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REPORT No. 107/22
PETITION 375-14
INADMISSIBILITY REPORT

MANUEL ENRIQUE LEIVA OLIVA
HONDURAS

Approved electronically by the Commission on May 9, 2022.

Cite as: IACHR, Report No. 107/22. Petition 375-14. Inadmissibility.
Manuel Enrique Leiva Oliva. Honduras. May 9, 2022.

I. I. INFORMATION ABOUT THE PETITION

Petitioning party:	Melvin Evenor López Herrera
Alleged victim:	Manuel Enrique Leiva Oliva
Respondent State:	Honduras
Rights invoked:	Article 25 (judicial protection) of the American Convention on Human Rights ¹ ; Articles 6 (labor) and 7 (just, equitable, and satisfactory conditions of work) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"); and other international instruments ²

II. PROCESSING BY THE IACHR³

Filing of the petition:	March 7, 2014
Additional information received during the initial review stage:	March 19, 2014; July 6, 2015; August 12, 17, 22, and 23; December 2 and 21, 2016; and February 10, June 5, July 5, and November 21, 2017; December 21, 2018; and March 1 and 7, 2019
Notification of the petition	March 18, 2019
State's first response:	September 26, 2019
Additional observations from the petitioner:	May 17, 2019, October 13, 2020, and June 25, 2021
Additional observations from the State:	March 19, 2021

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on September 8, 1977)

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

Duplication of procedures and international res judicata:	No
<i>Rights declared admissible:</i>	N/A
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	N/A

¹ Hereinafter the "American Convention."

² Articles 2, 7, 8, 16, 25, and 26 of the Universal Declaration Human Rights.

³ The observations of either party were duly forwarded to the opposing party.

V. ALLEGED FACTS

1. The petitioner alleges that Manuel Enrique Leiva Oliva (hereinafter "the alleged victim") was removed without due process from his position at the Central American Corporation for Air Navigation Services (COCESNA), an international organization of the Central American Integration System (SICA), with international legal personality and headquarters in Honduras. He also claims that he has been left unprotected after the courts of his country refused to exercise judicial oversight of his dismissal on the grounds of a jurisdictional immunity allegedly protecting that body, even though it had waived that immunity by registering its rules of procedure with the Honduran authorities.

2. In 1992, the alleged victim joined COCESNA, which operated under an agreement with Honduras that provided immunity from any jurisdiction, unless such immunity had expressly been waived. On April 30, 2011, the alleged victim was dismissed from COCESNA, due to an alleged restructuring and modernization of the organization; according to the petitioner, the dismissal was carried out without prior administrative investigation and in violation of the labor stability provided for in the Honduran legal system.

3. On August 5, 2011, the alleged victim filed a regular labor lawsuit against COCESNA requesting reinstatement to his job, which was admitted. COCESNA filed a motion declining the request due to lack of jurisdiction, which was declared inadmissible by the court. The decision was appealed by COCESNA, but the appeal was dismissed on February 23, 2012. COCESNA then filed a writ of amparo before the Supreme Court of Justice against the resolution that dismissed its appeal. The Public Prosecutors' Office, for its part, issued an opinion in which it stated that it considered the amparo action to be inadmissible. However, on August 20, 2013, the Supreme Court of Justice granted the amparo requested by COCESNA⁴.

4. The alleged victim filed an appeal for review against the amparo judgment in favor of COCESNA, which was dismissed on September 12, 2013. On November 4, 2013, the Labor Court of Appeals issued a new ruling in compliance with the amparo ruling, in which it granted the motion to decline filed by COCESNA. According to the petitioner, this decision definitively precluded the alleged victim from going to the Honduran labor courts to protect his violated labor rights.

