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**REPORT No. 97/21  
PETITION 911-08**  
REPORT ON ADMISSIBILITY

MANFRED REYES VILLA BACIGALUPI  
BOLIVIA

Approved electronically by the Commission on May 20, 2021.

**Cite as:** IACtHR, Report No. 97/21, Petition 911-08. Admissibility. Manfred Reyes Villa Bacigalupi. Bolivia. May 20, 2021.

## I. INFORMATION ABOUT THE PETITION

<b>Petitioner:</b>	Bjorn Arp
<b>Alleged victim:</b>	Manfred Reyes Villa Bacigalupi
<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), 20 (nationality), 21 (right to property), 23 (right to participate in government) 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) and other international treaties <sup>2</sup>

## II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>

<b>Filing of the petition:</b>	August 14, 2008
<b>Additional information received at the stage of initial review:</b>	August 11, 2008, August 15, 2008, August 20, 2008, April 15, de 2010, April 16, 2010, May 13, 2010, July 10, 2013, June 27, 2014, March 16, 2015 and March 17, 2015
<b>Notification of the petition to the State:</b>	May 31, 2018
<b>State's first response:</b>	October 15, 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, 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 4 (life), 5 (humane treatment), 8 fair trial), 9 (freedom from ex post facto laws), 20 (nationality), 23 (right to participate in government), 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)
<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

<sup>1</sup> Hereinafter “the American Convention”.

<sup>2</sup> The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Rome Statute.

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioner claims that the State violated the rights of Mr. Manfred Reyes Villa Bacigalupi, since it allowed irregular groups adherent to the government party to attack his integrity. Likewise, argues that afterward it enacted Laws which caused the alleged victim be irregularly removed from his position as prefect and be criminally prosecuted without due judicial guarantees for crimes of corruption.

2. The petitioner narrates that on December 5, 2005 Mr. Reyes Villa Bacigalupi was elected Prefect and General Commander of the Department of Cochabamba for a five-year term. Petitioner claims that, in his view, the at the time President of the Republic tried to centralize the political power of the country by suspending all of the prefects belonging to opposition parties in order to, allegedly, substitute them by people of his trust.

3. Due to this, the petitioner claims that social organizations supportive of the government commenced violent actions against the alleged victim in an aim to remove him from his office. Next, on January 11, 2007 irregular military groups, coca dealers and other followers of the party of the then President started violent actions in Cochabamba against Mr. Reyes Villa Bacigalupi, even setting fire to the building of the Prefecture. He claims that even, in order to avoid the protection of persons being held in that building, the then Minister of Government ordered that police officers leave the Prefecture. Petitioner holds that, in order to save his life, the alleged victim escaped through the back door of the premises onboard of an antiriot tank and that afterward he departed the country.

4. The petitioner informs that, upon achieving that the European Union intervene in the conflict and criticize the actions of the government, Mr. Reyes Villa Bacigalupi managed to return to Bolivia. Nonetheless, he claims that he kept receiving threats, including an abduction attempt on his children. Along these lines, he holds that on May 12, 2008, in order to continue with the political persecution against opposing authorities, the National Congress enacted Law Nº 3850, in order to carry out a Recall Referendum by Popular Mandate in regard to the President, Vice-president and Departmental Prefects. That same day the National Electoral Court (hereinafter "NEC") issued Resolution Nº 57/2008 which approved the Electoral Calendar and established that said referendum take place on August 10, 2008.

5. Upon this, on July 11, 2008 the alleged victim filed an indirect or incidental remedy of unconstitutionality against such resolution, claiming flaws worthy of annulment and requesting the suspension of the referendum. He holds that on July 21, 2008, by means of Resolution Nº 113/2008, the NEC rejected such remedy; ordered to proceed with the referendum; and elevated such decision to the Constitutional Court (hereinafter "CC"). On this matter, the petitioner explains that, as of December 13, 2007, the CC did not have enough quorum to session validly and resolve the remedies under its competence, since a group of magistrates had resigned their positions claiming lack of judicial independence, after having been subject to a trial for responsibilities on May 17, by the government in office at such time. Given this situation, the very July 21, 2008, the only magistrate on duty issued a Constitutional Decree which confirmed the binding nature of the decisions of the CC and, based on jurisprudential precedents, she exhorted the NEC to suspend the referendum until having a definitive judgment from such court. However, due to the issuance of such decree, the then Vice Minister of Justice filed a criminal complaint against said magistrate on the crime of prevarication, leading that official to resign her post.

