

OEA/Ser.L/V/II.
Doc. 97
6 June 2019
Original: Spanish

REPORT No. 88/19
PETITION 582-08
REPORT ON ADMISSIBILITY

JOSÉ ALFREDO VELÁSQUEZ RÍOS
PERU

Approved electronically by the Commission on June 6, 2019.

Cite as: IACHR, Report No. 88/19, Petition 582-08. Admissibility. [José Alfredo Velázquez Ríos. Peru. June 6, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Alfredo Velásquez Ríos and Alberto de Paz Izaguirre ¹
Alleged victim:	José Alfredo Velásquez Ríos ²
Respondent State:	Peru
Rights invoked:	Articles 7 (right to personal liberty), 8 (right to a fair trial), 10 (right to compensation), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	May 22, 2008
Additional information received at the stage of initial review:	December 22, 2008; July 23, August 27, and September 8, 2009; June 4, 2012
Notification of the petition to the State:	March 25, 2013
State's first response:	July 25, 2013
Additional observations from the petitioner:	April 1, 2014 ⁵
Additional observations from the State:	None

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 (instrument of ratification deposited 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 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention in connection with Article 1(1) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Alberto de Paz Izaguirre appears as legal representative of José Alfredo Velásquez Ríos as of April 1, 2014.

² Pursuant to 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 the discussion or the decision on this case.

³ Hereinafter "the American Convention" or "the Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ The petitioner has also communicated at various times with the IACHR to request information on the status of the petition, most recently on November 26, 2017.

V. ALLEGED FACTS

1. The petition alleges that the Peruvian State is responsible for violating the human rights of Mr. José Alfredo Velásquez Ríos (hereinafter “the alleged victim” or “Mr. Velásquez”) for having convicted him in violation of due process guarantees.

2. According to the petitioners, the alleged victim was detained on April 4, 2002, for illicit drug trafficking, and he decided to cooperate with the authorities to avail himself of the procedural benefit of exemption from prison established in Legislative Decree No. 824.⁶ The petitioners indicate that, pursuant to the regulations governing the prison exemption, Mr. Velásquez, in the presence of his defense counsel and a representative of the Public Prosecutor’s Office, at a police facility, admitted the acts of which he had been accused. The petitioners state that in parallel to the criminal case, a proceeding was initiated on the issue of exemption from prison, in which Mr. Velásquez provided information that enabled the seizure of drugs, revealed the infrastructure of an international drug trafficking organization, and led to the arrest of the organization’s members.

3. The petitioners maintain that based on the alleged victim’s cooperation, the First Provincial Prosecutor’s Office Specialized in Illicit Drug Trafficking provided a favorable opinion regarding the benefit of exemption from prison, and the Fourth Criminal Court of the Superior Court of Callao declared that the benefit was applicable. However, the petitioners state that on September 8, 2003, the Second Criminal Chamber of the Superior Court of Callao (hereinafter “the Second Superior Criminal Chamber”), with Judge Cesar José Hinostroza Pariachi presiding (hereinafter “Judge Hinostroza”), declared that the exemption from prison did not apply, because the judge found that the information provided by the alleged victim had not led to the capture of individuals who appeared to be leaders of a criminal organization, a requirement established in Legislative Decree No. 824. The petitioners state that this was challenged by means of an action seeking annulment of the decision (*recurso de nulidad*), and on February 14, 2005, the Supreme Court declared that the decision of September 8, 2003, would not be annulled.

4. Parallel to that, the main case against the alleged victim and other codefendants continued. According to the petitioners, in October 2004 Judge Hinostroza, acting as Chief Judge of the First Criminal Chamber of the Superior Court of Callao (hereinafter “the First Superior Criminal Chamber”) decided to elevate the case to oral proceedings. The petitioners claim that this judge not only had presided over the Second Superior Criminal Chamber when that body declared that the benefit of exemption from prison did not apply; he had also acted in the main case as a legal representative of one of the individuals accused of the crime of drug trafficking in the same case. They maintain that the judge himself asked to be recused due to his previous role as a legal representative and that the other members of the First Superior Criminal Chamber did not accept his recusal.⁷

5. On November 5, 2004, the First Superior Criminal Chamber, with Judge Hinostroza participating, issued its ruling. In their ruling, the judges observed that Mr. Velásquez had elected not to testify during the judicial phase of the case and that his application for exemption from prison was pending resolution. Despite that, the First Superior Criminal Chamber deemed that the main case could not be held up while the request for exemption from prison was resolved. Based on the confession the alleged victim had given the police, he was convicted and sentenced to 12 years in prison. An appeal to have that decision annulled was rejected by the Second Transitory Criminal Chamber of the Supreme Court on December 22, 2004.