5. The petitioner alleges that in granting amparo in favor of COCESNA, the Supreme Court ignored that said organization had waived its immunity from jurisdiction regarding labor matters, since on December 6, 2004, it had registered an internal labor-related rule of procedure with the Honduran Secretariat of Labor and Social Security; and that said rule of procedure was in force at the time the courts ruled on the alleged victim's case. The petitioner adds that the rule of procedure remained in force until 2019 and rejects the argument that COCESNA did not agree to submit to the Honduran labor courts due to alleged formal irregularities in said procedure. In this regard, it emphasizes that COCESNA's normal practice is to submit to national labor jurisdictions and cites the cases of Guatemala, where it formulated labor-related rules of procedure in accordance with the provisions of the Labor Code of that country; and of Nicaragua, where it adopted labor-related rules of procedure expressly recognizing that it must comply with the obligations contained in the Labor Code of that country.

6. The petitioner also argues that the Supreme Court violated the alleged victim's right to equality, since in other labor lawsuits filed against COCESNA, the national courts had asserted their competence, which resulted in orders for reinstatement and payment to the appellants of foregone wages. In support of this assertion, it provides copies of the files of several of these proceedings, including the file that culminated in the resolution of labor amparo suit 0676-2015.⁵ It also mentions that on June 8, 2021, the Labor

⁴ In said decision, the Court determined that "the appellant institution enjoys jurisdictional immunity; for anyone entering into a contract of any kind with the agency, any claim against this agency, of any nature, must be processed through diplomatic channels" and that "any labor claim must be handled by the Secretariat of Labor and Social Security and transferred through the Secretariat of Foreign Affairs."

⁵ That file refers to the case of an individual who filed an amparo action after the labor courts declined jurisdiction to hear that person's claim against COCESNA. The Supreme Court granted the requested amparo and recognized the competence of the Honduran labor

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Court of Appeals rejected an appeal filed by COCESNA against a first instance judgment in which it had invoked its alleged immunity privilege.

7. According to the petitioner, the State's mediation through diplomatic channels would not grant the alleged victim a real possibility of obtaining justice, because it would leave him at the mercy of COCESNA's one-sided position. This entity had already provided, in Resolution 2013/101.5 issued on June 17, 2013 by its Board of Directors, that it would not, under any circumstances, reinstate the persons dismissed by the institution between 2009 and 2012.

8. It also notes that the internal mediation and arbitration procedures with the right to appeal to the Central American Court of Justice provided for in COCESNA's current Code of Services would not be applicable to the alleged victim's case, as this Code entered into force in 2014, more than three years after the alleged victim's dismissal. Moreover, the Code envisages such mechanisms for disciplinary actions against COCESNA officials, whereas the alleged victim was dismissed as a result of an alleged restructuring. The petitioner adds that the previous Services Code adopted by COCESNA in 1988 did not provide for any referral to the Central American Court of Justice, but, rather, envisaged the adoption of internal work-related rules of procedure. In the petitioner's opinion, this reference to an internal work-related rule of procedure in its Service Code implies that COCESNA agreed to submit to domestic labor laws.

9. The petitioner also states that the mediation and arbitration procedures are voluntary in nature; and that the Central American Court would not have jurisdiction to hear the alleged victim's case, since its statute indicates that it can only hear appeals on administrative resolutions of SICA bodies that affect its personnel after a reinstatement has been denied, which is different from the case of the alleged victim. The petitioner further alleges that the Central American Court lacks jurisdiction to rule on matters affecting his human rights since Article 25 of its statute provides that "the jurisdiction of the Court does not extend to human rights matters, which correspond exclusively to the Inter-American Court of Human Rights." The petition acknowledges that in 2019 the Central American Court issued an advisory opinion in which it affirmed its jurisdiction over COCESNA's labor matters; however, it argues that this opinion is not relevant to the case of the alleged victim, who was dismissed seven years prior to that opinion.

