

OAS/Ser.L/V/II
Doc. 73
20 May 2024
Original: Spanish

REPORT No. 70/24
CASE 1965-15
REPORT ON INADMISSIBILITY

MAYSA HELENA ALVES
BRAZIL

Approved electronically by the Commission on May 20, 2024.

Cite as: IACHR, Report No. 70/24. Petition 1965-15. Inadmissibility. Maysa Helena Alves.
Brazil. May 20, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Maysa Helena Alves
Alleged victims:	Maysa Helena Alves
Respondent State:	Brazil
Rights invoked:	Other international instruments ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 19, 2015 ³
Additional information received at the stage of initial review:	September 21, 2016 and November 8, 2016
Notification of the petition to the State:	May 6, 2019
State's first response:	August 6, 2019
Additional observations from the petitioner:	November 25, 2019; March 2, 2021; January 4, 2022; May 3, 5 and 6, 2022

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 on Human Rights ⁴ (instrument deposited on September 25, 1992)

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:	NA
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, pursuant to Section VI
Timeliness of the petition:	NA

V. POSITION OF THE PARTIES*Position of the petitioner*

1. The petitioner and potential victim alleges that her current account was wrongfully debited by the Caixa Econômica Federal (CEF), her employer, while she was on medical leave; as well as claiming a lack of access to information related to her account at the above-referenced bank. She further contends that her right to due process was violated in the proceedings to adjudicate those claims.

¹ Articles 4, 5, 6, 7, 8, 12, 17, 23, 24 and 25 of the Universal Declaration of Human Rights.

² The observations submitted by each party were forwarded to the opposing party, as appropriate.

³ The initial petition filed with the Inter-American Commission appears to have been filed with a few pages missing.

⁴ Hereinafter the "American Convention" or "Convention."

2. The petitioner argues that, from January 2009 to May 2012, she was absent from her job at the CEF in order to go on medical leave to treat herself for cancer discovered in 2007 and also because of the psychological effects of a workplace environment of persecution against her by her bosses and adoption of truck system. She alleges that during that period, though her only source of money was sick pay from the National Social Security Institute (INSS), which was disbursed to the CEF to be transferred to the alleged victim, the CEF debited money from her account for repayment of loans and finance charges owed by her to the aforementioned bank. She further contends that the CEF refused to provide her with bank statements relating to her account at the institution, despite requesting them on several occasions to no avail.

3. She argues that the debits from her account were illegal because they were equal to practically the entire amount of her income, since she was not receiving her regular paychecks. Additionally, she contends these debits did not adhere to the upper limit of 30% permitted under Brazilian law and did not take into consideration the particular health status of the petitioner, leaving her without money to purchase medications, feed herself and to support her two daughters. She claims that under Brazilian law salary benefits and sick pay may not be garnished, and that the CEF did not propose a plan to schedule payment installments of her loans, extend the agreed upon schedule of repayment or to bring the instalments in line with her income during the period of leave.

4. She further contends, with regard to the debits allegedly made from 2009 to 2012, that in May 2012 the CEF appropriated another amount of money that she received from the Fundação dos Economizadores Federais (FUNCEF), which was a portion of the total accumulated value of her pension, R\$ 52.734,14 (almost USD\$ 9,912), paid out exclusively as support for living expenses, as a benefit of her official contributions to the optional Supplemental Social Security system (Previdência Complementar). She argues that this amount was not subject to garnishment either, but that the CEF claimed it was garnishing it to pay off past due and future instalments of loan repayment, without issuing proof or a written record of pay-off, even though she had made requests several times to the CEF to do so via telephone call, postal mail and email.

