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**REPORT No. 272/21**  
**PETITION 1627-10**  
REPORT ON ADMISSIBILITY

MARIO ADEL COSSIO CORTEZ  
BOLIVIA

Approved by the Commission electronically on October 9, 2021.

**Cite as:** IACHR, Report No. 272/21, Petition 1627-10. Admissibility. Mario Adel Cossio Cortez.  
Bolivia. October 9, 2021

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Bjorn Arp
<b>Alleged victim:</b>	P-1627-10: Mario Adel Cossio Cortez
<b>Respondent State:</b>	Bolivia
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) 9 (freedom from ex post facto laws), 11 (right to privacy), 21 (right to property), 22 (Freedom of Movement and Residence), 23 (Right to Participate in Government) 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) and 2 (obligation to abide by domestic legal effects) thereof

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

<b>Filing of the petition:</b>	<b>P-1627-10:</b> November 11, 2010 <b>P-1536-11:</b> September 2, 2011
<b>Additional information received at the stage of initial review:</b>	<b>P-1627-10:</b> November 22, 2010, December 3, 2010, January 12, 2017 and July 7, 2017 <b>P-1536-11:</b> June 18, 2012, August 8, 2018, October 8, 2019, October 15, 2019
<b>Notification of the petition to the State:</b>	<b>P-1627-10:</b> March 6, 2017 <b>P-1536-11:</b> February 12, 2018
<b>State's first response:</b>	<b>P-1627-10:</b> August 1, 2017
<b>Additional observations from the petitioner:</b>	<b>P-1627-10:</b> August 8, 2018
<b>Additional observations from the State:</b>	<b>P-1627-10:</b> March 19, 2020 and September 20, 2021

**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 (instrument of accession deposited on July 19, 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>	8 (fair trial) 9 (freedom from ex post facto laws), 11 (right to privacy), 21 (right to property), 22 (Freedom of Movement and Residence), 23 (Right to Participate in Government) 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 abide by domestic legal effects) thereof.

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

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

## V. FACTS ALLEGED

1. The petitioner party claims that the State violated, inter alia, the right to participate in Government of the alleged victim, in removing him from his office as governor of Tarija, exerting criminal law against him with this single purpose, and thereby configuring a situation of deviation of power.

2. The petitioners narrate that on April 4, 2010 the alleged victim took office as Governor of the Department of Tarija for the period of 2010-2015, after winning in the departmental elections. Previously, Mr. Cossio Cortez served as prefect of said location, during 2005-2010. The petitioner holds that since 2005 the alleged victim and other departmental authorities held strong arguments and political confrontations with the at the time president and the members of the national government, in charge of the executive power, since they prompted the introduction of a new State organization model which would grant greater autonomy to the departments of Bolivia.

3. In that context of polarization, on July 19, 2010 the national government enacted Law N° 031/10, a Frame Law for Autonomies and Decentralization, with the support of their sector in the legislative power. In the petitioner party's view, the goal of this regulatory framework was to overthrow opposing local authorities, in order to consolidate their power with no political resistance, since article 144 of said law authorized the suspension of Governors and other elected officials with a simple accusation from a prosecutor, with no need to previously prove his or her culpability by means of a criminal sentence, as demanded by the Constitution<sup>3</sup>. The petitioner argues that, based on said legislation, during 2010- 2012, the government suspended over one hundred opposing authorities elected via popular votes from their offices in all the country.

4. The petitioner argues that ever since 2008 the at the time vice-minister for transparency filed presented several indictment proposals with political persecution purposes to attain the criminal prosecution of Mr. Cossio Cortez, for alleged facts taken place when he was prefect of the Department of Tarija. The Prosecutor's Office admitted one of said remedies and initiated an investigation against the alleged victim, for not having taken measures to make the private company IMBOLSUR, which had been awarded a public bidding, pay a contractual warranty, after not providing the amount of cement agreed with the Departmental Service of Roads of Tarija (hereinafter, "SEDECA"). This proceeding was called "IMBOLSUR case".

5. On January 18, 2010 the alleged victim requested that the claim be rejected, explaining that there was no factual nor legal substance to motivate his connection to that crime. Along this line, petitioner specifies that Mr. Cossio Cortez explained that it was not the responsibility of a prefect to control the validity of a contractual warranty and that the entity in charge of the bidding was SEDECA, not the prefecture. Nonetheless, the prosecutor in charge had disregarded the arguments, and on May 15, 2010 issued a formal indictment against the alleged victim on the alleged crimes of incompletion of duties, antieconomic conduct and crime concurrence. Upon this, the alleged victim raised an incident of nullity and a liberty remedy, requesting that the persecution against him cease. However, in 2010 the jurisdictional authorities rejected these remedies.

