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REPORT No. 58/18
PETITION 1434-08
REPORT ON ADMISSIBILITY

RÓMULO RUBÉN PALMA RODRÍGUEZ
PERU

Approved by the Commission at its session No. 2127 held on May 5, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 58/18, Petition 1434-08. Admissibility. Rómulo Palma. Peru.
May 5, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rómulo Rubén Palma Rodríguez
Alleged victim:	Rómulo Rubén Palma Rodríguez
Respondent State:	Peru ¹
Rights invoked:	Articles 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, ² in relation to Article 1.1 (Obligation to Respect Rights) thereof

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	December 9, 2008
Additional information received at the stage of initial review:	October 27, 2011; July 18, 2012; March 11, 2014
Notification of the petition to the State:	October 3, 2016
State's first response:	January 12, 2017

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 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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; May 30, 2013
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. Mr. Rómulo Rubén Palma Rodríguez (hereinafter “Mr. Palma Rodríguez” or “the petitioner”) is a former officer of the Peruvian army who served in the Fifth Motorized Infantry Battalion (hereinafter “Infantry Battalion”) in the province of Zarumilla, department of Tumbes (bordering Ecuador). He declares that on August 26, 1997 his colleague Guillermo Sánchez Alva was arrested for stealing grenades in order to sell them, and that in an examination, the latter incriminated the petitioner as an accomplice.

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion or the decision on this matter.

² Hereinafter “Convention” or “American Convention.”

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

2. The petitioner indicates that on August 2, 1997, the Provincial Prosecutor's Office of Zarumilla filed a complaint against the petitioner before the criminal judge of Zarumilla for unlawful possession of grenades. On August 24, Mr. Palma Rodríguez was notified that a complaint had been lodged against him before the Permanent War Council of the Army First Judicial District (hereinafter "the War Council"). On the following day, this military jurisdiction decided to entrust the corresponding investigation tasks to a military court, under the supervision of officer Manuel García Mendizábal. On August 26, the petitioner was arrested and brought before the War Council in order to stand "a 24-hour summary trial," which in the Code of Military Justice (hereinafter "the Military Code") is classed as a "trial in the theater of operations," applicable in times of war. On that precise day, the petitioner's statement was taken before a defense counsel appointed by the military court; the petitioner alleges that he did not know his counsel or had been in touch with him; and that the counsel did not do anything to defend him.

3. On October 6, 1997, the War Council sentenced Mr. Palma Rodríguez to 25 years in prison for participating in the perpetration of a criminal offense against the security and the honor of the country, in the form of treason (article 78, paragraph 14 of the Military Code), with the aggravated circumstances of abuse of power and crime against property. As an additional penalty, he was disqualified from immediately taking his job and punished to pay, along with the other persons sentenced in those proceedings, civil compensation to the army. Mr. Palma Rodríguez alleges that in view of his removal from office, now he has the status of a civilian; that, therefore, since then, the competent jurisdiction is not the military but the ordinary criminal jurisdiction. The petitioner submits that he filed an appeal against the above decision; and that, however, the Supreme Council of Military Justice (hereinafter "the Supreme Council") upheld the resolution issued by the War Council, by a decision dated September 8, 1998.

4. Mr. Palma Rodríguez claims that during this summary trial, he was held *incommunicado* at first, but he does not indicate for how long or in what conditions. He alleges that he was deprived of his right of defense because his counsel, appointed by the military court, did not controvert any of the judgments issued. Moreover, he submits that he was sentenced "in 48 hours," and thus he did not have enough time to collect evidence for his defense. He indicates that the officer initiating the investigation in the military jurisdiction, Major García Mendizábal, was appointed to the War Council with disregard for the Military Code, because he does not have the rank of lieutenant-colonel.

5. The petitioner claims that he was never in touch with the Ecuadorian citizen that, according to the sentence, he sold the stolen weapons; and that the Supreme Council never proved that it was him who provided weapons to a foreigner or to another State. He affirms that although he did participate in stealing military weapons, this was a criminal offense against property (theft)—for which punishment is lighter—and not treason; thus, he believes that there is a factual error in the classification of the criminal offense. Likewise, he claims that the State used his case as material for the media, for political purposes and to project a good image of the military justice in a time called Alberto Fujimori's "ten years of corruption."

6. Subsequently, the petitioner filed a *habeas corpus* but, on July 14, 2003, this was found inadmissible by the First Corporative Court Specializing in Ordinary Proceedings against Defendants in Custody, of the Superior Court of Justice of Lima. To challenge this decision, the petitioner filed a special remedy before the Constitutional Court; but this court dismissed it on June 24, 2004 for questioning the merits of the judgment issued by the Supreme Court of Military Justice. However, the petitioner lodged another *habeas corpus* against the Supreme Council's resolution, for alleged violation of the right of due process and arbitrary detention, before the Eighth Criminal Court of the Superior Court of the District of Lima. On November 10, 2004, this court declared it inadmissible on the grounds that "it was not the appropriate remedy to debate settled or unsettled punitive measures because the purported error should have been amended within the same proceedings through the legal remedies available to the petitioner."

