equal protection**. In this regard, he indicated that there is no legitimate or reasonable justification for prohibiting a foreigner with the required education from exercising the notary profession in Guatemala. He states that Guatemala's international obligations on being a member of the inter-American system and the World Trade Organization prohibit nondiscrimination and supersede any requirement of the Code of the Notary Profession prohibiting foreigners from exercising that profession in Guatemala.

10. The petitioner continued by alleging a violation of his **right to work**. In this regard, he stated that the right to work must be guaranteed without discrimination based on nationality. This was not the case here, where he was subject to an arbitrary restriction on exercising a profession because he was not Guatemalan, or allowed to exercise the profession only after renouncing his US nationality.

11. Lastly, he alleged violation of the **duty to adopt domestic legal effects** based on the contradiction he argues exists between domestic law prohibiting non-Guatemalans from exercising the notary profession and international provisions.

B. State

12. With regard to background, the State indicated that on September 18, 2000, the alleged victim was granted the titles of lawyer and notary. He then proceeded to request registration with the Association of Lawyers and Notaries of Guatemala. However, in January 2002, the association's governing board informed him that his registration as a notary was rejected because he was not a native Guatemalan citizen, pursuant to the requirements of article 2 of the Code of the Notary Profession.

13. It added that the petitioner filed a writ of *amparo* before the Third Chamber of the Court of Appeals, which denied the writ. However, in hearing the appeal, the Constitutional Court ruled on April 21, 2004, to grant the *amparo* and allow the appellant's registration to exercise the notary profession, but on the condition that in order to receive such authorization, the alleged victim must become a Guatemalan citizen.

14. It argued that the prohibition on foreigners exercising the notary profession did not violate any constitutional law or conventional provision and underscored that States can make fair and reasonable distinctions in response to different situations. Specifically, it stated that in Guatemala, the notary profession is vested with the legal authority to attest documents delegated by the State of Guatemala and is held in esteem as a public official, adding that the exercise of this profession in reserved exclusive to Guatemalans in order to protect Guatemalan sovereignty. It stated that the mere fact that a notary in Guatemala is vested with the legal authority to attest documents is enough to justify restricting exercise of this profession exclusively to Guatemalans.

15. It underscored that although the petitioner stated that the World Trade Organization treaty signed by Guatemala prohibits discriminatory treatment of the nationals of other countries with regard to access to work, these specific trade provisions are not applicable to the notary profession because it is a liberal profession with specific requirements under Guatemalan law.

16. The State also addressed the precedents invoked by the petitioner, especially precedents in the U.S., where there are no nationality restrictions or prohibitions on performing notary work. In this regard, it stated that the Guatemalan notary system is different because it follows the tradition of the Latin notary, in which the notary exercises a public function based on State authority. In contrast, it indicated that in the U.S.

notary system, notaries do not perform a public function or assess the legality of juristic acts. Instead, their function is limited solely and exclusively to ratifying signatures without regard to the content of documents.

17. It stated that in contrast to the petitioner's claims, he has not been deprived of the titles granted to him. Rather, he was informed that in order to exercise the profession of notary in Guatemala, he must first become a Guatemalan citizen, in view of the special dignity of the exercise of the notary profession in Guatemala, and that once he met this requirement, he would be recognized as a registered notary.

18. Guatemala stated that it reiterated its willingness to fully recognize Steven Edward Hendrix and permit him to exercise the notary profession as long as he complies with the judgment of the Constitutional Court requiring him to become a naturalized Guatemalan citizen in order to be registered as a notary, pursuant to the Political Constitution of the Republic.

19. In addition, during the merits stage, the State argued that the alleged victim did not exhaust domestic remedies because he failed in this case to bring a constitutional challenge against article 2 of the Notary Code if he believed that article violated a constitutional right.

20. With regard to rights, the State argued that it did not violate the **right to nationality** because the alleged victim had not been arbitrarily deprived of his nationality or his right to change it. Rather, article 2 of the Code of the Notary Profession stipulates a nationality requirement to exercise the notary profession, a requirement that must be met by the petitioner.

21. The Guatemalan State held that it did not violate the **principle of equal protection** because the prohibition on foreigners exercising the notary profession in Guatemala is based on reasonable rationale, as notaries have the legal authority to attest documents. The limit is therefore intended to protect national sovereignty. It said that the State, in the legitimate exercise of its sovereignty, may determine which individuals can be assigned public functions, as in the case of the authority to attest documents with which notaries in Guatemala are legally vested. It added that a number of countries that use the Latin notary system and are members of the International Notary Union—including Argentina, Bolivia, Colombia, Cuba, the Dominican Republic, El Salvador, Ecuador, Honduras, Peru, Uruguay, and Venezuela—require citizenship in order to exercise the notary profession, without violating the principle of equal protection.

22. The State underscored that the alleged victim's **right to work** was not violated. It specifically highlighted that the right to work is not being infringed given that the alleged victim can work as a lawyer without any restrictions beyond those established in domestic law. However, he cannot work as a notary in Guatemala because the law establishes that in order to do so, he must be a Guatemalan citizen. This does not infringe upon the labor rights of foreigners because they can opt for naturalization in order to work as notaries. It added that Guatemala reserves the exercise of certain rights to its citizens, but it also establishes mechanisms whereby foreign persons can exercise these rights.

III. ESTABLISHED FACTS

A. Applicable legal framework

23. This case revolves around Guatemala's ban on foreigners exercising the notary profession. In this regard, the provisions of Guatemalan law establishing the requirements to exercise the notary profession and the functions of notaries are relevant, and are described hereinafter.

24. The pertinent section of the Code of the Notary Profession is as follows:

> Article 1. Notaries have the legal authority to certify and authorize juridical acts and contracts as ordered by law or as required by a party.
>
> Article 2. To exercise the notary profession, the following is required:

1. Be a native Guatemalan, of the age of majority, lay, and domiciled in the Republic, save for the provision set forth in subparagraph 2 of article 6 (...)

2. Hold a specialized degree in the Republic or incorporation pursuant to the law.

3. Have the specialized degree or incorporation registered before the Supreme Court of Justice, along with the signature and seal to be used, with name and surnames.

4. Be of upstanding character.[2]

25. As regards the functions of a notary in Guatemala, the Commission observes that, pursuant to Guatemalan law, notaries are granted authorities to authorize public documents, legalize signatures, and draft notarial acts as accessories to the judiciary in cases of "voluntary jurisdiction."

