

Castañeda Gutman v. Mexico

ABSTRACT¹

This case was brought by the former Mexican minister of foreign affairs, who tried to participate in the Presidential elections of 2006 as a citizens' candidate, without being affiliated with a political party. It explores the Mexican electoral process.. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

Mr. Jorge Castañeda Gutman is born in Mexico City on May 24, 1953.² He teaches at Mexico's National Autonomous University ("UNAM"), Princeton University, the University of California, Berkley, and New York University from 1978 to 2004.³ Mr. Castañeda Gutman serves as the Foreign Minister of Mexico under the Vicente Fox administration from 2000-2003.⁴

March 5, 2004: Mr. Jorge Castañeda Gutman submits a request to the Federal Electoral Institute (*Instituto Federal Electoral*, "IFE") General Council for registration as a non-party candidate for the State's Presidency in the July 2, 2006, elections.⁵ To run for President, Article 82 of the State's Constitution requires the applicant to be a State citizen, at least thirty-five years old by election day, and a resident of the State in the year leading up to the election.⁶ Article 82 also prohibits any

1. Monica Rodriguez, Author; Elise Cossart-Daly, Grace Kim, and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Jorge G. Castañeda, *Curriculum Vitae*, <http://jorgecastaneda.org/index.php?pageId=EACF9EE5-CC9B-701C-419A-A2DFABAF14F>.

3. *Id.*

4. *Id.*

5. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 184, ¶ 81 (Aug. 6, 2008).

6. Castañeda Gutman v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.535, ¶ 35 (Mar. 21, 2007).

applicant who is a member of an ecclesiastical hierarch or minister of any religion; who meets any disqualifications outlined in Article 83 of the Constitution; or who is a secretary of any government department, Attorney General, or governor of any state or territory, unless the applicant resigns from the position six months before Election Day.⁷ In his application, Mr. Castañeda Gutman provides all the necessary information to demonstrate that he satisfies the requirements listed in the State's Constitution to run for office.⁸

March 11, 2004: The IFE notifies Mr. Castañeda Gutman that it cannot register him as a political candidate.⁹ The IFE bases its decision on Article 175 of the Federal Code for Electoral Institutions and Procedures (*Código Federal de Instituciones y Procedimientos Electorales*, "COFIPE"), which limits who may run for public office at the federal level only to those chosen by national political parties.¹⁰ However, Castañeda Gutman had presented himself as an independent "citizens' candidate." Additionally, the IFE notifies Mr. Castañeda Gutman that he failed to register to run for office within the proper time frame pursuant to Article 177 (1)(e), which is January first to the fifteenth of the election year.¹¹

March 29, 2004: Mr. Castañeda Gutman files an *amparo* application against the IFE in the Seventh District Administrative Court of the Federal District.¹² He argues that the State violated his rights to freedom of work, to participate in the development of the national political arena, to freedom of association, and the right of equality before the law, as provided in the State's Constitution.¹³

July 16, 2004: The Seventh Administrative Law Court declares the *amparo* application inadmissible, because Article 73, section VII of the *Amparo* Act declares that any *amparo* applications against decisions of electoral bodies are inadmissible.¹⁴

7. *Id.*

8. *Id.* ¶ 40.

9. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, ¶ 21.

10. *Id.*

11. *Id.*

12. *Id.* ¶ 83.

13. *Id.*

14. Castañeda Gutman v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.535, ¶ 45 (Mar. 21, 2007).

August 2, 2004: Mr. Castañeda Gutman appeals to the Fourteenth Collegiate Administrative Court of the First Circuit.¹⁵

November 11, 2004: The Administrative Court proposes that the Supreme Court of Justice review the *amparo* decision because it raises constitutional matters.¹⁶