7. Mr. Palma Ramírez submits that on August 4, 2005 he lodged an appeal for review before the Supreme Council claiming that his punishment did not match the facts, because there was no evidence of any connection with a foreign army, and that the trials in the theater of operations are exclusively applicable in times of war. On April 18, 2008, the Supreme Council declared said remedy inadmissible for lack of legal grounds, and on June 9 that year, this was notified to the petitioner. In its resolution, the Supreme Council

established that the offenses of treason, abuse of authority and theft were duly established through objective evidence in the proceedings, and that no evidence was submitted to prove the contrary. The petitioner alleges that a few days after lodging the appeal, the President of the Supreme Council of Military Justice, Juan Ramos Espinosa, told the media that “currently there are two non-commissioned officers [meaning Mr. Palma Rodríguez and Sánchez Alva] standing a very strict trial; they are sentenced to prison, to 25 years in prison, for offenses committed in 1995 when it was found that these individuals sold military weapons to Ecuador”, and that the military justice “was severe and exemplary, and that they deserved the punishment imposed,” the *Vivir Bien* magazine reported in June 2006. The petitioner claims that, at that time, his appeal was being analyzed, thus he accuses him of having advanced an opinion. Therefore, Mr. Palma Rodríguez manifests having filed a motion to recuse the President of the Supreme Council of Military Justice, alleging bias, before the Supreme Council twice, on July 14, 2006 and June 6, 2007, and he indicates that both times the remedy was dismissed.

8. In the framework of the Supreme Council’s resolution of April 18, 2008, one of its members issued a “complementary vote” expressing that he believed that the petitioner should be given the benefit of probation. Thus, in September that year, the latter filed for probation; and on September 25, 2008, the Military Criminal Court of Tumbes admitted his petition. Nevertheless, the Military Prosecutor’s Office of Tumbes impugned this decision and, on October 27, 2008, the War Council annulled the trial resolution, forwarding the proceedings to the Supreme Council of Military Justice. On March 31, 2009, the highest military criminal court ruled to return the case to the trial court because Legislative Decree No. 961 of the Code of Military Justice was not in force concerning criminal procedure; therefore, the Code of Criminal Procedure had to be temporarily applied. As a result, the petitioner was not released on probation then. Mr. Palma Rodríguez indicates that he presented an appeal for annulment and that the Supreme Council dismissed it on January 30, 2010; and that he also submitted an objection to the members of the Supreme Military-Police Court for abuse of authority in the form of omission, refusal or delay in the performance of duties and willful neglect of duty on the grounds that they had failed to comply with the order given by Abraham Talavera by his complementary vote dated June 4, 2008, which was part of the Supreme Council’s resolution of April 18, 2008. However, the Superior Prosecutor’s Office for Administrative Matters of the Attorney General’s Office decided not to file a criminal complaint against the rest of the members of the Supreme Council.

9. Finally, on April 22, 2013, the Chief Military-Police Prosecutor filed an appeal for review in relation to the final resolution, before the Supreme Review Chamber of the Supreme Military-Police Court. The appeal indicated that on September 2, 2010 the new Military Criminal Code came into force, under which treason in times of peace will be punished with 20 years in prison; thus, the prosecutor requested that the new law be retrospectively applied in favor of the petitioner. Accordingly, on May 30, 2013, the Supreme Review Chamber of the Supreme Military-Police Court declared the appeal well-founded and reduced the punishment to fifteen years, nine months and four days in prison, a period that was fully served given that the petitioner had already served that time in prison. However, the petitioner still had to pay civil reparations and serve the additional punishment. Although the Supreme Military Court ordered that Mr. Palma Rodríguez be immediately released from prison, the petitioner alleges that, against his will and against the court’s ruling, he was held for 48 additional hours in the Chorrillos Military Prison, on the order of the Secretary of the Supreme Council of Military Justice, in reprisal for filing the present complaint before the IACHR and refusing to sign a document to withdraw this complaint.

10. The State, for its part, claims that the petitioner never controverted judicially the fact that the criminal proceedings against him were lodged before the military jurisdiction even though he had the procedural opportunity to do so. In regard to the alleged impossibility to exercise his right of defense in the proceedings before the military jurisdiction and the unsuitability of the defense counsel appointed, the State claims that the petitioner had the opportunity to complain about his counsel’s deficient performance, either in the preliminary statement or through any of the remedies presented. Concerning the allegation that Mr. Rodríguez had been sentenced in 24 hours, and the purported impossibility to submit evidence, the State alleges that from the date of issue of the resolution to open an investigation to the date of issue of the sentence, several days passed, and thus the petitioner and his defense counsel had time to undertake the steps they deemed convenient to protect their interests. Moreover, the State denies the fact that the

petitioner was subjected to a summary trial “in the theater of operations,” because the subject matter of the proceedings did not occur in a time of war.