6. The petitioner holds that due to the lack of judicial protection, on December 9, 2010 the prosecutor in charge of the case filed a formal indictment against the alleged victim on the crimes of noncompliance of duties and antieconomic conduct; and on December 10, 2010 he notified this decision to the President of the Legislative Assembly of the Autonomous Departmental Government of Tarija, requesting the

<sup>3</sup> Law N° 031/10, Frame Law for Autonomies and Decentralization. Article 144. (TEMPORARY SUSPENSION). "Governors, Mayors, Maximum Executive Regional Authority, Departmental and Regional Assembly members, Council members of autonomous territorial entities, may be suspended temporarily from the performance of their duties when a Formal Indictment is dictated against them".

suspension of Mr. Cossio Cortez from his office as Governor of Tarija. The petitioner argues that, although the alleged victim filed several remedies and submitted different briefs so that public authorities would protect his rights, on December 16, 2010 the Legislative Assembly applied article 144 of Law N° 031/10; and via Resolution N° 053/2010-2011 suspended Mr. Cossio Cortez from his office as Governor.

7. The alleged victim remained in illegality the days following his suspension, in order to preserve his life and protect from the government, and afterward requested asylum in Paraguay. On December 22, 2010 the National Commission of Refugees of Paraguay (hereinafter, "CONARE") granted him the juridical status of refugee, after confirming for said purpose, the existence of a political persecution against Mr. Cossio. In spite of this, on December 27, 2010 the Second Sentencing Court of the city of Tarija declared him stubborn and rebellious, providing that the proceedings, including the oral trial, continue without his physical presence, although with the participation of defense counsels in aid of his rights. On this matter, the petitioner specifies that said decision considered that there was no attached copy of the document which certified the status of refugee of Mr. Cossio Cortez with the formalities demanded by domestic legislation. In parallel the government of Bolivia intended by several means to revoke said decision of recognition of refugee, including the filing of a "red notification" before "INTERPOL".

8. Two years after the recognition of the status of refugee of Mr. Cossio, on October 16, 2012 the Plurinational Constitutional Court of Bolivia, by means of sentence N° 2055/2012, declared the unconstitutionality of articles 144, 145, 146 and 147 of Law N° 031/10, Frame Law for Autonomies and Decentralization, employed to suspend the alleged victim. Consequentially, as of February 22, 2013 Mr. Cossio Cortez requested, up to eight times, to the Departmental Assembly of Tarija his reinstatement as Governor; nonetheless, this body did not respond to his requests.

9. The petitioner holds that, in this context, on March 19, 2013 Mr. Cossio Cortez requested the General Consulate of Bolivia in Paraguay to legalize one of the letters of request for reinstatement to the office of Governor, sent on February 22, 2013. However, that same day, the Consul of Bolivia in Paraguay, by means of official document CHPAA-015-LOC-005/2013 dismissed the request, indicating that the Supreme Court of Justice and the Attorney General's Office ordered that the documents of the alleged victim not be legalized since he was being prosecuted for crimes of corruption. Likewise, the petitioner holds that on October 10, 2013 the alleged victim requested said consulate the legalization of a power of attorney letter, so that his lawyers could file amparo remedies and administrative or the judicial measures necessary to request, manage and attain his reinstatement as governor. Nevertheless, on October 23, 2013 the General Consul of Bolivia in Paraguay, by means of official document CHPAA-099-LOC-055/2013, once again dismissed the request under the same argument, affecting the access to justice of Mr. Cossio Cortez.