10. The State, for its part, requests that the petition be dismissed for lack of violations and for lack of competence *ratione materiae* of the organs of the inter-American system. It argues that on April 2, 2001 - ten years before the dismissal of the alleged victim - the National Congress approved the agreement containing the headquarters agreement between Honduras and COCESNA, article 4 of which granted the agency immunity from all jurisdiction. It points out that, based on that agreement, the courts of Honduras do not have jurisdiction to hear claims against COCESNA. It considers that, if the Honduran courts were to hear a suit such as the one filed by the alleged victim, despite not having jurisdiction to do so, they would be in violation of the right to a competent judge provided for in Article 8(1) of the American Convention. It highlights that the Central American Court stated in its advisory opinion 2-24-03-2017 that COCESNA "enjoys immunity from jurisdiction, which implies that it is not subject to national jurisdiction, so that any dispute arising in the interpretation or application of its legal instruments of operation and those derived therefrom, by way of example, labor contracts, cannot be heard by the national legal bodies of each State party."

11. In the State's opinion, this does not imply that there are no mechanisms to control possible violations of labor rights by COCESNA, nor that those who work there do not have legal protection. It emphasizes that labor claims against COCESNA may be transferred by the Secretariat of Labor and Social Security, via the Secretariat of Foreign Affairs, so that they may be addressed through diplomatic channels. In its opinion, this was recognized in the judgment that granted amparo to COCESNA in the case related to the alleged victim's claim. It also stresses that Article 22.J of the Statute of the Central American Court of Justice establishes that the Court is competent to "hear in the last instance, on appeal, administrative resolutions

courts to hear the case, stating that "immunities must be express and limited and are subject to restrictive interpretation; consequently, if the Vienna Convention had intended to establish immunity in relation to labor or work-related jurisdiction, it would have expressly provided for that option"; and that COCESNA's bylaws established that "the personnel of the Corporation shall be governed by the Code of Services, by the in-house work-related rules of procedure and by the labor laws of the place where they render their services."

issued by the Organs or Agencies of the Central American Integration System, which directly affect a member of their personnel and whose reinstatement has been denied."

12. It affirms that the Central American Court is the competent court to hear legal disputes arising in connection with COCESNA, and that the alleged victim joined the international organization with full knowledge of the special labor regime that would be applicable to him. The State also alleges that the fact that this regime prevents him from having access to the national courts cannot be considered a violation of the alleged victim's right to equality before the law, since that same regime provides a mechanism and instance for lodging an appeal before the Central American Court. It also argues that the alleged victim's access to justice was not limited; rather, the alleged victim erroneously sought recourse from the Honduran domestic jurisdiction instead of going to the competent jurisdiction.

13. The State also denies that COCESNA had waived its immunity by registering an internal work-related rule of procedure with the Honduran authorities. It argues that said rule of procedure was improperly registered, since it is contrary to COCESNA's legal status and lacks legitimacy requirements, such as the approval of the Board of Directors of the organization. The State emphasizes that the alleged victim himself was the one who registered the rule of procedure when he held the position of head of the agency's department of human resources. It further states that the Inter-American Commission lacks competence *ratione materiae* to rule on the violations alleged by the petitioner, since this would imply interpreting the international legal instruments governing SICA: a function that falls within the exclusive competence of the Central American Court.

14. In addition, the State provides an official letter in which COCESNA indicates that it has had a Service Code since 1988, to which the alleged victim agreed to submit in his employment contract. According to this official letter, the alleged victim's contract was terminated in accordance with Article IX of the Services Code, which authorized unilateral termination of the contract with payment of the corresponding benefits. The official letter also states that, if the alleged victim was dissatisfied, he should have gone to the Central American Court, the only body competent to hear administrative resolutions of SICA bodies or agencies in the last instance.⁶ The official letter emphasizes that the alleged victim, having held the position of head of human resources at the agency, was fully aware of the special regime that applied to him as an employee of an international organization, as a result of which he benefited from such privileges as tax exemption in Honduras.

