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**REPORT No. 210/24**  
**PETITION 886-14**  
REPORT ON INADMISSIBILITY

RAYMUNDO MALPICA FLORES  
MEXICO

Approved electronically by the Commission on November 19, 2024.

**Cite as:** IACHR, Report No. 210/24. Petition 886-14. Inadmissibility.  
Raymundo Malpica Flores. Mexico. November 19, 2024.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Raymundo Malpica Flores
<b>Alleged victim:</b>	Raymundo Malpica Flores
<b>State denounced:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (right to a fair trial), 21 (right to property), 25 (right to judicial protection), and 26 (right to social security) of the American Convention on Human Rights <sup>2</sup>

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

<b>Filing of the petition:</b>	June 16, 2014
<b>Additional information received at the stage of initial review:</b>	December 15, 2014
<b>Notification of the petition to the State:</b>	October 14, 2021
<b>State's first response:</b>	June 1, 2023
<b>Notification of the possible archiving of the petition:</b>	August 6, 2020, and January 23, 2024
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	August 7, 2020, and February 14, 2024

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, the American Convention (deposit of the instrument of accession on March 24, 1981.)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, 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>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	No, under the terms of Section VI
<b>Timeliness of the petition:</b>	Not applicable

<sup>1</sup> In keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission, Commissioner José Luis Caballero Ochoa, a Mexican national, did not participate in the debate or the decision on this matter.

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

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

### The petitioner

1. Mr. Raymundo Malpica Flores (hereinafter “Mr. Malpica” or “the petitioner”), in his capacity as the alleged victim and petitioner, argues that the Mexican State is internationally responsible for the violation of his right to social security, due to the failure to update his permanent partial disability pension.

2. Mr. Malpica recounts that he worked for the Mexican National Railroad [*Ferrocarriles Nacionales de México*] (FNM), where he suffered several work-related accidents that seriously affected his health, leading to a permanent partial disability. As a result, on January 28, 1997, he filed a work-related lawsuit before the Federal Conciliation and Arbitration Board No. 45, in Veracruz against the FNM and the Mexican Institute of Social Security (IMSS), demanding recognition of a permanent disability, granting of a disability pension, corresponding annual increases by law since 1997, compensation for occupational hazards, and payment of a retirement pension as from 1996, among other claims.

3. On October 15, 2001, the Federal Conciliation and Arbitration Board issued an arbitration decision ordering the IMSS to recognize a permanent partial disability of 35% and to pay a daily pension of \$41.89 Mexican pesos. However, it dismissed the other claims against the IMSS, including the pension increase and the compensation. The Board also ordered the FNM to recognize and pay the retirement pension, but dismissed the remaining claims against it.

4. All the parties involved challenged the arbitration decision by filing several direct writs of *amparo* [petitions for a constitutional remedy] before the Second Court of Appeals in Administrative Matters and Labor of the Seventh Circuit. Mr. Malpica highlights that in his writ of *amparo* he requested that the percentage of his disability be increased and that his pension likewise be increased annually in keeping with the changes in the minimum wage. Accordingly, on November 14, 2002, the Federal Conciliation and Arbitration Board issued a second arbitration decision, in which it ordered the IMSS to recognize a permanent partial disability of 90% and to increase the pension payment to \$107.73 Mexican pesos per day; additionally, it upheld its order against the FNM. On December 8, FNM appealed the decision yet again, which led to a third arbitration decision confirming the obligations of the IMSS and the FNM, setting the definitive amount of the pension, and dismissing the other claims against them.

5. The petitioner adds that the IMSS, still dissatisfied with the decision, filed a second direct writ of *amparo* on October 1, 2004. The appeal, however, was found to be without merit. For this reason, and inasmuch neither the petitioner nor the FNM filed an additional *amparo*, on January 12, 2004, the arbitration decision became final.

6. Despite the favorable decisions in 2002 and 2004, the petitioner claims that the IMSS did not fully comply with its obligations. He asserts that although the 2004 decision recognized a partial disability of 90% and established a daily pension of \$107.73, in years that followed, the IMSS did not increase the social security amount by a percentage similar to the increase in the minimum living wage, despite the fact that he asserted this claim in his writ of *amparo* and that domestic legislation provides for this increase for all pensioners.

### *Motion for benefits adjustment*

7. The petitioner alleges that in view of the IMSS’ refusal to increase his pension, on September 17, 2008, he filed a motion for benefits adjustment with the Federal Conciliation and Arbitration Board in order to obtain a ruling that would force the IMSS to increase his pension in line with the salary increases that should have been applied, in accordance with the amount of the minimum wage. However, on October 3, 2012, the Board ruled that the motion was inadmissible because the 2004 arbitration decision did not contain a provision expressly requiring the IMSS to apply such increases.

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8. Faced with this decision, the petitioner filed an *amparo* action on November 22, 2012, with the Sixth District Court of the State of Veracruz, which declined to hear the case due to lack of jurisdiction. It referred the case to the Third District Court of the Ancillary Center of the First Region. On May 13, 2013, the latter Court concluded that the action was without merit. In its decision, the Court considered the following:

[...] although it is true, as the plaintiff claims, that he has a right to increases in his permanent partial disability payment, [...] he in fact had the opportunity at the time to object such that the IMSS was also ordered to provide the respective increases in his pension. This did not happen, however, so the decision of January 12, 2004, acquired the authority of a final decision.

