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REPORT No. 207/19

PETITION 1377-08

REPORT ON ADMISSIBILITY

ELEAZAR SINCLAIR SOLDEVILLA MAGALLANES

PERU

Approved by the Commission on December 6, 2019.

Cite as: IACHR, Report No. 207/19, Petition 1377-08. In/Admissibility. Eleazar Sinclair Soldevilla Magallanes. December 6, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Eleazar Sinclair Soldevilla Magallanes
Alleged victim:	Eleazar Sinclair Soldevilla Magallanes
Respondent State:	Peru ¹
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), 11 (privacy), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ² in conjunction with Article 1.1 (obligation to respect rights) of the same instrument

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 1, 2008
Notification of the petition to the State:	October 27, 2014
State's first response:	January 26, 2015
Additional observations from the petitioner:	December 19, 2015 ⁴
Additional observations from the State:	June 16, 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 of ratification 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 8 (fair trial), 9 (freedom from Ex Post Facto laws), 25 (judicial protection) and 26 (progressive development) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, on December 1, 2008

V. FACTS ALLEGED

1. The petitioner, a policeman, alleges that he was arrested and tried for the offense of illegal drug trafficking on the basis of false evidence fabricated by the police, and that this accusation also served as

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussion or 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 The petitioner has also sent various briefs to the IACHR requesting information on the procedural progress of his petition, the last of which was received on November 15, 2017.

a basis for dismissing him from his position for the alleged commission of gross misconduct. He indicates that he was acquitted in the criminal proceedings, and that he filed an *amparo* to reverse his dismissal. However, he points out that the Peruvian State has violated his human rights because – in addition to his illegal detention and dismissal – it delayed the resolution of his *amparo* claim and denied payment of compensation despite having twice acknowledged that the administrative disciplinary proceedings had failed to satisfy due process.

2. With respect to his detention and criminal proceedings, he indicates that he was arrested on January 10, 1998, without an arrest warrant and without being caught *in flagrante* and that he was detained and held incommunicado. He asserts that the arresting police officers falsified a document alleging that the petitioner had been armed when arrested at the scene of the alleged events, and in the presence of a prosecutor. He claims that they also falsified the signature of the prosecutor allegedly present at his detention. He indicates that due to the forged document and another report -prepared on January 21, 1998, by one of the police officers who detained him- the prosecution mistakenly filed charges against the petitioner for the offense of illegal drug trafficking. The Specialized Court on Illegal Drug Trafficking of Maynas (hereinafter "the TID Court"), ordered an investigation be opened against him coupled with a detention order. The petitioner was taken to the Iquitos Prison on January 22, 1998. He argues that subsequently, the TID Court found irregularities in the decisions initiating the proceedings, and, on March 27, 1998, sent a copy of them to the prosecutor's office for an investigation into the forgery of signatures. On April 3, 1998, the petitioner was released unconditionally. On March 27, 2000, the Maynas Superior Criminal Drug Court acquitted the petitioner of the crime of illegal drug trafficking.

3. On the other hand, on January 9, 1999, the prosecution filed a complaint against the police officers who allegedly fabricated evidence for the offenses of falsifying public documents to the detriment of the State and the petitioner. On February 22, 1999, the Special Court for Tax and Customs Crimes of Maynas (hereinafter, "TA Court") opened an investigation against the accused. On August 26, 1999, the prosecution submitted indictments charging them with falsifying the signature of a prosecutor to the detriment of the petitioner and formally acknowledging that the prosecutor who had allegedly signed the falsified document confirmed that the signature on the document was not his. On November 30, 1999, the TA Court acquitted the accused on the grounds that there had been no malicious intent or injury caused.

4. With respect to the administrative procedure, the petitioner argues that on January 30, 1998, the Directorate of Investigations prepared a report, based on the false police documents, accusing him of committing gross misconduct. This report was submitted to the Permanent Investigation Council (hereinafter, "CPI"), which, according to its rules, should have collected his statement at the detention center where he was being held. However, he confirms that the CPI did not visit the jail and did not notify him to attend the hearing of the full session of the CPI. On February 2, 1998, the CPI decided that the petitioner had committed serious misconduct and recommended his compulsory retirement as a disciplinary measure. He reports that prior to this recommendation, the statute of limitations on his compulsory retirement expired due to the inaction of the Ministry of the Interior.

