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REPORT No. 282/21

PETITION 452-14

REPORT ON ADMISSIBILITY

ANTONIO RODRIGO LOBOS CORDANO AND CLAUDIA ANGÉLICA
CÓRDOVA BALBOA
CHILE

Electronically approved by the Commission on October 12, 2021.

Cite as: IACHR, Report No. 282/21. Petition 452-14. Admissibility. Antonio Rodrigo Lobos Cordano and Claudia Angélica Córdova Balboa. Chile. October 12, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner	Gustavo Adolfo Bassaletti Ortega
Alleged victim	Antonio Rodrigo Lobos Cordano y Claudia Angélica Córdova Balboa
Respondent State	Chile ¹
Rights invoked	Articles 8 (fair trial), 11 (privacy), 24 (right to equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention on Human Rights ² , in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	March 25, 2014
Additional information received during the study stage	April 4 and 14, 2014 and June 24, 2016
Notification of the petition to the State	May 14, 2019
State's first response	June 10, 2020
Additional observations from the petitioner	August 15, 2019 and September 7, 2020

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (instrument of ratification deposited on August 21, 1990).

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), 11 (privacy), 23 (right to participate in government), 24 (right to equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention on Human Rights, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).
Exhaustion or exception to the exhaustion of remedies	Yes, on June 9, 2015
Timeliness of the petition	Yes

V. ALLEGED FACTS

1. The petitioner denounces that the alleged victims were subjected to workplace harassment for trying to stop irregular acts in the public institution where they worked; and that they were unlawfully dismissed, without access to effective judicial protection. He also claims that the court ruling in favor of the alleged victims has been left unfulfilled.

2. The petitioner narrates that the alleged victims worked for the Administrative Corporation of the Judicial Power, a division of the Judicial Power exclusively in charge of adopting and executing the administrative decisions of that institution and whose highest authority is a Superior Council formed by whoever holds the presidency of the Supreme Court, and four more people selected from among those who

¹ As established in article 17.2.a of the Rules of Procedure of the Commission, Commissioner Antonia Urrejola Noguera, a Chilean national, did not take part in the debate or decision of the instant matter.

² Hereinafter, "the American Convention" or "the Convention".

³ The observations from each party were duly notified to the other party.

formed the Supreme Court by the internal vote of said body. The alleged victims held the positions of Deputy Chief of the Department of Finance and Budget and Head of the Subdepartment of Programs and Management Control. According to the petitioner, between January and June 2013 the alleged victims became aware of a series of irregularities in the administration of economic resources by the Judiciary, which affected administrative integrity and could cause the State to lose money. The petitioner affirms that the alleged victims began to “put obstacles” in the execution of these irregular acts, which would have led to acts of persecution and workplace harassment against them. The petitioner points out that the alleged victims could not bear the harassment, so in June 2013 they went to see psychiatrists who extended a six-month medical leave until December 2013.

3. In July 2013, the alleged victims filed appeals for the protection of constitutional guarantees in which they denounced the harassment they were suffering for having prevented the illegal acts. These appeals were rejected by the Santiago Court of Appeals. The petitioner party claims that the Superior Council of the Administrative Corporation, formed by hierarchical superiors of the Court of Appeals, had approved granting defense and institutional advice to the superiors of the alleged victims who had been denounced by them. The petitioner party considers that this violated the right to equality of the alleged victims who did not receive the same institutional support despite working for the same institution, and that it was also an act by which the Superior Council expressed its inclination in favor of rejecting the resources submitted by the alleged victims, compromising the impartiality of the Court of Appeals, which could not go against the will of its hierarchical superiors. Later, the alleged victims challenged the rejections of their appeals before the Supreme Court.