15. The official letter from COCESNA also clarifies that the internal rule of procedure had been unlawfully registered, since COCESNA was referred to throughout the text of the rule of procedure as a "company," concealing from the Ministry of Labor the fact that it was an international organization. It also states that the rule of procedure referred to airport functions, whereas COCESNA's functions only involve air navigation. The official letter emphasizes that, according to the Honduran Labor Code, in-house labor-related rules of procedure are only applicable to companies, operations, or establishments; not to international organizations. The above-mentioned rule of procedure was repealed in 2019 by the Secretary of State, and was never applied by COCESNA, which always applied its Services Code.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

16. The petitioner has argued that the alleged victim exhausted all the remedies provided by the Honduran legal system. For its part, the State asserts that the petitioner did not go to the Central American Court to discuss his dispute with COCESNA, even though this was the competent court.

⁶ Along with COCESNA's official letter, the State encloses a copy of Advisory Opinion 6-13-6-2019 in which the Central American Court cites its previous jurisprudence, as follows:

[A]rticle 180 of COCESNA's Services Code, referring to the competence of the Central American Court of Justice, establishes: 'Any party that is dissatisfied with the Award and therefore affected in his or her claims, may appeal to the Central American Court of Justice as a sole instance organ of permanent, compulsory, and exclusive jurisdiction, whose judgments are binding; therefore its regional jurisdiction and competence are mandatory and must be respected.'

17. In keeping with the doctrine of the IACHR, “whenever a State alleges the petitioners’ failure to exhaust domestic remedies, it is responsible for identifying which remedies should be exhausted and demonstrating that the remedies that have not been exhausted are “adequate” for remedying the alleged violation, which means that the function of those remedies within the domestic legal system is appropriate for protecting the legal right that has been infringed.” Likewise, the Inter-American Court has stated that “once a State Party has proved the availability of domestic remedies for the exercise of a right protected by the Convention, the burden of proof shifts to the claimant who must then demonstrate that the exceptions contemplated in Article 46(2) are applicable.”⁷.

18. In the instant case, the State has indicated that the appeal before the Central American Court was established by Honduras and the other SICA member States as the appropriate mechanism for individuals who considered that their labor rights had been impaired by COCESNA. In addition, the State has sent an official letter in which COCESNA recognizes the competence of the Central American Court to resolve disputes with its personnel in a final and binding manner, and an advisory opinion in which the Central American Court reaffirms its ultimate instance competence in disputes related to administrative resolutions on the personnel of SICA agencies.

19. For his part, the petitioner indicates that the mediation and arbitration procedure with appeal to the Central American Court provided for in COCESNA's Code of Services was not applicable to the alleged victim, because it was designed for cases of administrative investigations and not dismissal. However, the argument that the alleged victim's case does not fall under Article 22.J of the Statute of the Central American Court has not been clearly substantiated. The petitioner has not presented arguments or evidence, nor does it appear from the record, that the appeal before the Central American Court would not have been a suitable mechanism for the alleged victim to obtain redress for the alleged violations of his labor rights. In addition, he has not alleged, nor is it apparent, that the alleged victim was prevented from having access to the remedy before the Central American Court of Justice.

20. At the same time, the Inter-American Commission considers that the domestic courts addressed all the judicial remedies filed by the alleged victim, and that in all instances they provided a legal response to his claims, within a reasonable period of time. No actions are alleged or observed that *prima facie* could be in violation of the rights established in the American Convention.

21. For the foregoing reasons, the Commission concludes that the instant petition does not meet the requirement of Article 46(1)(a) of the American Convention.

VII. DECISION

1. To declare the present petition inadmissible based on Articles 46.1 (a) and 47 (a) of the American Convention; and

2. To notify the parties of this decision; 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 9th day of the month of May, 2022. (Signed:) Julissa Mantilla Falcón, President; Esmeralda E. Arosemena Bernal de Troitiño, Roberta Clarke, and Carlos Bernal Pulido, Commissioners.

⁷I/A Court H.R. Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990, par. 41.