5. He argues that after obtaining his release in April 1998, he appeared before the National Intelligence Service in Lima, and that he placed himself at the disposal of the human resources department, where he returned to work. He states that he became aware of the existence of a draft resolution for his compulsory retirement as disciplinary measure and, on April 21, 1998, filed a motion with the Ministry of the Interior pointing out the existence of unverified evidence demonstrating the illegality of his detention; that police actions were doubtful; and that members of the police had been investigated for offenses of falsifying public documents by forging signatures and statements. He also noted that the legal time limit for the Ministry of the Interior to issue a resolution for his compulsory retirement had already expired. However, he indicates that on June 5, 1998, the Ministry of the Interior issued a resolution ordering the petitioner's retirement, a sanction coming into effect on June 23, 1998. On July 8, 1998, the petitioner filed a motion for reconsideration, subject to resolution by the Ministry of the Interior within a maximum period of 30 days. However the motion was only rejected on January 18, 2001.

6. On August 1, 2001, the petitioner filed an *amparo* claim, on his illegal detention and alleged that: i) during the administrative proceedings, his right to a defense had been violated; ii) a sanction was imposed upon him in violation of the principle of legality and the presumption of innocence; iii) his right to work had been violated; and iv) his right to the protection of honor and dignity had been violated. In his claim, he requested that the Ministry of the Interior's decisions ordering his retirement be declared inapplicable and that he be reinstated to the active service of the National Police of Peru at his rank of lieutenant. On June 25, 2004, the 64th Specialized Civil Court of Lima (hereinafter, "64th Civil Court") issued a judgment upholding his claim on the ground that his right of defense and the presumption of innocence had been violated and ordering the petitioner's reinstatement to his former position. After the Procurator had filed an appeal, on October 17, 2005, the First Superior Civil Chamber of Lima annulled this decision and remitted the proceedings to the 64th Civil Court.

7. On March 16, 2006, the 64th Civil Court again upheld his claim on the basis that the petitioner's right of defense and presumption of innocence had been violated. In view of the foregoing, it overturned the Ministry of the Interior's decisions and ordered the reinstatement of the petitioner to his former post. The Procurator's Office appealed this decision again, arguing that, in light of legislative changes and a Constitutional Court ruling in November 2005, the *amparo* motion could no longer be considered as an alternative remedy and, henceforth, it was not an adequate remedy when specific and equally satisfactory remedies for the protection of constitutional rights were available. On July 3, 2006, the First Superior Civil Chamber, taking into account the legislative changes, annulled the judgment of March 2006, declaring the case inadmissible and, by virtue of the principle of procedural economy and speed, ordered the immediate remission of the case file to a contentious administrative court.

8. On August 10, 2006, the petitioner filed a constitutional judicial review motion with the Constitutional Court, arguing violations of his right to due process within a reasonable time and a simple and prompt remedy. According to the petitioner, refusing to resolve the *litis* after 5 years of litigation, and remanding the case to a contentious administrative court for a new process, was nonsensical; especially taking into account that during the litigation he had already obtained two decisions upholding his claims and recognizing violations of his fundamental rights. On November 30, 2007, the Constitutional Court declared the motion without merit on the basis that the petitioner's rights had not been violated. This decision was served on him on June 3, 2008.

9. According to the petitioner, the alleged events violated the guarantees of due process, his personal freedom, his honor and dignity, equality before the law, his life project and protection against human rights violations. In relation to his honor and dignity, he argues that these were damaged because, despite having been declared innocent, he was unjustly dismissed from the police on the basis of the drug trafficking charges, violating the right of presumption of innocence.

10. As appears from Final Report No. 39- 98 of September 30, 1998, signed by the Specialized Judge in Proceedings for Illicit Drug Trafficking, the State, for its part, indicates that the petitioner's detention was lawful, on the basis of an anti-narcotics operation conducted jointly by a representative of the Public Prosecutor's Office and police personnel. In addition, it argues that during the criminal proceedings the petitioner did not contest his detention and failed to inform the authorities that it had been carried out illegally, without a judicial warrant and without his being *in flagrante delicto*. Similarly, the State emphasizes that the petitioner has failed to explain the circumstances of his incommunicado detention and whether the authorities were made aware of it. In light of the foregoing, the State argues that the petitioner has failed to exhaust the remedies regarding his detention in time to enable the State to rectify the situation. The State adds that despite this omission, the authorities released him after an investigation into the falsity of the evidence presented against the petitioner, and thus remedied any potential alleged violation.

11. With respect to the petitioner's request for compensation before the IACHR on the basis of his alleged illegal detention, the State argues that there has also been a failure to exhaust domestic remedies. In this regard, the State points out that the petitioner only mentioned the alleged illegality of his detention in his *amparo* motion, which sought to challenge his forced retirement from the police, and not an alleged

breach of the right to personal liberty. According to the State, in order to obtain compensation, it was necessary to file an action for damages to allow the national authorities the opportunity to analyze the issue.