August 16, 2005: The Supreme Court of Justice confirms the judgment on appeal, declaring that the *amparo* application is inadmissible pursuant to Articles 175, 176, 177(1)(e) and 178 of the COFIPE.¹⁷ Article 176 of the COFIPE requires that the State's citizens be provided with a voting card so that they may exercise their right to vote.¹⁸ Article 178 of the COFIPE mandates the political party supporting the candidate submit a statement, in writing, that the nominating political party selected the registering candidate.¹⁹ The Supreme Court does not examine the merits of the case.²⁰

October 6, 2005: The IFE receives applications from individuals who wish to run for the State Presidency.²¹ Mr. Castañeda Gutman does not file an application during this period.²²

B. Other Relevant Facts

Article 35 of the Mexican Constitution provides its citizens with the right to vote and congregate for the purposes of discussing the country's political affairs.²³ Additionally, Article 35 gives citizens the right to run for public office or be appointed to any other employment or commission if the applicant has met the legally established

15. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, ¶ 85.

16. *Id.*; Castañeda Gutman v. Mexico, Petition to the Court ¶ 46.

17. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, ¶ 86.

18. *Código Federal Electoral* [CFE] [Federal Elections Code], Art. 176, Diario Oficial de la Federación [DO] (Jan. 14, 2008) (Mex.).

19. Castañeda Gutman v. Mexico, Petition to the Court, ¶ 39.

20. *Id.* ¶ 49.

21. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, ¶ 87.

22. Castañeda Gutman v. Mexico, Petition to the Court, ¶ 50.

23. *Id.* ¶ 33.

requirements.²⁴

Article 41 of the Constitution explains what political parties are and what purpose political parties aim to serve.²⁵ Political parties are considered public-interest entities under the law, which have the right to participate in both state and municipal elections.²⁶ The goals of political parties are to promote the people's participation in a democracy, facilitate the selection of the people's representatives, and give the people access to their parties' platform, principles and ideas.²⁷ This must be done through free, private, and direct elections.²⁸

Article 4 of COFIPE states that citizens have the right to vote and citizens have an obligation to exercise this right when electing state officials.²⁹ Additionally, that article imposes an obligation on political parties to ensure the equal opportunity and treatment of men and women who wish to run for a politically elected position.³⁰

Article 36 of COFIPE gives national political parties the right to nominate candidates running for federal office.³¹

Article 178(3) of COFIPE reads that if the political party does nominate a candidate, then it must state in writing that the candidate who wishes to register was selected in accordance with the nominating party's laws.³²

II. PROCEDURAL HISTORY

A. *Before the Commission*

October 12, 2005: Mr. Castañeda Gutman presents a petition to the Inter-American Commission on Human Rights.³³

October 17, 2005: The Commission, on behalf of Mr. Castañeda Gutman, grants precautionary measures.³⁴ The Commission determines that the COFIPE's rules regarding the registration and election of

24. *Id.*

25. *Id.* ¶ 34.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* ¶ 36.

30. *Id.*

31. *Id.* ¶ 37.

32. *Id.* ¶ 39.

33. *Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 184, ¶ 81 (Aug. 6, 2008).

34. *Castañeda Gutman v. Mexico*, Petition to the Court, ¶ 12.

federal officials could lead to irreversible damage of a citizen's political rights.³⁵ Specifically, the Supreme Court's decision eliminates the avenues available to challenge the constitutionality of the election laws.³⁶ The Commission gives the state ten days to report what measures it has taken to protect Mr. Castañeda Gutman's rights.³⁷

October 27, 2005: The State responds to the Commission's request, stating that the State law does not permit the registration of an independent presidential candidate; thus, Mr. Castañeda Gutman cannot be registered.³⁸

November 15, 2005: The Commission files a request with the Inter-American Court of Human Rights seeking provisional measures requiring the State to take steps to register Mr. Castañeda Gutman as an independent presidential candidate.³⁹ The Commission requests the Court do this while the Commission rules on the admissibility and merits of the alleged violations to the American Convention.⁴⁰

November 25, 2005: The Court dismisses the Commission's request for provisional measures.⁴¹ The Court determines that granting the provisional measures would require the Court to review the merits of the case, which would be procedurally unfair to the parties.⁴²