6. On July 28, 2008, the alleged victim resorted to another judicial remedy and challenged the previously mentioned Resolution Nº 113/2008 of the NEC. Nevertheless, by mid-August the NEC declared, via Resolution Nº 137/2008, its lack of jurisdiction and competence to hear on such challenge, indicating that the controverted matter required a decision by the CC. Upon this, on August 1, 2008 the alleged victim filed a constitutional writ of amparo before the Superior Court de Cochabamba against the resolutions issued by the NEC that ordered to proceed with the referendum. In spite of this, On August 15, 2008 such judicial instance declined its competence in favor of the Superior Court of La Paz, which also declared itself incompetent, raising a competence conflict. The petitioner argues that such matter should have been judged by the CC, but that due to the lack of functioning of such court the cited conflict did not get to be duly settled. Petitioner holds that due

to the lack of effectiveness of judicial remedies on August 10, 2008 the recall referendum took place, resulting in the destitution of the alleged victim as prefect upon not collecting enough votes as to remain in office.

7. The petitioner explains that on April 14, 2009 presidential elections were held and that Mr. Reyes Villa Bacigalupi announced his candidateship for such office. Petitioner claims that this decision of the alleged victim caused the government of the then President to initiate new actions of persecution to hinder his candidateship, such as authorities of the government political party to file even criminal complaints against Mr. Reyes Villa Bacigalupi for alleged crimes of corruption committed during his service as prefect, causing the Prosecutor General of the Republic different proceedings against him. Two of these proceedings which advanced with greater celerity were those known as "Construction of Río Sacambaya Bridge" and "Vinto-Sacambaya Road", referred to alleged irregularities in the construction of works during the management of Mr. Reyes Villa Bacigalupi.

8. The petitioner argues that the Constitution in force at the time at which the alleged acts of corruption took place which originated such actions, granted Mr. Reyes Villa Bacigalupi political immunity; due to which the alleged victim raised exceptions of incompetence in two quoted cases, in order for the casefiles to be forwarded to the Congress so they would be conducted as a trial for Responsibilities. However, the petitioner points out that on May 16, 2009 and on May 23, 2009 the Nº 1 and Nº 3 Criminal Trial Courts rejected said remedies, under the argument that article 184 of the Bolivian Constitution of 2009 granted no such immunity to the departmental prefects and that since it was not a substantial norm it implied immediate application. Petitioner holds that Mr. Reyes Villa Bacigalupi appealed this decision, but on August 22, 2009 the Third Criminal Chamber of the Superior Court of the District of Cochabamba, in a unified decision, confirmed the rejection of the remedies.

9. Afterward, the alleged victim initiated a constitutional amparo proceeding against said decision. Nonetheless, on January 28, 2010 the Court of Constitutional Guarantees rejected the claim because of lack of active legitimacy, for considering that Mr. Reyes Villa Bacigalupi's representative had no representational faculties as to exert Constitutional complaints. In parallel, the Public Defender promoted another amparo in favor of the alleged victim in order to question the judgment of the Third Criminal Chamber of the Superior Court of the District of Cochabamba, but on April 8, 2010 The Third Civil Chamber of Cochabamba dismissed the remedy, for considering that the defense counsel responsible had legal identity only to act in the criminal trial, and that the remedy was filed "27 minutes" off the six-month deadline.

