

OEA/Ser.L/V/II
Doc. 228
5 March 2022
Original: Spanish

REPORT No. 225/22
PETITION 2356-12
ADMISSIBILITY REPORT

VÍCTOR MANUEL IRUEGAS GARCÍA
MEXICO

Approved electronically by the Commission on March 5, 2022.

Cite as: IACHR, Report No. 225/22. Admissibility. Víctor Manuel Iruegas García.
Mexico. March 5, 2022.

I. INFORMATION ABOUT THE PETITION

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| Petitioner | Víctor Manuel Iruegas García |
| Alleged victim | Víctor Manuel Iruegas García |
| Respondent state | Mexico ¹ |
| Rights invoked | Articles II (equality before the law), XVI (social security), XVIII (fair trial), and XXIV (petition) of the American Declaration of the Rights and Duties of Man; ² and other international instruments. ³ |

II. PROCEEDINGS BEFORE THE IACHR⁴

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| Filing of the petition | December 30, 2012 |
| Notification of the petition to the state | October 4, 2017 |
| State's first response | March 13, 2018 |
| Additional observations from the petitioner | January 4, April 29, and December 17, 2013; December 12, 2014; August 4, 2015; May 17, November 9, 14, 15, and 25, and December 16, 2016; August 17, 2018; and April 30, 2019; February 11, 2020; February 10, 14, and 17, May 7, and November 30, 2021. |

III. COMPETENCE

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

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

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| Duplication of proceedings and international <i>res judicata</i> | No |
| Rights declared admissible | Articles 8 (fair trial), 24 (equality before the law), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the Inter-American Convention on Human Rights, ⁵ in connection with its Article 1.1 (obligation to respect rights), and Article XVI (social security) of the American Declaration. |
| Exhaustion of domestic remedies and applicability of an exception to the rule | Yes, the exception enshrined in Article 46(1)(c) of the American Convention is applicable. |
| Timely filing | Yes, in terms of Article 32(2) of the IACHR Rules of Procedure. |

V. SUMMARY OF THE FACTS ALLEGED

1. Víctor Manuel Iruegas García (hereinafter the petitioner) alleged he was working for a Mexican state enterprise when he had a motor vehicle accident while discharging his duties as an employee and that he was not deemed admissible for occupational hazard compensation. He also reported that the court

¹ Pursuant to the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission, Commissioner Joel Hernández García, a Mexican national, did not participate in the deliberations or ruling in the instant case.

² Hereinafter the American Declaration.

³ The petitioner also invokes the Inter-American Convention on Human Rights, the San Salvador Protocol, and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, without specifying the articles, as well as Conventions 17 (Workmen's Compensation, Accidents), 95 (Protection of Wages), 29 (Forced Labor), 160 (Labor Statistics), and 30 (Hours of Work) of the International Labor Organization (ILO).

⁴ The observations made by each party were duly transmitted to the other party.

⁵ Hereinafter the American Convention.

proceedings to claim this compensation were conducted irregularly and have not been settled within a reasonable period of time.

2. The petitioner indicated that he worked as a dependable member of the personnel in the Gulf Center Division of the Federal Electric Power Commission (*Comisión Federal de Electricidad—CFE*), in the state of Tampico. He contended that he was subjected to extreme working conditions with an approximate workday extending from 6:47 am to 23:23 pm, including weekends and holidays; that he was not allowed to leave his assignment perimeter; and that he was required to spend the night in the office to safeguard the agency's property. He also alleged that he was not being paid overtime, which he identifies as forced labor.

3. As a result of physical exhaustion from overworking, on March 13, 2008, the petitioner had an accident while driving a motor vehicle of the CFE, which led to a severe traumatic brain injury (TBI), permanent damage to the spinal column, and psychological and psychiatric impairments which, for the rest of his life, prevented him from engaging in the professional activity he had until then. He reported that, while he was convalescing, the CFE demanded that he continue working under threat of requiring him to pay for the damage to the motor vehicle, which worsened his health condition.