October 26, 2006: The Commission adopts the Admissibility and Merits Report No. 113/06, which includes recommendations for the State.⁴³ The Commission requests that the State take measures to increase access to the right to vote and to be elected.⁴⁴

B. Before the Court

35. Castañeda Gutman v. Mexico, Precautionary Measures, Order of the Commission, Inter-Am. Comm'n H.R., Case No. 12.535, ¶ 32 (Oct. 17, 2005); see Castañeda Gutman v. Mexico, Petition to the Court ¶ 73.

36. *Id.*

37. Castañeda Gutman v. Mexico, Petition to the Court, ¶ 12.

38. *Id.* ¶ 13.

39. *Id.* ¶ 15.

40. *Id.*

41. Castañeda Gutman v. Mexico, Precautionary Measures, Order of the Commission, Inter-Am. Comm'n H.R., Case No. 12.535, ¶ 32 (Oct. 17, 2005).

42. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 184, ¶ 43 (Aug. 6, 2008).

43. *Id.* ¶ 1.

44. Castañeda Gutman v. Mexico, Petition to the Court, ¶ 52.

March 21, 2007: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁵

June 8, 2007: The Court appoints Claus Wener von Wobeser Hoepfner as Judge *ad hoc*.⁴⁶

1. Violations Alleged by Commission⁴⁷

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights);

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁴⁸

Same Violations Alleged by Commission, plus:

Article 23 (Right to Participate in Government)

Article 24 (Right to Equal Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

September 11, 2007: The State files four preliminary objections:⁴⁹

First, the State argues that the Court cannot hear Mr. Castañeda Gutman's case because the State did not enforce the law.⁵⁰ The State must have enforced a law for the Court to have jurisdiction over the case.⁵¹ Mr. Castañeda Gutman's request for registration was time-barred

45. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

46. *Id.* ¶ 6, n 2.

47. Castañeda Gutman v. Mexico, Petition to the Court, ¶¶ 51, 79.

48. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, ¶ 4. Fabián M. Aguinaco, Gonzalo Aguilar Zínser and Santiago Corcuera served as representatives of Mr. Castañeda Gutman.

49. *Id.* ¶ 5.

50. *Id.* ¶ 16.

51. *Id.*

against the electoral process and the registration of candidates.⁵² The electoral authority simply informed Mr. Castañeda Gutman that a candidate for federal position must be affiliated with a political party.⁵³ As this response was not an enforcement of law, the Court lacks jurisdiction.⁵⁴ Additionally, the State argued that no legal enforcement had taken place because doing so would have meant infringing the registration of candidates.⁵⁵ Thus, the Court may not hear this case because it is only permitted to hear and decide cases where the law in force was applied, and where it adversely affected the rights and freedoms protected by the Convention.⁵⁶ No law was applied in this case.⁵⁷

Second, the Court lacks the jurisdiction to hear the merits of the case since Mr. Castañeda Gutman is not participating in the electoral process, which began on October 2005.⁵⁸ Filing a request for registration within the required time frame is a requirement and the proper domestic remedy.⁵⁹ The time bar made it impossible for the electoral authority to consider Mr. Castañeda Gutman as a possible presidential candidate and to allow him to participate in the electoral process.⁶⁰ Thus, this remedy has not been exhausted.⁶¹

Third, Mr. Castañeda Gutman has failed to exhaust appropriate domestic remedies.⁶² The State points to Articles 8, 79 and 83 of the Law on the System of Mechanisms for Contesting Electoral Matters for the procedures available to ensure the protection of the political and electoral rights of citizens.⁶³ These procedures require that the individual contesting the electoral authority's action file an action within four days after having learned about the authority's act.⁶⁴ Next, the Superior Chamber of the Electoral Tribunal decides the matter that has been filed in a single proceeding.⁶⁵ The State contends that this is the proper remedy and method of safeguarding political rights that have

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* ¶ 23.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* ¶ 27.