10. Due to the lack of legalization of said documents the assembly members from the Democratic Path of Change group (hereinafter, "CDC") filed an amparo against the President of the Departmental Assembly of Tarija, requesting a response to the cited rights of petition filed by Mr. Cossio Cortez. Thus, on April 14, 2014 the Guarantees Court declared the claim founded and ordered said authority to respond either positively or negatively within three days to the request of reinstatement of the alleged victim. By virtue of said ruling, petitioner affirms that on April 21, 2014 the President of the Legislative Departmental Assembly decided on the merits and dismissed the request by Mr. Cossio Cortez. Upon this, on October 17, 2014 the assembly members from the "CDC" group and the public defenders of the alleged victim in the criminal proceedings of the IMBOLSUR case, once again filed an amparo remedy, objecting the referred resolution. Nonetheless, the Guarantees Court decided not to take such remedy as filed, arguing that the claimants lacked legal personality, since they had no notarized and legalized power of attorney from Mr. Cossio Cortez so as to file said constitutional remedy on his behalf. On November 19, 2014 the Plurinational Constitutional Court confirmed said interlocutory decision.

11. By virtue of the preceding considerations, the petitioner party argues that the so-called IMBOLSUR case turned out to be a fiasco utilized by the State to request and obtain the illegal suspension of the alleged victim from his office as Governor. The petitioner also holds that the criminal proceedings, and the latter suspension of the alleged victim, constituted a deviation of power, pursuant to excluding him from the political arena. Petitioner states that although the bodies of justice judged the alleged victim on crimes which

were current at the time of the facts, new aggravators and more strict norms were applied, regulated in Law 004, Law “Marcelo Quiroga Santa Cruz”, enacted on March 31, 2010. In concrete terms, said law modified article 91 bis of the Criminal Procedural Code, enabling the possibility that persons prosecuted for crimes of corruption be tried in absentia or without their participation at the oral trial<sup>4</sup>. Also, the petitioner party holds that there is an intention to apply more burdensome punishments on Mr. Cossio Cortez which were not yet in force when the facts for which he is being prosecuted took place. Specifically, petitioner holds that although the sentences foreseen for crimes of incompletion of duties and antieconomic conduct went from a month to one year and from one to six years, respectively, he is intended to be imposed punishments of one to four years and from three to eight years, pursuant to the modifications of each criminal typification.

12. In regard to the right to honor, the petitioner holds that the authorities of the Prosecutor’s Office and of the government sponsored and promoted, by several means of mass media, slanderous spots and campaigns against the alleged victim, branding him as corrupt without the existence of a firm criminal sentence against him. As for the right to property, petitioner argues that the State violated said right, in inventing claims of corruption against the alleged victim which resulted in preventive annotations over the assets of Mr. Cossio Cortez, keeping him from freely using and disposing of them.

13. In regard to article 22 of the American Convention, the petitioner holds that the State did not respect the juridical institution of asylum; and that it refused to legalize Resolution N° 96, which granted the alleged victim the status of refugee, not even on February 9, 2011 when the CONARE itself officially requested it. He adds that the Bolivian courts also breached said right in not recognizing his situation of asylum as a “justified cause” for not appearing in the proceedings, pursuant to article 87 of the Criminal Procedural Code. Finally, the petitioner holds that the publication of a “red notification” in “INTERPOL” also portrays a violation of the rights of the alleged victim in his condition of refugee.

14. Finally, the petitioner claims that after the issuance of sentence N° 2055/2012, which declared the unconstitutionality of certain articles of Law N° 031/10, Frame Law for Autonomies and Decentralization, the at the time government, instead of reinstating him in his office, accelerated the trials and multiplied the criminal claims against the alleged victim. Due to this, petitioner holds that the State maliciously sought that the alleged victim remained suspended until 2015, date in which the period for which he had been elected to serve as Governor concluded, so that he could not be reinstated in this office.

15. In regard to the exhaustion of domestic remedies, the petitioner holds that, counter to what the State has claimed, the domestic legal system provided no administrative or judicial procedure for the alleged victim to be able to contest the decision of the Legislative Departmental Assembly of Tarija of suspending him from his office. Along that line, he holds that the amparo was not an effective path, since the reiterated jurisprudence of the Constitutional Court determined that said remedy is not applicable in circumstances of a restriction set forth by a law, since the constitutionality of said norm is regarded as given. Petitioner adds that it was not possible either to file a constitutional complaint against Law N° 031/10, since the Constitutional Court ceased to function as of November 2007, and that it only started to hear new claims in 2012. Also, even if there had been any other judicial remedy, the circumstances of the case did not allow Mr. Cossio Cortez to exhaust said path, since he was subjected under a scheme of such a violent political persecution that his liberty, security and life were in great jeopardy.