10. The petitioner holds that due to the political persecution and ineffectiveness of the judicial remedies by the end of 2009 the alleged victim he exiled himself in the United States. He argues that on March 21, 2010 the Congress enacted the "Law Against Corruption", which modified several stipulations of the Criminal Code, establishing, inter alia, the use of oral trial against the defendant found in absentia and more severe criminal aggravators of corruption<sup>4</sup>. He claims that said stipulations were applied retroactively in detriment of the alleged victim; and that applying such Law in 2012 the alleged victim was sentenced to a year of imprisonment for the crime of noncompliance of duties; and on April 17, 2013 sentenced to five years of deprivation of liberty for the crime of antieconomic conduct. The petitioner claims that both first instance sentences resulted from criminal proceedings, which had no evidence, nor participation of witnesses or other essential elements of due process. Petitioner highlights that, to this date, the alleged victim would still be facing several criminal proceedings for the claims filed against him. Finally, adds that Mr. Reyes Villa Bacigalupi tried to request the Bolivian Consulate in Washington DC copies of his birth and marriage certificates, but that such office did not proceed with said errand.

11. Based on these events, the petitioner claims three specific issues. First, that the attacks against the life and integrity of the alleged victim remain unpunished to this date. Petitioner specifies that, although a

<sup>4</sup> Article 1.4.c of Law Against Corruption establishes the following: "The Criminal Code is to be studied and modified in accordance to the philosophy of the present. The Criminal Code shall specify which of these crimes, due to their severity and harm to society and the State, are imprescriptible". The petitioner holds that, due to this article, the punishment for noncompliance of duties (article 154 of the Criminal Code) was modified from the range of a month to a year of deprivation of liberty, to the range of 1 to four years of deprivation of liberty. On a similar sense, holds that the punishment for the crime of antieconomic conduct (article 224 of the Criminal Code) was modified in its range from one to six years of deprivation of liberty, to the range of three to eight years of deprivation of liberty.

criminal investigation initiated due to such events, there still has not been any clarification as to what happened nor have the authors of such actions been punished, since political authorities, in order to hinder and obstruct an eventual conviction, named the persons responsible for such crimes in government offices. In second place, argues that the alleged victim was unconstitutionally dismissed as prefect and that he had no effective judicial remedy to question such affectation. In third place, holds that he is suffering political persecution based on criminal proceedings which do not comply with minimum due process guarantees. Finally, claims that the Bolivian Consulate in Washington DC issued no copy of the birth and marriage certificates of the alleged victim, and that there is no judicial remedy to question such situation.

12. The State, on its part, replies that the petition is inadmissible since the domestic jurisdiction remedies have not been exhausted. First, concerning the alleged violations on the life, integrity and liberty, holds that the alleged victim did not file a complaint before the Prosecutors Office nor an habeas corpus remedy. Likewise, holds that Mr. Reyes Villa Bacigalupi also failed to inform the authorities of alleged acts of abduction and threats against him.

13. On the other hand, in connection to the alleged affectation of political rights due to the illegitimate use of a recall referendum, the State holds that Mr. Reyes Villa Bacigalupi did not use domestic remedies properly in order to question such situation, since he should have filed a direct or abstract Constitutional Complaint against Law № 3850, instead of an indirect or incidental Constitutional Complaint. Likewise, claims that on November 25, 2010 the CC, by means of Constitutional Bill 0304/2010-RCA, resolved the conflict of competences raised by the amparo remedy filed by the alleged victim against Resolution 113/2008 and stipulated the remission of the casfile to the Superior Court of La Paz. In such sense, considers that Mr. Reyes Villa Bacigalupi should have continued and finalized such proceedings in said judicial venue. Finally, in regard to the alleged affectation on the judicial guarantees at the criminal quarters, argues that the Constitutional amparo remedy was not correctly used in order to question the resolution of the Third Criminal Chamber of the Superior Court de District of Cochabamba, since the legal defense of the alleged victim neglected the rules of representation for its filing.