11. The State submits that Mr. Palma Rodríguez’s allegations about the composition and the performance of the military courts are groundless; and that the petitioner has not been specific in regard to the type of reparation that he expects the State to grant him if it is found to be responsible for the alleged violations, and that he did not pursue any domestic remedy suitable for judicially obtaining compensation for a purported error on the basis of Law 24973. Thus, it asserts that Mr. Palma Rodríguez could have resorted to the civil jurisdiction to obtain compensation for damages, which is an accessible and possible remedy.

12. Furthermore, the State affirms that Mr. Palma Rodríguez never reported or proved his alleged arbitrary detention for 48 additional hours in the military prison where he had served punishment, as a measure to make him withdraw his complaint before the IACHR.

13. Likewise, the State indicates that the petition was filed beyond the period established in Article 46.1.b of the American Convention, since the final resolution in the domestic proceedings was the one issued on September 8, 1998 by the Supreme Council of Military Justice to settle the appeal lodged against the trial court’s decision, and not the resolution on the special appeal for review issued by the Supreme Council of Military Justice on April 18, 2008. In the State’s view, this delay exceeds a reasonable time; thus, it requests the IACHR to dismiss the petition. The State also claims that since the purported acts reported by the petitioner do not give rise to alleged violations of rights enshrined in the American Convention, the petition is groundless; and that, as a result, the petitioner intends to have the Commission work as a court of fourth instance.

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

14. In regard to the military criminal proceedings filed against the petitioner, the Commission observes that the petitioner lodged several remedies, both ordinary and special, and that the last one was a special appeal for review that the Supreme Council settled on April 18, 2008, notified on June 9, 2008. Additionally, the Commission notes that on May 30, 2013, the Supreme Council, based on an appeal for review filed by the Chief Military Prosecutor, decided to shorten the prison sentence imposed initially, as a result of which the petitioner was released. With respect to this, the Commission moreover believes that the judicial complaints filed by the petitioner completely refer to the alleged violations stemming from his detention and criminal prosecution, and that he does not submit a specific pleading concerning lack of compensation; therefore, the Commission considers that the remedies that should have been exhausted were basically those proper to the military criminal jurisdiction. Accordingly, in this case, it was not necessary that the petitioner exhaust the civil jurisdiction.

15. Concerning the requirement of timeliness, and in view of the State’s observation about the purported untimely presentation of this complaint, the Commission recalls that although in a case like the present, in principle, it may suffice that the alleged victim exhaust ordinary remedies, if they exhaust special remedies in the reasonable expectation that they will obtain a favorable result, then these should be deemed as validly exhausted remedies when determining the petition’s compliance with the admissibility requirements.⁴ In this regard, the Commission observes that the last judicial decision on the criminal proceedings undertaken against the alleged victim dates from May 30, 2013, and that the present complaint was received at the IACHR on December 9, 2008.

16. In view of the foregoing, the Inter-American Commission concludes that this petition meets the requirement of prior exhaustion of domestic remedies and of timeliness, set forth in Articles 46.1.a and 46.1.b of the American Convention.

⁴ IACHR, Report on Admissibility. P-585-08, Carlos Alfonso Fonseca Murillo, Ecuador, November 30, 2017, par. 17.

VII. ANALYSIS OF COLORABLE CLAIM

17. In this case, the Inter-American Commission observes that the pleadings submitted by the petitioner exclusively deal with the purported irregularities and violations of the right to a fair trial committed by the State in the framework of the military criminal proceedings he was subjected to on the charge of stealing military weapons for their illegal sale. In this regard, Mr. Palma Rodríguez emphasizes, in his communications to the IAHCR, that he lacked proper legal representation because he did not have the opportunity to meet the person that would be his defense counsel, or to meet him sometime, in particular, right before the trial court sentenced him to 25 years in prison. In addition, he refers to other purported violations of due process and an alleged interference with his right to file a petition before the IACHR.

18. The State, for its part, alleges, *inter alia*, that the petitioner did have proper legal representation and also the opportunity to challenge the purported deficient performance of the defense counsel appointed by the army; that it is false that he was subjected to a summary trial “in the theater of operations”; and that he never controverted or proved the alleged arbitrary detention for 48 hours after the court ordered his release.

19. Therefore, the Commission believes that if the facts reported by the petitioner are proved to be true, they may establish violations of the rights enshrined in Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 thereof, to the detriment of Mr. Palma Rodríguez.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 7, 8, and 25 of the American Convention, in connection with the obligations established in its Article 1.1; and

2. 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 in the city of Santo Domingo, Dominican Republic, on the 5th day of the month of May, 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.