5. Regarding exhaustion of domestic remedies, the petitioner provides information about five separate judicial proceedings: 1) Public-Interest Civil Action (Ação Civil Pública) 000126.2009.03.009-0, originally brought in the city of Pouso Alegre and transferred to Brasília; 2) Action for Precautionary Relief (Ação Cautelar Inominada) 0002295-12.2010.4.01.3810, filed with the Federal Second District Court in Pouso Alegre; 3) Civil Action (Ação Ordinária) 0013498.16.2012.8.13.0517, filed with the Court of General Jurisdiction of Poço Fundo; 4) Action for Precautionary Relief (Ação Cautelar Inominada) 2772-62.2015.4.01.3809, filed with the Federal Court in Varginha; and 5) Declaratory Action to Vacate Judgment (Ação Declaratória de Nulidade) joined with motions for compensation for pain and suffering and restitution of amounts wrongfully debited 1000580-34.2018.4.01.3810, filed with the Second Federal District Court for Civil Matters of Pouso Alegre.

6. The petitioner notes that the first lawsuit brought by the Office of the Prosecutor for Labor Matters (MPT) for “Discrimination against workers,” was triggered by the complaint she filed with the MPT for alleged workplace harassment by her bosses at CEF, who had been persecuting her since 2008. She does not submit any details about the alleged harassment nor does she specify when she filed the complaint with the Labor Prosecutor’s Office. She asserts that the suit was transferred to Brasilia on the grounds that technical evidence was required. It was at that venue where Civil Action (Ação Ordinária) 000468.2013.10.000/2-36 and Labor Grievance (Ação na Justiça do Trabalho) 0000959-59.2013.5.10.0018 were brought. Without providing further details, she recounts that the Grievance proceeding resulted in a Consent Decree (Termo de Ajustamento de Conduta), under which the respondent company recognized the harassment endured by her. She argues that, while the labor grievance decree can prevent further conduct that is in violation of labor laws, it cannot redress the grievous damages she alleges to have suffered.

7. With regard to Action for Precautionary Relief (Ação Cautelar Inominada) 0002295-12.2010.4.01.3810, filed on May 19, 2010, for the CEF not to make withdrawals over 30% of salary, the petitioner notes that on March 18, 2016, the judge partially ruled in her favor and ordered the bank to not debit her account for more than 30% of her salary. According to the petitioner, albeit tardy, the decision was fair; however, she claimed, it was inadequate to remedy her situation, since she had already been saddled with a lot

of debt. Based on the copy of the court's decision submitted to the IACHR by the petitioner, her claim was partially granted; the judge concluded that Mrs. Maysa did not gather suitable evidence to prove that the debit from her paycheck was above 30%, and that she had not proven either the alleged debit of the loan repayment installments from her sick pay. At that time, the judge also remarked that Mrs. Maysa asserted that she would file a separate case-in-chief to request review of the loan agreement, repeated wrongful debiting and losses and damages.

8. Regarding the suit filed by Mrs. Maysa with the court of general jurisdiction in 2012, the petitioner provides no details except for the case number and remarks that, in this case, she sought preliminary injunctive relief to be paid back the amounts debited from her account.

9. As for second Action for Provisional Relief (Ação Cautelar) 2772-62.2015.4.01.3809, which the petitioner explains is also a Motion to Show Documents (Ação de Demonstração de Documentos), she claims that the judge denied it without examining the merits on the grounds of her failure to submit an administrative request to the CEF. Without noting the date, she reports that her motion filed on December 14, 2015 was also denied. She further reports that her access to the documents requested by the judge was denied, even though Mrs. Maysa had attached a copy of the formal request that she had made to the CEF in 2014 via registered mail. As reported by the petitioner to the IACHR on May 6, 2019, this lawsuit was in the motions phase. There are no details about this stage or up-to-date information about the lawsuit.

10. The petitioner also notes that she submitted a request to the Office of Comptroller General of Union (CGU) on August 4, 2015, using the Information Access Protocol to obtain a copy of the bank statements, pay-off receipts, paycheck stubs and other documents related to her account at CEF. However, the response was that the documents were confidential and that she should request them through the appropriate channels of the Bank, as she claims to have done several times, without obtaining any response.

