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REPORT No. 63/17
PETITION 1304-08
ADMISSIBILITY REPORT

HUGO RENÉ VÁSQUEZ HERNÁNDEZ
GUATEMALA

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

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I. INFORMATION ABOUT THE PETITION

Petitioner:	Hugo René Vásquez Hernández
Alleged victim:	Hugo René Vásquez Hernández
State denounced:	Guatemala
Rights invoked:	Articles 8 (Right to a Fair Trial), 11 (Right to Privacy), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ¹ , and Articles 6 and 7 of the Protocol of San Salvador

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	November 7, 2008
Additional information received at the initial study stage:	April 23, 2013
Date on which the petition was transmitted to the State:	August 20, 2014
Date of the State's first response:	November 20, 2014

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 (instrument of ratification deposited on May 25, 1978)

IV. ANALYSIS OF 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:	Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to its Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, May 16, 2008
Timeliness of the petition:	Yes, November 7, 2008

¹ Hereinafter "the Convention" or "the American Convention".

² The observations presented by each party were duly forwarded to the opposing party.

V. ALLEGED FACTS

1. The petitioner notes that, on April 1, 1999, he started an employment relationship with the National Civil Police. He says that, on May 27, 2003, criminal proceedings were initiated against him for homicide, which was later amended to the offense of concealment. This process ended with a judgement of acquittal on September 1, 2003. The petitioner says that an administrative process was subsequently initiated that resolved his dismissal before the end of the criminal proceeding. The petitioner notes that he was notified of this decision on November 16, 2004.

2. The petitioner says that, based on these events, he filed a complaint before the Seventh Judge for Labor and Social Security of the First Economic Area on November 24, 2004. On June 29, 2005, the judge ordered his reinstatement given that, at the time of his dismissal, a collective labor dispute was ongoing and the incidental proceeding necessary to allow employee dismissal was not yet in place. He notes that the Procurator-General's Office filed an appeal against that ruling before the Third Chamber of the Court of Appeals for Labor and Social Security of the First Economic Area. On December 5, 2005, the Third Chamber overruled the first instance decision and discharged the State of the obligation to reinstate, noting that the decision to end the employment relationship was not an act of retaliation and was justified given that the petitioner had committed acts that seriously impacted or damaged the institution's prestige.

3. The petitioner filed a writ of *amparo* against that ruling before the Supreme Court of Justice. The Supreme Court of Justice deemed on April 30, 2007 that the Third Chamber had violated the petitioner's rights of defense and due process by not ensuring that his dismissal was preceded by a complete disciplinary administrative proceeding where he might have disputed the cause that was being alleged for his dismissal. The Procurator-General's Office challenged this decision through an appeal before the Constitutional Court, which resolved, on November 23, 2007, to revoke the protection that had been granted by the Supreme Court. The Constitutional Court considered that, in the case of public servants who fulfil duties related to public citizen security, it is not necessary to request a judicial authorization for dismissal when that person perpetrates acts that seriously damage the institution's image despite not being crimes. The petitioner filed an application for clarification against that ruling before the same Constitutional Court, which was dismissed on February 18, 2008. The petitioner was notified of that decision on May 16, 2008.

4. The petitioner alleges that the resolution whereby he was dismissed is an arbitrary action which violated his right to due process and that he did not have access to domestic legal mechanisms to protect his rights. He further alleges that, based on the Disciplinary Regulation, he should not have been subjected to an administrative penalty since he was acquitted by a criminal court. Consequently, the petitioner alleges that Articles 8, 11, 24 and 25 of the Convention and Articles 6 and 7 of the Protocol of San Salvador were violated.

5. The State alleges that the petition is eminently baseless and without foundation. It claims that, should this petition be declared admissible, the Commission would be acting as a higher court, since the legal decisions that were made domestically were properly grounded in the legal framework that was in place at the time the events happened.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. In relation to the requirement that domestic remedies be exhausted, the Commission notes that the petitioner exhausted, through his application for clarification before the Constitutional Court, all stages of legal proceedings available domestically to obtain a resolution regarding the possible violation of his rights. In this sense, the Commission deems that the requirements established in Articles 46(1)(a) of the Convention and 31.1 of the Rules have been satisfied. The Commission notes that the State did not submit allegations regarding this aspect of the petition.

7. The Commission considers that, in this case, the submission deadline established in Articles 46(1)(b) of the Convention and 32.1 of the Rules was respected, since the decision on the appeal for clarification was notified on May 16, 2008, and the petition was filed on November 7, 2008.

VII. COLORABLE CLAIM

8. In light of the factual and legal arguments presented by the petitioner and the nature of the matter before it, the IACHR finds that the petitioner's allegations are not manifestly unfounded and that, if proven, they may tend to establish violations of rights protected in Articles 8 and 25, in accordance with Article 1.1 of the American Convention. The Commission considers that the petitioner did not submit evidence to the effect that these events might tend to establish violations of the rights recognized in Articles 11 and 24 of the Convention. Further, with respect to the allegations relative to Articles 6 and 7 of the Protocol of San Salvador, the IACHR notes that the jurisdiction that is established in the terms of Article 19.6 of said treaty to issue a ruling in the context of an individual case is limited to Articles 8 and 13.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 8 and 25, in accordance with Article 1.1 of the American Convention;
2. To declare this petition inadmissible with regard to Articles 11 and 24 of the American Convention;
3. To notify the parties of the present decision;
4. To continue examining the merits of the case; and
5. 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 in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.