

OEA/Ser.L/V/II.
Doc. 201
26 December 2018
Original: Spanish

REPORT No. 176/18

PETITION 1040-08

REPORT ON ADMISSIBILITY

JOSÉ LUIS ALTAMIRANO SALVADOR
PERU

Approved electronically by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 176/18, Petition 1040-08. Admissibility. José Luis Altamirano Salvador. Peru. December 26, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Luis Altamirano Salvador
Alleged victim:	José Luis Altamirano Salvador
Respondent State:	Peru ¹
Rights invoked:	Articles 4 (life) and 10 (compensation) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	September 8, 2008
Notification of the petition to the State:	October 28, 2014
State's first response:	April 6, 2015
Additional observations from the petitioner:	February 17, March 2, and December 8, 2015; March 23 and October 17, 2016
Additional observations from the State:	March 4, 2016

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 (deposit of instrument made on July 28, 1978) and Inter-American Convention to Prevent and Punish Torture ⁴ (deposit of instrument made on March 28, 1991)

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 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (freedom from Ex Post Facto laws), 10 (compensation), 11 (privacy), and 25 (judicial protection) in relation to Articles 1 and 2 of the American Convention; and Articles 1, 6, and 8 of the IACPPT.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. The petitioner and alleged victim states that on November 17, 1992, he was arrested without a warrant on suspicion of stealing a car in the city of Lima (which he denies committing), and sent to facilities of the National Counter-Terrorism Directorate. He states that he was there for 15 days, during which he was

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner José Francisco Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussion or the decision in the present case.

² Hereinafter "the American Convention" or "the Convention"

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter the "IACPPT"

mistreated and beaten frequently by his captors, who in addition to threatening and harassing him psychologically, tortured him by hanging him by his arms. He alleges that the foregoing was recorded in a medical certificate issued on November 21, 1992, by the Peruvian Institute of Legal Medicine. He indicates that he was later transferred to the cells of the Palace of Justice, where he remained for more than three months. He reports that at the end of March 1993 he was taken to the Canto Grande maximum-security prison in Lima, under the special detention regime established for individuals accused of terrorism.

2. He alleges that he was subjected to criminal proceedings for the offense of terrorism, which violated his rights to a fair trial. He points out that he did not have defense counsel, nor access to the file of his case, and was thus unaware of the state of proceedings or of his legal status. He indicates that in 1995 he was sentenced by faceless judges to a 20-year prison sentence, a decision he could not contest. He claims that he was transferred to the "El Milagro" maximum-security prison in the Department of Trujillo, where he remained until 2004, when arrangements were made for his return to the Canto Grande penitentiary.

3. He indicates that in compliance with judgment No. 10-2003-AI/TC issued by the Constitutional Court on May 27, 2003, the National Chamber of Terrorism decided to annul this trial for terrorism, as it had been conducted by unidentified judges, and ordered a new trial against him. He argues that during these proceedings he was illegally detained, he filed a writ of habeas corpus, which was dismissed on October 1, 2004, by the Sixth Special Chamber for Criminal Proceedings of Prison Detainees of the Superior Court of Justice of Lima. This decision was upheld by the Constitutional Court on March 4, 2005, on the grounds that Legislative Decree No. 926 provided that the maximum term of preventive detention was calculated from the declaration of nullity of the trial before faceless judges, and that in the case of the alleged victim it had not yet expired, so he should remain in jail.

4. He argues that the Collegiate "D" of the National Criminal Chamber ordered his acquittal by judgment of May 19, 2006. He was released on May 23, 2006. He indicates that his acquittal was upheld by the First Transitional Criminal Chamber of the Supreme Court on June 12, 2008, on the basis that statements implicating the alleged victim had disappeared because expert handwriting reports to establish whether original declarations had been made or not had not been carried out, and that no documents of a subversive nature were found in the search of his homes, and that the principal witness in the case failed to identify him as one of the individuals who had committed the offense of which he was accused.

5. He states that on October 3, 2006, he requested asylum in Chile, due to his fear of renewed detention. Refugee status was granted to him by the Assistant Secretary of the Interior on June 30, 2008. He argues that because of the confidential nature of the criminal proceedings for terrorism against him, he did not have access to all the documents and evidence. Also due to the lack of resources and the state of permanent fear, he could not resort to the judiciary after his release. He states that in 2013 he renounced his refugee status, but continues to live in Chile. He alleges that he filed a claim for compensation against the Peruvian State, which was declared inadmissible by the Twenty-fifth Civil Court of Lima on July 8, 2014, due to procedural reasons that could not be remedied.

6. For its part, the State argues that the petition is inadmissible because the alleged victim did not exhaust domestic remedies. Thus, it observes that in order to request compensation for judicial error, the petitioner ought to have challenged the sentence of acquittal through an appeal for annulment on the ground that no compensation payment had been established. It also refers to the fact that he was able to file a claim for compensation for damages in civil proceedings. It also indicates that none of the exceptions provided for in Article 46.2 of the American Convention is applicable.

