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**REPORT No. 147/20**  
**PETITION 1384-16**  
REPORT ON ADMISSIBILITY

JOSÉ IGNACIO ORÍAS CALVO  
BOLIVIA

Approved electronically by the Commission on June 9, 2020.

**Cite as:** IACHR, Report No. 147/20, Petition 1384-16. Admissibility. Jose Ignacio Orias Calvo.  
Bolivia. June 9, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Organización Derechos en Acción [Rights in Action Organization]
<b>Alleged victim:</b>	José Ignacio Orías Calvo
<b>Respondent State:</b>	Bolivia
<b>Rights invoked:</b>	Articles 8 (judicial guarantees), 11 (protection of honor and dignity), 12 (freedom of conscience and religion), 13 (freedom of speech and expression), 23 (political rights), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> in relation to its article 1.1 (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	July 18 <sup>th</sup> 2016
<b>Additional information received at the stage of initial review:</b>	June 19 <sup>th</sup> 2017, October 25 <sup>th</sup> 2017, January 24 <sup>th</sup> 2018 and June 26 <sup>th</sup> 2018
<b>Notification of the petition to the State:</b>	July 17 <sup>th</sup> 2018
<b>State's first response:</b>	March 21 <sup>st</sup> 2019
<b>Additional observations from the petitioner:</b>	August 21 <sup>st</sup> 2019
<b>Additional observations from the State:</b>	December 18 <sup>th</sup> 2019

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of the instrument of ratification made on July 19 <sup>th</sup> 1979)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (judicial guarantees), 11 (protection of honor and dignity), 12 (freedom of conscience and religion), 13 (freedom of speech and expression), 23 (political rights), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights in relation to its article 1.1 (obligation to respect rights) and 2 (obligation to adopt domestic law dispositions)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> Hereinafter "the American Convention".<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioner claims that the State has infringed the human rights of José Ignacio Orías Calvo (hereinafter “Mr. Orías”) for not exempting him from complying with his obligatory military service on account of his right to conscientious objection.

2. It also indicates that the alleged victim declares himself as an atheist who believes “*in life, in nonviolence, in love and in collaboration over imposition*”, which is why the army and war run counter to his ethical principles. It specifies that on July 15<sup>th</sup> 2015 Mr. Orías requested the Ministry of Defense to be relieved from the obligatory military service in virtue of his pacifist identity, and requested to be given a special military booklet which recognized his conscientious objector condition towards military functions. It points out that on August 20<sup>th</sup> 2015, through Note No. 2948, the Minister of Defense denied such request, claiming that as it is set forth on article 249 of the Political Constitution the military service is obligatory for every Bolivian and that the figure of conscientious objection does not exist in the State’s juridical system.

3. On October 2<sup>nd</sup> 2015 the alleged victim filed a writ of amparo action against the Minister of Defense, requesting enforcement of his rights to equality, freedom of thought and conscientious objection through the exoneration of the military service, a special military booklet handed over with no additional costs and the issuance of a resolution which would exempt him from participating in military actions should an armed conflict take place. On November 17<sup>th</sup> 2015 the Sala Civil Tercera del Tribunal Departamental de Justicia [Third Civil Chamber of the Department Court of Justice] of La Paz through resolution AC-47/2015 declared the claim partially based, thereby revoking Note No. 294, but conditioning the submittal of such requested documentation, to Mr. Orías attending a recruiting center presenting his criminal record and documents that certified he was a conscientious objector not just by word but for a fact. Such chamber considered, that although the conscientious objection is implicitly contemplated in Bolivian law, the lack of regulation of such right does not allow the direct tutelage over it from justice organisms in the resolution of concrete cases.

4. The petitioner explains that, in accordance with the Código Procesal Constitucional [Constitutional Procedure Code], the aforementioned AC-47/2015 resolution was raised on automatic revision to the Tribunal Constitucional Plurinacional [Plurinational Constitutional Court] to issue either a confirmatory or revocatory ruling. Thus, on March 23<sup>rd</sup> 2016 the second chamber of such court enacted the sentence 265/2016-S2 which revoked the first instance decision and rejected the writ of amparo in every respect. This higher court deemed that Mr. Orías failed to prove how his pacifist identity has conditioned his life through objective facts, which is why he could not be acknowledged as conscientious objector due to the subjectivities aiming to exempt him from a constitutional duty. Likewise, it specified that the obligatory military service is not necessarily opposite to the alleged victim’s ideology, since it involves actions that do not carry a warlike character and that do not counter peace, such as assistance in cases of natural disasters, protection of the environment, safeguarding internal security and democratic processes, among others. Finally, the ruling exhorted the Asamblea Legislativa Plurinacional [Plurinational Legislative Assembly] to regulate by means of specific norms everything concerning the right to objection or conscience.

