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**REPORT No. 184/20**  
**PETITION 1027-14**  
REPORT ON ADMISSIBILITY

YSSEL REYES DELGADO  
MEXICO

Approved electronically by the Commission on July 6, 2020.

**Cite as:** IACHR, Report No. 184/20. Petition 1027-14. Inadmissibility. Yssel Reyes Delgado. Mexico. July 6, 2020.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	José Luis Rostro and Erick López Serrano
<b>Alleged victim:</b>	Yssel Reyes Delgado
<b>State denounced:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (due legal guarantees), 11 (protection of honor and dignity), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention on Human Rights, in connection with Article 1(1) (obligation to respect rights) thereof. <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	July 15, 2014
<b>Additional information received at the stage of initial review:</b>	December 22, 2016
<b>Notification of the petition:</b>	December 16, 2016
<b>State's first response:</b>	June 21, 2017
<b>Additional observations from the petitioners:</b>	May 21, 2018
<b>Additional observations from the State:</b>	October 18, 2018

**III. COMPETENCE**

<b><i>Ratione personae:</i></b>	Yes
<b><i>Ratione loci:</i></b>	Yes
<b><i>Ratione temporis:</i></b>	Yes
<b><i>Ratione materiae:</i></b>	Yes, American Convention (instrument deposited on March 24, 1981)

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

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 8 (due legal guarantees), 11 (protection of honor and dignity), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (obligation to adopt domestic laws) thereof.
<b>Exhaustion of domestic remedies or where an exception applies:</b>	Yes, January 29, 2014
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> Pursuant to the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in either the debate or the decision on this case.

<sup>2</sup> Hereinafter, the "Convention" or the "American Convention."

<sup>3</sup> Each party's observations were duly forwarded to the other party.

## V. SUMMARY OF THE FACTS BEING ALLEGED

1. The petitioners allege violation of a number of Mr. Yssel Reyes Delgado's [hereinafter, the "alleged victim"] human rights stemming from a series of acts of discrimination he reportedly suffered at the hands of private actors, such as his firing and the improper use of personal data. As well as the resulting lack of judicial protection of his rights by Mexico's judicial system. Mr. Reyes was allegedly targeted for being gay and having HIV.

2. The petitioners state that the alleged victim joined the HSBC Mexico S.A. bank in April 1994. He was diagnosed as being HIV positive. Without his consent, the company's insurance company, Medi Access, S.A., shared this information with it. Then, on August 20, 2007, the information was reportedly used illegally when a list containing the medical histories of some employees, including Mr. Reyes Delgado, was posted on the bank's internal network. The alleged victim reports that as a result, he became the target of discrimination and taunting by his work colleagues and his superiors because of his sexual orientation and because he had HIV. On September 27, 2007 Mr. Reyes Delgado was allegedly fired, without justification, for these same reasons.

3. In response to his firing, the alleged victim filed a claim (No. 546/2007) on November 9, 2007 with Special Board No. 14 of the Federal Labor Board in Mexico City, requesting reinstatement to his position, back pay and benefits, and repair of the harm caused by the improper use of his personal data and the discrimination suffered because of the reasons described in the paragraph above. Mr. Reyes Delgado indicates that he filed this action because the violations against him occurred at his former place of employment, making this a clear employee-employer dispute. On February 15, 2012, Special Board No. 14 issued a ruling awarding the alleged victim the proportional share of his 2007 bonus and some benefits. However, the board claimed lack of jurisdiction to rule on the acts of discrimination and non-material harm caused by the publication of his personal information.

4. Consequently, Mr. Reyes Delgado pursued a direct amparo action (674/2012) before the Ninth Court of Appeals for Labor Matters of the First Circuit in Mexico City, on the same grounds he had previously brought before the Labor Board. He simultaneously pursued his case before Mexico's Supreme Court of Justice (hereinafter, the "SCJN") in an effort to get the Court to hear the matter. The SCJN admitted the case on August 15, 2012 (case file 69/2012). On January 29, 2014, however, the SCJN ruled against this amparo for Mr. Reyes Delgado, upholding the Labor Board's decision.

5. The alleged victim holds that he was unable to file civil or criminal claims because the statute of limitations for such actions had run out far before the Special Board issued its decision, which took more than four years. During that time, the Board never made any statement regarding its position that it lacked jurisdiction to rule on the non-material harm. Mr. Reyes Delgado therefore believes that he exhausted domestic remedies with the direct amparo action he pursued, which he notes also took a long time to be resolved.