11. Additionally, she submits a copy of the appeal dated September 1, 2019, pertaining to case of Declaratory Action to Vacate Judgment (Ação Declaratória de Nulidade) joined with requests for compensation for damages for pain and suffering and restitution of the wrongfully debited amounts of money 1000580-34.2018.4.01.3810, which was processed before the Second Federal Civil Court of Pouso Alegre. Based on an analysis of this claim, it can be noted that the trial court judge dismissed the case on the grounds that the debits were carried out as payment of existing debt. In her appeal to the Federal Regional Court of Region 1 (TRF1), the petitioner claims that the decision was marred by errors such as: i) the judge notes that the judgment of case 2.295-12.2010.4.01.3810 was groundless, when in actuality, it partially favored the petitioner; ii) the judge argued the petitioner did not attach the bank statements from the period of January 2009 to May 20212 to prove receipt of the social security benefit from the INSS in her bank account; while, the petitioner claims that she had reported in the initial petition that she did not attach them to the case proceedings because the CEF refused to hand them over, prompting her to file aforementioned Action to Show Documents number 2772-62.2015.4.01. 3809.

12. According to the petitioner, after the bank statements were denied through administrative channels and at the trial level Federal Courts, it wasn't until November 2019 that the CEF handed over copies of the statements to her, following the lawsuit she brought for the return of the amounts of money was found at the trial level to be inadmissible because the petitioner had not submitted documentary evidence of the debits. In her additional submissions, the petitioner attached bank statements and spreadsheets to the proceedings in the instant petition to the IACHR and argued that the Inter-American Commission can use them to see for itself that the item was not hers, even though it said "authorized debt." She contends that the CEF debited wrongfully and without authorization a total of R\$ 104,292.18 reais (almost USD\$ 20,000) from her account. She claims that this amount came from her salary, from her FGTS (Time of Service Guarantee Fund) and from the retirement benefit of the FUNCEF/CEF; and that as of June of 2022, the amount was \$ 542,940.64 Brazilian reais (nearly USD\$ 102,056).

Position of the State of Brazil

13. The State alleges that the instant petition is inadmissible because it does not meet the minimum requirements for processing, on the grounds that the petitioner did not adequately exhaust domestic remedies. On this score, it mentions that suit 2772-62.2015.4.01.3809, filed by the petitioner in the domestic courts, was dismissed on the grounds that it did not fulfill the requirement of prior exhaustion of administrative procedures. Furthermore, it argued action 000295-12.2010.4.01.3810, also filed by the petitioner, was dismissed on similar grounds of mistaken choice of procedure. The State also refers to a third action brought by Mrs. Maysa, with the filing dated June 22, 2022, wherein she requested that the court grant her an order to receive money from CEF, noting that this lawsuit ended without a judgment after the petitioner formally moved to withdraw from the case on the grounds that, in her own words, “the best and only procedure to argue the instant matter is via the courts, through a lawsuit that could eventually be filed at the right time,” which, according to the State, was never done by her. It contends that, in making this statement, the petitioner is recognizing that there were domestic remedies available to cure the alleged violation, but she did not avail herself of them.

14. Additionally, the State argues that the public-interest civil action brought on behalf of the petitioner was adjudicated in a timely and satisfactory manner and shows how Mrs. Maysa had adequate domestic remedies available to her. Specifically, it asserts that in October 2009, the alleged victim, who was employed at the time by CEF, filed a complaint with the Municipal Labor Prosecutor’s Office (PTM) of Pouso Alegre, state of Minas Gerais, recounting, among other things, that a proceeding had been brought against her to investigate alleged irregularities and that, in the course of the case investigation, her right to bank secrecy had been violated. After this complaint was filed, the PTM opened a preliminary investigation, which became a civil inquiry. Once the banking secrecy violation was identified, the Office of the Labor Prosecutor brought a public-interest civil action on June 7, 2013 against the CEF, before the 18th Labor Court of Brasilia. On August 1, 2014, the Office of the Prosecutor for Labor Matters and the CEF entered into a legally binding agreement, approved by the Judge, whereby the CEF pledged to immediately refrain from accessing, controlling, verifying or monitoring financial transactions and bank accounts of its employees, for purposes of investigation of irregularities subject to liability, which involve employees’ bank secrecy rights, without prior judicial authorization, under punishment of a fine of twenty thousand reais (approximately four thousand dollars USD) per affected employee, without prejudice to any criminal liability of the agents who cause the violation of bank secrecy. The CEF agreed to comply with the terms of the agreement and the judge determined the case would be archived.