5. The petitioner argues that resolution AC-47/2015 as well as sentence 265/2016-S2 show that the amparo was the suitable remedy to protect his right to conscientious objection. It adds that, although Bolivian ordinances contemplate requests for review and Hierarchical Recourse, both are additional instruments, and that Mr. Orías had no obligation to use them. It claims that, should there have been an obligation to file such recourses in administrative office before turning to the jurisdictional channel, the courts would have declared the amparo writ out of order. Likewise, claims that in absence of a regulation that determines which conditions must be fulfilled and presented by people who seek protection of their right to conscientious objection, Mr. Orías accredited his condition of conscientious objector through his own statement. It affirms that, in virtue of the principle of legality, the State cannot demand requirements not contemplated in Bolivian law.

6. The petitioner points out that, despite the fact that in 2004 the State committed before the IACHR to incorporate conscientious objection in the military legislation<sup>3</sup> through a friendly settlement, no appropriate regulation has been established to this date which may allow the exercise of such right. It specifies that in 2008 the State ratified the Ibero-American Convention of the Youth, which acknowledges the right to conscientious objection on its article 12 subparagraphs 1 and 2<sup>4</sup>; however, Law 3854 used for such ratification of the aforementioned treaty established a reservation regarding such dispositions. In the petitioner's view, such norm constitutes an obstacle and shows the State's lack of will in complying its obligation to adequate its internal law, which is why it must be withdrawn.

7. The petitioner adds that the absence or norms to secure that right creates a situation of discrimination in detriment of those who support their objections based on political, ethical and philosophical convictions, since in the practice it is only protecting those who profess the Catholic religion in virtue of a bilateral norm between the Holy See and the State of Bolivia<sup>5</sup>. In this line, adds that through Ministry Resolution No. 834 Alfredo Díaz Bustos was acknowledged as, beneficiary of such friendly solution agreement, as conscientious objector and received the requested military booklet with no additional cost, which infringes Mr. Orías' right to equality. Finally, it is further stated that to this date he has no Military Booklet, which would breach his political rights since article 234 of the Bolivian Constitution demands compliance of military duties as a requirement to perform in public office.

8. In return, the State affirms the petition is inadmissible, since not all domestic remedies have been exhausted. It points out that the alleged victim should have filed before the same administrative authority an appeal versus Note No. 2948 of the Ministry of Defense and, upon a negative answer, should have filed a Hierarchical Recourse in pursuit of his goals. It claims that the Sala Civil Tercera del Tribunal Departamental de Justicia [Third Civil Chamber of the Department Court of Justice] of La Paz in its resolution AC-47/2015 confirmed this omission, which is why Mr. Orías is to use such remedies with documentation which certify that his conscientious objector condition. Likewise, argues that the reservation formulated by the Ibero-American Convention of the Youth by Law 3854 may be questioned through a concrete unconstitutionality action, which is why there is lack of exhaustion regarding such claim.

9. Additionally, the State argues that the facts reported in the petition do not constitute human rights violations. It explains that the alleged victim has not given local authorities nor the IACHR unequivocal evidence as to his conscientious objector status, which his why he has not proven to be a victim of any infringement of right recognized by the American Convention. Also, adds that the IACHR concluded in its Merits Report 43/05 that the lack of acknowledgement of the conscientious objection does not generate infringement to the right to freedom of thought, conscience or religion in the states that do not foresee such condition in their internal legislation<sup>6</sup>. According to such reasoning, it says that the State of Bolivia cannot be held liable for alleged violation to a figure not foreseen in its juridical system. Lastly, it specifies there are up to six ways to attain the Military Booklet, which includes methods that do not involve assistance or participation whatsoever of any kind of combative instruction.

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

10. The petitioner indicates that domestic remedies were exhausted upon the decision 265/2016-S2 of the Tribunal Constitucional Plurinacional [Plurinational Constitutional Court]. On the other hand the State replies there is a lack of exhaustion of internal jurisdiction, since the alleged victim did not turn to an appeal or

<sup>3</sup> IACHR, Report N° 97. Friendly Solution. Petition 14/04, Alfredo Díaz Bustos, Bolivia, October 27<sup>th</sup> 2005.

<sup>4</sup> Ibero-American Convention on Youth Rights. Article 12. 1. "*Youth have the right to formulate conscientious objection towards obligatory military service. 2. The States hereby commit to foster pertaining legislative measures to guarantee the exercise of this right and to move forward towards progressively eliminating obligatory military service*".

