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**REPORT No. 243/20**  
**PETITION 817-09**  
REPORT ON ADMISSIBILITY

JOSÉ PLATA VERA  
VENEZUELA

Approved electronically by the Commission on September 6, 2020.

**Cite as:** IACHR, Report No. 243/20. Petition 817-09 Admissibility. José Plata Vera. Venezuela. September 6, 2020.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Keneth Enrique Scope Leal
<b>Alleged victim:</b>	José Plata Vera
<b>State denounced:</b>	Bolivarian Republic of Venezuela
<b>Rights invoked:</b>	Article 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>2</sup>**

<b>Reception of petition:</b>	July 4, 2009
<b>Additional information received during initial review</b>	October 27, 2014
<b>Notification of the petition to the State:</b>	June 15, 2017
<b>State's first response:</b>	24 Aug 2018
<b>Additional observations from the petitioner</b>	February 27, 2019

**III. COMPETENCE**

<b>Competence Ratione personae:</b>	Yes
<b>Competence Ratione loci:</b>	Yes
<b>Competence Ratione temporis:</b>	Yes
<b>Competence Ratione materiae:</b>	Yes, American Convention (ratification instrument deposited on August 9, 1977)

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

<b>Duplication of procedures and International res judicata:</b>	No
<b>Rights declared admissible</b>	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 26 (economic, social, and cultural rights).
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, July 16, 2009
<b>Timeliness of the petition:</b>	Yes, July 4, 2009

**V. SUMMARY OF ALLEGED FACTS**

1. Keneth Enrique Scope Leal (hereinafter "the petitioner") denounces alleged violations of the human rights of José Plata Vera (hereinafter "the alleged victim") alleging that the company for whom he worked prematurely retired him against his will. He complains that the alleged victim went to the courts of his country where he obtained favorable decisions on multiple occasions with the quality of *res judicata*, which were later ignored by the courts, ultimately resulting in a final judgment that ignored his rights.

2. The petitioner reports that the alleged victim worked for the company LAGOVEN S.A. the one that was succeeded by PDVSA PETRÓLEO S.A. (hereinafter "the company"), until December 31, 1987, when he was unfairly fired as he was retired against his will. He indicates that on December 4, 1990, the alleged victim filed a lawsuit against the company requesting that he be restored to his job and the corresponding

<sup>1</sup> Hereinafter "the American Convention" or "the Convention".

<sup>2</sup> The observations presented by each party were duly transmitted to the opposing party.

compensation; this led to a judicial process in which it was evidenced that his retirement had been imposed on him through an administrative process of a request that he had not made. The petitioner indicates that on August 5, 1992 and September 26, 1994, first and second instance rulings were issued, respectively, in favor of the claims of the alleged victim. The petitioner maintains that the second instance decision constituted a final and enforceable ruling with the quality of *res judicata*.

3. The petitioner argues that, instead of complying with the decision, the company distorted due process, proceeding to file successive and repeated appeals which, despite being clearly inadmissible by law, were admitted for processing by the authorities. The petitioner points out that, despite the remedies filed by the company, the legal representation of the alleged victim managed on four occasions to return the final judgment of second instance issued in his favor to the status of enforceable *res judicata*. First, on September 26, 1997, when an appeal for invalidation filed by the alleged victim was declared admissible against a decision of a judge ordering the continuation of the process despite *res judicata*; Second, on July 21, 1999 when the Civil Cassation Chamber of the Supreme Court of Justice declared inadmissible an extraordinary appeal filed by the company against the decision that declared the motion for invalidation of the alleged victim to be admissible; Third, on April 8, 2005 after the Third Superior Labor Court declared valid once again the judgment that granted the appeal for invalidation of the alleged victim after the matter had returned to the lower instance after a successful appeal for cassation filed by the company; and finally on October 9, 2006 when the Forty-fifth Court of First Instance for Substantiation, Mediation and Enforcement approved a conciliation act in which the parties agreed on the terms and conditions for the execution of the judgment favorable to the alleged victim.

4. The petitioner continues stating that, despite what was agreed in the conciliation, the company continued to file appeals, achieving the nullity of the conciliation agreement. It indicates that, for this reason, the alleged victim requested the "competence" of the Social Cassation Chamber of the Supreme Court of Justice so that this court could directly review all the irregularities that occurred in the file. It alleges that, although it granted the competence on December 12, 2008, the Chamber did not review the irregularities, but proceeded on July 16, 2009 to deliver a final judgment violating the rights of the alleged victim. The petitioner provides a copy of the judgment in which it is observed that the Chamber determined that although the retirement age was 60 years, the collective agreement granted the company the optional power to carry out premature retirement of workers over 50 years of age, even though these workers would not have requested it; which applied to the case of the alleged victim who was 55 years old when he was retired. Based on these considerations, the Chamber declared the judgments that had been favorable to the alleged victim definitively null and void and definitively ruled on his claim. The petitioner considers that this judgment violated *res judicata* and that the repeated ignorance of *res judicata* by the judicial authorities prevented the alleged victim from exhausting domestic remedies.