4. The petitioner explains that while the decision on their appeals was pending before the Supreme Court, the alleged victims were submitted to an evaluation commission that classified them as deficient in order to remove them from the institution. He points out that in the past the alleged victims had received outstanding grades and that they had never received demerit notes or been subjected to disciplinary investigations. He also alleges that submitting them for evaluation was illegal because it contravened article 79 of the personnel regulations of the Administrative Corporation, which prevented persons from carrying out qualifying acts for persons who had made complaints against their superiors related to possible violations of administrative integrity. Faced with this situation, the alleged victims asked the Chamber of the Supreme Court, which was hearing their appeals, to issue temporary injunction against further process, arguing that the qualification was an illegal act included within the object of the appeal for protection. This request was rejected; against this rejection, an appeal for reconsideration was presented, with respect to which the Court decided that what would be resolved in the final judgment should be followed. Additionally, the alleged victims presented before the Plenary of the Supreme Court, and in subsidy before the Superior Council of the Administrative Corporation, an appeal for invalidation of the qualifying act in subsidy with an appeal against the same act.

5. On December 24, 2013, the Third Constitutional Chamber of the Supreme Court of Justice decided to revoke the ruling of the Santiago Court of Appeals and accept the appeal for protection presented by the alleged victims. The petitioner provides a copy of the rulings in which it is observed that the Court determined that the right to equality of the alleged victims had been violated through arbitrary actions such as revoking their access to the institution's computer systems while they were on medical leave, without this being a general practice with respect to persons on leave and without special circumstances to justify it; and assigning them to functions other than those specifically of their positions, without due motivation and without them being able to continue fulfilling, in the new assignment, functions of the same hierarchy as those of the positions for which they had been appointed.

6. Consequently, the Court ordered that the alleged victims be reinstated to their positions, that their computer access be reactivated, and that the defendant authorities cease all conduct that would impede the performance of the duties of their positions. The petitioner points out that, in protest against these rulings, 4 out of the 5 members of the Superior Council resigned from their positions; and that the remaining member could not do so because his position on the Council was due to his capacity as President of the Supreme Court. However, the full Court would have rejected the resignations and initiated an institutional blockade against the alleged victims in order to expel them from the Judiciary.

7. The petitioner explains that after the favorable rulings of the Third Chamber, the alleged victims asked the Plenary of the Supreme Court not to continue hearing their remedies for invalidation and appeal in subsidy; considering that the object of that controversy had already been resolved by the decision of the Third Chamber. However, the Supreme Court did not rule on this request. When the alleged victims prepared to return to their posts, as ordered by the Third Chamber, they were expelled from the facilities, indicating that they could not return to work because the President of the Supreme Court had so ordered. Subsequently, on January 2, 2014, the Court rejected the appeal for invalidation of the alleged victims and decided that the Superior Council of the Corporation hear the appeal that had been presented as a subsidy. The petitioner indicates that the Superior Council determined that the applicable regulations did not prohibit the application of qualifications to the alleged victims because they had only presented their complaints within the framework of their protection action, they had not formally presented them to the authorities provided for in the regulations. For this reason, the Council conducted a new evaluation of the alleged victims, once again rating them as deficient. The petitioner party emphasizes that two ministers participated in this new classification, who had already publicly expressed their dissatisfaction with the ruling issued by the Third Chamber in favor of the alleged victims and had resigned in protest, in addition to the fact that one of the officials who had been ordered to cease the harassment behavior against the alleged victims intervened as secretary. With this qualification pronounced by resolution of January 7, 2014, the alleged victims would be automatically separated from the Judicial Power and prohibited from working in the public sector for five years.

8. The alleged victims asked the Superior Council to reconsider their qualifications and submitted their resignations from their positions, both of which were denied. They also presented an extraordinary appeal for review before the plenary session of the Supreme Court of Justice, requesting that their requalification by the Superior Council be reviewed because one of the directors of the Administrative Corporation had been dismissed for reasons related to irregularities in his performance. The director in question was one of the people who were denounced for harassment by the alleged victims and had participated in the alleged victim's requalification as secretary. The appeal was rejected on June 9, 2015, after the Plenary of the Court considered that it was not proven that the qualifying act of the alleged victims was vitiated by the same irregularities that led to the dismissal of the director. The alleged victims also judicially requested compliance with the judgments issued in their favor by the Third Chamber, to which the requested authority replied that the judgement could not be complied with because the alleged victims had been dismissed. On April 16, 2015, the request for compliance with the judgment was rejected by the Santiago Court of Appeals. Against this decision, the alleged victims filed an appeal for reconsideration, which was rejected, and as a subsidy they appealed to the Supreme Court, which also rejected the appeal on June 12, 2015.