26. The Code of the Notary Profession establishes that notaries authorize briefs or public documents of various kinds with the formalities established in that law and in national legislation.[3]

27. This law also establishes as follows:

Article 54. Notaries may legalize signatures when signed or recognized in their presence. They may also legalize photocopies, photostats, and other copies produced with similar procedures as long as they are processed, copied, or reproduced from the original, as applicable, in the presence of the authorizing notary.

Article 60. In the official documents requiring their processing by law or because a party requires it, notaries shall affix affidavits attesting to the facts witnessed and surrounding circumstances.[4]

28. The Civil and Mercantile Procedural Code of Guatemala establishes the following:

Documents authorized by a notary or a public official or employee in the course of their duties are legally valid and fully admissible, save for the right of the parties to impugn them as null or fake. The other documents referred to in article 177 and article 178, as well as private documents duly signed by the parties are deemed authentic unless proven otherwise. A challenge of a document in an adversarial proceeding must be submitted within ten days of notification of the order admitting it as evidence. However, private documents will only have legal effect on third parties from the date on which they are recognized before a competent judge or legalized by a notary.[5]

29. Additionally, as regards the functions of the voluntary jurisdiction, the Civil and Mercantile Procedural Code establishes that the "voluntary jurisdiction includes all acts in which, either by law or upon the request of the parties involved, the intervention of a judge is required, with said intervention neither resulting from or intended to address any dispute between parties."[6] The Law Regulating the Notarial Processing of Voluntary Legal Matters assigns notaries voluntary jurisdiction authorities. It stipulates as follows:

(...) WHEREAS notaries, as accessories to the judiciary, effectively collaborate with the courts through the authority to attest documents in the processing of legal acts (...) That, for these reasons, the notary profession shall be expanded to include the different acts that are not contested to facilitate the execution of civil acts (...)[7]

30. According to available information, "voluntary jurisdiction" matters that can be processed before a notary include the following: 1) Declaration of absence; 2) declaration of presumed death; 3) late entry of records; 4) correction of records; 5) family inheritance; 6) execution and encumbrance of property belonging to minors, the incapacitated, and the absent; 7) intestate succession processes; 8) succession processes with a will; 9) declaration of incapacity; 10) interim titling; 11) correction of property lines; 12) location and division of rights to pro indiviso properties; 13) recognition of pregnancy or birth;

[2] Code of the Notary Profession, Decree 314 of the Congress of the Republic of Guatemala.
[3] Code of the Notary Profession, Decree 314 of the Congress of the Republic of Guatemala.
[4] Code of the Notary Profession, Decree 314 of the Congress of the Republic of Guatemala.
[5] Decree Law 107, Civil and Mercantile Procedural Code of Guatemala.
[6] Article 401, Decree Law 107, Civil and Mercantile Procedural Code of Guatemala.
[7] Decree 54-77 Law Regulating the Notarial Processing of Voluntary Legal Matters.

14) name changes; 15) identification of person; 16) identification of third party; 17) determination of age; 18) replacement of records.[8]

31. The Criminal Code stipulates the following in the general provisions in Article I:

> Article I. The following are definitions for the purposes of criminal law:
>
> (…) 2. Public officials: those who, pursuant to the law, popular election, or legitimate appointment, exercise a position or power, jurisdiction or representation, that is official in nature.
> Notaries shall be considered public officials in the context of crimes committed during or for the purposes of acts related to the exercise of their profession.[9]

B. Alleged victim's process of registering as a notary

32. On November 22, 2000, the alleged victim filed a request to register as a lawyer and notary with the Association of Lawyers and Notaries of Guatemala. On February 6, 2001, its governing board determined, via resolution 3-2001, as follows:

> A request was received for registration from U.S. attorney Steven Hendrix, a graduate of the School of Juridical and Social Sciences of the Universidad de San Carlos de Guatemala, with the academic degree of Attorney of Juridical and Social Sciences and the titles of Lawyer and Notary. Pursuant to subparagraph 1 of article 2 of the Code of the Notary Profession, one must be a native Guatemalan to practice the profession of notary in the State of Guatemala. Prior to issuing a decision, the governing board AGREES: a) to ask the School of Juridical and Social Sciences of the Universidad de San Carlos de Guatemala for a report on the registration of Mr. Steven Edward Hendrix and whether it is legally authorized to grant the title of notary, a profession that, pursuant to current legislation, is to be exercised exclusively by native-born Guatemalans, and therefore, the Association of Lawyers and Notaries of Guatemala is not capable of authorizing the applicant to excise this profession, but solely the profession of lawyer.[10]

33. The alleged victim filed an appeal of this resolution to the Assembly of Presidents of the Professional Associations of Guatemala. On April 22, 2002, it denied the appeal filed by the alleged victim. In this regard, it found as follows:

> (...) that article 2 of Decree 314-75 of the Congress of the Republic, Code of the Notary Profession, establishes: "one must be a native Guatemalan to practice the profession of notary..."
>
> In this case, Mr. STEVEN EDWARD HENDRIX, a U.S. citizen, completed the procedure of the Universidad de San Carlos de Guatemala to be trained as a Lawyer and Notary, and therefore, pursuant to article 1 of the Obligator Professional Organization Act, he can be registered in the Association of Lawyers and Notaries of Guatemala as an active member, a requirement that must be met that enables exercise of the profession. That the governing board of the Association of Lawyers and Notaries of Guatemala only admitted him as a Lawyer and not as a Notary because he is not a native Guatemalan.
> This Assembly of Presidents of Professional Associations, on review of this appeal, finds that the Association of Lawyers and Notaries of Guatemala acted in accordance with our laws and that at no time were the principles of the constitution or international conventions violated. Therefore, this appeal is denied and the resolution under appeal is upheld.[11]

34. On May 9, 2002, the alleged victim filed a writ of *amparo* before the Third Chamber of the Court of Appeals against the resolutions of the Association of Lawyers and Notaries and the Assembly of Presidents of the Professional Associations of Guatemala that denied his registration as a notary. The alleged victim alleged the violation of a number of constitutional rights and emphasized that "there is no reasonable

[8] Office of the Attorney General of the Nation, Practical guide to handling voluntary jurisdiction matters, processed by the Office of the Attorney General of the Nation.
[9] Decree 17-73, Penal Code of Guatemala.
[10] Annex 1. Copy of Official Record 3-2001 of February 6, 2001 of the Association of Lawyers and Notaries of Guatemala, from a note dated January 16, 2002, from the secretary of its governing board. Annex to the initial petition of November 5, 2004.
[11] Annex 2. Resolution No. 1151.13.02.02 of April 22, 2002, issued by the Assembly of Presidents of the Professional Associations of Guatemala. Annex to the initial petition of November 5, 2004.