15. The State also argues that the petition is manifestly groundless because there is no evidence to sustain the arguments of the petitioner. This lack of evidence was recognized by a Brazilian judge in a similar case brought in domestic court by the petitioner (Case 0002295-12.2010.4.01.3810), on March 18, 2016, when the judge concluded that, because of the failure to meet her evidentiary burden and the failure to specifically prove the allegations, it was not appropriate to grant her request for the CEF. The situation in that case is similar to that of the instant petition before the IACHR, as claimed by the State, and warrants a similar response of inadmissibility. That is partly because the aforementioned decision cites two incongruencies also present in P-1965-15: a) the petitioner was able to obtain and attach bank statements in the domestic judicial proceeding, in contradiction to what she is currently alleging; and b) in claiming that the 30% limit on withholdings from salary must be observed, the petitioner fails to fully prove the alleged lack of observance, which is essential, in view of the fact that she herself admits to having “debts” with the CEF, which means that the withholdings were, at least to some extent, proper. Given the lack of evidence to the contrary, the domestic decision concluded that the withholdings were appropriate, since they were carried out pursuant to the terms voluntarily agreed upon in the loan contract by the petitioner.

16. With respect to the petitioner’s allegation that the facts laid out in the petition violate Articles 4, 5, 6, 7, 8, 12, 17, 23, 24 and 25 of the Universal Declaration of Human Rights, the State contends that this instrument is not applicable under the competence *ratione materiae* of the IACHR.

17. Lastly, the State alleges that the petitioner has not expressly indicated what provisions of the American Convention, or of any other international normative instrument, were violated, as established under Article 23 of the IACHR Rules of Procedure.

VI. EXHAUSTION OF DOMESTIC REMEDIES, TIMELINESS AND COLORABLE CLAIM OF THE ALLEGED FACTS

18. The petition primarily concerns the alleged occurrence of undue debits in the alleged victim's bank account by her former employer, lack of access to bank information, and violation of due process within the proceedings she filed to remedy these situations.

19. The State contends that the petitioner did not adequately exhaust available domestic remedies; whereas, the petitioner alleges that all remedies were adequately exhausted before the judicial system, the respondent public agency and the Secretariat of Human Rights. Additionally, she claims that she pursued several remedies in order to obtain the bank statements of her account at the CEF, receive the amounts wrongfully debited from her bank account and review the loan agreement entered into between the alleged victim and CEF.

20. The requirement of prior exhaustion of domestic remedies is meant for national authorities to become aware of the alleged violation of a protected right and, when appropriate, resolve the situation before it is brought before an international body.

21. The Inter-American Commission notes that several of the petitioner's legal actions in domestic proceedings were unsuccessful because of the alleged lack of documentary evidence or because adequate domestic remedies had not been exhausted. By way of example, in the Judicial Action filed in 2010 (No. 0002295-12.2010.4.01.3810), the court ruled partially in favor of the alleged victim because documents were not attached to support some of her claims. In the ruling the judge also noted that the petitioner could still file another case-in-chief lawsuit to request review of the loan agreements, reimbursement for default and damages and losses. Likewise, in the judicial action of 2015 (No. 2772-62.2015.4.01.3809) and in her request for access to information with the Office of the Comptroller General of the Union, on August 4, 2015, the judge and the lead agency noted the alleged victim needed to request these documents through the appropriate administrative procedure with the CEF.