4. He added that he was taken to the hospital closest to the site of the accident, and then from there he was transferred to the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social—IMSS*). According to the petitioner, in that unit, his admission was not logged in nor was any medical diagnosis made, to avoid recording the occupational hazard. The Health Secretariat, however, did issue a document that specifies that he had been transferred to the IMSS hospital. Thereafter he was transferred to a private hospital where the injuries stemming from the accident were put on the record, although it was not registered as an occupational hazard accident. The petitioner claimed that the CFE failed to observe the law that requires employers to register any occupational accident within seventy-two hours of its occurrence and that the enterprise had an incentive to conceal the occupational accident, because it received productivity bonuses based on a performance indicator that shows low accident rates.

5. On September 25, 2009, he filed a worker rights complaint in which he requested payment of his employee benefits and admissibility for receiving the occupational hazard compensation.⁶ The petitioner also filed a motion on constitutional grounds (*amparo*) so that the Federal Labor Mediation and Arbitration Board (*Junta Federal de Conciliación y Arbitraje—JFCA*) would be ordered to issue a ruling in his case. The motion was dismissed on May 7, 2015 by the judge hearing the case, because he deemed that, before the ruling, various types of evidence had to be examined. Furthermore, the petitioner recognized that, on July 20, 2010, they granted him a general ill health pension although it was eleven months after requesting the occupational hazard compensation. He contended that both of these benefits are mutually compatible and independent, which means that granting a general ill health pension is not the same as qualifying for an occupational hazard compensation. He also underscored that the medical examinations established a linkage between the clinical depression that was at the origin of the general ill health pension with the TBI from the work-related accident.

6. The petitioner also claimed that the proceedings in JFCA 39 had been plagued with irregularities, such as the loss of Form ST7 that qualified the accident as an occupational hazard incident and its replacement by a form characterizing the accident as the opposite, which was signed by a person whom the petitioner does not know and who belongs to the IMSS of Pachuca de Soto, located 560 km from the place where he was convalescing. The petitioner also viewed as highly irregular the fact that the medical expert designated to examine him did not issue her expertise report until more than six years later, although he had been punctual when showing up for his appointment with her on January 30, 2012, and had provided her with the original medical exams that were required for the diagnosis, and he also had urged her to do so in 2017. Despite all of the above, the expert was not notified, fined, or replaced by the court. The petitioner provided a copy of the medical expertise that was drawn up on January 8, 2021 in the context of his worker rights complaint, but it does not specify whether or not prior expertise examinations had been conducted previously.

⁶ On February 12, 2019, the petitioner reported that the settlement of this complaint by JFCA 39 of Tampico remained pending. Afterwards, on May 7, 2021, the petitioner provided relevant documentation on an incidental hearing that had been held by JFCA 39 of Tampico with respect to this complaint.

7. Furthermore, the petitioner claimed that the state had not fully complied with the general ill health pension that had been granted, because of which, in 2011, he filed another worker rights complaint, which was also delayed for more than six years. As alleged by him, from September 12, 2012 to February 11, 2016, JFCA 37, in charge of his complaint filed for failure to provide him with the general ill health pension, filed 10 requests with JFCA 39 so that they would notify the CFE's General Manager as a co-respondent party. The petitioner contended that JFCA 39 failed to take these requests into account and brought the proceedings to a standstill until said manager retired on April 28, 2016. It then passed on to the plaintiff the responsibility for looking for the manager throughout the country so that he could be notified. The petitioner argued that all of this highlights the bias of JFCA 39 in favor of the CFE. In his latest communication, on November 30, 2021, the petitioner provided documentation indicating that the second complaint was consolidated with the proceedings involving the first complaint and that a hearing was held on November 19, 2021 in the proceedings for both complaints, which are still under way.

8. The petitioner stated that he filed a petition with the Inter-American Commission because of the time that had elapsed without the competent authorities deciding on or completing the examination of the evidence required to render a judgment on the complaint filed on September 25, 2009. He underscored that he has met all the requirements that JFCA 39 has requested, including the provision of the medical tests that were requested.

