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**REPORT No. 105/18**  
**PETITION 1278-07**  
REPORT ON ADMISSIBILITY

DELMIRO CARRASCO GARCÍA  
PERU

Approved by the Commission on September 20, 2018.

**Cite as:** IACHR, Report No. 105/18, Petition 1278-07. Admissibility. Delmiro Carrasco García.  
Peru. September 20, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Delmiro Carrasco García
<b>Alleged victim:</b>	Delmiro Carrasco García
<b>Respondent State:</b>	Peru <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (Fair Trial), 11 (Privacy) and 25 (Judicial Protection) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	September 29, 2007
<b>Additional information received at the stage of initial review:</b>	October 2, 2007; October 14 and 22, 2008
<b>Notification of the petition to the State:</b>	March 4, 2010
<b>State's first response:</b>	June 17, 2010
<b>Additional observations from the petitioner:</b>	August 18, 2010; June 20, 2011; August 17, 2012; May 21, 2013; May 6, 2014; March 30, 2015
<b>Additional observations from the State:</b>	February 23, 2011; September 9, 2011; January 15 and September 12, 2013

**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 ratification instrument on July 28, 1978)

**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 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not partake in the discussion or the decision on this matter.

<sup>2</sup> Hereinafter "Convention," "American Convention" or "ACHR."

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

## V. ALLEGED FACTS

1. Mr. Delmiro Carrasco García (hereinafter “the petitioner” or “the alleged victim”) indicates that after his nomination through an open competitive selection process he was appointed Judge of the Superior Court of Justice of Amazonas. He submits that for six years and seven months he worked at the judiciary, with impartiality and independence, and that in 1999 and 2000 he worked as President of the Superior Court of Justice of Amazonas. He claims that on April 16, 2002, the Judiciary Council (hereinafter “Council” or “CNM”) decided to hold evaluation and confirmation proceedings of prosecutors and judges, and that on February 7, 2004, after subjecting him to said proceeding, the CNM ruled to not confirm him, revoking his appointment and removing him from office as a magistrate.

2. The petitioner submits that, although the CNM assumed competence to confirm judges every seven years, the State is constitutionally bound to ensure independence and tenure of magistrates, meaning that confirmation must be subject to a well-grounded evaluation of a judge’s performance and qualifications. He indicates that said proceeding was held before he completed a period of seven years in office, because for six months he had worked at the electoral court of Utcubamba, and he adds that the rules of due process were infringed to the detriment of his right of defense and to be heard, he being punished and removed from office regardless of his merits as a professional and as an employee. He affirms that said unfair judgment caused him moral and financial damage, affecting his dignity and his and his family’s honor; that he was treated as underserving of the office of magistrate. Likewise, he asserts that when his son, a minor, suffered from a serious disease, he was unable to afford a treatment for him. Therefore, he requests that the State of Peru pay reparations for the damage caused by the CNM’s non-confirmation and decision to dismiss him from office.

3. The alleged victim moreover indicates that, based on the Peruvian Constitution, judgments from the Council are unappealable. However, due to legal defects in the confirmation proceeding, on April 28, 2004, he filed an appeal for legal protection against the CNM before the 45th Special Civil Court of Lima, but it was rejected on July 4, 2006. In its judgment, said court concluded that the Council’s decision did not need to be substantiated because the CNM, a discretionary body, did not impose a punishment but that it did not give the alleged victim a vote of confidence. He submits that, later, he lodged an appeal before the Sixth Civil Chamber of Lima Superior Court of Justice, dismissed on June 4, 2008 in view of the constitutional ban on appeals against resolutions from the CNM. He also asserts that, to challenge this resolution, he presented a constitutional grievance before the Constitutional Court (hereinafter “TC”) to obtain his reinstatement as a magistrate and the payment of the salaries due to him.

4. He claims that the TC, by a resolution of August 31, 2009, found his complaint admissible in relation to the groundlessness of the judgment from the CNM, ordering thus his immediate reinstatement as a Judge of the Superior Court of Justice of Amazonas. However, the TC found the claim regarding the unpaid salaries inadmissible on the grounds that these were compensatory rather than restorative in nature hence their payment cannot be obtained through a constitutional appeal proceeding. He submits not having resorted to the ordinary jurisdiction because the confirmation proceeding affects the impartiality and independence of the judiciary. In this regard, he submits that judges do not rule against the CNM as the body in charge of evaluating them; consequently, there was not an effective remedy to obtain the payment of his salaries. Lastly, he alleges an unwarranted delay in the execution of the judgment because he was reinstated on May 5, 2011. Likewise, he claims that his length of service for the period from his arbitrary removal until his effective reinstatement has not been recognized.

5. The State claims that the petition must be declared inadmissible because the petitioner’s situation has been resolved, for the TC recognized the violation of his rights and ordered his reinstatement. It alleges that the State amended the Code of Constitutional Procedure and the Law on Administrative Procedures, and issued a new Rules of Procedure for the Evaluation and Confirmation of Judges of the Judiciary and Prosecutors of the Prosecutor’s Office, in order that all decisions from the CNM will be well-founded. Moreover, it indicates that the TC has established a new binding precedent that allows the filing of special remedies against resolutions that do not meet the requirement of reasonableness.