justification for a citizenship requirement for notaries." He noted that under international treaties, Guatemala already receives notaries from other countries, adding that "the Association of Lawyers and Notaries of Guatemala committed an act ultra vires because it is not authorized to refuse registration of degrees granted by the Universidad de San Carlos de Guatemala (USAC). Article 89 of the Constitution makes it clear that "only universities that are legally authorized can grant degrees and issue higher education titles and diplomas to graduates."[12]

35. On June 25, 2002, the court rejected the *amparo* appeal, finding as follows:

> (...) It is clear from the resolution itself that, as the action under appeal, it did not cause damage to the *amparo* appellant, as a reading of it shows it does not deny the granting of a degree but rather declines to authorize the exercise of the notary profession by appellant Steven Edward Hendrix because he does not meet the requirement of being a Guatemalan citizen, as required for this procedure, for which reason the *amparo* is clearly inadmissible.
>
> With regard to the appealed action of the Assembly of Presidents of Professional Associations of Guatemala, like the resolution addressed above, there is no evidence that the with its decision, this authority caused damage to the appellant (...) Therefore, this Court concludes that there is no evidence of any of the violations alleged, and the *amparo* appeal before us is inadmissible. The appellant is thus ordered to pay the court costs (...).[13]

36. Later, the alleged victim filed an *amparo* appeal before the Constitutional Court. On April 21, 2004, that court granted the *amparo*, with the condition that the alleged victim become a Guatemalan citizen. It found as follows:

> (...) the argument of the appellant supported by the jurisprudential precedents he cites and related international treaties (signed by Guatemala on the subject of world trade) cannot be adopted by this Court because Guatemala's notary system—in line with the so-called "Latin Notary" system—is different from the notary system in the country (United States of America) from which the legal precedents on which the appellant seeks to base his claim are issued. Additionally, the notary system in Guatemala does not conceptualize the notary function as "a service," and therefore, the international trade treaties (on services) cited by the appellant are not applicable.
>
> (...) nevertheless, it considers that the fact that a professional degree has been validly conferred on a person who, because of his nationality, in accordance with the provisions of statutory law, would not be able to exercise the profession to which this degree admits him gives rise to a constitutional conflict between one constitutional provision (Article 81 of the Political Constitution of the Republic), which establishes that "the acquired rights of professional practice of holders of said degrees (which include university degrees) must be respected, and no provisions of any kind may be promulgated that limit or restrict them" and another, contained in Article 2(1) of the Code of the Notary Profession, which states that, to obtain authorization to exercise the profession of notary, it is necessary to "be a native Guatemalan, of the age of majority, lay, and domiciled in the Republic."
>
> (...) In the opinion of the Court, the aforementioned conflict may be resolved by applying Article 146 of the Political Constitution of the Republic, which provides that "naturalized Guatemalans shall have the same rights as native Guatemalans, except for the limitations established in this Constitution," none of which concern the exercise of the profession of notary.
>
> Thus, in order to preserve the appellant's vested right to exercise the notary profession, with the condition that authorization of this exercise be dependent on the securing of Guatemalan citizenship as described in article 146 *ibid*, the appellant is granted the *amparo* pursuant to the terms set forth in the resolution paragraphs of this judgment (...)[14].

C. Additional information

[12] Annex 3. *Amparo* appeal filed by Steven E. Hendrix before the Third Chamber of the Court of Appeals of Guatemala on May 9, 2002. Annex to the initial petition of November 5, 2004.
[13] Annex 4. Judgment of the Constitutional Court of April 21, 2004. Annex to the initial petition of November 5, 2004.
[14] Annex 5. Judgment of June 25, 2002, of the Third Chamber of the Court of Appeals, constituted as an *amparo* court. Annex to the initial petition of November 5, 2004.

37. According to the case file, on February 17, 2010, at the request of the State of Guatemala, the secretary of the governing board of the Guatemalan Institute on Notarial Law issued an opinion on the possibility of the alleged victim exercising the notary profession in Guatemala. The opinion concluded as follows:

> (...) In Guatemalan constitutional jurisprudence, there is no question that the principle of juridical equal protection is not violated if different provisions are in place for different situations, as long as the differences are based on criteria that is reasonable. In the case in question, and based on the extensive doctrine set forth, the requirement that legislators place on the notarial professional is not only reasonable but easily understandable and grounded in notarial principles. Most countries treat foreigners different than nationals. A foreigner needs work permits, a national does not. Foreigners cannot vote or be elected, nor can they hold public offices. For example, in Guatemala, juridical persons are prevented from engaging in certain commercial activities if they do not have Guatemalan nationality.
>
> (...) Based on this doctrine, it is therefore concluded that, in Guatemala, notaries are public officials, as they exercise a jurisdictional authority delegated by the State of Guatemala. Therefore, Guatemalan notaries are public officials, regardless of whether their income comes from the State or from private parties. The nationality requirement established under Guatemalan law is not an arbitrary one. It comes from a long tradition of the Latin notary profession. Although this profession is different in different countries, Mexico, Argentina, Spain, and others require citizenship to exercise it. The Spanish Notary Profession Act clearly states that "Notaries are public officials," and requires that they "be Spanish in order to attest documents." Thus, Guatemala's requirement that notaries must be Guatemalan to exercise the notary profession is not outside the context of the Latin notary system, and as set forth in the doctrine cited, it is a requirement with solid historical and legal basis, and it is perfectly legitimate for the State to establish requirements for the exercise of the notarial profession.[15]

38. On February 17, 2010, the secretary of the governing board of the Association of Lawyers and Notaries of Guatemala notified the Guatemalan State of its resolution, as follows:

> (...) The governing board resolves: to inform the Executive Deputy Director of COPREDEH that, as resolved in paragraph 18 of resolution 18-2007, from the session held on April 25, 2007, in compliance with the judgment issued on April 21, 2004, by the Constitutional Court and the resolution of April 16, 2007, by the Assembly of Presidents of Professional Associations, before Attorney Edward Steven Hendrix can be sworn as a Notary, he must comply with the provisions set forth in article 146 of the Political Constitution of the Republic of Guatemala. The governing board hereby complies with the resolution issued by Guatemala's high constitutional court.[16]

IV. CONSIDERATIONS OF LAW

A. The principle of equal protection and nondiscrimination[17]

1. General considerations

39. The Commission and the Court have found that the principle of equal protection and non-discrimination is a central and fundamental pillar of the inter-American human rights system. The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual, and that principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority; it is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. The Court's caselaw has indicated that at the current moment of the development of international law, the fundamental principle of equal protection and