14. In addition, the State claims that the facts reported by Mr. Reyes Villa Bacigalupi do not conform human rights violations. It holds that there is no evidence to prove that the direct or indirect participation of authorities in the facts transpired on January 11, 2007. Along these lines, argues that no elements have been provided either to corroborate that members of the police ceased to provide protection to the alleged victim. On a similar sense, holds that the petitioner has failed to prove that Mr. Reyes Villa Bacigalupi was denied the issuance of his birth and marriage certificates. On the other hand, regarding the recall referendum, asserts it was conducted in accordance with the Bolivian Constitutional framework and that there is no proof of irregularities which would undermine the legitimacy of its results. Likewise, stresses that such measure did not represent a discriminatory act in detriment of Mr. Reyes Villa Bacigalupi, since several elected authorities were subject to the same procedure. In such sense, highlights that the referendum represented a legitimate, transparent and democratic departure to a political and social crisis.

15. Finally, holds that the criminal proceedings against the alleged victim respected judicial guarantees, since the authorities in charge had independence and impartiality in the exercise of their functions. It specifies that it was not suitable that the matter be analyzed via a trial of responsibilities, which is why there was no deviation from the competent judicature. Also, it underscores that there was no violation to the principle of legality and freedom from ex post facto laws, since the Law Against Corruption used in the proceedings against Mr. Reyes Villa Bacigalupi did not result in the use of new criminal sorts, but only generated the application of updated aggravators of previously indicted crimes of corruption and the application of the new procedural regulation.

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

16. The petitioner claims that he was not provided with an effective remedy due to the stagnation of the CC and, likewise, he could not exhaust domestic remedies due to his asylum in the United States and the impossibility to attend with his own legal defense before Bolivian courts, because of the political

persecution against him. He adds that the times he intended legal actions, he received judgments motivated in political considerations. In return, the State replies that the alleged victim did not exhaust domestic remedies properly, which is why none of the allegations submitted in his petition to the IACHR should be declared admissible.

17. Concerning the violent actions committed by irregular groups on January 11, 2007 against the alleged victim, the IACHR recalls that, upon possible crimes against life and integrity, the domestic remedies to be considered in terms of the admissibility of petitions are those related to criminal investigation and punishment of those responsible<sup>5</sup>. Such investigation is to be conducted ex-officio and promptly, especially when the crimes claimed are allegedly committed with acquiescence of the State, in order to protect the interests of the victims, preserve the evidence and even safeguard the rights of every person who in the context of the investigation may be considered a suspect.

18. In the instant case, the Commission observes that the aforesaid violent actions were of public knowledge; occurred precisely in a public building; were widespread by several media and human rights organizations<sup>6</sup>; and that the Prosecutor's Office, in fact, initiated an investigation to determine what happened. In spite of this, thirteen years after the occurrence of such facts, the State has not provided information that will allow to corroborate that such investigative actions have been diligent as to clarify the events, and to identify and punish those responsible. That's why, the IACHR concludes, as in several other cases<sup>7</sup>, that it is fit to apply the exception to the exhaustion of domestic remedies, pursuant to the set forth in article 46.2.c) of the Convention. Also, the IACHR considers that the facts raised in this point of the petition remain current due to their lack of investigation, and that they were submitted within a reasonable time in the terms of article 32.2 of the IACHR's Rules for Procedure.

19. As for the lack of judicial protection before the recall referendum, the IACHR has confirmed on previous cases that the CC was not operational during the time referred in the petition due to the lack of designation of magistrates, bringing as consequence that the amparo and unconstitutionality remedies resulted ineffective during said time<sup>8</sup>. Likewise, the Commission observes that, although on November 25, 2010 the CC resolved the conflict of competences raised by the amparo proceedings filed against Resolution 113/2008, such decision was issued two years after the revocation of Mr. Reyes Villa Bacigalupi. Therefore, the IACHR concludes that in the instant case the exception to the exhaustion of domestic remedies foreseen in article 46.2.a) of the American Convention is applicable. Similarly, it deems that the facts claimed were within a reasonable time in the terms of article 32.2 of the IACHR's Rules for Procedure.