16. The petitioner holds that upon the issuance of constitutional sentence N° 2055/2012, Mr. Cossio Cortez could not file an amparo remedy either, since the consulate of Bolivia in Paraguay refused to legalize the power of attorney which he granted to his lawyers, making it impossible for them to file remedies on his behalf, in order to attain his reinstatement as Governor. The petitioner considers that the government conducted this maneuver to keep the alleged victim from accessing justice, since the Supreme Court of Justice and the Attorney General’s Office instructed all courts and other Bolivian offices not to legalize the procedural

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<sup>4</sup> Criminal Procedural Code. Article 91 Bis. (Prosecution of trial in absentia). When the in-absentia prosecution be declared for a defendant within criminal proceedings for the crimes set forth in Articles 24, 25 and following of the Law of Fight Against Corruption, Illicit Enrichment and Investigation of Fortunes, the proceedings in regard to the defendant shall not be suspended. The State shall designate a public defender and the indicted shall be tried in-absentia, along with the other prosecuted present in court.

documents of Mr. Cossio Cortez<sup>5</sup>. Mr. Cossio Cortez filed five requests of legalization of documents, and they were all dismissed by the Bolivian Consulate in Paraguay.

17. On its part, the State holds that the petition is inadmissible, since domestic remedies have not been exhausted. It informs that on July 18, 2016 the Third Sentencing Court of the Capital issued sentence N° 40/2016, which acquitted the alleged victim of the crimes attributed to him. However, the Vice-Minister of Fight Against Corruption and the Public Ministry, respectively, filed appeals against said decision, for which reason on December 17, 2018 the Second Criminal Chamber of the Departmental Court of Justice of Tarija declared said first instance decision null. Upon such resolution, it holds that the defenders of the alleged victim filed a cassation remedy, which is yet unresolved before the Supreme Court of Justice. Proceedings due to which Bolivia considers that domestic judicial remedies have not been exhausted yet.

18. Likewise, it claims that both the IACHR and the IHR Court have admitted preliminary exceptions when it has been proven that the petitioner party had not exhausted suitable remedies to resolve the controversy at a domestic level, for having avoided justice. In the instant case, it holds that the alleged victim decided to avoid the Bolivian justice in the so-called IMBOLSUR case, when the investigation was at an intermediate stage of criminal proceedings.

19. In addition, Bolivia claims that the alleged victim did not exhaust domestic remedies either in regard to his process of suspension; since Mr. Cossio Cortez could have filed an amparo remedy, which could have immediately repaired the alleged affectation on his right to presumption of innocence and due process<sup>6</sup>. It specifies that the alleged victim could use that remedy as of December 16, 2010, date when he was suspended as Governor, and December 21, 2010, moment at which he allegedly left the country. The State holds that none of the remedies filed by the alleged victim concerning this issue, as for instance the incident of nullity or the liberty remedy, intended to attain the reinstatement of the right to presumption of innocence. In that sense, it holds that, although Mr. Cossio Cortez requested the reinstatement of his office after the issuance of sentence N° 2055/2012, said resolution of the Constitutional Court only rules for future remedies and could not be employed to review previous decisions, for which reason it is clear that no remedy was specifically aimed to claiming the reinstatement of the right to the guarantee of presumption of innocence.

20. On the other hand, in regard to consular procedures, the State holds that it met its obligation to provide a formal response to the remedies that the alleged victim requested. Along this line, it asserts that, should there be any disconformity with the answers given, there are administrative contestation procedures, by means of the filing of a formal claim, the filing of hierarchical remedies or initiating a contentious administrative process. Nonetheless, it holds that it has no information concerning the use of said administrative remedies by Mr. Cossio Cortez.

21. Finally, the Bolivian State holds that the reported facts do not characterize human rights violations. It holds having the constitutional and international right to investigate possible facts of corruption, derived from the obligation to protect the public patrimony for the most underprivileged. Along this line, it affirms that the criminal proceedings in question have been conducted within the framework of the rules of due process, since the alleged victim had the opportunity to access the jurisdictional bodies in order to submit evidence, arguments and/or remedies, and no criminal norm has been applied in a retroactive or untimely fashion. Nonetheless, it holds that these possibilities have been voluntarily waived by Mr. Cossio Cortez. On that same line, it argues that there has been no incorrect conduct from the public power and that, on the contrary, by abandoning the national territory, Mr. Cossio Cortez hindered the action of justice, impeding that he could counter argument or, of if applicable, contest any decision which he considered counter to his interests.