6. According to information provided by the petitioners and publicly available information, a series of *habeas corpus* petitions were filed challenging the decision that found the benefit of exemption from prison inapplicable and the decision that convicted the alleged victim of drug trafficking, on grounds that these rulings had violated the alleged victim’s human rights. Along these lines, in 2005 the alleged victim filed a *habeas corpus* petition against the judges of the First Superior Criminal Chamber and the justices of the

⁶ “Law on Combating Illicit Drug Trafficking.”

⁷ According to publicly available information, in reaching this conclusion the other judges took into account the fact that the person Judge Hinostroza had assisted was not charged, nor was he been summoned to give testimony in the oral proceedings.

Supreme Court, on grounds that they had violated his rights in determining his criminal responsibility while his application for exemption from prison was still pending and in having used his statement to the police against him. According to the petitioners, the conviction of the alleged victim based on his confession to the police violates his human rights, first because his confession was given in accordance with Article 5 of Supreme Decree No. 08-98-JUS, which requires an accused to confess to be able to claim the benefit of exemption from prison,⁸ and second because under the terms of Article 26 of Legislative Decree No. 824, the confession could not be used against him once his request for exemption from prison was rejected.⁹

7. The petitioners report that this petition was stalled for two years by Judge Elizabeth Castillo Colan (hereinafter “Judge Castillo”) and that, in response to the lack of procedural activity, in January 2007 the alleged victim filed a *habeas corpus* petition and a complaint against this judge. On May 31, 2007, the Third Criminal Chamber of the Superior Court of Callao resolved the *habeas corpus* and ordered the judge to issue a decision on the *habeas corpus* petition the alleged victim had filed in 2005. Meanwhile, the alleged victim’s complaint was taken up by the Decentralized Office of Judiciary Oversight of Callao and decided in his favor. The judge appealed that decision, and the appeal had not yet been resolved when the petitioners filed their petition with the IACHR in 2008.

8. In compliance with the decision of the Third Criminal Chamber of the Superior Court of Callao, Judge Castillo ruled on the *habeas corpus* petition, finding against the claims of the alleged victim. After the filing of an appeal and later a claim of constitutional harm, the *habeas corpus* petition reached the Constitutional Court. On November 20, 2007, that court rejected the appeal after finding that the alleged victim had given his statement to the police spontaneously and freely, in the presence of his legal representative, when an application for exemption from prison did not yet exist, and that therefore the statement could be part of the body of evidence in the main case.

9. Additionally, it is clear from publicly available information that on June 14, 2010, the alleged victim filed a *habeas corpus* petition seeking an annulment of his conviction and of the decision rejecting the benefit of exemption from prison, on grounds that Judge Hinostrroza had participated in both decisions and that the judge had acted as a legal representative of another person accused in the main case. On September 12, 2011, the Constitutional Court rejected this claim because it found, among other things, that: i) Judge Hinostrroza had only represented someone outside the criminal proceedings, during the investigative phase; ii) the judge sought to recuse himself during the main case based on his previous participation and the other judges of the First Superior Criminal Chamber rejected his request because no charges were brought against the person he had assisted and that person was not called on to testify in the oral proceedings; iii) the legal representatives of all the codefendants had the opportunity to express their opinions on the recusal and they did not do so before the decision to reject the judge’s request for recusal; and iv) in his appeal to annul the decision the alleged victim did not call Judge Hinostrroza’s participation into question.

10. The petitioners claim that these facts, along with the delay in resolving the cases, constitute violations of the rights established in Articles 8 and 25 of the American Convention. They add that the alleged victim’s right to liberty has also been violated.

11. For its part, the State holds that the facts that are alleged do not tend to establish violations of the alleged victim’s human rights and that the Commission is not a court of appeals or one that reviews judicial proceedings when these have been carried out through due process.

⁸ In this regard, Article 5 of Supreme Decree 08-98-JUS indicates the following: “A person who is detained or who turns himself in voluntarily to the police authority specialized in illicit drug trafficking and seeks to avail himself of the benefit of Exemption from Prison must first admit to the acts in which he may have participated or that may be involved in the commission of the crime of illicit drug trafficking. This statement shall be taken with all the formalities of law and shall form part of the main proceedings, with care being taken not to reveal the request for the benefit.

