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REPORT No. 155/20
PETITION 514-09
REPORT ON ADMISSIBILITY

ANSELMO JOAQUÍN McDONALD POSSO
PANAMA

Electronically approved by the Commission on June 1, 2020.

Cite as: IACHR, Report No. 155/20, Petition 514-09. Admissibility. Anselmo Joaquín McDonald Posso. Panama. June 1, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Anselmo Joaquín McDonald Posso
Alleged victim	Anselmo Joaquín McDonald Posso
Respondent State	Panama ¹
Rights invoked	The petitioner does not specify any article but broadly refers to violations of the American Convention on Human Rights, ² the Inter-American Convention on the Elimination of All Forms of Violence against Persons with Disabilities and the Convention on the Rights of Persons with Disabilities and the Optional Protocol on the Rights of Persons with Disabilities

II. PROCEEDINGS BEFORE THE IACHR³

Date of filing	April 29, 2009
Additional information received during initial review	June 13 and 19, and November 15, 2013
Notification of the petition	November 27, 2017
State's first response	May 3, 2018
Additional observations from the petitioner	August 6, 2018
Additional observations from the State	June 11, 2019

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification on June 22, 1978)

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

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	Articles 8 (fair trial), 24 (equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention, in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section IV
Timeliness of the petition	Yes, under the terms of section IV

V. SUMMARY OF FACTS ALLEGED

1. According to the petition, the State of Panama violated the human rights of Anselmo Joaquín McDonald Posso (hereinafter "the alleged victim") since the Panamanian Ministry of Health did not grant his petition seeking the physical accessibility of the hospital where he had to complete the medical internship required for a license for professional medical practice. The alleged victim submits that the denial to make the building physically accessible constitutes a distinct violation of his human rights and an act of discrimination on the part of the State of Panama, given his physical disability.

2. The alleged victim claims that, on completing his degree in Medical Sciences, he went to the Santo Tomás Hospital on July 1, 2000. He explains that he performed the tasks he was assigned at the hospital for five months, but then he developed an acute left-sided lumbar radiculopathy, in addition to a left foot drop. He moreover says that during his recovery period, he developed a neurological condition affecting the upper

¹ Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Esmeralda Arosemena de Troitiño, a Panamanian national, did not partake in the discussion or the decision on this matter.

² Hereinafter "American Convention" or "Convention."

³ The observations submitted by each party were duly transmitted to the opposing party.

motor neuron, so in June 2001, he was put in the intensive-care unit of the National Hospital. His leaves and medical certificates for work-related injury lasted until April 30, 2002. On May 8, the alleged victim was examined by the Benefits Committee of the Social Insurance Fund, which determined that he had a 90 percent permanent partial incapacity for work. Therefore, the Occupational Health Area of the Social Insurance Fund granted him a two-year pension for permanent partial disability.

3. The alleged victim says that two years later, on March 24, 2004, the Social Insurance Fund's Benefits Committee reassessed his health condition and granted him a lifelong pension under Resolution No. 331 of 2004 because the damage that determined his permanent partial disability persisted. He asserts that despite his injury, on March 20, 2004, he successfully completed a master's degree in Health Services Management and that, for some years, he had jobs related to health services and management.

4. On May 26, 2008, the alleged victim formally requested the Ministry of Health to adjust his medical internship to his physical disability. However, the Ministry never answered his petition, which, under the laws of Panama, constitutes an administrative denial. Under this juridical institution, governed by Law 38 of 2000, an administrative body's lack of an answer to a petition is tantamount to its denial. In addition, the alleged victim argues that the State did not consider the recommendation by the National Agency on Comprehensive Health Services for Persons with Disabilities (ONSIPD) of the Ministry of Health, which recommended he be acknowledged as a physician able to perform technical and administrative tasks only, provided these do not pose a risk to his health condition, that he should contribute his knowledge to this institution.

5. On September 26, 2008, the alleged victim's attorney filed, with the Third Division of the Contentious-Administrative Court of the Supreme Court of Justice, a contentious-administrative complaint seeking a writ of nullity, claiming the unlawfulness of the constructive denial of the request submitted to the Ministry of Health (the request sought an adjustment of the medical internship given the alleged victim's physical and organic limitations). The alleged victim asserts that any proceedings that ignore a disabled person's right to social integration may be understood as an act of discrimination; thus, the actions of the State of Panama are a flagrant violation of Law 43 of 2003 and Executive Decree 119 of 2003.

6. On December 21, 2012, the Supreme Court of Justice found the appealed administrative decision lawful. During its analysis of the instant matter, the Supreme Court reported that at the ordinary meeting held on August 29, 2008, the Medical Licensing Board rejected the request filed by the alleged victim, based on the same laws he had invoked. The Supreme Court moreover considered that the claims of the Ministry of Health regarding the regulation of the professional training programs for medical interns and residents by Law No. 43 and Executive Decree No. 119, which establishes their duties, were constitutional. It also emphasized the compulsory completion of the two-year internship required for an unrestricted license to practice medicine, which the alleged victim apparently did not complete.