<sup>5</sup> By means of Instructional FGE/RJGP/DSL N° 010/12 of December 12, 2012 and circular N° 017/2012 of November 27, 2012. Annexed to the brief by the petitioner of August 8, 2012.

<sup>6</sup> Political Constitution of 2009. "Article 128. The Action for Constitutional Protection shall take place against the illegal or unjustified acts or omissions of public servants or of individuals or collectives, who restrict, suppress or threaten to restrict or suppress rights recognized by the Constitution and the law."

22. Lastly, it holds that the request sent to the CONARE in order to revoke the status of refugee of the alleged victim meant no incompliance of any obligation contemplated in the American Convention either, since it was an institutional act, in full respect of due process. In addition, it specifies that Mr. Cossio Cortez has no arrest warrant.

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

23. In regard to the criminal proceedings for the so-called “IMBOLSUR case”, the Commission observes that although the investigations began in 2010 and that on May 15, 2010 the prosecutor in charge issued a formal indictment, pursuant to the last brief of the State, the criminal proceedings would still be waiting a final judgment, since there is a pending decision for a cassation remedy. By virtue of the aforesaid, considering that nearly eleven years have elapsed with no firm first instance sentence or acquittal, the IACHR considers that the exception foreseen in article 46.2.c) of the American Convention is applicable. Likewise, taking into account that the petitioner party filed the petition on November 11, 2010, the Commission considers that the timeliness requirement set forth in article 32.2. of its Rules of Procedure is also met.

24. In regard to the remedies filed to contest the suspension of the alleged victim from his office as Governor, the Commission observes that although the Plurinational Constitutional Court, by means of sentence N° 2055/2012, declared the unconstitutionality of articles 144, 145, 146 and 147 of Law N° 031/10, of the Frame Law for Autonomies and Decentralization, Mr. Cossio Cortez was unable to file an amparo remedy in order to demand his reinstatement into his office, since the General Consulate of Bolivia denied him the legalization of the letter of power of attorney which enabled his private lawyers to file amparo remedies on his behalf, due to orders of the Supreme Court of Justice and the Attorney General’s Office. Likewise, it notes that although the members of the “CDC” group and the public defenders of the alleged victim attempted to file an amparo remedy, the bodies of justice dismissed said action arguing that the cited persons had no power of representation granted by Mr. Cossio Cortez. On this point, the IACHR considers that said decisions prove that the decision of the General Consulate of Bolivia constituted an obstacle for the alleged victim to access justice in order to demand a reparation for his undetermined suspension from his office as Governor in the judicial scope. Consequentially, the Commission concludes that in the instant case the exception foreseen in article 46.2.b) of the American Convention is applicable. Also, considering that the attempts for attaining the reinstatement of the alleged victim were conducted while the petition was under study, it also considers that the requirement of article 32.2. of its Rules of Procedure is met as well.

25. Finally, the Commission recalls that the provisions of the American Convention which establish exceptions for the requirement of exhaustion of domestic remedies are of autonomous content vis à vis the substantive norms of said treaty. As a consequence, the determination of applicability of said exceptions is to be conducted in a previous and separate manner from the study on the merits, since it depends on a different standard of appraisal from the one used to determine the possible violation of articles 8 and 25 of the American Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

26. After examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner’s claims, concerning a deviation of power and wrongful use of criminal law to dispossess the alleged victim of his office as Governor and the lack of judicial protection upon said situation, are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 8 (fair trial), 9 (freedom from ex post facto laws), 11 (right to privacy), 21 (right to property), 22 (Freedom of Movement and Residence), 23 (Right to Participate in Government), 24 (Equality before the law) and 25 (judicial protection) of the American Convention, in connection to its articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects), to the detriment of Mr. Mario Adel Cossio Cortez.

27. As for the claim of alleged violation of articles 4 (life), 5 (humane treatment) and 7 (personal liberty) of the American Convention; the Commission observes that the petitioners have not offered enough allegations or foundation which allow to consider *prima facie* their possible violation.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 9, 11, 21, 22, 23, 24 and 25 of the American Convention in connection to its Articles 1.1 and 2; and
2. To find the instant petition inadmissible in relation to Articles 4, 5 and 7; 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.

Approved by the Inter-American Commission on Human Rights on the 9<sup>th</sup> day of the month of October 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flavia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Joel Hernández García and Edgar Stuardo Ralón Orellana, Members of the Commission.