[15] Annex 6. Opinion of the Guatemalan Institute of Notarial Law, May 3, 2010. Annex to the brief of the State of June 18, 2010.
[16] Annex 7. Letter of February 17, 2010, to COPREDEH from the secretary of the governing board of the Association of Lawyers and Notaries of Guatemala. Annex to the brief of the State of June 18, 2010.
[17] Article 24 of the American Convention states that "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." Likewise, Article 1(1) of the American Convention establishes that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

nondiscrimination has taken on the status of *jus cogens*. This principle, on which rests the entire legal framework of the national and international public order, permeates all legal systems.[18]

40. The principle of equal protection and nondiscrimination incorporates two concepts: "(...) a negative concept related to the prohibition of arbitrary differentiation of treatment, and an affirmative concept related to the obligation of States Party to create real equal conditions toward groups who have been historically excluded or who are exposed to a greater risk of being discriminated."[19]

41. With regard to the first concept, which is pertinent to this case, the Inter-American Court has emphasized, based on the origins of the case law on the subject, that not all differentiated treatment is discriminatory and that it must be determined whether it is objectively and reasonably justified.[20] The Inter-American Court has emphasized that "with a ban on discrimination based on one of the protected categories set forth in Article 1(1) of the Convention, any restriction of a right must be rigorously justified, with great weight, and the burden of proof must be inverted, meaning that the authority must demonstrate that its decision has no discriminatory purpose or effect."[21]

42. Likewise, the Commission recalls that one of the immediate obligations emanating from the right to work consists of guaranteeing its exercise without any discrimination and the adoption of measures or deliberate and specific steps that are aimed at fully realizing that right and are neither applied progressively nor dependent on the availability of resources. States have an obligation to adopt all adequate and reasonable measures to protect the individuals under their jurisdiction from violations of the right to work committed by third parties.[22]

2. Analysis of this case

43. In this case, it must first be determined if the alleged victim was restricted from exercising a right protected by the American Convention, and second, whether the restriction was compatible with the Convention. Regarding the first aspect, the Commission recalls that the alleged victim studied law and the notary profession in Guatemala. However, several administrative and judicial rulings prevented him from exercising the profession of notary based on article 2 of the Code of the Notary Profession, which establishes that, in order to exercises profession, one must be Guatemalan. This is therefore a restriction and differentiated treatment imposed on the exercise of the right to perform a profession based on national origin.

44. Hereinafter, the Commission will analyze whether this legal restriction is compatible with the criteria required by the American Convention, taking into account the rigorous scrutiny required for a case like this one in which the restriction and differentiated treatment is based on one of the categories established in Article 1(1)—in this case, national origin. The IACHR recalls that, for the purpose of determining whether a restriction on the exercise of a right is acceptable under the Convention, both the Commission and the Court

[18] Inter-American Court. *Case of Flor Freire v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2016. Series C No. 315, para. 109.

[19] Inter-American Court. *Case of Furlan and relatives v.* Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, para. 267.

[20] Inter-American Court. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 55 and 56.

[21] Inter-American Court. Case of Granier et al. (RCTV) v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment June 22, 2015. Series C No. 293, para. 228. Also see, IACHR. Application before the Inter-American Court of Human Rights in the case of the Karen Atala and daughters v. the State of Chile. Case 12,502. September 17, 2010, para. 88. Also CO-24/17, in which the Inter-American Court underscored that when the differentiating criteria corresponds to characteristics protected under Article 1(1) of the Convention, referring to: i) the permanent characteristics of persons that cannot be changed without separating them from an identity; ii) groups that have traditionally been marginalized, excluded, or subordinated; and iii) criteria that are irrelevant for the equitable distribution of goods, rights, or social responsibilities, the Court views it as an indication that the State has acted arbitrarily. Inter-American Court. Advisory Opinion OC-24/17 of November 24, 2017, Requested by the Republic of Costa Rica, on gender identity, and equality and non-discrimination with regard to same-sex couples, para. 66.

[22] Committee on Economic, Social and Cultural Rights. General Comment 18, February 6, 2006, para. 31.

have used a graduated proportionality test that considers the following elements: (i) the legality of the restriction—that is, if it is established in law both formally and in practice; (ii) the existence of a legitimate aim; (iii) suitability—that is, if the measure has a logical connection to the aim pursued; (iv) necessity—that is, determination of whether other alternatives exist that would be less restrictive and equally suitable; and (v) strict proportionality—that is, balancing the interests in question against the degree of sacrifice.[23]

- ***Legality of the restriction***

45. With regard to the requirement of legality of the restriction, the Commission underscores that the decisions to block the alleged victim from exercising the notary profession in Guatemala were based on article 2(1) of the Code of the Notary Profession, which establishes that, among other things, in order to exercise this profession, one must "Be a native Guatemalan, of the age of majority, lay, and domiciled in the Republic, save for the provision set forth in subparagraph 2 of article 6 (...)." Taking this into account, the IACHR finds that the legality requirement of the restriction is satisfied.

- ***Aim of the restriction***

46. As regards legitimate aim, the Commission observes that the State argued that the purpose of the restriction was to protect Guatemalan sovereignty, as the notary profession in Guatemala is vested with the authority to attest documents. The Commission highlights that the notary performs important public functions by "conferring transparency, security, and legal certainty upon those acts or business dealings to which they attest,"[24] and misconduct can affect not only private parties but also public and general interests.[25] Therefore, the Commission finds that the State's invocation of "sovereignty" as a mechanism to guarantee the proper use of the authority to attest to public documents constitutes a legitimate aim. Therefore, the Commission finds that this requirement is satisfied.

- ***Suitability of the restriction***

47. As regards the suitability of the restriction, the IACHR must evaluate whether there is a means-to-an-end relationship between the distinction and the end sought with it—that is, whether the restriction contributes in some way to achieving the aim, regardless of degree of effectiveness.

48. The IACHR notes that the State made the argument of "sovereignty" to justify the restriction and differentiated treatment in this case, limiting itself to stating that the mere fact that notaries are vested with the legal authority to attest documents is enough to justify restricting exercise of this profession exclusively to Guatemalans. It also highlighted that in Guatemala, notaries are "public officials." The IACHR must therefore evaluate, based on the State's justification, whether prohibiting foreigners from exercising the notary profession in Guatemala in some way contributes to the aim invoked by the State.

49. Regarding this, the Commission first notes that, considering that in this case, the restriction and differentiated treatment are based on one of the categories protected under Article 1(1) of the Convention, a rigorous justification with much weight is required from the State to justify the differentiated treatment.