9. The petitioner also alleged that he was unable to file a motion of appeal or review with respect to Form ST7, which qualifies his health status as "not work-related," because the state "disappeared" the original form correctly specifying his true status, and he was never formally notified about the second form. Regarding the second Form ST7, he contended that he has not had access to the document's original, only mere copies that are not officially valid according to the applicable statutes. He added that, in the copy of the document, there is a signature of receipt supposedly by his spouse, but he argued that it was a forgery because it did not match her signature on her identity card. He also indicated that, in any case, it would not be valid because his spouse does not act as his legal representative and is therefore not authorized to receive notifications on his behalf.

10. The state, however, pointed out that, on October 13, 2008, the petitioner went to a social security hospital because he had headaches and dizziness and requested a pension, which was granted to him for general ill health, because it was ascertained that he presented severe clinical depression that prevented him from carrying out work-related activities. Afterwards, in January 2009, the petitioner requested an additional occupational hazard compensation, which the IMSS ruled inadmissible, because it had not been able to establish the cause-and-effect relationship between his ailments and the accident sustained. It indicated that the petitioner had subsequently requested, using Form ST7, the occupational hazard status with the corresponding compensation, which was once again ruled inadmissible because the Family Medical Unit qualified the case as "not work-related." In the view of the state, the petitioner is not unprotected, because he is receiving a general ill health pension and being supplied with the medicines he needs. Therefore, it considers that he has opted to label certain rulings or proceedings as violating his rights simply because they were contrary to his claims.

11. The state also indicated that the petitioner filed a worker rights complaint on September 25, 2009, in which he requested diverse benefits, including severance pay for wrongful dismissal and the occupational hazard compensation. This complaint continues to remain in the investigation stage for reasons attributable to the petitioner himself, because in January 2012 he was requested to undergo radiology tests and related specialized exams, as well as an audiometry test, but according to the state, the petitioner failed to submit to these examinations. It indicated that the petitioner objected to the request arguing that he had no money to cover the costs of the tests in the National Respiratory Diseases Institute (*Instituto Nacional de Enfermedades Respiratorias—INER*) or to travel to Mexico City where they would have taken place. The state contended that he was told that the INER was a public institution and that therefore the tests would be free of charge. Despite this and the fact that the request was reiterated, the state asserts that the petitioner has not provided said tests in more than six years, nor has he provided updates to the other medical examinations. These omissions made it impossible to issue the medical report that was needed to clarify his worker rights complaint.

12. The state added that, even if the proceedings concluded with a ruling that was unfavorable to the petitioner, he would have the opportunity to challenge it by filing a motion on constitutional grounds (*amparo*), which in turn has its own remedies for challenging rulings. It also pointed out that the petitioner did not exhaust the suitable remedy that could have settled the claims being filed with the IACHR, because he did not exercise his right to file—within the statutory limits of fifteen days—the appeal challenging the ruling that did not recognize that his ailments came from a work-related hazard.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS

13. The petitioner denounced the unwarranted delay in settling the worker rights complaints and the fact that he was not notified of the document that qualified his injury as “not work-related,” because of which he was prevented from filing the corresponding appeal. As for the state, it contended that the delay in ruling on the worker rights proceedings is attributable to the petitioner, who in addition did not meet the requirement for exhausting domestic remedies because he did not exercise his right to file the remedy of appeal within the statutory time-limits.

14. The IACHR points out, first, that the provisions of the American Convention relative to the exceptions to the requirement of exhaustion of domestic remedies, by their nature and purpose, are norms with autonomous content with respect to the treaty’s substantive norms. Therefore, ascertainment of the applicability of the corresponding exceptions must be undertaken previously and separately from the review of the merits of the case, because it relies on a standard of appreciation that is different from the one used to ascertain the violation of Articles 8 and 25 of the American Convention.

15. The case file for the instant case reveals that the petitioner filed his first worker rights complaint in 2009 and the second one in 2011. According to the latest documentation provided, both complaints were consolidated and the proceedings are still under way: on November 19, 2021, a hearing was held as part of the proceedings, that is, a final judgment has not yet been rendered.