<sup>5</sup> Agreement between the Holy See and the Republic of Bolivia on religious assistance to Armed Forces and National Police Forces. Article XII. "*In times of peace, the clergy, the seminarists, priests and novices are exempt of military service. [...]*"

<sup>6</sup> IACHR, Report 43/05. Case N° 12.219. Matter, Cristian Daniel Sahli Vera and others, Chile, March 10<sup>th</sup> 2005, par. 38.

a Hierarchical Recourse in administrative office to enforce his right to conscientious objection, and that did not file a concrete unconstitutionality action to question the reservation established in Law 3854.

11. In this regard, the Commission has established that the requisite of having exhausted domestic remedies does not mean that the alleged victims have necessarily the obligation to exhaust all domestic remedies. Consequentially, if the alleged victim approached the matter through any of the appropriate alternatives, as in the case of this petition, and the State had the chance to solve the situation, the purpose of the norm is fulfilled.<sup>7</sup> In such sense, observes that the judicial instances that knew of the claim, although disregarded some core points by the alleged victim affirmed their competence to analyze the raised controversy and declared the requirements of precedence of the action fulfilled. On this base, the Commission concludes that the alleged victim exhausted the proper remedies to uphold his right to conscientious objection by filing the constitutional writ of amparo, which was finally resolved by sentence 265/2016-S2 of the Tribunal Constitucional Plurinacional [Constitutional Plurinational Court] issued on March 23<sup>rd</sup> 2016, which is why the petition complies with requirements set forth in article 46.1.a of the Convention. Also, the petition was filed on July 18<sup>th</sup> 2016, therefore, within the span of six months for submittal as stated in article 46.1.b of the Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

12. As a result, considering all the elements of fact and law exposed by the parties, the Commission considers that the facts alleged by the petitioner concerning the lack of acknowledgement and regulation of the right to conscientious objection in the military field, are not baseless and require a thorough study on its matter. In this sense, although the alleged background report 43/05 referred to by the State, the Commission concluded the non-violation of conventional rights, such decision was adopted fifteen years ago in a context in which the development of international law of human rights and own interpretative standards of the Inter American System were different. On this matter, when ruling on the present case the Commission shall take into account the current conception of the content and scope of the rights invoked by the alleged victim. Since human rights treaties are living instruments, with interpretation that must go side by side with the evolution of times and current lifestyles. Such evolutionary interpretation is consequent with the general rules of interpretation set forth in article 29 of the American Convention, as with the Vienna Convention on the Law of Treaties<sup>8</sup>.

13. But, beyond these considerations, the Commission considers as clearly established that the current petition fulfills formal requisites of admissibility in the American Convention, that its point is not expressly baseless nor lacking enough grounds, and that the fundamental matter it raises is of a juridical complexity which calls for a substantive review by the Inter American Commission, which exceeds the aim of the present admissibility report.

14. In light of these considerations the Commission concludes that the alleged facts could, *prima facie*, constitute violations to articles 8 (judicial guarantees), 11 (protection of honor and dignity)<sup>9</sup>, 12 (freedom of conscience and religion), 13 (freedom of thought and expression)<sup>10</sup>, 23 (political rights), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to adopt domestic law dispositions).

<sup>7</sup> IACHR, Report No. 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas and others, retirees from the Venezuelan Aviation Company VIASA. Venezuela, October 15<sup>th</sup> 2004, par. 52.

<sup>8</sup>International Human Rights Court. Advisory Opinion OC-22/16 from February 26<sup>th</sup> 2016 requested by the Republic of Panama, Juridical Persons' Ownership of Rights in the Inter American System of Human Rights (Interpretation and Scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, as well as article 8.1.a and B of the San Salvador Protocol, par.49.

<sup>9</sup> The Inter American Court has expressed that the field of protection of the right to private life has been interpreted in broad terms by international tribunals on human rights, by pointing out it goes beyond the right to privacy. The protection of private life entails a series of factors related to the individual's dignity, including for example, the capability to develop an own personality and aspirations, determine own identity and defining own personal relations. Cfr. International Human Rights Court. Case Artavia Murillo and others ("In Vitro Fecundation") vs. Costa Rica. Preliminary Exceptions, Matter, Damages y Costs. Sentence on November 28<sup>th</sup> 2012. Serie C no. 257, párr.143. In such sense, the IACHR considers that the claimed right to object conscience may be linked to the content of article 11 of the American Convention.

<sup>10</sup> The IACHR regards pertinent to analyze at a matter stage if the right to freedom of thought, contemplated in article 13 of the American Convention, stems from the right to conscientious objection.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 11, 12, 13, 23, 24 and 25 of the American Convention in accordance with its articles 1.1 and 2; and

2. 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.

Approved by the Inter-American Commission on Human Rights on the 9<sup>th</sup> day of the month of June, 2020.  
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.