7. The State argues that there is no evidence of torture against the alleged victim, and that should a formal complaint have been lodged, the judicial authorities would have carried out an investigation. It points out that the anti-terrorist legislation was amended in compliance with international standards on human rights. In this regard, it states that a Peruvian Constitutional Court judgment of January 3, 2003, drew and narrowed the interpretation of the basic offense of terrorism set out in Article 2 of Decree Law No. 25475. It also states that the facts denounced by the alleged victim do not characterize a violation of the

rights enshrined in the Convention, since the prosecution of the alleged victim was carried out pursuant to due process, and that there was no illegal or arbitrary detention.

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

8. The petitioner points out that due to the confidential nature of the criminal proceedings taken against him, he had no knowledge of or any ability to challenge the decisions of the judicial authorities. He states that after the annulment of the trial for the offense of terrorism, he filed a writ of habeas corpus on the grounds that his preventive detention was excessive and illegal. This was dismissed by the Constitutional Court on March 4, 2005. He indicates that the acts of torture he suffered were never investigated. In addition, he alleges that he filed a claim for compensation that was declared inadmissible on July 8, 2014. For its part, the State maintains that the petitioner has failed to exhaust domestic remedies, since he did not file the appeal for annulment or the civil suit to obtain compensation. It argues that it has not received any formal complaint about the alleged acts of torture perpetrated against the petitioner.

9. The Commission recalls that in cases where torture is alleged, the adequate and effective remedy is an investigation and criminal prosecution, and that the State has the obligation to promote and follow-up on such remedies. In this regard, in relation to offenses subject to *ex officio* prosecution, the IACHR has repeatedly stated that "the authorities are obliged to conduct a thorough criminal investigation calculated to clarify the facts and determine blame."⁵ From the documentation provided by the parties, the Commission observes that the State was or should have been aware of the alleged acts of torture and harm to the personal integrity of the alleged victim, since a medical examination was performed while he was deprived of his liberty – as evidenced in the certificate of November 21, 1992, issued by the Peruvian Institute of Legal Medicine. The Commission notes that to date, the judicial authorities have not ordered the initiation of any type of investigation. Consequently, the IACHR concludes that in accordance with the provisions of Article 46.2.c. of the Convention, the exception to the exhaustion of domestic remedies applies.

10. In respect to the allegations regarding the detention and criminal proceedings against the alleged victim, the information submitted indicates that after the nullity of the proceedings conducted in the 1990s, Mr. Altamirano Salvador was definitively acquitted by a decision issued by the First Transitory Criminal Chamber of the Supreme Court on June 12, 2008. Consequently, the IACHR concludes that the claims examined in this report satisfy the requirement set forth in Article 46.1.a of the American Convention.

11. With respect to the alleged lack of compensation, the Commission is aware that Mr. Altamirano Salvador began to reside in Chile from October 2006, where he subsequently remained as a refugee, a situation that initially prevented him from having access to the administration of justice in Peru. It also observes that the Twenty-fifth Civil Court of Lima declared inadmissible a claim for compensation filed by the alleged victim on July 8, 2014. Notwithstanding the foregoing, the Commission reiterates that the alleged victim was not required to file additional appeals in the civil proceedings for the purposes of the requirement set forth in Article 46.1.a of the Convention.⁶

12. Finally, the petition before the Commission was received on September 8, 2008, and the events alleged in the claim began on November 17, 1992, with certain effects continuing up to the present. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period is satisfied.

⁵ IACHR, Report No. 7/15, Petition 547-04. Admissibility. José Antonio Bolaños Juárez. Mexico. January 29, 2015, para. 22; Report No. 14/06, Petition 617-01. Admissibility. Raquel Natalia Lagunas and Sergio Antonio Sorbellini. Argentina. March 2, 2006, para. 44.

⁶ IACHR, Report No. 65/10, Petitions 827-98 and 798-03. Admissibility. Rutaldo Elmer Alejo Saavedra and Raúl Andrés Arias Condori. Peru. June 21, 2010, para. 53.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the factual and legal elements put forward by the parties and the nature of the matter brought to its attention, the Commission considers that the petitioner's allegations on illegal detention, the alleged acts of torture committed against him, as well as the criminal prosecution for the crime of terrorism, allegedly carried out in violation of his right to a fair trial, including being tried by faceless judges and under anti-terrorist laws, and the alleged lack of compensation and access to justice, could characterize possible violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (freedom from Ex Post Facto laws), 10 (compensation), 11 (privacy) and 25 (judicial protection) of the American Convention in relation to its Article 1.1, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the prejudice of the alleged victim.

14. In regard to the claim concerning the alleged violation of Article 4 (life) of the American Convention; the Commission observes that the petitioner has not offered allegations or sufficient support to allow a *prima facie* consideration of its possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 9, 10, 11, and 25 in conjunction with Article 1.1 of the American Convention; as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To find the instant petition inadmissible in relation to Article 4 of the American Convention;

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 26th day of the month of December, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.