6. In short, Mr. Reyes Delgado submits that his right to effective legal remedies was denied inasmuch as no remedy exists that can address, in their entirety, claims by employees who are victim of acts of discrimination like the ones he suffered. He further holds that the State failed to protect his mental and moral integrity as well as his honor and dignity and that, as a gay man living with HIV, he is a member of a minority that requires stronger protection of rights in the workplace. In light of all of the foregoing, the alleged victim has turned to the IACHR in pursuit of full repair of his rights.

7. The State, for its part, indicates that the petitioners' claims can be divided into two types: labor and civil and criminal. Accordingly, the State holds that there were no violations of the alleged victim's human rights with respect to his labor claim insofar as it had been duly addressed and the outcome was favorable to him. The State submits that the domestic courts that handled the claim acted in full accordance with the law within their areas of jurisdiction. The State further noted that when it admitted the claim, Special Board No. 14 was unable to delve into the merits and therefore could not make a statement as to whether or not case would go forward, using this as justification for why the

Special Board did not issue a statement early on regarding its lack of jurisdiction with the respect to non-material harm or potential compensation therefor.

8. The State also holds that domestic remedies were not exhausted inasmuch as the alleged victim did not pursue a civil action for the non-material harm or a criminal action for discrimination and the publication of his personal data. In conclusion, Mexico is asking the IACHR to dismiss the petition on the grounds that there were no human rights violations and because domestic remedies were reportedly not exhausted.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

9. In the instant case, the Inter-American Commission observes that there is dispute over whether domestic remedies needed to be exhausted. The petitioners indicate that because the conflict occurred in the alleged victim's workplace and that was where his basic rights were violated, they first brought their claim to a labor board, and thereafter filed a direct amparo action, which was ultimately denied by the SCJN. They further note that they did not pursue criminal or civil actions—as argued by the State—because their legal standing to do so had ceased to exist even before the Special Board issued its decision. As already indicated, the State, for its part, alleges a failure to exhaust domestic remedies precisely because the alleged victim did not pursue actions in the criminal or civil courts.

10. With the above considerations in mind, the Commission observes first that the alleged victim was consistent in the sense that when he sought constitutional relief via an amparo action, he presented the same fundamental claims that had been denied him in the labor jurisdiction. Furthermore, and without attempting to interpret domestic procedural rules, the IACHR considers both plausible and reasonable the petitioners' argument that the statute of limitations for any criminal or civil action had run out before Special Board No. 14 issued its decision, because as it observes, that Board took more than four years to make a statement regarding jurisdiction and because the State does not dispute that the statute of limitations for such actions had, in fact, run out.

11. In this regard, the Commission reiterates that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.<sup>4</sup>

12. Therefore, bearing in mind that the SCJN, as the highest court in the nation, issued a ruling dismissing the direct amparo action on January 29, 2014, and that the petition was received by the IACHR on July 15, 2014, the Inter-American Commission hereby concludes that the petition meets the admissibility requirements for exhaustion of domestic remedies and timeliness set forth in Articles 46(1)(a) and 46(1)(b), respectively, of the American Convention.

## **VII. CHARACTERIZATION OF THE FACTS ALLEGED**

13. In view of these considerations, the Commission considers that the allegations made by the petitioners are not manifestly groundless, and, if proven, the facts concerning the lack of judicial protection with respect to possible acts of discrimination and workplace harassment based on Mr. Yssel Reyes Delgado's sexual orientation and medical condition, in addition to the lack of a legal framework to protect individuals from these types of acts and their consequences, may constitute violations of the rights set forth in Articles 8 (due legal guarantees), 11 (protection of honor and dignity), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American

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<sup>4</sup> IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, paragraph 12.

Convention, in connection with Article 1(1) (obligation to respect rights) and 2 (obligation to adopt domestic laws) thereof.

**VIII. DECISION**

14. To declare this petition admissible with regard to Articles 1, 2, 8, 11, 24, 25, and 26 of the American Convention on Human Rights; and

15. To notify the parties of this decision; to continue with its analysis of the merits of the complaint; and to publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 6<sup>th</sup> day of the month of July, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.