16. As for the first complaint, the Inter-American Commission takes note that the parties have presented contradictory arguments regarding the responsibility for the delay. Without detriment to the merits of the case, the IACHR deems that the court of first instance’s failure to rule on the worker rights complaints—after more than twelve years since the filing of the first complaint and more than ten years since the second—justifies the applicability of the exception to the rule of exhaustion enshrined in Article 46(2)(c) of the American Convention. The Inter-American Commission shall examine, in the merits stage, the state’s allegations regarding the petitioner’s responsibility for the delay.

17. As for the deadline to present the petition, the proceedings in which there might have been an unwarranted delay started in 2009 and 2011. The petition was filed on November 30, 2012, and therefore the IACHR concludes that the reasonable period of time stipulated in Article 32(2) of its Rules of Procedures has been complied with.

18. The parties have presented contradictory factual accounts regarding the filing of appeals against the document that qualified the petitioner’s status. Bearing in mind the conclusions of the paragraph above, the Inter-American Commission does not deem it necessary to settle this controversy in the admissibility stage and therefore shall examine it in the merits stage.

VII. COLORABLE CLAIM

19. For the purposes of admissibility, the IACHR must decide if the facts tend to establish a possible violation of rights as stipulated in Article 47(b) of the American Convention or if the petition is manifestly groundless or obviously out of order, in accordance with subparagraph (c) of said article. The criterion for assessing said requirements differs from the one used to rule on the merits of a petition. Likewise, in the framework of its mandate, the Inter-American Commission is competent to declare a petition admissible when it refers to domestic proceedings that could be violating the rights guaranteed by the American

Convention. In other words, according to the treaty-based norms cited and in line with Article 34 of its Rules of Procedures, the review of admissibility focuses on verifying said requirements, which refer to the existence of elements which, if proven to be true, would establish *prima facie* violations of the American Convention.⁷

20. In short, the case refers to labor and social security rights that should be observed for a person with disabilities and to the fact that more than twelve years have elapsed since the first worker rights complaint was filed, without any conclusion being reached in the proceedings. In that sense, the Inter-American Court of Human Rights has established that “if the passage of time has a significant impact on an individual’s legal situation, the proceedings must move forward with greater diligence so that the case is decided promptly.⁸” The IACHR also deems that the allegations of the petitioner regarding the causes of his occupational accident and the alleged alteration of public documents to his detriment cannot be qualified *prima facie* as obviously groundless and therefore require in-depth analysis.

21. After examining the elements of fact and law described by the parties, the Inter-American Commission deems that the petitioner’s allegations are not obviously groundless and that they require in-depth examination because the facts being alleged, if they prove to be true, could establish the violation of rights enshrined in Articles 8 (fair trial), 24 (equality before the law), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with its Article 1(1) (obligation to respect rights) and Article XVI (social security) of the American Declaration.

22. As for the alleged violations of Articles II (equality before the law), XVIII (fair trial), and XXIV (petition) of the American Declaration, the IACHR has previously established that, when the American Convention enters into force with respect to a state, it becomes the primary source of enforceable law, as long as the petition refers to the alleged violation of rights that are identical in both instruments and that it does not involve a situation of continued violation.

23. Finally, it should be underscored that the Inter-American Commission, as part of its procedure for processing petitions, does not have the competence *ratione materiae* to decide on any possible violations of the conventions of the International Labor Organization (ILO), the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, and the articles of the San Salvador Protocol not envisaged in its Article 19(6). Nevertheless, pursuant to Article 29 of the American Convention, the IACHR can take these treaties into account to interpret and enforce the American Convention and other applicable instruments.

VIII. DECISION

1. To declare the present petition admissible with respect to Articles 8, 24, 25, and 26 of the American Convention, in connection with its Article 1(1) and with Article XVI of the American Declaration.

2. To notify the parties about the present decision, to continue examining the merits of the case, 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 5th day of the month of March, 2022. (Signed:) Julissa Mantilla Falcón, President; Stuardo Ralón Orellana, First Vice President; Margarete May Macaulay, Second Vice President, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁷ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, para. 12.

⁸ I/A Court H.R. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations, and costs. Judgment of March 6, 2019. Series C No. 375, para. 162.