9. The petitioner affirms that the alleged victims have been seriously affected by the loss of their jobs, and that the impediment to work in the public sector is especially burdensome for them because their professional and academic specialization is aimed at public service. Regarding Mr. Lobos Cordano, he reports that he obtained a job in the Ministry of Education, but that later the Office of the Comptroller General of the Republic determined that he was disqualified from holding that position. The petitioner considers that said decision was illegal because the Comptroller's Office could not assume judicial functions and because the alleged victim could not be denied the opportunity to work in the State administration due to a bad qualification that was awarded to it by an institution that is not part of that administration. The petitioner also claims that the Comptroller's Office arbitrarily ordered that Mr. Cordano's five-year disqualification would run from the moment that the institution issued its decision, arbitrarily extending the sanction that had been imposed on him, since this was five years from the moment the Superior Council rated him deficient. As for Ms. Córdova Balboa, he points out that she submitted a request to the Superior Council to review the qualifying acts issued against her, given the impact they had had on her professional life. However, this request was rejected on April 21, 2016.

10. The petitioner argues that the alleged victims have not had access to independent and impartial justice for the protection of their rights; since the Administrative Corporation of the Judicial Power, the Supreme Court, and the other courts of the country are part of the same state power and have complex hierarchical relationships among themselves, being largely formed by the same people.

11. The State, for its part, considers that the petition should be inadmissible because it seeks to establish the Commission as a court of “fourth instance”; because the facts alleged by the petitioner do not constitute, firsthand, violations of the American Convention; and because, in its opinion, the Commission lacks competence *ratione materiae* to hear it.

12. Chile argues that the petitioner has limited himself to expressing his disagreement with the administrative and judicial pronouncements of the domestic authorities, without arguing in what way these would constitute an international offense that could compromise the international responsibility of the State in matters of human rights. It considers that the petitioner party wrongly intends to appeal at the national level to annul a domestic qualification act and for the Commission to hear the facts that led to the filing of appeals at the domestic level as a court of fourth instance.

13. The State also highlights that the petitioner himself has provided information on the multiple steps taken by the alleged victims to assert their allegations and defenses regarding the qualifying process, which contradicts the allegation regarding lack of access to justice. It adds that the petitioner has not presented specific evidence or information to substantiate his allegations regarding the lack of independence or compromised interests with respect to those who were part of the Supreme Court at the time of the events; that the director of the Administrative Corporation of the Judiciary treated the alleged victims in a humiliating manner by denying them their alleged reinstatement; or that institutional legal advice was granted to the superiors of the alleged victims to the detriment of their right to equality. In addition, it indicates that the petitioner does not substantiate the alleged illegalities to avoid complying with the ruling issued by the Third Chamber, and that the incorrectness of this information is demonstrated by the fact that the alleged victims were reevaluated by the Superior Council and again included in the list of deficient.

14. It also states that the petition refers to rights contemplated in Articles 6 and 7 of the Protocol of San Salvador. It highlights that said instrument has not been ratified by Chile and that, in any case, it does not grant the IACHR competence to hear petitions regarding rights other than the right to education or trade union rights. It also cites and shares the criteria issued by Judge Sierra Porto of the Inter-American Court in his concurring vote in the case of Poblete Vilches et al. v. Chile, in the sense that Article 26 of the American Convention does not contain a catalog of clear and precise rights that allows the derivation of obligations enforceable from the States through the individual petitions system. It maintains that the petition should be inadmissible due to the lack of competence *ratione materiae* of the IACHR to hear alleged violations of Article 26 of the American Convention.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

15. The petitioner has detailed various remedies filed in the domestic sphere to remedy the grievances he denounces. In turn, the State has not submitted observations regarding compliance with the requirements of exhaustion of domestic remedies and its submission within the set term.

16. The alleged victims presented an appeal for protection to denounce acts of labor harassment against them, a remedy that was rejected in the first instance, but later granted in the last instance. However, before said favorable judgment was issued, the alleged victims were subjected to an evaluation where they received a poor rating that would result in their dismissal from the position they held, and a temporary disqualification from exercising public service.

