

**REPORT Nº 21/94**  
CASE 10.804 (b)  
GUATEMALA  
September 22, 1994

I. INITIAL COMPLAINT

1. On March 22, 1991, Mr. Harris H. Whitbeck Piñol filed a petition against the Government of Guatemala for violating the political rights, recognized by the American Convention on Human Rights, of himself and 69 National Parliament candidates, when they were not allowed to register as candidates because the slate of candidates submitted by various nominating parties whose presidential candidate was General José Efraín Ríos Montt was rejected. He stated also that in processing his complaint Guatemalan officials had denied him his right to personal defense in the proceedings and to an impartial trial.

2. The petitioner set forth the following acts as violating his rights:

a) The decision of the Electoral Tribunal Register of Citizens refusing to register his candidacy for the vice presidency, because of the rejection of the entire slate headed by Mr. Ríos Montt as candidate for president. Mr. Ríos Montt was considered ineligible under Article 186 of the Constitution (referring to "Any leader or head of a movement that disturbs the constitutional order or who takes command of the state on the strength of such movement").<sup>1</sup>

Mr. Whitbeck alleges that that decision deprived him of his right to participate in the election as candidate for vice president and, of course, to be elected to that office; that the nominating parties had likewise been deprived of their right to participate in the elections, as had the other 69 candidates in the general elections, and that the voters had been deprived of their right to elect them.

b) The decision of the Supreme Electoral Tribunal refusing to process the appeal for annulment filed by him against the decision referred to in subparagraph a), and denying his subsequent appeal for review.

The Supreme Electoral Tribunal based its decision on the Election Law provision that only political parties have the legal status to contest acts of the electoral process,<sup>2</sup> that it could not receive complaints from individual persons.

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<sup>1</sup> See IACHR Report Nº 30/93 on the case of Mr. Ríos Montt.

<sup>2</sup> "The request is rejected outright because petitioner has no legal capacity to sue, which inheres only in legal organizations (political parties -- IACHR note) and their legitimate representatives..."

Petitioner contends that this violated his right to defense at trial, in a case affecting the interests of a person who had not been duly summoned, heard and defeated in proceedings (Article 8 of the American Convention on Human Rights and 12 of the Guatemalan Constitution).

c) The judgments of the Constitutional Court of October 19, 1990, in special *amparo* proceedings 280-90 and 281-90.

The judgment of the Constitutional Court confirming the ruling of the Supreme Court on the case, takes the same position as the Supreme Electoral Tribunal that candidates do not personally register their candidacy but rather it is the political parties that request such registration and therefore it is those parties that must represent their candidates in proceedings, based on Article 250 of the Law on Elections and Political Parties. Petitioner contends that this article and its application violate Articles 8.1 and 25 of the American Convention on Human Rights.

## II. SUBSEQUENT PROCEEDINGS BEFORE THE IACHR

### 3. Consolidation of the instant petition with that of Mr. Rios Montt

The Commission, taking into consideration that the facts and persons referred to in this petition and in that filed by Mr. Rios Montt were the same, and in order to avoid ruling prematurely on the merits of the case, proceeded to consolidate the processing of the above-mentioned petition with that filed by Mr. Rios Montt, pursuant to Article 40.2 of the IACHR Regulations, and the representatives of both petitioners and of the Guatemalan Government agreed.

However, when the Commission considered the merits of the petitions, it decided that the characteristics of the two cases were different, and for the purposes of taking decisions on them, it decided to separate them, and assigned number 10,804(b) to the present case referring to Mr. Whitbeck and the other candidates.

### 4. Reply of the Government

On April 22, 1991, the Government replied to the combined petitions, confirming the procedural and electoral facts cited by the petitioners, stating the various domestic remedies filed by them, and noting that:

The laws applied to resolve those proceedings, and the arguments put forward and conclusions reached by the above-mentioned courts in their final decisions are clearly stated in their judgments thereon.

The Government states further that "...the arguments presented by citizen Harris Whitbeck to the Commission are the same as those he presented to the various Guatemalan authorities...", and that "...the fact that the decisions were not in his favor does not imply that justice was denied." It considers that in none of these acts were any human rights violated, either those recognized universally, or those recognized by the Constitution and the American Convention. The Government requests that the petition be declared inadmissible as groundless and out of order.

The Government's reply was transmitted to the petitioners on May 21, 1991. Subsequently, Mr. Whitbeck and his attorneys reiterated and elaborated on their written arguments in hearings held in the following sessions and requested an early settlement of their case.

### III. CONSIDERING

As to admissibility

5. That the Commission is competent to examine the matter of the case because it concerns violations of the human rights recognized in the American Convention on Human Rights (Articles 2, 8 and 25 on Judicial Guarantees, and Article 23 on Political Rights).

6. That the petition meets the formal requirements for admissibility set forth in the American Convention on Human Rights and in the Commission's Regulations.

As to the merits:

7. The Commission will address first the matter of the exclusivity of the right of representation conferred by Guatemalan law on political organizations to appear before electoral tribunals and courts as participants in trials of election cases.

8. The Commission has already stated its opinion on the value of the role of political parties as the legitimate representatives in electoral proceedings of the individuals who associate themselves legally with them. In an earlier case of a similar matter,<sup>3</sup> the Commission held that parties are institutions needed in democracy, and agreed with the view of Linares Quintana that:

Modern democracy may be said to be founded on political parties ... At each election the parties choose the candidates from among whom the voter must choose when he casts his ballot. In this way they impose order on public opinion, for if citizens were to vote directly without this advance work of party assurances, elections would be reduced to chaos and anarchy, votes would

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<sup>3</sup> IACHR Resolution N° 26/88, Case 10109 Ríos Brito (Argentina), par. 10. Published in its 1988 Annual Report, p. 106.

be dispersed in disorder, and those elected would receive so few votes as to have no representativity whatever.

9. In this decision the IACHR also recalled that:

in the general run of democratic countries, 'independent' candidates may only stand for election if they meet certain requirements... regulating the right to elect and be elected as the candidate of a party or of a sizable number of electors.<sup>4</sup>

10. The Commission considers, however, that administrative, electoral or judicial avenues must always remain open for the party or the individual candidates to challenge any decision affecting the other candidates.

11. The Supreme Court of Justice says that in the decisions of the electoral bodies in this case, "though the nominators (parties) and nominees (candidates) were not treated the same as the other parties and candidates, this was because the situation of the former differed from that of the latter owing to the disqualification of their candidate for the presidency." (File CSJ 280/90, p. 24).

12. Article 190 of the Constitution of Guatemala establishes that the Vice President shall be elected on the same slate as the President of the Republic.

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

#### RESOLVES:

1. That the candidacies of president and vice president constitute an indissoluble unit, commonly known as the presidential slate.

2. That, accordingly, the denial based on the lawsuit of one member of that presidential slate can only be interpreted as a violation of the political rights of the other member where the law or the interpretation of it by the electoral organs prohibits or impedes the replacement of the excluded candidate.

3. To recommend that the Government amend its election laws so as to provide expressly that candidates who are excluded may be replaced, in order to avoid unfortunate interpretations of the present law that involve violation of the political rights set forth in the American Convention.

4. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of Guatemala did not adopt

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<sup>4</sup> *loc.cit.*, par. 9.

measures to correct the situation denounced within the time period.