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REPORT No. 127/17
PETITION 527-07

INADMISSIBILITY REPORT

JUAN JOSÉ RESÉNDIZ CHÁVEZ
MEXICO

Approved electronically by the Commission on September 29, 2017.

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Organization of American States

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JUAN JOSÉ RESÉNDIZ CHÁVEZ
SEPTEMBER 29, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Juan José Reséndiz Chávez
Alleged victim:	Juan José Reséndiz Chávez
State denounced:	Mexico
Rights invoked:	Articles 1 (Obligation to Respect Rights), 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights; [2] and Articles 1 (Obligation to Adopt Measures), 2 (Obligation to Enact Domestic Legislation), 3 (Obligation of nondiscrimination) and 7 (Just, Equitable, and Satisfactory Conditions of Work) of the Protocol of San Salvador

II. PROCEDURE BEFORE THE IACHR[3]

Date on which the petition was received:	April 26, 2007
Date on which the petition was transmitted to the State:	January 20, 2011
Date of the State's first response:	April 14, 2011
dditional observations from the petitioning party:	September 21, 2011; January 21 and September 20, 2012; August 9, 2013 and April 10, 2015
Additional observations from the State:	December 14, 2011; April 18, 2012; May 31 and December 20, 2013

III. COMPETENCE

Competence *Ratione personae:*	Yes
Competence *Ratione loci*:	Yes
Competence *Ratione temporis*:	Yes
Competence *Ratione materiae*:	Yes; American Convention (deposit of instrument of ratification: March 24, 1981)

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 *res judicata*:	No
Rights declared admissible	None

[1] Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision on this matter.

[2] Hereinafter "the Convention" or "the American Convention."

[3] The observations presented by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	No; under the terms of Section VI
Timeliness of the petition:	Not applicable, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner and alleged victim, Juan José Reséndiz Chávez, ("the petitioner" or "the alleged victim") asserts that he worked at the Local Office of the Ombudsman's Federal Institute in Baja California ("the Institute") for a year and three months, until he was removed from his job as a judicial officer on July 15, 2004. He claims that his removal was arbitrary and based on false facts, that it was decided through partial proceedings before a final court of appeals, in which his right not to be removed from his post was not recognized.

2. He indicates that a competitive selection process was open at the Institute in order to fill a vacancy, and that he applied but was not chosen for the job. Dissatisfied with the results, he wrote to the Institute to request his examination results, the reasons he was not selected and a review of the selection process results. He states that, in reply, he was given access to his results and told that it was impossible to reconsider the decision in view of the nature of the selection process. The petitioner sent two other disconformity letters to the President of the Council of the Federal Judiciary, who, by a letter of June 2, 2004, expressed again that he had not been the most suitable candidate for the job. Subsequently, he submits in general terms that on July 15, 2004 he was arbitrarily removed from his job on the basis of false facts. He claims that said decision, adopted in partial proceedings before a final court of appeals, violated his rights not to be removed from his post and to compensation for arbitrary removal in accordance with the law.

3. The petitioner submits that he filed a labor claim before the Single Trial Commission of the Federal Judiciary in view of the purported arbitrary removal, and that the remedy was settled on March 22, 2006 by the Plenary of the Council of the Federal Judiciary. By said resolution, the authorities ruled, in favor of the petitioner, the recognition of seniority premium, pay for additional hours worked, proportional extra month's pay for the first semester of 2004, vacation pay and other benefits that he claimed. However, the purported arbitrary dismissal was not recognized; therefore, the claim for compensation was dismissed as well. In light of this judgment, the petitioner indicates that the proceedings were partial in favor of the State, and that the authorities failed to consider all the evidence presented, such as the documents that duly certify his working period and his satisfactory performance during said time.

4. The petitioner asserts that pursuant to Article 100 of the National Constitution resolutions by the Judiciary Council are final and unappealable, which violates Article 8 of the American Convention as it sets forth that proceedings before said body are of single instance of jurisdiction. However, the petitioner filed a direct constitutional appeal before the Eleventh Collegiate Court for Labor Matters of the First Circuit to request protection from the federal court in view of the violated rights. He submits that on August 7, 2006 said court, without a prior analysis of the merits, dismissed his claim on the basis of Article 73 of the Law on Constitutional Appeals, under which this remedy is inapplicable whenever another law so establishes –in this case, Article 100 of the National Constitution. In the face of this ruling, the petitioner lodged a claim for review before the National Supreme Court of Justice, but this court, by a resolution of November 7, 2006, rejected the claim as out of order, noting that a complaint would have been the appropriate remedy.

5. The petitioner also claims that he had the right not to be removed from his post[4] in view of the fact that he met the following legal requirements: several uninterrupted appointments for over six months to a steady job and a professional record without negative observations. With regard to this, he submits that he had no negative observations until after the selection process for the vacancy was made. Moreover, he indicates that through the remedies that he filed, he requested the application of the principle of

[4] The petitioner refers to Article 6 of the Federal Law for State Workers, under which "Staff workers are: those not included in the above list and who will therefore be steady. Those recently recruited will become steady only after six months in service unless negative observations appear on their record."