63. *Id.* ¶ 31.

64. *Id.*

65. *Id.*

allegedly been violated.⁶⁶ Mr. Castañeda Gutman has not exhausted these remedies, thus the State has complied with its obligation to indicate which domestic remedies have not been exhausted.⁶⁷

Fourth, the Commission's actions in processing the case are objectionable.⁶⁸ For one, the Commission should not have processed the alleged victim's request for provisional measures.⁶⁹ Instead, the Commission should have completed the processing of the petition based on evidence of the State's response to the provisional measures and Mr. Castañeda Gutman's failure to register during the required registration period of the electoral process.⁷⁰ Additionally, the Commission should have ruled on the admissibility of the petition and declared the petition inadmissible based on Article 47 of the American Convention.⁷¹ Instead the Commission ordered the admissibility matter to be transferred.⁷² Moreover, the Commission violated Article 50 of the American Convention by adopting the Report on Admissibility and Merits No. 113/06.⁷³ Pursuant to Article 50, in the event that the parties cannot reach a settlement, the Commission is required to send its recommendations to the State, and such recommendations must remain unpublished. Finally, the Commission failed to comply with its own Rules of Procedure of how to lodge cases before the Inter-American Court.⁷⁴

January 24, 2008: Mr. Jorge Santistevan de Noriega, a Peruvian lawyer,⁷⁵ submits an *amicus curiae* brief to the Court.⁷⁶

66. *Id.*

67. *Id.*

68. *Id.* ¶ 37.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* "1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report. 2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it. 3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit."

74. *Id.*

75. *Falleció Jorge Santistevan de Noriega, el Primer Defensor del Pueblo*, LA REPUBLICA.PE (April 19, 2012), www.larepublica.pe/19-04-2012/fallecio-jorge-santistevan-de-noriega-el-primer-defensor-del-pueblo.

76. *Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 12.

January 31, 2008: The Mexican Lawyers' Professional Association submits an *amicus curiae* brief to the Court.⁷⁷

February 6, 2008: A group of students, former students and academics of the Human Rights master's degree program at the Universidad Iberoamericana of Mexico submit an *amicus curiae* brief to the Court.⁷⁸

February 7, 2008: The Parliamentary Group Convergence Party Law School submits an *amicus curiae* brief to the Court.⁷⁹

April 28, 2008: A group of law students of the Universidad Autónoma de Mexico Law School submit an *amicus curiae* brief to the Court.⁸⁰

May 26, 2008: Mr. Castañeda Gutman and his representatives request that the Court not consider the *amicus curiae* submitted on April 28, 2008, by the students of the Universidad Autónoma de Mexico Law School because it was submitted after the Court had already closed the file for this case.⁸¹

July 7, 2008: Ms. Socorro Apreza Salgado, Mr. Ricardo Alberto Ortega Soriano, and Mr. Jorge Humberto Meza of the Universidad Autónoma de Mexico Law School submit an *amicus curiae* brief to the Court.⁸²

July 19, 2008: Mr. Castañeda Gutman and his representatives request that the Court not consider the *amicus curiae* submitted on July 7, 2008, because it was not filed in a timely manner.⁸³

July 21, 2008: Mr. Imer Flores from the Juridical Research Institute of the Universidad Nacional Autónoma de Mexico submits an *amicus curiae* brief to the Court.⁸⁴

August 6, 2008: The Court denies Mr. Castañeda Gutman's request and determines that the third parties can submit amici curiae at any time

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* ¶ 13.

82. *Id.* ¶ 12.

83. *Id.* ¶ 13.