17. The alleged victims tried to avoid these consequences, which they considered violated their rights, in two ways. On the one hand, they challenged the qualifying act by means of invalidation appeals with subsidy appeal; and finally, by means of an extraordinary appeal for review that was rejected by the plenary session of the Supreme Court of Justice on June 9, 2015. On the other hand, they requested compliance with the judgment in their favor with the argument that the qualification and subsequent dismissal were contrary to the provisions of said judgment; the request was definitively rejected by the Supreme Court of Justice on June 12, 2015. The State has not disputed, nor does it appear from the file, that the remedies filed by the alleged victims were not appropriate to raise their claims in the domestic sphere, nor that there were additional unexpired resources that could be suitable for this purpose. Consequently, the IACHR considers that domestic remedies

have been exhausted with respect to the subject of this petition with the decision that definitively rejected the request for compliance with the judgment.

18. Given that the final decision of the domestic jurisdiction was issued on June 12, 2015, and the petition was filed on March 25, 2014, the IACHR concludes that the petition meets the requirements of Article 46.1 (a) and (b) of the American Convention.

VII. COLORABLE CLAIM

19. Regarding the allegations of the State, it has presented allegations referring to the so-called “fourth instance formula”, for the purposes of admissibility, the Inter-American Commission must decide whether the alleged facts may characterize as violation of rights according to Article 47 (b) of the American Convention, or if the petition is manifestly unfounded or its total inadmissibility is evident, pursuant to subsection (c) of said article. The criterion for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, the IACHR is competent to declare a petition admissible when it refers to internal proceedings that could violate rights guaranteed by the American Convention. In other words, according to the aforementioned conventional norms, in accordance with Article 34 of its Regulations, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention.⁴

20. The petitioner denounces that the alleged victims were subjected to workplace harassment, to humiliating and discriminatory treatment, were dismissed from their positions and suffered temporary disqualification from exercising public service in retaliation for having obstructed the commission of irregular acts in the institution for which they worked. That explains the reasons why the petitioner considers that the authorities that heard the remedies filed by the alleged victims did not comply with the objective guarantees of impartiality, reasons that the Inter-American Commission does not find manifestly unfounded either.

21. When considering the information provided by the parties and analyzing the context in which the events denounced would have occurred in light of sound criticism, the Inter-American Commission establishes *prima facie* that the events are not manifestly unfounded and require an analysis on the merits. In this sense, the IACHR agrees with the criterion according to which, persons who disclose information on violations of laws or serious cases of mismanagement of public bodies “should be protected against legal, administrative or employment-related sanctions if they act in “good faith”.⁵ On the other hand, the Inter-American Court has determined that the right to an impartial tribunal requires that it offer “objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality”⁶. The Inter-American Commission also notes that it was concluded in final judgments of the domestic jurisdiction that the alleged victims suffered violations of their right to equality before the law, and that it does not appear from the file that the corresponding reparation was provided

22. Based on these considerations, the IACHR concludes that the petition is not manifestly unfounded and requires a merits examination, since the alleged facts, if corroborated as true, could constitute violations of the rights enshrined in Articles 8 (fair trial), 11 (privacy), 23 (right to participate in government), 24 (right to equal protection), 25 (judicial protection) and 26 (progressive development) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

23. On the other hand, the Inter-American Commission recognizes that it lacks competence to rule on possible violations of the Protocol of San Salvador with respect to this petition, since said instrument has not been ratified by Chile. However, this does not affect the competence of the Inter-American Commission to

⁴ IACHR, Report N. 143/18, Petition 143/18. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, par. 12.

⁵ International Mechanisms for Promoting Freedom of Expression. Joint Declaration on Access to information and secrecy legislation. Declaration of December 6, 2004.

⁶ I/A Court H.R., Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, par.56

hear the petition in what could be related to Article 26 of the American Convention. As indicated by the Inter-American Court, Article 26 of the American Convention “is subject to the general obligations contained in Articles 1(1) and 2 mentioned in chapter I (entitled “General Obligations”), as well as Articles 3 to 25 mentioned in chapter II (entitled “Civil and Political Rights”)”.⁷

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 11, 23, 24, 25 and 26 of the American Convention, in connection to its Articles 1.1 and 2.

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 12th day of the month of October 2021. (Signed): 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.

⁷ I/A Court H.R., Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, par. 100.