"amendment of the complaint,"[5] under which, in the petitioner's view, the court itself had to amend any omissions made by the claimant. Nevertheless, the competent authority apparently failed to abide by this rule, as it dismissed the claim for review. Finally, he claims that he was not granted public legal assistance, since he resorted to the Federal Ombudsman's Office for Labor Matters ("PROFEDET") seeking said legal assistance but he was told that said body deals only with cases likely to be settled by arbitration and settlement, and that disputes before the Judiciary are not applicable.

6. The State claims that after the selection process in which the petitioner was not chosen, he adopted an unacceptable and disrespectful attitude and reduced his efficiency at work; therefore, the Institute's Directorate was obliged to call his attention in writing. As a result, the authority in charge of the Local Office of Baja California recommended the Institute's Directorate not to renew the petitioner's contract; the petitioner was notified of this decision on July 12, 2004.

7. The State indicates that the petitioner had access to a fair trial and due process in the courts foreseen by the Mexican law; thus, this petition is an attempt by the petitioner to have the IACHR work as a fourth instance, in view of the fact that the domestic courts' rulings were contrary to his interests. Moreover, it submits that the claim for review he presented was inadequate, that the appropriate remedy was a complaint, which was not filed; consequently, it alleges lack of exhaustion of domestic remedies. It considers that the petitioner, in light of his profession (a lawyer) and experience, should have known which the appropriate remedies were. The State believes that the existence of a suitable remedy proves that the proceedings were not of single instance of jurisdiction to the detriment of Article 8 of the Convention. It asserts that Article 25 of the Convention was not violated, since any decision made the petitioner himself is not attributable to the State.

8. In addition, as to the petitioner's purported right not to be removed from his post, the State submits that the "staff" status mentioned in the legislation applies to workers who were, in written form only, appointed accordingly, which was not the petitioner's case. Lastly, it indicates that PROFEDET gives legal assistance and representation on a free-of-charge basis pursuant to Article 530 of the Federal Law on Labor under which one of PROFEDET's functions is to provide free-of-charge legal assistance "before any authority."

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. In this case, the petitioner claims that the proceedings undertaken before the Council of the Federal Judiciary are of single instance of jurisdiction and that, as a result, it was impossible for him to file remedies against the decisions made by this court. Still, he presented a constitutional appeal against the Judiciary Council's ruling, which was contrary to his interests. The State, for its part, alleges lack of exhaustion of domestic remedies on the grounds that the petitioner should have exhausted the remedy of complaint before the National Supreme Court of Justice.

10. The Commission notes that the petitioner filed a direct constitutional appeal before the Eleventh Collegiate Court for Labor Matters of the First Circuit, but it was rejected on August 7, 2006. The court considered that under Article 73 of the Law on Constitutional Appeals, said remedy is out of order whenever another special law so rules; in the petitioner's case, in particular, this special law would be Article 100 of the National Constitution. Said decision was challenged before the National Supreme Court of Justice, which confirmed the collegiate court's decision and also invoked, as the basis of its decision to dismiss, Article 103 of the Law on Constitutional Appeals, which sets forth that "[t]he remedy of complaint is appropriate to challenge decisions issued by the president of the Supreme Court of Justice or by the presidents of its Chambers or the Circuit Collegiate Courts."

[5] The petitioner invokes the rule contained in Article 76.a of the Law on Constitutional Appeals, under which "Authorities hearing the constitutional appeal proceedings must amend conceptual omissions regarding the denounced violation as well as those regarding the grievances denounced through the remedies foreseen by the law (...)."

11. The Commission also notes that, in the face of the State's observation that the petitioner failed to exhaust the appropriate remedies, the petitioner claims that, in any case, the court hearing the constitutional appeal should have applied the rule known as "amendment of the complaint," set forth in Article 76.a of the Law on Constitutional Appeals. However, based on the content of this rule, the Commission prima facie notes that said rule of amendment of a complaint appears to be applicable only if or as long as, in a particular case, a constitutional appeal is the appropriate remedy to file the specific complaint at issue, but not when the legislation itself establishes another appropriate remedy.

12. As a result, the Commission concludes that the subsidiarity principle concerning the protection provided by the American Convention on Human Rights demands that all petitions be previously heard, in substance, by the domestic courts. As to this case, the fact that the alleged victim did not file the corresponding remedy pursuant to the rules in force at the time of the facts means that the Commission cannot find this petition admissible in accordance with Article 46.1.a of the Convention, as the domestic remedies were not duly exhausted.[6]

VII. DECISION

1. To find the instant petition inadmissible in relation to Article 46.1.a of the American Convention;

2. To notify the parties of this decision;

3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved electronically by the Commission on the 29th day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.

[6] IACHR, Inadmissibility Report No. 71/14, Petition 537-03, Mayra Espinoza Figueroa, Chile, July 25, 2014; par. 41.