12. According to the State, in his petition before the IACHR the petitioner alleges for the first time a violation of his right to equality before the law, without explaining the alleged breach. The State considers that this alleged violation should have been raised during the *amparo* motion and that, therefore, domestic remedies have not been exhausted with respect to an alleged lack of equality before the law.

13. On the other hand, in relation to the administrative disciplinary proceedings, the State points out that the disciplinary measure was a decision considered by several domestic instances, in accordance with established procedure, on an appropriate assessment of the evidence. In addition, it points out that the administrative proceedings differ in their nature to criminal proceedings and that a criminal acquittal does not necessarily lead to an acquittal in the administrative sphere. The State indicates that this was the position of the Constitutional Court's decision "in the final and definitive instance" on the *amparo* motion filed by the petitioner to challenge the disciplinary procedure. It argues that the petitioner is merely dissatisfied with the outcome of the administrative proceedings and is applying to the IACHR as a court of fourth instance.

14. Finally, the State argues that, despite allegations of a breach of his honor and dignity in the *amparo* motion, the petitioner has failed to substantiate an alleged violation and there are insufficient elements to determine a violation of the petitioner's honor and dignity.

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

15. With respect to the administrative sanction imposed on the petitioner, the IACHR observes that in his *amparo* motion, the petitioner alleged violations of the right to work, due process, the principle of legality, and a breach of his honor and dignity. Therefore, the IACHR considers that domestic remedies regarding the alleged violations of these rights were exhausted on June 3, 2008, the date on which the Constitutional Court served its November 30, 2007 decision on the constitutional judicial review motion filed by the petitioner. In light of the above, and given that the petition before the IACHR was received on December 1, 2008, the IACHR considers that, in this aspect, the petition fulfills the requirements of Articles 46(1)(a) and 46(1)(b) of the American Convention.

16. With respect to the petitioner's alleged illegal and incommunicado detention, on the one hand, he claims to have reported these allegations in his *amparo* motion. On the other hand, the State alleges that the petitioner failed to contest his detention and failed to explain the circumstances surrounding his incommunicado detention and whether it was brought to the attention of the authorities. The IACHR observes that in his *amparo* motion, the petitioner alleged that on January 10, 1998, he was arrested by personnel of the Tactical Anti-Narcotics Operations Unit, involved in an investigation into drug trafficking offenses, and that he was held unconstitutionally in incommunicado detention, without a judicial warrant, nor being *in flagrante delicto*, with a falsified personal registry document. In view of the foregoing, the IACHR considers that this claim was also exhausted in the context of the *amparo* action and that this element of the petition also satisfies the requirements of Articles 46(1)(a) and 46(1)(b) of the American Convention.

17. In relation to the alleged lack of equality before the law, the State argues that the petitioner has failed to explain its alleged breach and failed to do so in his *amparo* motion. The petitioner asserts that the alleged violation was raised in the legal pleadings of his *amparo* motion, where he argued violations of Article 30 of the Universal Declaration of Human Rights, Articles 5 and 46 of the International Covenant on Civil and Political Rights and Articles 8 and 29 of the American Convention guaranteeing equality before the law. In addition, he alleges that, even in the event of incomplete claims in his *amparo*, the allegation is a natural consequence thereof. However, from an overview of the *amparo*, it appears that the petitioner failed to invoke the articles of these treaties protecting equality before the law and it does not necessarily follow from his arguments that the petitioner has alleged discriminatory treatment and/or a lack of equality before the law. Therefore, the IACHR considers that the alleged violation was not raised in domestic law, and that this aspect of the petition fails to fulfill the requirement of Article 46(1)(a) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

18. The IACHR considers that the events alleged in relation to the duration of the domestic proceedings and the violations of due process – i.e. the alleged violation of the right of defense and the presumption of innocence, which were accepted at first instance but apparently not addressed on further appeal - if proven, could characterize a violation of the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention in conjunction with Article 1.1 of the same instrument. Likewise, the IACHR considers it necessary to analyze at the merits stage whether the administrative sanction imposed on the petitioner was applied in accordance with Article 9 (freedom from Ex Post Facto laws) of the Convention. In addition, the Commission will also analyze at the merits stage whether the alleged violation of the right to work could characterize a violation of Article 26 of the American Convention.

19. On the other hand, the IACHR considers that the petitioner has failed to present sufficient elements to determine a possible violation of Article 11 (right to privacy) of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8, 9, 25 and 26 of the American Convention in conjunction with Article 1.1 of the same instrument;

2. To find the instant petition inadmissible in relation to Articles 11 and 24 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 6th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.