84. *Id.* ¶ 12.

before the Court renders a judgment, so long as the arguments made in the amici curiae are relevant.⁸⁵

The Court also unanimously decides to dismiss all four of the State's preliminary objections.⁸⁶

The Court dismisses the preliminary objection because it determines that regardless of whether the request was made outside of the legal time frame, the IFE, a competent administrative authority, decided not to accept the request based on constitutional and legal provisions governing the electoral process.⁸⁷ This decision and the effect of the decision are acts of enforcing the law.⁸⁸ As a result, the Court rejects the preliminary objection.⁸⁹

The Court dismisses the second preliminary objection on the basis that submitting a request for registration of candidacy is not a remedy because its purpose is not to determine whether human rights have been violated.⁹⁰ Thus, the Court rejects this preliminary objection.⁹¹

The Court also dismisses the third preliminary objection because it determines that examining the parties' arguments regarding the merits of the case is crucial for determining whether Article 25 (Right to Judicial Protection) of the Convention was violated.⁹²

Finally, the Court dismisses the fourth preliminary objection because it determines that the State's argument against granting the provisional measures is not a proper preliminary objection argument and it does not affect the Court's competence to hear the case.⁹³

Furthermore, in regard to the State's argument that Mr. Castañeda Gutman failed to register for the candidacy, the Court previously ruled that this was not a proper remedy and it did not need to be exhausted.⁹⁴ The Court also decides that the State failed to prove how the Commission's actions of transferring the case led to a prejudicial error affecting or violating the State's right of defense during the proceedings before the Commission.⁹⁵

Considering the State's allegation that the Commission infringed

85. *Id.* ¶ 14.

86. *Id.* "Decides" ¶ 1.

87. *Id.* ¶¶ 21-22.

88. *Id.* ¶ 22.

89. *Id.*

90. *Id.* ¶ 26.

91. *Id.*

92. *Id.* ¶ 36.

93. *Id.* ¶ 46.

94. *Id.* ¶ 50.

95. *Id.* ¶ 67.

Article 50 of the American Convention, the Court finds that determining whether the Commission violated Article 50 would require the Court to examine the merits of the case.⁹⁶ Article 50 requires the Commission to send its recommendations to the State if a settlement is not reached, and that such recommendations should remain unpublished.⁹⁷

Addressing the State's objection regarding the Commission's failure to abide by its Rules of Procedure, the Court determines that the State has not proved that the Commission's actions produced an error that violated or prejudiced the State's right of defense during the Commission's proceedings.⁹⁸

III. MERITS

A. *Composition of the Court*⁹⁹

Cecilia Medina Quiroga, President
Diego García-Sayán, Vice-President
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Claus Wener von Wobeser Hoepfner, Judge *ad hoc*

Pablo Saavedra, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

August 6, 2008: The Court issues its Judgment on the Preliminary Objections, Merits, Reparations and Costs.¹⁰⁰

The Court found unanimously that the State had violated:

Article 25 (Right to Judicial Protection), in relation to Articles 1(1)

96. *Id.* ¶ 63.

97. *Id.*

98. *Id.* ¶ 67.

99. On May 7, 2007 Judge Sergio García Ramírez, a Mexican national, recused himself from hearing this case; *Id.* n.*.

100. Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs.

and 2 of the Convention, to the detriment of Mr. Castañeda Gutman,¹⁰¹ because:

*The State neither provided an accessible or effective judicial procedure for an individual to contest the electoral authority's judgment nor protect his political right to be elected as established by the State's Constitution and the American Convention.*¹⁰²

*The American Convention establishes the State's obligation to provide within its domestic laws a simple and immediate recourse for its citizens who file human rights violations.*¹⁰³

*In the present case, the Court analyzed two issues regarding the effectiveness of the judicial authority provided by the State.*¹⁰⁴ *The first issue was whether the alleged victim had access to appropriate judicial authority, and the second issue was whether the judicial authority had the ability to restore the alleged victim's rights if the victim's rights were violated.*¹⁰⁵

