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REPORT No. 316/21
PETITION 1517-14
REPORT ON INADMISSIBILITY

MUSTAFA SELIN ORTIZ HAVIVI
BOLIVIA

Approved electronically by the Commission on November 4, 2021.

Cite as: IACHR, Report No. 316/21, Petition 1517-14. Inadmissibility. Mustafa Selin Ortiz Havivi. Bolivia. November 4, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Mustafa Selin Ortiz Havivi
Alleged victim:	Mustafa Selin Ortiz Havivi
Respondent State:	Bolivia
Rights invoked:	Articles 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	October 30, 2014
Additional information received at the stage of initial review:	August 20, 2018
Notification of the petition to the State:	August 12, 2019
State's first response:	December 12, 2019
Additional observations from the petitioner:	March 19, 2021
Additional observations from the State:	December 17, 2020

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument on July 19, 1979)

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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	N/A

V. FACTS ALLEGED

1. Mustafa Selin Ortiz Havivi reports the alleged violation of his human rights because he was terminated from his public post in violation of his labor rights and because an amparo judgment issued in his favor was not complied with.

2. The alleged victim explains that in 2008 the mayor of Warnes hired him for an unspecified period to fill in the positions of "advisor to the area of comprehensive legal services and to the RUAT (Consolidated Municipal Tax Administration Registry)." According to the petition, on September 13, 2010, the alleged victim requested his employer to make use of his inalienable right to holidays and without having an answer to that, on October 14 of that same year, in a memorandum, he was noticed of his termination. He was

¹ Hereinafter "the American Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

noticed of the decision to dispense with his services in legal services (but not in the RUAT). The petitioner alleges the illegality of his dismissal because the domestic legal rules prohibit the termination of labor relations when a matter is pending resolution, as in the case of his request for holidays—which in the end were not granted nor paid. He also asserts that his position was not one of public trust and the fact that he had worked for the State since 1991, provided him with job security.

3. The alleged victim reported this irregularity to the interim mayor of Warnes, who told him to continue working for the RUAT; despite doing as told, he was not remunerated. Faced with this situation, the petitioner filed complaints to the interim mayor through official letters and briefs. Thus, on May 5, 2011, he presented a brief to the interim mayor, requesting his official reinstatement to his position. As there was no answer to his request, he lodged an amparo action, and on August 25, a hearing was held in which he was granted legal protection due to the denial of his fundamental right of petition. Accordingly, an order was issued instructing the mayor to reply to the alleged victim's petition within a period of 72 hours. This amparo judgment was upheld subsequently by the Constitutional Court on June 28, 2013. The alleged victim understands that in granting him legal protection for the violation of his right of petition, the authorities also recognized the violation of his rights to access to health care services, social security, work, and employment.

4. The alleged victim alleges that the judgment issued in his favor was not complied with, and that, accordingly, on May 11, 2012, the magistrate (*juez de control de garantías*) informed this to the Office of the Attorney General so that the mayor would be criminally prosecuted. According to the petition, the Attorney General's Office failed to comply with its duty to investigate the illegal act, and the judgment was not complied with either. Because of the foregoing, the petitioner allegedly filed several complaints against officials of the Attorney General's Office, but without success. Lastly, he denounced the Attorney General of the Republic to the Legislative Chamber, on the grounds of violation of fundamental rights and guarantees, breach of duty, and delay in the administration of justice. The complaint was rejected; therefore, he appealed that decision to the Human Rights Commission of the House of Representatives, which upheld the denial on March 26, 2014. The petitioner states that this decision exhausted the domestic remedies provided by the domestic legal system to enforce the judgment issued in his favor. He was noticed of the final decision on April 11, 2014.

5. Moreover, the petitioner asserts, without reference to the outcome, that he lodged three amparo actions seeking the reparation of the fundamental rights harmed through his dismissal without cause and the denial of his inalienable right to holidays. It appears that the adjudication of these actions did not conform to the standard of reasonable time nor to the deadlines established in the domestic legal system, as the actions were either concealed or delayed. He also claims that the decisions on his legal actions did not conform to the favorability principle and ignored the fact that the rights at issue were protected by the Constitution, which is why no additional conditions are required to have them legally protected. Furthermore, the petitioner alleges that when he tried to use administrative law to enforce his rights, his documentation was concealed, and the process was delayed and that at the Department of Labor, the employees said to him that they would not receive his complaint "because they did not want to lose their job."

6. For its part, the State considers that this petition should be declared inadmissible because the alleged victim did not comply with the requirement of exhaustion of domestic remedies and the petition does not include acts that constitute human rights violations.

7. The State contends that the alleged victim was not a permanent employee but an "at-will professional," officially hired as such under the applicable rules, and that he was not under the General Labor Act, accordingly. The alleged victim was terminated from the municipality of Warnes because of his at-will position. Despite this, the alleged victim filed legal actions seeking legal protection from the General Labor Act, which was not applicable to him. Thus, initially he filed an amparo lawsuit claiming the violation of his labor rights and his right of petition (given the lack of an answer to several of his petitions for reinstatement). The amparo was granted in first instance, but on October 1, 2012, the Plurinational Constitutional Court partly revoked that decision, granting the alleged victim legal protection only regarding his right of petition. In the Court's opinion, the other rights could not be protected through an amparo judgment because the alleged victim had not previously exhausted the applicable administrative avenues.