⁹ In this regard, Article 26 of Legislative Decree No. 824 indicates: “When the response to the agent’s request is not favorable due to a lack of evidence, the statements and means afforded shall be considered nonexistent and may not be used against him.”

12. The State claims that the alleged victim has had access in domestic courts to the regular time periods and channels required by the justice system to assert his right to a defense with full respect for due process, and that he now comes before the IACHR as a court of fourth instance.

13. The State further affirms that the right to personal liberty is not absolute but rather is subject to restrictions adapted to cases and proceedings duly established by law. In this sense, the State maintains that the deprivation of liberty of the alleged victim was legal based on Peruvian law and that there was no illegality or arbitrariness involved.

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

14. First, in terms of the alleged violation of the human rights of Mr. Velásquez based on the purported illegality of his statement to the police being used as the basis for his conviction, the IACHR notes that the alleged victim filed an appeal seeking to have the decision annulled and a *habeas corpus* petition to challenge the use of that statement. According to information provided by the parties, the *habeas corpus* was decided on November 20, 2007, the date on which the remedies related to this claim were exhausted, which meets the requirement established in Article 46(1)(a) of the American Convention. The petition dated May 9, 2008, was sent to the IACHR via the postal service and was received at the IACHR on May 22, 2008. In line with the IACHR's practice in these matters, considering the days that elapsed while the petition was in the mail, the Commission considers that the petition was lodged in a timely manner, and therefore the requirement established in Article 46(1)(b) of the American Convention has also been met.¹⁰

15. Second, in terms of the supposed lack of impartiality based on the participation of Judge Hinostroza in various proceedings and in different capacities, the IACHR notes that, according to publicly available information, on September 12, 2011, the Constitutional Court declared that the *habeas corpus* petition that the alleged victim had filed to challenge Judge Hinostroza's participation was inadmissible; this exhausted the domestic remedies available with regard to this claim. Given that fact and considering that the remedies were exhausted while the petition was already under review by the IACHR, the Commission finds that the petition also meets the requirements established in Articles 46(1)(a) and 46(1)(b) of the American Convention on this point

VII. ANALYSIS OF COLORABLE CLAIM

16. Based on the information presented by the parties, the IACHR believes it is relevant to examine, in the merits stage, whether Judge Hinostroza's participation as a judge in the main case and in the ancillary case related to exemption from prison, as well as his participation as a legal representative of someone who gave testimony in the main case, has been in line with the judicial guarantees established in Article 8 (right to a fair trial) of the American Convention. In other words, during the merits stage the IACHR will examine whether this judge's participation in various proceedings meets the standards of the inter-American human rights system related to due process, specifically the right to be tried by an impartial tribunal. Similarly, in the merits stage the IACHR will also examine whether the alleged victim's police statement has been used in line with judicial guarantees. The IACHR also believes that the alleged delay in resolving the case related to exemption from prison, as well as the alleged harm created by this delay, if proved, could constitute a violation of Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention.

17. Additionally, in the merits stage the IACHR will also examine whether the alleged violations of due process, if proved, could have resulted in a violation of the right established in Article 7 (right to personal liberty) to the detriment of Mr. Velásquez.

¹⁰ IACHR. Report No. 173/17, Petition 1111-08. Admissibility. Marcela Brenda Iglesias, Nora Ester Ribaldo, and Eduardo Rubén Iglesias. Argentina. December 29, 2017, para. 8.

18. On the other hand, the IACHR finds that the petitioners have not provided sufficient information to show, *prima facie*, a possible violation of the right established in Article 24 (right to equal protection) of the Convention.

19. Finally, with respect to the State's fourth-instance argument, the Commission notes that in admitting this petition it does not seek to supplant the jurisdiction of the domestic judicial authorities. Rather, in the merits stage of this petition, the Commission will examine whether the domestic judicial proceedings complied with the guarantees of due process of law and judicial protection and offered due guarantees of access to justice for the alleged victims under the terms of the American Convention.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 7, 8, and 25 of the American Convention in connection with Article 1(1) thereof;
2. To declare this petition inadmissible in relation to Article 24 of the Convention; and
3. To notify the parties of this decision; continue with the analysis on the merits of the matter; and publish this decision and include it in the Commission's 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 June, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García (dissenting opinion), First Vice President; Antonia Urrejola, Second Vice President; Margaret May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.