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REPORT No. 50/18
PETITION 931-07
REPORT ON ADMISSIBILITY

EDGAR ALFREDO VALDEZ LÓPEZ
GUATEMALA

Approved by the Commission at its session No. 2127 held on May 5, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 50/17. Admissibility. Edgar Alfredo Valdez López. Guatemala. May 5, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Edgar Alfredo Valdez López
Alleged victim:	Edgar Alfredo Valdez López
Respondent State:	Guatemala
Rights invoked:	Articles 8 (fair trial), 24 (equal protection), 25 (judicial protection) of the American Convention on Human Rights, ¹ in accordance with its Article 1.1 (obligation to respect rights); and Articles 6 and 7 of the Protocol of San Salvador

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	July 16, 2007
Additional information received at the stage of initial review:	August 15, 2007; April 21 and September 29, 2009; February 23, 2010
Notification of the petition to the State:	January 17, 2012
State's first response:	July 11, 2012
Additional observations from the petitioner:	February 5 and September 16, 2013; March 24, 2014; March 26, 2015; March 29, 2016

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 ratification instrument on May 25, 1978)

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	Articles 8 (fair trial), 21 (property), 25 (judicial protection) and 26 (economic, social and cultural rights) 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, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. Mr. Edgar Alfredo Valdez López ("the petitioner" or "the alleged victim") indicates that he worked at the Public University of San Carlos from January 16, 1974 as an administrative employee in the finance department until he resigned his job on June 1, 2003. He asserts that, at the same time, on March 4, 1993 he began working as Teaching Assistant at the School of Economics and that he was unfairly and wrongfully dismissed from his job on January 5, 1995. On April 21, 1995, in view of a claim filed by the

¹ Hereinafter "Convention" or "American Convention."

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

petitioner, the Seventh Court for Labor and Social Welfare ordered he be reinstated and paid his salaries due corresponding to the period from his removal to his reinstatement to the position of Teaching Assistant, which the Court of Appeals confirmed on July 8, 1996.

2. Given the University's authorities' noncompliance with the judicial order, on March 12, 1999 the petitioner submitted a criminal complaint against the rector of the University for contempt of court before the Court for Criminal Matters, Drug Trafficking and Crimes against the Environment. In the framework of said case, on September 17, 1999 the representative of the University's rector signed an agreement by which the alleged victim would be effectively reinstated on September 20, 1999 and the unearned salaries would be paid to him in installments no later than November 30, 1999. In view of the University's non-compliance with said commitments, in November and December 1999, the petitioner sent several official letters to the different University authorities to inform them of the University's failure to reinstate him and to pay him the salaries due; but he was given no answer.

3. The petitioner claims that as a result of the agreement of September 17, 1999, on December 2, 1999 the Prosecutor's Office wrongfully and arbitrarily decided to dismiss and archive the criminal complaint, although the petitioner manifestly opposed to the noncompliance with the court's order and to the view that the matter of his complaint did not constitute a criminal offense. He indicates that this decision was notified to him on January 20, 2003 because of a continuous denial of information about the progress of the case and because for years he had been told that the case file was missing; thus he was unable to timely challenge the dismissal of the case. Likewise, he alleges that on January 20, 2003 he requested the Prosecutor's Office specializing in Administrative Offenses to continue with the criminal proceedings against the University authorities for contempt of court because the commitments made in the agreement remain unfulfilled. However, he claims that his application has not yet been answered.

4. He submits that on March 10, 2000, the dean of the School of Economics sent him a telegram requesting him to appear at the school for his reinstatement. Since no one received the petitioner at his arrival for his reinstatement, on March 14 he sent an official letter to the dean indicating what had happened. On March 16, 2000, the dean sent him another telegram requesting him to appear at the school again for his reinstatement, but again no one received the petitioner. He indicates that, contrary to the information the State submitted to the IACHR, he was never reinstated and requests the State to prove its claim. In regard to the payment of his salaries due, he asserts that on November 29, 2011 (two years after the agreement of September 17, 1999) he was finally paid the salaries corresponding to the period from January 1995 to December 1999, extra month's salary and the applicable bonus included.

5. Moreover, the petitioner alleges that the University authorities refused to grant him a retirement pension for the administrative tasks he performed from January 1974. The petitioner explains that on June 1, 2003 he resigned his job as an accountant in the finance department of the University in order to enroll in its retirement pension plan. He affirms that his resignation letter was accepted on August 29, 2003 by the chief financial officer but that his application for a retirement pension was arbitrarily rejected for several reasons. One of such motives was that by a resolution of October 18, 2004 the Office of Legal Affairs established that the petitioner is not eligible for a retirement pension because he still holds a position at the University, namely the position of teaching assistant which he has not explicitly resigned from—even though the same Board of Directors of the School of Economics informed that the petitioner's employment contract at said school had ceased on December 31, 1994. In addition, on October 5, 2007, the Managing Board of the Welfare Program allegedly defined his employment situation as uncertain due to the controversy over his reinstatement to the teaching position, and therefore decided not to grant him the retirement pension corresponding to his administrative job.