6. As for the alleged lack of payment of salaries due, it argues that domestic remedies have not been exhausted, and that a constitutional appeal is not the appropriate remedy for this—like the TC explicitly established. It indicates that said court, in its decision, added that the petitioner still could resort to the ordinary jurisdiction, but that he failed to do so. It also affirms that the time elapsed from his removal until his reinstatement was taken into account in the calculation of his length of service and his retirement contributions. It claims that the petitioner seeks to have the Commission work as an appeals court, and that his claims do not constitute violations of the American Convention. It argues that under the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights the Commission is not entitled to deal with the alleged payment or lack of payment of work benefits.

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

7. According to the available information, on April 28, 2004 the petitioner filed an appeal against his removal from office before the 45th Special Civil Court, allegedly dismissed. To challenge this decision, he lodged an appeal before the Sixth Civil Chamber of the Superior Court of Justice, also dismissed. Finally, on August 31, 2009 the Constitutional Court settled, partly in his favor, a constitutional complaint, ordering his reinstatement but rejecting his claim on the payment of the salaries due, concerning which—the petitioner alleges—there are no effective remedies available. For its part, the State claims that domestic remedies concerning the lack of payment of salaries due in view of his removal have not been exhausted because the petitioner can still file said claim before the ordinary jurisdiction.

8. The Commission notes that when the events took place the domestic legal framework established that the Council would not admit appeals for review or reversal filed against decisions from the CNM. However, the IACHR observes that, in regard to his removal from office, the petitioner filed the available legal remedies that he deemed appropriate. Consequently, the instant petition meets the requirement set forth in Article 46.1.a of the Convention.

9. Furthermore, as for the purported lack of payment of salaries due and the lack of recognition of his length of service and of the eventual compensation of damages derived from his removal from office, the petitioner indicates that he did not present his claim before the domestic courts because there was not an effective remedy for this. The Commission therefore reminds that in analyzing the effectiveness of the available domestic remedies, it observes whether the alleged victim did everything reasonably expected from them to exhaust domestic remedies, or if there were factual or legal obstacles for so doing.<sup>4</sup> In this regard, from the available information, there is nothing to indicate that the petitioner has lodged such claim before the competent ordinary court at the domestic level, even though the Constitutional Court explicitly ruled in its decision that “the petitioner still can resort to the ordinary jurisdiction.” Furthermore, the Commission believes that the mere possibility that a judgment will be unfavorable does not prove in itself the unsuitability of domestic remedies nor is a sufficient reason to constitute an exception to the rule of prior exhaustion of domestic remedies in this case.<sup>5</sup> As a result, the Commission finds that, in relation to these aspects, the instant petition does not meet the requirement provided for in Article 46.1.a of the Convention.

10. With regard to the rule of timeliness, the petition was filed before the IACHR on September 29, 2007 and the remedies were allegedly exhausted on August 31, 2009 through the judgment from the Constitutional Court—when the petition was under study. Based on the IACHR doctrine, the analysis on the requirements set forth in Article 46.1.b of the Convention and Article 32.1 of the IACHR Rules of Procedure must be made in the light of the situation in force at the time when the admissibility or inadmissibility of the claim is being considered. Given the above, it is appropriate to find the requirement fulfilled.<sup>6</sup>

<sup>4</sup> IACHR, Report No. 147/17. Admissibility. Javier Arnaldo Córdoba and D. Paraguay. October 26, 2017, par. 10.

<sup>5</sup> IACHR, Report No. 122/17. Admissibility. Petition 156-08. Williams Mariano Paría Tapia. Peru. September 7, 2017, par. 13, IACHR, Report No. 87/03. Inadmissibility. Petition 12.006. Oscar Siri Zúñiga. Honduras. October 22, 2003, pars. 43 and 46.

<sup>6</sup> IACHR, Report No. 153/17. Admissibility. Jimmy Freddy Torres Villalva and Family. Chile. November 30, 2017, par. 9.

## VII. ANALYSIS OF COLORABLE CLAIM

11. Based on the legal and factual elements presented by the petitioner and the nature of the matter brought to its attention, the Commission deems that, if proven, the allegations concerning the unwarranted delay in the execution of the judicial decision ruling his immediate reinstatement as a judge, as well as its possible impact on judicial independence, could tend to establish violations of the rights protected through Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Articles 1.1 and 2 thereof.

12. In addition, as for the alleged victim's alleged unfair and arbitrary removal from office, and the alleged violation of the rules of due process, the right of defense, the right to a well-founded judgment and to appeal a court's decision, the Commission observes that said claims were analyzed and resolved in favor of the alleged victim by the Constitutional Court, which ruled to reinstate the petitioner in view of his right to a fair judgment. The Commission notes that by the time of approval of this report the Constitutional Court has already resolved, in the domestic jurisdiction, the purported violations initially presented by the petitioner. Consequently, the Commission declares inadmissible those aspects of the petition connected with the CNM's resolution to dismiss the petitioner, under the provisions of Articles 47.b of the Convention and 34.c of the IACHR Rules.

13. With regard to the petitioning party's claims on the violation of the rights enshrined in Article 11 (privacy) of the Convention, the Commission observes that the petitioner did not submit evidence for a *prima facie* consideration of said violation.

14. Finally, in regard to the allegations from the State about the Commission's lack of competence, the IACHR considers that the arguments presented by the petitioner do fall within its competence pursuant to the American Convention; therefore, there is not a possible issue of competence in this regard.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof;

2. To find the instant petition inadmissible in relation to Article 11 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 September, 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.