5. The State, for its part, considers that the petition should be inadmissible based on Article 46.1 (a) of the American Convention because at the time it was presented, domestic remedies were not exhausted, as it had been granted that the Cassation Chamber of the Supreme Court of Justice would hear the case as requested by the petitioner, but the decision of the Chamber on the merits was pending. The State alleges that the analysis on compliance with the requirement of exhaustion of domestic remedies must be carried out in relation to the moment in which the petition was presented and not to the moment in which the Commission adopts its admissibility report; because to affirm the contrary would be to nullify the complementary and cooperative nature of the Inter-American System by allowing a matter to be heard and processed simultaneously by domestic law and international law.

6. The State also alleges that the petition should be inadmissible in accordance with Article 34 (a) and (b) of the Commission's Rules of Procedure because the Commission does not detail facts that characterize human rights violations and is manifestly unfounded. It considers that the petitioner's account is woven and confusing to the point that it makes the petition practically unintelligible. It emphasizes that the petitioner attributes the alleged violations of his human rights to the judgment issued by the Cassation Chamber of the Supreme Court of Justice on December 12, 2008, which is a contradiction in terms as this was a mere formality judgment that was not pronounced on the merits of the matter and simply granted the competence that the alleged victim himself had requested.

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

7. The Commission observes that the petitioner maintains that the alleged victim was prevented from exhausting domestic remedies as a result of the repeated ignorance of *res judicata* by the judicial authorities of the State. Likewise, it takes note that the State has indicated that the petition should be inadmissible because domestic remedies were not exhausted at the time the petition was presented.

8. The Commission considers that the complaint filed by the alleged victim against the company constituted an appropriate remedy for him to present his claims at the domestic level. The State has not indicated, nor does it appear from the file, that there are other domestic remedies that have not been exhausted that would be suitable for the alleged victim to continue raising his claims after the Cassation Chamber of the Supreme Court of Justice dismissed his claim. For these reasons, the Commission considers that the final decision that exhausted domestic remedies with respect to this petition was the one issued by the Cassation Chamber of the Supreme Court of Justice on July 16, 2009. Consequently, and given that the petition was Presented on July 4, 2009, the Commission concludes that this petition meets the requirements of Article 46.1 (a) and (b) of the American Convention.

9. Regarding the State's questioning of the fact that the exhaustion occurred after the petition was submitted, the IACHR reiterates its constant position according to which the situation that must be taken into account to establish whether domestic remedies have been exhausted is that which exists when deciding on admissibility.

## VII. COLORABLE CLAIM

10. The Commission observes that the present petition includes allegations that the alleged victim filed a lawsuit in defense of his labor rights on December 4, 1990, in respect of which a final decision was not issued until July 16 2009, almost 19 years later.

11. The Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 47 (b) of the American Convention, or whether the petition is "manifestly unfounded" or its total inadmissibility is "evident", pursuant to subsection (c) of said article. In the present case, the Commission considers that the purpose of the process in respect of which the violation of the reasonable time is reported was to determine whether the alleged victim should be reinstated to his job; the Commission has already recognized that a claim of a labor nature "by its very nature requires timely decisions."<sup>3</sup> The Commission also assesses the total time of almost 19 years that elapsed from the beginning of the process to the final decision, as well as that the information on file does not indicate, *prima facie*, that the alleged victim acted negligently or failed to comply with his procedural obligations during the development of the process. In addition, the Commission recalls that the Inter-American Court has determined that the fact that the parties to a proceeding make use of remedies recognized by the applicable legislation for the defense of their interests cannot in itself be used against them<sup>4</sup>.

12. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the allegations of the petitioning party are not manifestly unfounded and require a study of the merits, since the alleged facts, if corroborated as true, could characterize violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1. (obligation to respect rights) and 26 (economic, social, and cultural rights).

## VIII. DECISION

1. To declare this petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to its articles 1.1 and 26; and

<sup>3</sup> IACHR. Report No. 74/17, Case 12.656. Merits. Victorio Spoltore. Argentina. July 5, 2017, para. 68.

<sup>4</sup> I/A Court H.R., *Mémoli v. Argentina*, Judgment of Preliminary Objections, Merits, Reparations, and Costs. August 22, 2013, para.

2. To notify the parties of this decision; to continue with the analysis on the merits of the matter; 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 6<sup>th</sup> day of the month of September, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.