8. In its reply, the State also asserts that the alleged victim lodged another amparo lawsuit claiming the violation of his right of petition given the lack of an answer to his petition for reinstatement, and that this second legal action concluded with a judgment in his favor which, he claims in his petition, was not complied with. This was also the lawsuit that led to the criminal complaint against who was then the mayor of Warnes, which was processed until a resolution of denial was issued on October 30, 2012. The State attaches a copy of the resolution of denial adopted by the Attorney General's Office, in which the representative of the latter asserts that the alleged victim had been noticed of resolution no. 188/2011, containing the denial of his petition for reinstatement, within the 72 hours required by the amparo judgment. According to this resolution of denial, it had been impossible to locate the alleged victim at his domicile; thus, resolution no. 188/2011 was notified to him through an edict that was broadcast for three different days on a radio station. Subsequently, he was noticed in person of the certificate of broadcast, the edict, and resolution 188/2011; however, the alleged victim refused to sign the notice.

9. The State moreover contends that the alleged victim filed a third amparo action claiming the violation of his fundamental rights given his dismissal without cause. This third legal action was concluded with a judgment of review issued by the Plurinational Constitutional Court on April 3, 2013. In this judgment, the Court rejected the amparo action because of the subsidiarity principle. Thus, it determined that before filing an amparo action, the petitioner should have impugned this resolution in the administrative jurisdiction with an appeal for annulment and an appeal filed before a higher administrative authority, immediately after being noticed of resolution 188/2011 containing the denial of his reinstatement petition. The petitioner impugned the judgment that dismissed his third amparo action, by lodging a fourth amparo action. This action was dismissed as out of order, based on the inadmissibility of appeals against judgments issued by the Plurinational Constitutional Court; and a final decision was issued on August 12, 2014.

10. The State argues that the alleged victim prevented the domestic authorities from the opportunity to rule on the merits of his claims, since he did not exhaust the pertinent administrative remedies. It contends that the alleged victim could have availed of the administrative remedy of appeal for annulment of a decision and that, had this been rejected, he could have appealed before a higher administrative authority. Furthermore, the State claims that the alleged victim's rights were not violated because he was terminated under the rules applicable to at-will professionals, all of his legal actions were resolved in accordance with the law, and he was noticed of the resolution through which his reinstatement petition was denied.

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

11. The alleged victim alleges the full exhaustion of domestic remedies. In turn, the State contends that the alleged victim failed to exhaust domestic remedies because he filed an amparo action without first exhausting the pertinent administrative remedies.

12. The State has argued that the amparo actions filed by the alleged victim regarding his alleged termination without cause were rejected for lack of prior exhaustion of the pertinent administrative remedies: the appeal for annulment of the decision and the appeal before a higher administrative authority. The Commission has previously established that it "*cannot regard the petitioner as having duly complied with the requirement of prior exhaustion of domestic remedies if said recourse has been rejected on reasonable, not arbitrary, procedural grounds, such as filing an appeal for amparo without previously exhausting the pertinent channels.*"³ In this regard, the alleged victim has not provided nor are there in the case files elements that indicate that the requirement of prior exhaustion of administrative remedies did not exist in the domestic legal system or that this was unreasonable or arbitrary. Therefore, the Commission deems that, except for the elements related to the alleged failure to comply with the judgment in favor of the alleged victim, this petition is inadmissible, as it does not meet the requirements set for in Article 46.1.a of the American Convention.

³ IACHR, Report No. 90/03, Petition 0581/1999. Inadmissibility. Gustavo Trujillo González. Peru. October 22, 2003, par. 31.

VII. ANALYSIS OF COLORABLE CLAIM

13. Regarding the alleged failure to comply with a judgment in favor of the alleged victim, ruling that an answer was given to his petition for reinstatement, the Commission observes that the State has duly demonstrated that the alleged victim's petition for reinstatement was rejected through resolution no. 188/2011, and that the alleged victim was noticed of that resolution. The alleged victim has not provided nor are there in the case file elements that disprove the claims by the State. Consequently, it is evident that the said judgment was complied with, and that the alleged victim was given an answer. Therefore, the Commission deems that the allegations regarding the failure to comply with the judgment are, *prima facie*, manifestly groundless.

14. In addition to the foregoing and after a comprehensive analysis of the case file of this petition, the Inter-American Commission does not identify facts or allegations by the petitioner that could, *prima facie*, constitute possible violations of human rights established in the American Convention. Therefore, it concludes that this petition is inadmissible based on Article 47 of the American Convention.

VIII. DECISION

1. To declare this petition inadmissible on the grounds of Articles 46 and 47 of the American Convention.

2. To notify the parties of this decision 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 4th day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.