50. For example, in the case of *Atala Riffo v. Chile*, on examining the suitability of the invoked aim of the "best interest of the child" as a justification for the measure of removing her daughters from her care and custody because of her sexual orientation, the Inter-American Court found that:

> (...) "the child's best interest" being considered as a legitimate goal, in abstract terms, the mere reference to this purpose, without specific proof of the risks or damage to the girls that could result from the mother's sexual

[23] Inter-American Court. *Case of Artavia Murillo et al. (in vitro fertilization) v.* Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, para. 273; Inter-American Court. Case of Atala Riffo and girls v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, para. 146.
[24] Decision of the Plenary of the Supreme Court of Justice of the Nation of January 27, 2004. Registration number: 17,951, Volume XIX, February 2004, page 452.
[25] International Union of Notaries, Legislature Activity Report 2017-2019, pg. 3.

> orientation, cannot serve as a suitable measure to restrict a protected right like the right to exercise all human rights without discrimination based on the person's sexual orientation.[26]

51. The Commission notes that the State limited itself to generically invoking "sovereignty" without justifying or explaining in detail its reasoning for why conferring the authority to attest public documents to a foreigner would endanger national sovereignty. In this regard, the State did not in any way prove that the differentiated treatment contributed to the aim indicated.

52. Second, with regard to the State's argument that notaries are public officials and, therefore, must be citizens, the Commission notes first that in neither domestic legislation nor the comparative legislation available are notaries identified as public servants or officials, as they do not represent the will of the State.

53. Thus, for example, as indicated above, the Law Regulating the Notarial Processing of Voluntary Legal Matters in Guatemala establishes that notaries are "accessories to the judiciary" and "effectively collaborate with the courts through the authority to attest documents in the processing of legal acts (...) That, for these reasons, the notary profession shall be expanded to include the different acts that are not contested to facilitate the execution of civil acts (...).[27]

54. The Commission highlights that although the Guatemalan Penal Code stipulates in its general provisions in Article I that "Notaries shall be considered public officials in the context of crimes committed during or for the purposes of acts related to the exercise of their profession,"[28] this explicitly refers to criminal matters, with the intention of issuing a more serious reproach to notaries in view of the special relevance of their functions.

55. For its part, the European Parliament has underscored that "the profession of notary has a number of basic, virtually common characteristics, the most important being: a partial delegation of state sovereignty to carry out a public service in respect of the authenticity of contracts and evidence; independent public-service activity exercised within a liberal profession (...) but subject to supervision by the State –or by the statutory body to which this responsibility is delegated by the public authorities (...)."[29]

56. Likewise, in Argentina, the Supreme Court ruled in 1984 in the case of Vadell to limit the reasons for which a notary cannot be considered a public official. The judge ruled as follows:

> (...) 10) That nevertheless, a literal reading of the provision is not enough to explain the condition sub judice, and therefore a systematic exegesis of the legal statue on the notary profession is in order. In this regard, although there is no doubt that, as an attestor to documents, the notary is vested by the State with a public function under its supervision (articles 17, 35, and following of law 12,990), it is clear that this office does not have the characteristics of a public employee relationship, in which they can be held responsible for the consequences of their performance. Effectively, there is no organic department within the branches of government under which notaries fall. They are not subject to any hierarchical subordination, nor do they have the other characteristics of a permanent link to government, such as through their form of remuneration.
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> 11) That under these conditions, notaries can be defined as legal professionals engaged in a private activity, but with some attributes comparable to public administration, and the acts they perform, associated with private juridical commerce, attest to private relations and do not express the will of the State, as normally expressed through its bodies.
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> (...) 13) That in addition, and even allowing that attestation of documents is the most substantive function performed by notaries, it cannot be ignored that they perform other functions as independent professionals that do not involve attestation. It therefore seems absurd for this duality to exist in those seeking to be defined as public officials (...).[30]

[26] Inter-American Court. Case of Atala Riffo and girls v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, para. 110.
[27] Decree 54-77 Law Regulating the Notarial Processing of Voluntary Legal Matters.
[28] Decree 17-73, Penal Code of Guatemala.
[29] Resolution of the European Parliament. Profession of notary in the Community, OJEC No 44/36, 18 January 1994.
[30] Ruling of the Supreme Court in the case of Vadell, Jorge Ferdnando v. Buenos Aires, December 18, 1984.

57. Without prejudice to this, and independent of the possible discussion of whether, in the Latin system, notaries are liberal professionals who perform public functions, more than public officials, for the purposes of justifying differentiated treatment, the State has not expressed the reasons why permitting foreigners to exercise public functions or have the status of public officials would affect the aim of sovereignty, as regards the notary profession.

58. Although the State has not submitted an explanation, the Commission can see how the State's argument on the legitimate aim of securing sovereignty could highlight aspects such as the better understanding that, in principle, a national could have of legislation and the trust that citizens could place in such individuals to exercise their function in an area such as attestation, where trust is so important. However, it is the Commission's view that, in addition to the fact that it would be complicated to justify this, even assuming that selecting citizens to serve as notaries could contribute to the aim of protecting a nation's sovereignty or interests by offering profiles of individuals who are highly responsible and have adequate technical training, the State has less damaging means of satisfying this aim other than an absolute ban on foreign persons exercising the notary profession.

59. Effectively, the Commission has previously heard a case[31] in which legislation required citizenship to grant a law degree. At the time, the Commission noted that the reasons invoked for prohibiting foreigners from being lawyers included national interest, such as improving the exercise of the professional domestically; ensuring the professionals were fully knowledgeable of Chilean legislation; and preventing competition from foreigners. In the specific case, the Commission found that the knowledge necessarily came from the fact of having completed studies at a State-recognized university, ensuring that graduates—even if they were foreigners—would in principle be at least equal in suitability to any Chilean lawyer who had completed the same course of study. Thus, through this line of reasoning, the Commission concluded that the State has less-harmful measures available to it to attain its aims. Additionally, the Commission concluded that, although the petitioner was in competition with her Chilean colleagues, this was not a legitimate basis for discriminating against her because of her nationality.

60. In sum, the Commission found that it was technically possible to allow foreigners equal footing with citizens by revalidating their studies or giving a knowledge test. Along with this, the Commission found that a system of accountability or regular examinations of people exercising the notary profession would enable supervision of the observance and trustworthiness of correct procedure.

61. Third, the Commission underscored that a number of the national and international courts that have analyzed bans on noncitizens from exercising the notary profession in Latin notary systems have concluded that these limits that discriminate based on nationality or that restrict the right to work are not reasonable.