20. Concerning criminal proceedings for crimes of corruption, the IACHR confirms that the alleged victim questioned said acts by means of different judicial paths, yet such remedies were dismissed which is why to this date there are two condemnatory sentences. Along these lines, it observes that Mr. Reyes Villa Bacigalupi claims that his remedies were rejected by jurisdictional bodies due to lack of independence and impartiality of authorities, on account of the alleged pattern of political and judicial persecution against him, which is why he had no effective judicial path available to pursue his aims. In this regard, the Commission considers that the application of the exception to the exhaustion of domestic remedies on this point of the petition is inextricably linked to the merits of the matter; and implies a broader analysis both of those proceedings themselves in light of articles 8 and 25 of the American Convention, and of the context in which they took place, context where it is observed that the petitioner has claimed before the IACHR a series of actions conducted by the State to annul his participation in the field of politics. For this reason, a more detailed analysis

<sup>5</sup> IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

<sup>6</sup> On this regard, see for example: <https://www.opinion.com.bo/articulo/cochabamba/anos-muerte-cristian-urresti-oposicion-denuncia-impunidad/2013011111800459088.html>; <https://www.lostiempos.com/actualidad/local/20070711/victimas-del-11-enero-olvido/>; and <https://www.amnesty.org/download/Documents/56000/pol100012008es.pdf>.

<sup>7</sup> On this regard, see especially: IACHR, Report No. 19/16, Petition 3546-02. Admissibility. Galo Roberto Matute Robles and family. Ecuador. April 15, 2016, para. 34. Also, IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 15; e Report No. 262/20, Petition 863-11. Admissibility. Carla Marcelina Camargo Bermúdez and another (Massacre of the Tupes). Colombia. September 25, 2020, para. 18.

<sup>8</sup> IACHR, Report No. 44/20, Petition 1687-09. Admissibility. María Elena Blanco Quintanilla De Estenssoro. Bolivia. February 24, 2020, para. 17.

on this matter pertains the merits stage of the present case; on this point, and for purposes of the present decision of admissibility the IACHR observes that domestic remedies were exhausted at these criminal proceedings against the alleged victim, in the terms of article 46.1.a) and 46.1.b) of the American Convention.

21. Finally, concerning the lack of issuance of copies of birth and marriage certificates, the IACHR observes that the State only limited to indicate that such extent of the petition is false. Since the allegation of the alleged victim concerning the lack of a judicial remedy to question such situation has not been controverted, the IACHR considers pertinent to apply the exception of article 46.2.a) of the American Convention regarding this extent of the petition. Likewise, concerning the timeliness of the filing, the Commission considers that the present allegation was filed within a reasonable time in the terms of article 32.2 of the IACHR's Rules for Procedure.

## VII. ANALYSIS OF COLORABLE CLAIM

22. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims, concerning the lack of investigation of the alleged attacks against life and integrity by irregular groups which included acquiescence of the government; the absence of judicial protection due to the non-operationality of the CC; and use of criminal proceedings against the alleged victim without due judicial guarantees, 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 4 (life), 5 (humane treatment), 8 (fair trial), 9 (freedom from ex post facto laws), 20 (right to nationality), 23 (right to participate in government) 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) in detriment of Manfred Reyes Villa Bacigalupi. The IACHR highlights that although the present case takes place within a particular political context, its analysis on merits shall only focus on the juridical aspects concerning respect for guarantee of the aforesaid rights.

23. As for the claim on the alleged violation to articles 7 (personal liberty) and 21 (right to property) of the American Convention; the Commission observes that the petitioners have not offered allegations or enough grounds as to allow to consider *prima facie* their possible violation.

24. Finally, in regard to the other international instruments claimed by the petitioners, the Commission lacks competence to establish violations to norms of said treaties, notwithstanding it may take them into account as part of its interpretational exercise of the norms of the American Convention at the merits stage of the present case, in the terms of article 29 of the American Convention.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 9, 20, 23 and 25 de the American Convention, in relation to its Articles 1.1 and 2; and,

2. To find the instant petition inadmissible in relation to Articles 7 and 21 of the American Convention; 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 20<sup>th</sup> day of the month of May, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.