*Regarding the first issue, the Court determined that the amparo relief filed by Mr. Castañeda Gutman was an adequate recourse.*¹⁰⁶ *Articles 79(1) and 80(1)(d) of the Law on Contesting Electoral Matters govern the judicial action protecting a citizen's right to run for public office.*¹⁰⁷ *Article 79(1) governs the procedures for filing the judicial protection proceedings.*¹⁰⁸ *This Article states that every citizen has the right to file for this recourse.*¹⁰⁹ *Article 80 specifies the requirements in order to file the judicial action.*¹¹⁰ *Specifically, Article 80 limits the availability of this remedy to presidential candidates of a political party whose registration for public office was denied.*¹¹¹ *Thus, in order for Mr. Castañeda Gutman's amparo relief and his claim that his right to be elected to be admissible, Mr. Castañeda Gutman's candidacy must have*

101. *Id.* "Decides" ¶ 2.

102. *Id.* ¶ 131.

103. *Id.* ¶ 102.

104. *Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs*, ¶ 103.

105. *Id.*

106. *Id.* ¶ 131.

107. *Id.* ¶¶ 108-09.

108. *Id.* ¶ 108.

109. *Id.* ¶ 111.

110. *Id.* ¶¶ 110-11.

111. *Id.* ¶ 111.

been supported by a political party.¹¹² As Mr. Castañeda Gutman did not have such political support, he had no judicial remedy available to assert a claim for the violation of his political right to be elected.¹¹³

Regarding the second issue, the Court determined that the Electoral Tribunal was not an effective recourse.¹¹⁴ Previously, the State's Supreme Court had decided to limit the Electoral Tribunal jurisdiction.¹¹⁵

This resulted in the Electoral Tribunal's inability to examine disputes concerning an electoral authority's decision that would require the Tribunal to address the constitutionality of the law on which the electoral authority based its decision.¹¹⁶ Mr. Castañeda Gutman's case raised issues about the constitutionality of the proceeding; thus, the Electoral Tribunal did not have the authority to evaluate or carry out a remedy.¹¹⁷

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention requires that a State modify its domestic law to abide with its international obligations once it has ratified an international convention.¹¹⁸ In this case, an effective recourse did not exist since the State did not provide a proper judicial remedy for Mr. Castañeda Gutman to question the electoral authority's judgment and to protect his right to run for a political office.¹¹⁹ The Court, therefore, found a violation of Article 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) and Article 2, to the detriment of Mr. Castañeda Gutman.¹²⁰

The Court found unanimously that the State had not violated:

Article 23 (Right to Participate in Government), in relation to Articles 1(1) and 2 of the American Convention, to the detriment of Mr.

112. *Id.* ¶ 114.

113. *Id.*

114. *Id.* ¶ 131.

115. *Id.* ¶¶ 128, 130.

116. *Id.*

117. *See id.* ¶ 131.

118. *Id.* ¶ 132.

119. *Id.* ¶¶ 131, 133.

120. *Id.*

Castañeda Gutman,¹²¹ because:

There is not one exclusive way for the State to fulfill its obligation.¹²² Article 23(1) (Right to Participate in Public Affairs) of the American Convention establishes the right and opportunity to participate in public affairs.¹²³ This can occur by directly or periodically electing representatives, or through elections that guarantee the will of the voters.¹²⁴ Article 23(1) also states that citizens have the right and should have the “opportunity” to engage in public service of their country through public office.¹²⁵ Article 23(2) (Exceptions to the Right to Participate) establishes limits for which the State can regulate the enjoyment of political rights.¹²⁶ Article (2) of the American Convention obligates the State to adopt measures to ensure that the rights delineated in the Convention are such that they can be enjoyed and exercised by people entitled to those rights.¹²⁷

Article 23 of the American Convention imposes a positive obligation on the State to ensure that its method for effectuating its citizens’ political rights complies with Article 23.¹²⁸ States effectuate a citizen’s political rights through internal organizations that regulate the electoral process.¹²⁹ These organizations facilitate and protect citizens’ right to vote and right to judicial protection, and thus are of the utmost importance.¹³⁰ Therefore, the Court stated that weight should be given to how the State designed its system for effectuating these rights.¹³¹

The Court then determined that the current electoral system of registering candidates for public office did not result in an unlawful restriction in political participation, and as such was not in violation of Article 23(1)(b) (Right to Elect and Be Elected).¹³² Article 75 of COFIPE established the restrictive measure of having the political

121. *Id.* “Decides” ¶ 3.