62. In Costa Rica, in 1993, the Constitutional Chamber of the Supreme Court found article 3 of the Organic Law of the Notary Profession unconstitutional. The law had established a requirement that individuals be Costa Rican by birth or by naturalization in order to exercise the notary profession. The Court found as follows:

> IV. This Chamber has acknowledged that the notary function is public, but there is no grounds for concluding that the exercise of public functions is reserved for Costa Ricans and excludes the participation of foreigners. The law may establish this, but the justification for doing so must be manifestly logical and reasonable: It cannot be based simply on the argument that this is what the law states. That is, the nature of the function—public or private—does not, by itself and a priori, provide a sufficient reason to codify a differentiated legal treatment, especially when it can be observed, as in the case of notaries, that in the exercise of this function, which is highly technical, all that could reasonably be required is technical or professional competence, and the requirement that a notary must be a lawyer—a status that does not exclude foreigners—and be suitably ethical and moral is not exclusively met only by those with a certain nationality. If foreigners who are lawyers, duly registered in the corresponding Bar Association, can exercise their profession in Costa Rica, there is clearly insufficient grounds to argue that foreigners cannot also

[31] IACHR, Report 56/10, Case 12,469, Margarita Cecilia Barbería Miranda (Chile), March 18, 2020.

serve as notaries. If sufficient and evident justification does not exist, it must be assumed that the difference is based purely on nationality, which is discrimination that violates the principle of equal protection.

V. By violating the right to equal protection in this way, it is logical that given the labor context, the right to work is also violated, as this right must be interpreted in harmony with the principle of equal protection, such that if the exception set forth in the law is illegitimate, the limitation on work it establishes is also illegitimate. Limitation on freedom of work is only valid if imposed by a rational legal provision, and as already described, the limitation established in article 3 of the current notary profession act is illegitimate because it is not rational. Therefore, the action is granted, and consequently, the limitation set forth in article 3 of the Notary Profession Act preventing foreigners from exercising the notary profession based on their origin is unconstitutional.[32]

63. Also, in 2004, the Supreme Court of Justice of Costa Rica denied a constitutional challenge against article 3 of the Notary Profession Code, which establishes in its pertinent section that foreigners who fulfill the requirements to work as notaries in the country may do so as long as their country of origin grants the same benefit to Costa Rican notaries. The court found:

(...) It should also be recalled that, in the specific case of the notarial function, the body with the competence to oversee and supervise it, by law, is the National Notary Office.

(...) this Chamber is not competent to analyze whether, in this case, the protected individual complied or not with the reciprocity requirement established by law for foreigners to exercise the notary profession, as this is exclusively the competence of the authority being appealed, the body in charge, by law, of supervising and overseeing the notary profession. That said, what is relevant to this chamber is whether the actions of the authority being appealed were legal, which they were, as the decision to reject the motion of the appellant is supported by the stipulation of the Notarial Code, described above.

(...) despite the foregoing, what is admissible is the allegation of the appellant as to alleged discriminatory treatment with regard to other foreigners, which—he states—have not been required to prove reciprocity, violating the provisions of paragraph 33 of the Political Constitution. In this regard, the authority appealed gave sworn testimony stating that the foreigners to which the appellant referred had different circumstances then he did, for which reason this chamber does not consider the action being appealed to have been discriminatory, given that, as has been recognized on previous occasions, equal treatment must be provided when the factual circumstances or situations are identical, and the principle of equal protection is only violated when the inequality lacks an objective justification. Effectively, cases in which foreigners complete their studies in Costa Rica cannot be compared to cases in which foreigners complete part of their studies in their countries and part in Costa Rica, nor to foreigners who complete their entire degree in their country of origin, as the three situations are different. Therefore, independently of whether the Universidad de Costa Rica has granted the degree of notary, the fact is the degree is academic in nature, and in order to be authorized to exercise the notary profession, authorization is required from the National Notary Office, which must follow the law governing the issue.[33]

64. For its part, in 2014, the Appellate Chamber for Administrative and Tax Disputes of the Autonomous City of Buenos Aires, Argentina, ruled in a case that the requirement established by article 8(a) of the Organic Notary Law, establishing that in order to be added to the professional registry as a notary one must "be a native born Argentine, or a naturalized citizen for no fewer than six years," was not applicable. The Court made several points relevant to this case:

(...) VIII. In view of this, it is appropriate to examine the only requirement that could prevent the applicant from registering as a notary: the requirement that he be a naturalized Argentine citizen for six years.

For these purposes, it should be recalled that article 16 of the National Constitution guarantees equal protection of all residents and access to employment "with fitness being the only condition." Additionally, article 20 of the Constitution recognizes that "Foreigners enjoy, on national territory, all the same civil rights as citizens; they can engage in industry, commerce, and professional work. They are not required to become citizens. It takes two consecutive years of residency to become a naturalized citizen in Argentina; however, authorities can shorten that time period if requested by those who claim and demonstrate having served the Republic."

[32] Constitutional Chamber of the Supreme Court of Justice of Costa Rica, Case File 2486-92 of May 19, 1993.
[33] Constitutional Chamber of the Supreme Court of Justice of Costa Rica, Case File 03-012275-007-CO of May 30, 2004.

(...) it observes that the Notary Association—which has been called on to contribute to this inquiry pursuant to the organic law on the notary profession (which requires its intervention, article 9)—invoked the letter of the law without arguing for substantial aims, unique to the exercise of the private notary practice, requiring that only natural-born citizens or citizens who had been naturalized for at least six years can do the work. Neither did it point to the reasons why the case law set by the Supreme Court (in response to similar circumstances) was not applicable.

X. It should not be forgotten that the applicant was born in 1973 (see p. 7), in Spain. As suggested by the evidence attached to p. 21, she has been living in the country since 1982 (that is, since the age of 9). She attended primary school, secondary school, and university in Argentina (p. 22/31 and 13), and also passed the exam to become a notary. She married a citizen (p. 48) and has two daughters born in Argentina (p. 49). She owns at least one piece of property in Argentina (p. 50/2). She has pursued her work and professional life in Argentina for more than 22 years (p. 27/45). Her legal background as a citizen is documented on p. 14/15 (attested affidavit); 17 (certification that she does not owe alimony); and 20 (certification that she has no criminal record).

XII. From the legal background described in the previous paragraph, it can be clearly concluded that none of the functions or competencies legally corresponding to notaries in the exercise of their liberal profession merits requiring citizenship of six years, for which reason, this requirement is in violation of articles 16 and 20 of the National Constitution, and therefore, not applicable with regard to the applicant in this proceeding.