7. In the same resolution, the Supreme Court expressed that the Medical Licensing Board and the Ministry of Health lacked the competence to adjust the medical internship program or grant a partial or restricted license to practice medicine. Therefore, it concluded that the decision by the Medical Licensing Board did not constitute a rejection or exclusion of the alleged victim on the basis of his disability, because actually a legislative decision was required, which was a competence of the related bodies. The alleged victim considers that the Supreme Court omitted analyzing the international laws and treaties ratified by Panama, hence lacked a better understanding of the rights alleged to have been violated.

8. For its part, the State contends that professional services must be provided according to their category and on a continued and uninterrupted basis. It explains that, in the past, there were intern candidates that, having suffered a disabling condition, were subjected to occupational health screenings and eventually allowed to start or restart the process of reinstatement to the medical internship program. However, the State contends that the alleged victim's matter was discussed with the National Commission of Teachers of Medical Residents and Interns. According to that body, the alleged victim was unable to withstand the intense physical effort typical of the medical internship or the sleep deprivation associated with it and that it would be unwise to expose him to hospital germs during the medical internship.

9. In view of these considerations, the alleged victim was granted a permanent partial disability pension for a work injury, which he has been paid since May 8, 2004, as a lifelong beneficiary of a work injury benefit. This decision was made considering that his health conditions were permanent and limited his capacity for work but without leading to his permanent full disability. Therefore, in 2008, the alleged victim requested Panama's Medical Licensing Board to adjust his medical internship to his physical and organic limitations, but his request was denied. The alleged victim resorted to the Supreme Court of Justice, and on December 21, 2012, it found the appealed proceedings lawful on the grounds that the request exceeded the administrative authorities' legal powers and competence.

10. The State of Panama considers that the alleged victim's claims of human rights violations are groundless, hence do not establish violations of the rights protected by the American Convention. To conclude, the State submits that the Inter-American Commission lacks subject-matter competence to determine violations of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on December 13, 2006.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The Commission observes that, on March 16, 2004, the alleged victim requested the Ministry of Health-Medical Licensing Board to adjust his internship to a physical disability that he had owing to a work injury and that he was not given any answers. Likewise, under the national rules of Panama, following two years of a petition to an administrative body, the lack of an answer leads to the application of the institution of "constructive denial," which is basically the denial of the petitioner's request. As a result, the alleged victim filed a complaint seeking the annulment of the constructive denial on the grounds of its being contrary to the Constitution and the laws currently in force regarding disability. Yet, on December 21, 2012, the Supreme Court found the appealed decision lawful.

12. The Inter-American Commission observes that the Supreme Court's decision exhausted domestic remedies on December 21, 2012 and that the petition was filed on March 29, 2009. Accordingly, the exhaustion of domestic remedies took place when the matter was under study at the IACHR. The IACHR reiterates that the requirements set out in Articles 46 and 47 of the Convention should be analyzed in the light of the situation existing at the time of the ruling on the admissibility or inadmissibility of a petition in order to guarantee that both the State and the alleged victim have the opportunity to submit information and claims.⁴ Thus, the Inter-American Commission finds that the instant petition meets the requirement set out in Article 46.1, paragraphs (a) and (b), of the American Convention.

VII. COLORABLE CLAIM

13. The Commission observes that the instant petition involves claims regarding the violation of the alleged victim's right to equal protection, for he was allegedly deprived of his professional license to practice medicine based on his physical disability. Moreover, the petitioner claims the violation of his rights to a fair trial and judicial protection because the domestic courts failed to duly remedy the State's refusal to make infrastructural changes appropriate to his physical disability that he should complete his medical internship. Finally, the alleged victim claims the lack of legislative action noted by the Supreme Court of Justice to ensure disabled people's exercise of their rights on an equal footing, which he considers should be reflected in Panama's national laws.

14. As for the State's claim about the Commission's lack of subject-matter competence to determine alleged violations of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly, the IACHR recognizes its lack of subject-matter competence to decide on violations of rights

⁴ IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 29, 2016, para. 33.

embodied in treaties outside the inter-American system, notwithstanding which, it may resort to the international standards established in other treaties, in order to interpret the rules of the American Convention, under Article 29 thereof.⁵ Therefore, the IACHR will analyze them in the merits stage.

15. As a result and having analyzed the factual and legal elements submitted by the parties, the Inter-American Commission deems that the facts alleged by the alleged victim are not manifestly groundless and require a substantive analysis. If proven to be true, these may establish violations of Articles 8 (fair trial), 24 (equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention, with regard to Articles 1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 8, 24, 25 and 26 of the Convention;
and

2. 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 1st day of the month of June, 2020.
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, and Julissa Mantilla Falcón, Commissioners.

⁵ IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and Family. Colombia. March 18, 2017, par. 9.