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REPORT No. 175/18
PETITION 571-08
REPORT ON ADMISSIBILITY

POMPILIO CAMPOS BONILLA
COSTA RICA

Approved electronically by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 175/18, Petition 571-08. Admissibility. Pompilio Campos Bonilla.
Costa Rica. December 26, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Pompilio Campos Bonilla
Alleged victim:	Pompilio Campos Bonilla
Respondent State:	Costa Rica
Rights invoked:	Articles 3 (juridical personality), 5 (humane treatment), 11 (privacy), 12 (conscience and religion), 13 (thought and expression) and 24 (equal protection) of the American Convention on Human Rights ¹ in relation to its Article 2 (domestic legal effects); Article I (life, liberty, security and integrity) and XVI (social security) of the American Declaration of The Rights and Duties of Man ² and other International Treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	May 8, 2008
Additional information received at the stage of initial review:	January 23, 2014
Notification of the petition to the State:	August 24, 2016
State's first response:	September 26, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of ratification instrument April 8, 1970)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (humane treatment), 11 (privacy), 12 (conscience and religion), 13 (thought and expression), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention in relation to its Article 1.1.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes
Timeliness of the petition:	Yes

V. FACTS ALLEGED

1. The petitioner, Mr. Pompilio Campos Bonilla worked in the secretariat of a Judge for the city of San José from 1998 and alleges that in 2005 a notice was issued by his employer titled "correct personal presentation" of officials, which regulated the attire of officials and their appearance; including the prohibition of wearing long hair. The petitioner alleges specifically that the notice prohibits male officials of the judiciary

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

² Hereinafter "the American Declaration" or "the Declaration."

³ Articles 1, 2, 3, 4 and 7 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion and Belief; and Articles 2, 3, 5, 16, 17, 18 and 19 of the International Convention on Civil and Political Rights; and Articles 1, 2, 3, 6, 7, 12, 18 and 19 of the Universal Declaration of Human Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

from wearing long hair. He claims that by official letter N° 620-ORS-05 of the Headquarters of the Agency for Judicial Investigation of Sarapiquí, he was instructed to wear his hair short within two days after receiving the letter or be dismissed for non-compliance.

2. The petitioner asserts that he has a good appearance and has succeeded in taking care of his hair and keeping it well presented. He alleges that the prohibition on wearing long hair for officials of the Judiciary is based on discriminatory criteria, as the same prohibition does not exist for officials of the Executive. Further, he alleges discrimination and unequal treatment between himself and citizens who have the freedom to wear long facial hair and beards; and women who are permitted to wear their hair long or short. He also alleges unequal treatment by the Constitutional Court, which has protected the rights of persons whose religious belief aligns with the wearing of long hair.

3. Mr. Pompilio Campos claims to have filed actions for “amparo” (remedy to protect constitutional rights) before the Constitutional Court; an administrative complaint before the Technical Secretariat of the Judiciary; and a complaint before the Ombudsperson of Costa Rica. He was notified on the 12th of December 2007 that his claim to the Constitutional Court was rejected by a decision given on the 19th of October, 2007, on a principle that the Constitutional Court was unable to admit a remedy against the sentences issued by the same Chamber; it being the Court of supreme jurisdiction and only instance. Similarly, the Technical Secretariat dismissed his claim on the 17th November, and he was notified of this on December 19, 2007. The claim before the Ombudsperson was rejected on the 2nd of November, 2007 and he was notified on the 7th of November, 2007. The petitioner has since retired but remains interested in the determination of the petition as he believes the State should compensate him for distress endured by himself and his family in trying to fight for his rights to his personal beliefs.

4. The State of Costa Rica alleges that the petition is inadmissible for a) breach of Article 46.1.b, alleging the petition was lodged after six months from the date on which the petitioner was notified of the final judgment on the alleged violation of his rights; and b) non-adherence to the doctrine of fourth instance - that the Commission is unable to review decisions given by national courts for the purpose of determining whether the court was acting within its sphere of competence and applied the appropriate judicial guarantees, but is to only consider the possibility of any violations of the Convention.

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

5. According to the information provided, the petitioner sought both administrative and judicial remedies to challenge the alleged discrimination. It is noted that, as alleged by the Petitioner, the judicial decision that gave the final domestic ruling was issued by the Constitutional Chamber on 19th October, 2007. Further, it is observed that the notification of the decision of the Constitutional Chamber was communicated to the Petitioner on the 12th of December 2007.⁵ The Commission received the petition on the 8th of May 2008 and therefore can conclude that the petition was lodged within the deadline established in Article 46.1 of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

6. The petitioner claims that he was treated unequally in his place of employment by prohibitions on the wearing of long hair, a prohibition which was not subjected onto female workers or similar employees within the Executive of the State. Further, a prohibition which is similarly protected against as regards the wearing of facial hair and beards, as well as for religious inclinations. If proved, the facts alleged could establish a possible violation of the rights protected by Articles 5, 11, 12, 13, 24 and 25 of the Convention in relation to its Article 1(1). The petition does not allege any facts that give rise to or sufficiently substantiated *prima facie* violations of Article 3 of the Convention.

7. As regards the allegations of violations of Article I and XVI of the American Declaration, the IACHR has previously established that once the American Convention enters into force with respect to a State, it is that instrument, and not the Declaration, that becomes the specific source of law to be applied by the Inter-American Commission, provided that the petition alleges violations of rights of identical substance upheld by both instruments. In this petition, the Commission has analyzed the American Declaration rights invoked by the petitioners in light of the American Convention.

8. In respect of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Region and Belief, the Commission is not competent to determine violations of the rules of said instrument. However, the IACHR may consider it for interpretation purposes of the American Convention at the merits stage of this case, pursuant to Article 29 of the American Convention.⁶

9. Regarding the State's pleadings on the doctrine of fourth instance, the Commission recognizes that it cannot serve as an appellate court to examine alleged errors of internal law or fact which may have been committed by the domestic courts acting within their jurisdiction. However, within its mandate to ensure the observance of the rights set forth in the American Convention, the Commission is necessarily competent to declare a petition admissible and rule on its merits when it refers to a domestic legal decision ruled in violation of any right protected by the American Convention.⁷

10. The jurisdiction of the Commission to examine the admissibility of the matter, involves a *prima facie* examination of the petition to determine whether it sets out facts that establish a possible or potential violation of a right as stipulated in Article 47.b of the Convention; moreover, to ensure the petition is not "manifestly groundless" and "obviously out of order" pursuant to Article 47.c of the Convention. Therefore, the action of the Commission hinges on whether the notice issued to officials of the Judiciary prohibiting wearing long hair for male employees like Mr. Bonilla is a possible violation of the rights under the Convention and whether the petitioner exhausted domestic remedies that were adequate and effective to remedy the alleged violation. By virtue of this assessment, the Commission is not reviewing the decision of the national courts to determine whether it was acting competently, as alleged by the State.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 11, 12, 13, 24 and 25 of the American Convention in relation to its Article 1(1);
2. To find the instant petition inadmissible in relation to Article 3 of the Convention; and;
3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 26th day of the month of December, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁷ IACHR, Report No. 42/08, Petition 1271-04. Admissibility. Karen Atala and Daughters. Chile. July 23, 2008, para. 59.