6. He indicates that on February 17, 2012 the Managing Board of the Welfare Program answered his several requests of payment of his pension, by expressing that his request could not be approved unless he submitted a statement indicating that he had no claims against the University, in other words, he had to withdraw the complaint demanding his reinstatement to the job as Teaching Assistant and the payment of salaries pending from January 1, 2000 and that his application to a retirement plan would be for both of his positions, as an administrative employee and a teaching assistant. Consequently, he claims that

this is a wrongful, arbitrary and coercive measure, for he is required to waive his fundamental rights. He alleges that, by denying him a retirement pension, the University has prevented his earning a livelihood, putting his life at risk, and that given the fact that he is a person over 60 years old, it has left him in a vulnerable situation because his pension is an income for alimony purposes.

7. The State, for its part, briefly alleges that the petitioner was reinstated to his job, in view of which post number 514 was created in the Common Area, and that pursuant to the judicial order his salaries due were paid. In this regard, the State attaches a copy of a payroll of 2000 that corresponds to the petitioner. In regard to the payment of his pension, it indicates that when the University has sent to it the corresponding information, the State will forward it to the IACHR. To date, the IACHR has not received any additional information from the State.

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

8. Concerning the alleged victim's purported wrongful removal from his job as Teaching Assistant, on April 21, 1995 the Seventh Court for Labor and Social Welfare issued a favorable judgment, confirmed by the Court of Appeals on July 8, 1996, ordering the University to immediately reinstate the petitioner and to pay the salaries due to him until his reinstatement. Given the alleged failure to comply with the judgment on the part of University, the petitioner filed a criminal complaint against the University's president for contempt, which was allegedly dismissed and archived on December 2, 1999. The petitioner claims that it was only on January 20, 2003 that he learned of the archiving of the case, as a result of which he was unable to challenge said decision. Additionally, he indicates that on the same January 20, 2003 he requested the Prosecutor's Office to continue with the criminal proceedings against the University's authorities for contempt, and that no answer was given to him. For its part, the State did not submit allegations on the requirement of exhaustion of domestic remedies. In cases of alleged noncompliance with judicial resolutions, the IACHR has maintained that, since the situation is reported under the domestic legal mechanisms, it is for the competent judicial body to adopt the measures necessary to ensure the execution of said decision.³ As a result, the Commission believes that the petition meets the exception set forth in Article 46.2.c of the Convention.

9. As to the alleged denial of a pension plan in view of his administrative job, the petitioner indicates that on September 24, 2004 the chief financial officer rejected his application for a retirement pension and after several requests of payment, on February 17, 2012, the Managing Board of the Welfare Program rejected it again. For its part, the State did not submit any observations on that allegation. The Commission notes that the alleged restrictions on the petitioner's right to a retirement pension seem to result from the purported noncompliance with the court's order ruling his reinstatement and the payment of the payable salaries in view of his position as a teaching assistant. Therefore, given the characteristics of the instant petition, the Commission believes that the denial of a retirement pension corresponding to his administrative job resulting from the alleged noncompliance with said judicial decision, after more than 13 years since his application was filed, as well as the alleged situation of uncertainty regarding his employment condition, all establish an unwarranted delay, thus, the exception set forth in Article 46.2.c of the American Convention applies to this petition.

10. With respect to the timeliness requirement, the petition was received on July 16, 2007 and the purported facts matter of this complaint allegedly started on January 5, 1995 and their effects in terms of alleged irregularities in the administration of justice, the denial of a retirement pension and the uncertainty of his employment and legal condition subject to his resignation from his reinstatement allegedly persist. Consequently, in light of the context and the characteristics of the instant case, the Commission believes that the petition was filed within a reasonable time.⁴

³ IACHR, Report No. 106/10. Petition 147-98. Admissibility. Oscar Muelle Flores. Peru. July 16, 2010, par. 29.

⁴ IACHR, Report No. 7/11. Petition 843-04. Admissibility. Leonel Enrique Lázaro Ospina and others. Colombia. March 22, 2011, par. 37.

VII. ANALYSIS OF COLORABLE CLAIM

11. In view of the elements of fact and law submitted by the parties and the nature of the matter brought to its attention, the Commission considers that the alleged facts concerning the University's noncompliance with a court resolution ordering the petitioner's reinstatement and full payment of his salaries due until said reinstatement; the irregularities in the due process of law, the lack of effective protection on the part of the State as well as the University's denial to pay his retirement pension all, if proved, could establish violations of the rights protected by Articles 8 (fair trial), 21 (property), 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).

12. As to the allegations concerning Article 7 of the Protocol of San Salvador, the Commission notes that under Article 19.6 of said treaty its competence to rule on individual cases is limited to Articles 8 and 13. Regarding the same article, Article 29 of the Convention establishes that the Commission may consider it in the interpretation and application the American Convention.

13. As for the petitioner's claim about the purported violation of Article 24 of the Convention, the Commission notes that the petitioner does not submit allegations or elements to *prima facie* consider a possible violation of said article as a result of acts internationally attributable to the State; thus, said claim is dismissed.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 21, 25 and 26 of the American Convention, in connection with its Article 1.1;

2. To find the instant petition inadmissible in relation to Article 24 of the American Convention; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Santo Domingo, Dominican Republic on the 5th day of the month of May, 2018. Signed: Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.