(…)XVIII. Therefore, it must be concluded that the requirements set forth in article 8, subparagraph a) of the aforementioned law (which constituted the only obstacle to registration in the Notaries Association) is not applicable to the petitioner because applying it by the letter would amount to discrimination (between natural born citizens, on one hand, and foreigners who meet the substantive requirements to be considered Argentines on the other) in violation of the constitutional principle of equal protection.[34]

65. Likewise, in the case of *Bernal v. Fainter*, the U.S. Supreme Court ruled a Texas statute requiring people to be U.S. resident citizens in order to be appointed notary publics unconstitutional, finding that it violated the equal protection clause of the 14th amendment. Although this decision does not specifically address a Latin notary system, certain of its considerations are relevant to this case.

(...) As a general matter, a state law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny. In order to withstand strict scrutiny, the law must advance a compelling state interest by the least restrictive means available.

(...) Under this exception, the standard of review is lowered when evaluating the validity of exclusions that entrust only to citizens important elective and nonelective positions whose operations go to the heart of representative government (...). The statute provides that, "[t]o be eligible for appointment as a Notary Public, a person shall be a resident citizen of the United States and of this state (...)

(...) The Court of Appeals ably articulated this argument: "With the power to acknowledge instruments such as wills and deeds and leases and mortgages; to take out-of-court depositions; to administer oaths; and the discretion to refuse to perform any of the foregoing acts, notaries public in Texas are involved in countless matters of importance to the day-to-day functioning of state government. The Texas political community depends upon the notary public to insure that those persons executing documents are accurately identified, to refuse to certify any identification that is false or uncertain, and to insist that oaths are properly and accurately administered. Land titles and property succession depend upon the care and integrity of the notary public, as well as the familiarity of the notary with the community, to verify the authenticity of the execution of the documents."

We recognize the critical need for a notary's duties to be carried out correctly and with integrity. But a notary's duties, important as they are, hardly implicate responsibilities that go to the heart of representative government. Rather, these duties are essentially clerical and ministerial. (...) To be sure, considerable damage could result from the negligent or dishonest performance of a notary's duties. But the same could be said for the duties performed by cashiers, building inspectors, the janitors who clean up the offices of public officials, and numerous other categories of personnel upon whom we depend for careful, honest service. What distinguishes such personnel from those to whom the political function exception is properly applied is that the latter are invested either with policymaking responsibility or broad discretion in the execution of public policy that requires the routine exercise of authority over individuals. Neither of these characteristics pertains to the function performed by Texas notaries.

[34] Judgment of the Appeals Chamber on Administrative and Tax Disputes of the Autonomous City of Buenos Aires, Martín and Mata Verónica, August 5, 2014.

> (...) there is nothing in the record indicating that resident aliens, as a class, are so incapable of familiarizing themselves with Texas law as to justify the State's absolute and class-wide exclusion. The possibility that some resident aliens are unsuitable for the position cannot justify a wholesale ban against all resident aliens. We conclude that Article 5949(2) violates the Fourteenth Amendment of the United States Constitution. Accordingly the judgment of the Court of Appeals is reversed (...).[35]

66. Additionally, in Europe, the European Union Court of Justice found in a series of decisions that Belgium, France, Luxembourg, Austria, Germany, and Greece had violated the freedom of establishment[36] recognized in the Treaty on the Functioning of the European Union and that the requirement established in its legislation that one must be a citizen to exercise the notary profession was discrimination based on nationality.[37] For example, in the decision regarding Greece, the court found as follows:

> However, the fact that notarial activities pursue objectives in the public interest, in particular to guarantee the lawfulness and legal certainty of documents entered into by individuals, constitutes an overriding reason in the public interest capable of justifying restrictions of Article 43 EC deriving from the particular features of the activities of notaries, such as the framework within which notaries act as a result of the procedures by which they are appointed, their limited number and the restriction of their territorial jurisdiction, or the rules governing their remuneration, their independence, their disqualification from holding other office and their protection against removal, provided that those restrictions enable those objectives to be attained and are necessary for that purpose. (...)
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> As regards the enforceability of an authentic instrument, it must be observed, as the Hellenic Republic submits, that enforceability enables the obligation embodied in the instrument to be enforced without the prior intervention of the court. The enforceability of an authentic instrument does not, however, derive from powers possessed by the notary which are directly and specifically connected with the exercise of official authority. So, while the notary's endorsement of the enforcement clause on the authentic instrument does give it enforceable status, that status is based on the intention of the parties to sign a document or agreement, after its conformity with the law has been checked by the notary, and confer enforceability on it.
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> (...) In those circumstances, it must be concluded that the activities of a notary, as they are defined currently in the Greek legal system, are not connected with the exercise of official authority within the meaning of the first paragraph of Article 45 EC. It must consequently be declared that the nationality requirement imposed by the Greek legislation as a requirement for access to the profession of notary constitutes discrimination on grounds of nationality prohibited by Article 43 EC.[38]

67. Likewise, the European Court of Justice found in 2015 that the Republic of Lithuania had failed to comply with article 49 of the Treaty on the Functioning of the European Union, regarding the freedom of establishment by requiring nationality to access the notary profession. The court took into account the multiple and essential functions that notaries performed in Lithuania, some of which are similar to the functions performed by notaries in Guatemala. The court found:

> (...) In the present case, the national legislation at issue reserves access to the profession of notary to Latvian nationals, thus enshrining a difference in treatment on the ground of nationality which is prohibited in principle by Article 49 EC. The Republic of Latvia submits, however, that the activities of notaries are outside the scope of Article 49 TFEU because they are connected with the exercise of official authority within the meaning of the first paragraph of Article 51 TFEU.
>
> (...) under Latvian legislation, the documents or agreements freely signed or entered into by the parties are subject to authentication. They decide themselves, within the limits laid down by law, the extent of their rights and obligations and choose freely the conditions which they wish to be subject to when they produce a document or

[35] U.S. Supreme Court, Bernal v. Fainter, Secretary of State of Texas, *et al.*, 1984.
[36] This right entails "allowing a national of the European Union to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom, so contributing to economic and social interpenetration within the European Union in the sphere of activities of self-employed persons." See judgment of the Court of May 24, 2011, C-50/08.
[37] See judgments C-47/08, C-50/08, C-51/08, C-53/08, C-54/08, C-61/08. Also see European Union press release, Nationality requirements notaries: the Commission takes steps to ensure compliance with the principle of non-discrimination in eight member states, October 17, 2007.
[38] Judgment of the Court of May 24, 2011, Matter C-61/08.

agreement to the notary for authentication. (...) In that regard, the Court has held that the activity of authentication entrusted to notaries therefore does not, in itself, involve a direct and specific connection with the exercise of official authority (...)