122. *Id.* ¶¶ 149, 162.

123. *Id.* ¶¶ 149, 156.

124. *Id.*

125. *Id.* ¶¶ 145, 154.

126. *Id.* ¶ 155.

127. *Id.* ¶¶ 156, 158.

128. *Id.* ¶ 159.

129. *Id.*

130. *Id.*

131. *See id.* ¶ 160.

132. *Id.* ¶ 205.

parties register the candidate for a federal elected position.¹³³ The American Convention permits this restriction because it ensured an organized electoral process, and protected the right to vote and to be elected by periodic genuine elections.¹³⁴ Contrary to the representative's belief, this restriction strengthened and improved democracy, and was necessary given the State's history and political reality.¹³⁵ This restriction fulfilled a public and social need in the State.¹³⁶ Additionally, the Court found that the State's restriction was not disproportionate or overly burdensome; indeed, Mr. Castañeda had several alternative options if he wanted to run for office.¹³⁷

Furthermore, the Court also emphasized that international law does not impose specific methods or procedures regarding the electoral system, the right to vote, and the right to be elected.¹³⁸ The Court held that requiring an individual who wishes to run for public office to do so on behalf of a political party is acceptable so long as Article 23 is not violated.¹³⁹ For instance, the Yatama case dealt with indigenous communities within Nicaragua whose differences prevented their candidates from participating in the electoral process.¹⁴⁰ This Court held in the Yatama case the political parties requirement adversely affected indigenous and ethnic communities, and violated the citizens' political rights.¹⁴¹ The Yatama situation is factually different from the present case, because Mr. Castañeda was not an independent candidate representing the interests of marginalized communities who had no other alternative in the Mexican electoral system to take part in the election.¹⁴² Indeed, the factual difference is demonstrative of the existence of different electoral systems compatible with the Convention.¹⁴³

Article 24 (Right to Equal Protection), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Castañeda

133. *Id.* ¶ 179.

134. *Id.* ¶ 183.

135. *Id.* ¶¶ 193, 202, 204-05.

136. *Id.*

137. *Id.*

138. *Id.* ¶ 162.

139. *See id.* ¶¶ 193, 202, 204-05.

140. *Id.* ¶ 172.

141. *Id.* ¶ 169.

142. *Id.* ¶ 172.

143. *Id.* ¶ 173.

Gutman,¹⁴⁴ because:

The Court found it impossible to compare federal and local elections, and thus determined that the representatives and the Commission had not proven that differences between local and federal elections violate human dignity.¹⁴⁵ Article 24 of the Convention requires equal protection under the law.¹⁴⁶ The representatives argued that the difference in treatment of the candidates in federal and local elections violated Article 24.¹⁴⁷ The Court noted that all differences in treatment could not be considered violations of human dignity.¹⁴⁸

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Obligation to Adopt Measures (Legislative and Administrative Reforms, etc.)

The State shall, within a reasonable time, reform its domestic law so as to comply with the American Convention.¹⁴⁹ Specifically, the State must modify the second legislation and norms provisions that regulate citizen's rights to the November 13, 2007 constitutional reform, to ensure that all citizens are guaranteed the chance of questioning the constitutionality of legal regulations governing the right to be elected.¹⁵⁰

2. Publish the Judgment

144. *Id.* "Decides" ¶ 4.

145. *Id.* ¶¶ 211-12.

146. *Id.* ¶ 210.

147. *Id.* ¶ 207.

148. *Id.* ¶ 211.

149. *Id.* ¶ 231.

