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REPORT No. 135/18
PETITION 1045-07
REPORT ON INADMISSIBILITY

ENRIQUE ALBERTO ELÍAS WAIMAN
ARGENTINA

Approved electronically by the Commission on November 20, 2018.

Cite as: IACHR, Report No. 135/18. Petition 1045-07. Inadmissibility. Enrique Alberto Elías Waiman. Argentina. November 20, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Enrique Alberto Elías Waiman
Alleged victim:	Enrique Alberto Elías Waiman
Respondent State:	Argentina
Rights invoked:	Article 8 of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	August 8, 2007
Additional information received at the stage of initial review:	March 16, 2012
Notification of the petition to the State:	June 3, 2013
State's first response:	December 19, 2013
Additional observations from the petitioner:	March 3, 2014 and December 15, 2014
Additional observations from the State:	August 18, 2014
Notification of the possible archiving of the petition:	April 20, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	April 20, 2018

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 of ratification September 5, 1984)

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, in the terms of Section VI
Timeliness of the petition:	Inapplicable, in the terms of Section VI

V. FACTS ALLEGED

1. Mr. Enrique Alberto Elías Waiman (hereinafter "the petitioner", "the alleged victim" or "Mr. Waiman"), who worked as a Public Notary in the City of Buenos Aires, alleges that he was removed from his position as a result of administrative proceedings, which resulted in a disproportionate punishment without the chance to have the sanction reviewed in second instance.

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

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

2. The petitioner states that by a decision dated July 2, 2003, the Association of Public Notaries of the City of Buenos Aires ordered a precautionary measure of preventive suspension from his professional practice as a public notary, and the opening of a disciplinary investigation against him for numerous alleged irregularities, omissions and inexcusable absences in the exercise of his functions, such as missing folios and mistakes in public documents.

3. As a result of the investigation, on April 21, 2004, the Association of Public Notaries filed proceedings with the Superintendent Court of Public Notaries, which has jurisdiction under the law to hear cases concerning the disciplinary responsibility of public notaries when the minimum applicable penalty is suspension for more than three months; and requested that the petitioner be sanctioned with dismissal. Thus, by decision of August 4, 2005, this tribunal ordered Mr. Waiman's dismissal and the cancellation of his professional registration, in accordance with legislation governing the role of public notaries.

4. On August 26, 2005, the petitioner filed an appeal for reconsideration against this decision, in accordance with the National Law on Administrative Procedures; and an unconstitutionality appeal, based on the Organic Law of the Judicial Power of the City of Buenos Aires. However, by resolution of September 30, 2005, the Superintendent Court of Public Notaries decided that both appeals were inadmissible on the grounds that "the organic statute governing public notaries establishes that the Superintendent Court has jurisdiction to decide as a single instance, following summary proceedings and opinion by the Association of Public Notaries, in matters relating to the disciplinary responsibility of public notaries, when the minimum applicable sanction is suspension for more than three months," in accordance with Article 120 a) of Law 404.

5. On October 17, 2005, the petitioner filed an appeal with the Superior Court of Justice of the City of Buenos Aires, also requesting the refusal of three of its members that had been members of the Superintendent's Court of Public Notaries. On December 27, 2005, the Superior Court of Justice accepted the recusal lodged by the petitioner and, with a new composition of judges, rejected the complaint on April 3, 2006. The petitioner filed an extraordinary federal appeal against this decision that was dismissed by the Superior Court of Justice on June 29, 2006. This court considered that the appeal was filed in an untimely fashion; that the decision under appeal was not subject to review by means of an extraordinary federal appeal; and that the decision that could be subject to appeal was the one issued by Superintendent's Court of Public Notaries. Finally, the alleged victim filed an appeal complaint before the National Supreme Court of Justice, which dismissed it on December 27, 2006, a decision that was notified to Mr. Waiman on February 9, 2007.

6. The petitioner considers that domestic remedies had been exhausted with the appeal filed before the National Supreme Court of Justice. He also argues that the State failed to single out the domestic remedies he should have exhausted in order to appeal the decision dismissing him from his position. He also alleges that his right to appeal to a higher court was violated by the judgment issued by the Superintendent's Court of Public Notaries; as well as his rights to a defense and to work; and of the principle of proportionality of sanctions, since the penalty he should have been received was suspension and not dismissal.

7. For its part, the State argues that the petition was sent to it by the IACHR more than five years after its submission. It also alleges that the petitioner has not exhausted domestic remedies, in violation of the provisions of Article 46.1.a of the American Convention, since the latter did not raise the federal question at the appropriate procedural opportunity (referring to the extraordinary federal appeal being declared inadmissible due to untimeliness by the Superior Court of Justice on June 29, 2006). In addition, the State argues that the petitioner filed reconsideration and constitutionality remedies incorrectly, as well as the extraordinary appeal on occasion of the rejection of the abovementioned remedies, and that only the clarification motion and the extraordinary federal appeal would have been admissible. In this regard, it points out that the Superior Court of Justice informed Mr. Waiman that he had filed an extraordinary federal appeal against the ruling of the Superintendent's Court.

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

8. The petitioner alleges that, with the rejection of the appeal filed before the National Supreme Court of Justice on December 27, 2006, domestic remedies were exhausted. The State for its part argues that the petitioner failed to duly exhaust domestic remedies because he omitted to raise the federal question at the appropriate procedural stage.

9. From the information and documentation provided by the parties, the Inter-American Commission observes that the Superior Court of Justice of the City of Buenos Aires, in its judgment of June 29, 2006, considered that the decision appealable by way of the extraordinary federal appeal was the one issued by the Superintendent's Court of Public Notaries dismissing him, because it was of a definitive nature. Based on this and on the fact that this decision was notified on October 7, 2005, the Superior Court of Justice dismissed the extraordinary federal appeal as untimely. In other words, under domestic legislation, the petitioner did not raise his "federal question" of alleged violation of the right to double instance at the appropriate procedural stage.

10. The Commission observes that although the organic statute governing public notaries establishes that the decision of the Superintendent's Court in matters relating to the disciplinary responsibility of public notaries is of a single instance, in the present case the petitioner chose to resort to extraordinary remedies available under domestic law. In this regard, the Inter-American Commission recalls that although in principle it is not necessary to exhaust extraordinary remedies in all cases, whenever the petitioner considers that these may have a favorable outcome in remedying the situation and he or she chooses to pursue them, such remedies must be exhausted in accordance with procedural rules in force, provided that conditions of access to them are reasonable. Therefore, in view of the fact that Mr. Waiman did not raise the federal question at the appropriate procedural juncture, that is, against the final decision ordering his dismissal, the Commission considers that the present petition fails to meet the requirement of exhaustion of domestic remedies under the terms of Article 46.1.a of the Convention.³

VIII. DECISION

1. To find the instant petition inadmissible in accordance with Article 46.1.a of the American Convention; and
2. To notify the parties of this decision; and to publish it 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 20th day of the month of November, 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.

³ See *mutatis mutandis*: IACHR, Report No. 127/17. Petition 527-07. Inadmissibility. Juan José Reséndiz Chávez. Mexico. September 29, 2017, paras. 9 to 12.