[...] thus, in this instance, the remedy by which he is seeking to obtain or have recognized that subjective right is unsuitable, because in keeping with the nature of the motion for benefits adjustment and the powers that this Court has to rule, it cannot go beyond what is set forth in the decision that gave rise to the benefits adjustment.

[...] Accordingly, the writ of *amparo* and protection under the federal justice system is denied to Raymundo Malpica Flores with respect to the decision of October 3, 2012, which ruled on the motion for benefits adjustment. It bears noting that in the present case no defects were identified that needed to be cured.

9. Finally, the petitioner indicates that on June 28, 2013, the judgment issued by the Ancillary Court became final because the parties did not appeal, and the matter was thus ordered to be shelved. The petitioner states that he was not notified of the decision, which is why on December 4, 2013, he requested copies of the decision from the Labor Board. These copies were provided on May 28, 2014.

**The Mexican State**

10. For its part, Mexico alleges that the petition should be found inadmissible because the petitioner did not exhaust domestic remedies pursuant to the stipulations of Article 46(1)(a) of the American Convention. The State asserts that the arbitration decision of January 12, 2004—from which the increase the petitioner is demanding from the IMSS stems—could have been challenged at that time by means of an *amparo*; by not doing so, it acquired the authority of a final decision. It further asserts that the arbitration decision of May 13, 2013, issued by the Ancillary Court, which denied the petitioner's *amparo*, could have been appealed through an *amparo* review [*amparo en revisión*], a remedy provided for under the *Amparo* Law. Inasmuch as none of these remedies were filed, the judicial decisions became final.

11. The State also argues that the petition was not presented in a timely fashion pursuant to Article 46(i1)(b) of the Convention. It points out that the last judicial decision related to the petitioner's case, which denied his *amparo*, became final on June 28, 2013; however, the petitioner only presented his petition to the IACHR on June 16, 2014. Accordingly, the petition should be rejected for being presented out of time.

12. Notwithstanding the foregoing, Mexico also maintains that the facts alleged by the petitioner do not show violations of his right to social security, judicial guarantees, and equal treatment before the law. The State contends that the refusal of the Court to adjust the permanent partial disability pension was a duly reasoned decision. What is more, at no time did the petitioner assert that his right to social security had been violated nor did he report that he had been the victim of discrimination or unequal treatment before the law. Additionally, the *amparo* judgment did not apply the legal construct of remedying defects in the pleadings [*suplencia de la deficiencia de la queja*] as provided for in the *Amparo* Law inasmuch as the Ancillary Court did not take note of any defect in the pleadings that needed to be remedied in favor of the petitioner.

13. Finally, Mexico notes that the IACHR should not admit the petition because an eventual review of domestic judicial decisions, which currently are *res judicata*, would undermine the principle of legal certainty that is protected under the Mexican Constitution. Accordingly, in the opinion of the State, the petitioner seeks

to have the Commission act as an international fourth instance to overturn what has been decided in domestic proceedings.

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

14. The Commission notes that on January 12, 2004, the Federal Conciliation and Arbitration Board issued its third arbitration decision that ruled on the claim that referred to the petitioner obtaining a disability pension. Furthermore, on May 13, 2013, the Ancillary Court denied the indirect writ of *amparo* the petitioner filed of the October 3, 2012 decision that ruled on the motion for benefits adjustment. On this point, the State argues, *inter alia*, that the petitioner could have challenged the arbitration decision of the Federal Conciliation and Arbitration Board through an *amparo* action in 2004. The State further argues that the petitioner could even have appealed the decision of the Ancillary Court issued in 2013 through an *amparo* review, mechanisms provided for under the Mexican *Amparo* Law. Despite this, the State affirms that the petitioner failed to use any of these options, for which reason it is obvious he did not exhaust domestic remedies.

15. In light of the arguments presented, the Commission notes that the State complied with its duty to specify the domestic remedies that were not exhausted and the reason why these were adequate and effective in order to resolve the alleged victim's legal situation. Since its initial case law, the Inter-American Court of Human Rights has provided that "*the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective*"<sup>4</sup>. Specifically, the information provided shows that after the denial of the *amparo*, the petitioner had at his disposal the special remedy set forth under the *Amparo* Law to challenge the improper ruling on the motion for benefits adjustment; and, in due course, to challenge the decision from 2004.

16. The petitioner does not present arguments aimed at refuting the arguments and information submitted by the Mexican State; nor does he question the fact that, in his specific case, the *amparo* or the special *amparo* review mechanism are lacking some feature that renders them unsuitable or ineffective. In light of this, the Commission concludes that this matter does not comply with the requirement provided for under Article 46(1)(a) of the American Convention and, accordingly, this petition should be found inadmissible.

17. Finally, since the petition did not meet the requirements for prior exhaustion of domestic remedies or any of the exceptions provided for under Article 46(2) of the Convention, there is no need to review compliance with the requirement of filing the petition by the deadline.

## VII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of 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 19<sup>th</sup> day of the month of November, 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.

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<sup>4</sup> I/A Court of H.R., Case of Velásquez Rodríguez v. Honduras, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 59; and Case of Cuya Lavy et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 28, 2021, Series C No. 438, para. 27.