150. *Id.*

The State shall publish the Judgment in an official gazette and in a daily newspaper that is widely circulated.¹⁵¹

3. Public Acknowledgement of State Responsibility

The Court determined that this measure is not necessary to repair the violation found.¹⁵² The Judgment serves as a *per se* measure of reparation.¹⁵³

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

The Court awarded \$7,000 to Mr. Castañeda Gutman for past and future costs and expenses, which includes monitoring and compliance with the Judgment and any expense at the domestic level.¹⁵⁴

4. Total Compensation (including Costs and Expenses ordered):

\$7,000

C. Deadlines

The State must publish the Judgment within six months of the

151. *Id.* ¶ 235.

152. *Id.* ¶ 239.

153. *Id.*

154. *Id.* ¶ 244.

notification of this Judgment.¹⁵⁵ In addition, the State must make the full payment of costs and expenses within six months of notification of this Judgment.¹⁵⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

July 1, 2009: The Court found that the State had complied with its obligation to publish the relevant portions of the Judgment in the official gazette and a widespread newspaper within the six-month period.¹⁵⁷ The State also complied with its obligation to pay Mr. Castañeda Gutman \$7,000 for costs and expenses within six months of the notification of judgment.¹⁵⁸ The Court determined that the State had not complied with its order to adapt its domestic law to comply with the American Convention.¹⁵⁹ Nonetheless, the Court noted that the State was still within its deadline period, and thus still had time to comply with the Judgment.¹⁶⁰

January 18, 2012: The Court determined that it would hold a private hearing on February 20, 2012, to review the State's compliance with its obligation to adapt measures so that the domestic law would abide by the American Convention.¹⁶¹

August 28, 2013: The Court issued a Monitoring Compliance Judgment.¹⁶² The Court declared that the State complied with all obligations imposed by the Judgment and closed the case.¹⁶³

VII. LIST OF DOCUMENTS

155. *Id.* ¶ 235.

156. *Id.* ¶¶ 244-45.

157. Castañeda Gutman v. Mexico, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) "Having Seen" ¶ 11 (July 1, 2009).

158. *Id.* ¶ 15.

159. *Id.* ¶ 19.

160. *Id.*

161. Castañeda Gutman v. Mexico, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) "Having Seen" ¶ 12 (Jan. 18, 2012).

162. Castañeda Gutman v. Mexico, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) (Aug. 28, 2013).

163. *Id.* "Resuelve Que" ¶¶ 1, 2.

A. *Inter-American Court*

1. Preliminary Objections

[Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C.\) No. 184, \(Aug. 6, 2008\).](#)

2. Decisions on Merits, Reparations, and Costs

[Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C.\) No. 184, \(Aug. 6, 2008\).](#)

3. Provisional Measures

[Castañeda Gutman v. Mexico, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 25, 2005\) \(Available only in Spanish\).](#)

[Castañeda Gutman v. Mexico, Provisional Measures Concurring Opinion of Judge Antônio Augusto Cançado Trindade and Judge Manuel E. Ventura Robles, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 25, 2005\) \(Available only in Spanish\).](#)

4. Compliance Monitoring

[Castañeda Gutman v. Mexico, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Aug. 28, 2013\).](#)

[Castañeda Gutman v. Mexico, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Jan. 18, 2012\).](#)

[Castañeda Gutman v. Mexico, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(July 1, 2009\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

Castañeda Gutman v. Mexico, Precautionary Measures, Order of the Commission, Inter-Am. Comm'n H.R., Case No. 12.535, (Oct. 17, 2005).

4. Report on Merits

[None]

5. Application to the Court

[Castañeda Gutman v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.535, \(Mar. 21, 2007\).](#)

VIII. BIBLIOGRAPHY

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Falleció Jorge Santistevan de Noriega, el Primer Defensor del Pueblo, LA REPUBLICA.PE (April 19, 2012), www.larepublica.pe/19-04-2012/fallecio-jorge-santistevan-de-noriega-el-primer-defensor-del-pueblo.

2014]

Castañeda Gutman v. Mexico

1969

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