(...) Furthermore, nor can the authentication of signatures of citizens as part of the procedure for lodging citizens' legislative proposals, having regard to the considerations in paragraphs 60 and 61 of the present judgment, be regarded as having a connection with the exercise of official authority.

(...) Secondly, with regard to the activities carried out in matters of succession, on the one hand, a notary may proceed to divide the estate only if there is no disagreement between the heirs in that regard and, on the other, that, in the event of disagreement between the heirs, the notary must, under Article 250(5) of the Code of Civil Procedure, place the inventory, valuation and draft instrument dividing the estate before the court.

(...) a notary's powers in divorce matters, which are based entirely on the wishes of the parties and leave the prerogatives of the courts intact in the absence of agreement between the parties, do not have any connection with the exercise of official authority.

(...) As regards the argument which the Republic of Latvia derives from the judgment in Colegio de Oficiales de la Marina Mercante Española, (...) it is apparent from paragraph 42 of that judgment that, when the Court ruled that the duties conferred on masters and chief mates of merchant ships flying the Spanish flag constitute participation in the exercise of rights under powers conferred by public law, it was referring to all the duties performed by them, including rights connected to the maintenance of safety and to the exercise of police powers, together with, in appropriate cases, powers of investigation, coercion and punishment, and not merely the authority held by those masters and chief mates in respect of the registration of births, marriages and deaths.

In those circumstances, it must be concluded that the activities of notaries as defined in the current state of the Latvian legal system are not connected with the exercise of official authority within the meaning of the first paragraph of Article 51 TFEU.[39]

68. In sum, pursuant to the comparative jurisprudence and international law described herein, with regard to the notary function, it is observed that: i) they do not function as public officials or servants in the traditional sense; ii) they do not perform functions that "go to the heart of representative government;" iii) they do not have any role in formulating or executing public policies; and iv) they do not have coercive or sanctioning authorities. Also, as likewise noted, the functions of notaries are subject to accountability procedures in the case of irregular acts, and can also be subject to regular knowledge verifications or evaluations to guarantee their technical abilities and proper conduct.

69. Therefore, the Commission concludes that the State did not provide sufficient justification to prove that prohibiting foreigners from exercising the notary profession in Guatemala is a restriction that meets the requirements set forth in the American Convention. As indicated, the State did not make arguments of suitability for the office that would exclude foreign nationals from taking part in order to protect State sovereignty, nor is any such reasoning found in the case file. Likewise, even assuming that the aim of the restriction was to guarantee professionals that are technically proficient and trustworthy in view of the importance of the role of document attestation as an extension of government, the alleged victim passed all the examinations needed to obtain the title of lawyer and notary, demonstrating his technical and professional ability to perform such work on an equal footing with citizens. Additionally, as has been described, the State still has the opportunity to supervise the proper performance and the trustworthiness of those who exercise the notary profession by conducting accountability procedures or regular evaluations, even when these individuals are foreign nationals. In this regard, the State has been unable to demonstrate that the restriction is necessary. Under the circumstances, the Commission finds that there are no grounds to presume that foreigners, as a class, are not capable of wielding the authority to attest to documents that is delegated to notaries under Guatemalan law, or that doing so would be detrimental to national sovereignty.

70. Therefore, the Commission concludes that the provision established in article 2(1) of the Code of the Notary Profession of Guatemala, requiring an individual be a native Guatemalan to exercise the notary profession, as well as its application in this specific case and the subsequent restriction and differentiated

[39] Judgment of the Court (Seventh Chamber), Matter C-151/14, September 10, 2015.

treatment of the alleged victim that prevented him from registering as a notary in Guatemala, which is a requirement to exercise this profession, were arbitrary, and thus violated the principle of equal protection and nondiscrimination established in Article 24 of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 of the Convention. The Commission notes that this is separate from the regulations and requirements that must be met for a foreigner to be able to live in the country and exercise a profession.

B. The right to judicial protection[40]

71. The IACHR recalls that States have a general obligation to provide effective judicial remedies to people who allege having been victims of human rights violations (Article 25), which should be in accordance with the rules of legal due process (Article 8(1)). For a remedy to exist, it is not enough for it to be provided for by law; rather, it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.[41]

72. In this case, the IACHR notes that on November 22, 2000, the alleged victim filed a request to register as an attorney and notary with the Association of Lawyers and Notaries of Guatemala. However, he was only registered as a lawyer, based on subparagraph 1 of article 2 of the Code of the Notary Profession, which requires an individual be a native Guatemalan to exercise the notary profession. The alleged victim filed an appeal with the Assembly of Presidents of the Professional Associations of Guatemala, which denied his appeal on April 22, 2002, based on the same grounds.

73. Later, the alleged victim filed a writ of *amparo* before the Third Chamber of the Court of Appeals against that decision described in the above paragraph, which was denied on June 25, 2002, with the reiteration that one needed to be a native Guatemalan to exercise the notary profession. Lastly, the alleged victim filed an amparo appeal before the Constitutional Court, which admitted it, but with the condition that the alleged victim must become a Guatemalan citizen.

74. The Commission takes note that the judicial authorities did not perform an analysis of reasonability and proportionality of the limitation imposed on the alleged victim and that was established in the Guatemalan Code of the Notary Profession. The Commission thus finds that the alleged victim did not have an effective remedy to protect his right to equal protection and nondiscrimination.

75. Therefore, the Commission concludes that the Guatemalan State is responsible for the violation of the right to judicial protection established in Article 25(1) of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Steven Edward Hendrix.

V. CONCLUSIONS AND RECOMMENDATIONS

1. The Commission concludes that the Guatemalan State is responsible for the violation of the rights established in articles 24 (equal protection) and 25(1) (judicial protection) of the American Convention on Human Rights, in conjunction with the obligations established in articles 1(1) and 2 of the Convention.

2. Based on the analysis and conclusions found in this report,

[40] Article 25(1) of the American Convention establishes that everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

[41] Inter-American Court, Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.). Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158. Para. 125; Inter-American Court, Case of the Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125. Para. 61; Inter-American Court, Case of the "Five Pensioners." Judgment of February 28, 2003. Series C No. 98. Para. 136.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF GUATEMALA:

1. Provide full pecuniary and nonpecuniary reparations for the rights violations declared in this report, including the payment of compensation for damages, specifically by paying compensation for imposing an arbitrary restriction and differentiated treatment.

2. Adopt the measures necessary to allow Steven Edward Hendrix to register as a notary with the Association of Lawyers and Notaries and exercise the notary profession in Guatemala.

3. Take the legislative and other measures necessary to remove the requirement established in article 2(1) of the Code of the Notary Profession of Guatemala that one must be a native Guatemalan to exercise the notary profession.