22. The Inter-American Commission also notes, with regard to the request for documents through the administrative procedure, that the petitioner provides only general information, mentioning that she made several attempts without obtaining a response. She claims to have done so at the appropriate CEF office through telephone calls, postal mail and e-mail and by formal request in 2014 by registered mail. However, she does not provide a detailed account to enable the IACHR to examine whether her request was properly filed and thus be able to determine whether the court's ruling of a lack of prior exhaustion of those remedies would or would not violate her human rights. Similarly, the petitioner offers only a general account, without any explanation, about exhaustion of domestic remedies, in relation to the request for documents pertaining to the account in the CEF. The Inter-American Commission clarifies that it is not its job to decipher a petition that does not lay out further details and provide explanations, inasmuch as it is incumbent upon the petitioner to flesh out concrete arguments about the case and cite what actions she took to exhaust domestic remedies.⁵

23. In relation to the Declaratory Action to Vacate Judgment with requests for compensation for pain and suffering and restitution of wrongfully debited amounts of money from her account (No. 1000580-34.2018.4.01.3810), the petitioner mentions the appeal filed by her in 2018, but does not advise whether this

⁵ Similarly: IACHR, Report No. 359/21. Petition 682-10. Inadmissibility. Luiz Eduardo Auricchio Bottura. Brazil. December 2, 2021, paragraph 21; IACHR, Report No. 155/22. Petition 1102-09. Inadmissibility. Ernesto Armando Ortiz Martínez. Colombia. July 5, 2022, paragraph 22; IACHR, Report No. 193/22. Petition 1153-12. Inadmissibility. Luis Alejandro Cárdenas Tafur and Familia. Colombia. August 3, 2022, paragraph 12.

appeal was settled. Consequently, there is no way to know whether this situation was remedied in the domestic arena by the State or whether a court ruling is still forthcoming.

24. The petitioner did not submit detailed information either about the action brought before the court of general jurisdiction in 2012, case 0013498.16.2012.8.13.0517. However, the State notes that the alleged victim formally requested to withdraw from the proceedings without a finding on the merits, on the grounds that the adequate remedy would be filing another suit “at the right time,” which she actually never did.

25. As for the claim for collection arising from an administrative disciplinary proceeding (PAD), all that is known is that in November 2018 the MPF filed a motion in support of the appeal of the alleged victim, suggesting, among other things, that the judgment denying production of further testimony is null and void by operation of law, that the case should return to the stage of preliminary investigation and hearing of testimonies; and that the alleged irregularities committed in the course of the PAD gave rise to lodging a petition with the Inter-American Commission on November 19, 2015.

26. The Inter-American Commission does not find, in the allegations and facts presented, any elements that indicate the application of any exception to the rule of prior exhaustion of domestic remedies. The petitioner does not allege undue delays in the domestic proceedings, but rather the manner in which they were conducted, the alleged lack of access to information, and the decisions contrary to her interests and expectations. The State, in turn, argues that it examined the domestic claims on the matter in a timely manner, as in the case of the public civil action, which was concluded in less than five years. Furthermore, the Commission does not find sufficient evidence to indicate that domestic remedies were ineffective. In her response, the petitioner does not challenge the State's claim that she withdrew an action because she considered that filing another claim was the best course of action, demonstrating that she recognizes the existence of domestic remedies to seek a solution.

27. Based on the foregoing examination of the information provided by both parties, to date, the alleged victim has not exhausted the adequate procedures available to remedy the alleged violation of her human rights, inasmuch as she withdrew from the case, it is still before the courts, none of her requests could be granted due to the lack of documentation or because she had not previously used the right procedure, which represents her failure to exhaust remedies. In view of the foregoing, the Inter-American Commission finds that the instant petition does not fulfill the requirements of Article 46.1.a of the American Convention.

VII. DECISION

1. To declare the instant petition inadmissible.
2. To notify the parties of this decision, 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 20th day of the month of May, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.