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REPORT No. 30/19
PETITION 754-08
REPORT ON ADMISSIBILITY

ROGELIO TORRES SUÁREZ
PERU

Electronically approved by the Commission on March 29, 2019.

Cite as: IACHR, Report No. 30/19. Petition 754-08. Admissibility. Rogelio Torres Suárez. Peru.
March 29, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rogelio Torres Suárez
Alleged victim:	Rogelio Torres Suárez
Respondent State:	Peru ¹
Rights invoked:	No articles from the American Convention on Human Rights, ² but other international treaties mentioned ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	June 19, 2008
Additional information received at the stage of initial review:	October 3, 2016
Notification of the petition to the State:	October 25, 2016
State's first response:	January 25, 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 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>:	Partly, under the terms of Section VII
Rights declared admissible	Articles 5 (humane treatment), 8 (fair trial), 21 (property), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, regarding its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception established in Article 46.2.c of the Convention applicable
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. Mr. Rogelio Torres Suárez (“the petitioner” or “the alleged victim”) worked at the Judiciary from October 22, 1969 until July 12, 2001, when the National Council of the Magistracy did not confirm him in the office of Superior Member of the Judicial District of Junín. Because of the termination of his contract, the Judiciary’s Office for Staff and Category Management awarded to him a monthly pension of 6,507.07 Soles⁵ payable as of July 12, 2001 (Resolution No. 793-2002-GPEJ-GG-PJ of the Judiciary’s Office for Staff and Category Management) and 195,152.10 Soles compensation for length of service.

2. The petitioner indicates that, since attaining his pensioner status, he has received only 3,489.38 Soles monthly, while a monthly difference of 3,015.69 Soles of the awarded pension has not been

¹ In accordance with 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.

² Hereinafter “Convention” or “American Convention.”

³ Universal Declaration of Human Rights. Articles 7 (equality before the law), 22 (social security) and 25 (adequate standard of living).

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

⁵ In 2001, the exchange rate was approximately 3,490 Soles to 1 dollar.

paid. Consequently, he filed a complaint and on October 4, 2002, a court ruled in his favor by ordering the settlement of his unpaid pension and the payment of the full amount of his severance pay. He also indicates that, since he had not received the compensation for length of service, he filed an “acción de cumplimiento” with the Sixth Civil Chamber of the Superior Court of Justice of Lima. By a resolution of January 14, 2003, said Court ordered the payment of the remainder of 195,152.10 Soles. By Notifications No. 602-2003-BP-SRB-GPEJ-GG-PJ of April 14, 2003, and 681-2003-BP-SRB-GPEJ-GG-PJ of May 7, 2003, the Head of the Judiciary’s Office for Staff and Category Management notified the petitioner that, in accordance with Supreme Decree No. 175-2002-EF, the payments established in those resolutions would be made in 2004 because it was impossible for it to include them in that budgetary period. He adds that, as the lack of payment persisted, he filed a petition for an administrative execution proceeding before the Labor Court of Huancayo. On January 3, 2008, said Court issued a resolution ordering the Judiciary to adjust Mr. Torres Suárez’s severance pay and to settle the full amount of his unpaid pension.

3. In his last communication, from September 21, 2016, the petitioner alleges that despite the final decisions in his favor, the State has failed to make all the payments, as the settlement of a part of his unpaid pension is pending. He also submits that the State has tried to justify its non-compliance with the payments by applying non-retroactive budgetary provisions that do not apply to the payment of social benefits. He further argues that such lack of pension income has affected his capacity to financially support his family and to care for his and his wife’s health.

4. Furthermore, on October 14, 2003, the petitioner presented to the IACHR petition P-847-03, concerning human rights violations committed by the State in the context of his non-confirmation, a petition processed together with petition P-119-03, dated February 7, 2003. By a friendly settlement agreement, R.S. No. 261-2005-JUS, approved by the Commission,⁶ the State recognized that the proceeding leading to the termination of the petitioner’s contract “*did not include certain guarantees of Effective Procedural Safeguards, particularly the requirement that a resolution should state the grounds.*” Under this agreement, the State pledged “*to recognize the period of service not worked, counted from the date of the Resolution of non-reconfirmation, in calculating duration of service, retirement, and other applicable employment benefits under Peruvian law*” and recognized the petitioner’s right to recourse in the domestic venue to claim any applicable compensation.

5. The petitioner indicates that on April 20, 2006, under the friendly settlement agreement, the National Council of the Magistracy issued a decision that revoked the judgment establishing his non-confirmation and ordered the Judiciary to reinstate him to his previous office. Nevertheless, it was impossible to reinstate him because, by the time the court ordered his reinstatement, he had exceeded magistrates’ legal age limit of 70. He submits that he sent a letter to the president of the Superior Court of Junín seeking that the court rules his reinstatement and, subsequently, the termination of his contract on the grounds of his age, which remains unanswered. Besides, he alleges that he seeks his reinstatement and the subsequent termination of his contract to receive an upward adjustment in both his severance pay and his compensation for length of service, because superior members’ salary almost doubled in the months following his wrongful termination.

6. Finally, he indicates that on October 15, 2007, he lodged a claim for damages against the State, the National Council of the Magistracy, the Judiciary and the Constitutional Court on the grounds of wrongful termination of contract and non-compliance with the friendly settlement agreement. The Fourth Civil Court of Lima admitted said complaint; however, he alleges that in more than 10 years said Court has not issued a decision.

⁶IACHR, Friendly Settlement, Report No. 50/06, Petition 711-01 et al. (Miguel Grimaldo Castañeda Sánchez *et al.*). Peru, March 15, 2006, paras. 107-108 (Facts claimed, Process before the IACHR: D. Petitioners who signed the Friendly Settlement Agreement on February 10, 2006), 127 (Determination of compatibility and compliance) and 4 (Decision) <http://www.cidh.oas.org/annualrep/2006eng/Peru.711.01eng.htm>

7. For its part, the State considers that the instant petition must be declared inadmissible because it does not meet the requirements concerning the prior exhaustion of domestic remedies, timeliness and colorable claim (Articles 46.1 and 47 of the American Convention).

8. The State contends that the petitioner has failed to present in the domestic venue his claims regarding the alleged wrongful and incorrect retroactive application of budgetary norms; that, therefore, he has not exhausted domestic remedies on this aspect. It also argues that he has not exhausted domestic remedies regarding his claim for damages because authorities have not ruled on that claim yet. As for the purported delay in the resolution of said claim, it alleges that he has not filed an amparo action, which would be the appropriate mechanism to protect his right to due process. It cites, by way of an example, a case where the Constitutional Court granted protection measures regarding the right to reasonable period through an amparo action [Case file No. 06390-2006-A.A.].

9. Regarding the petitioner's request to be reinstated and dismissed, the State affirms that decisions have been made. First, by the Third Superior Chamber of the Superior Court of Junín, which dismissed the petition by a resolution dated May 30, 2006; then, by the President of the Superior Court of Junín, who rejected the petitioner's appeal for review by a resolution of September 19, 2006; and finally, by the Executive Council of the Judiciary, which heard the case in second instance and upheld the resolution by a judgment of May 21, 2009. Additionally, it argues that the petitioner has failed to exhaust available domestic remedies, namely, the extraordinary recourse of an amparo action or an administrative proceeding.

10. Concerning the requirement of timeliness, the State alleges that there is no proof or element submitted by the petitioner to indicate that he filed it within the six months period.

11. Lastly, the State claims that the dismissal of the petitioner's request for reinstatement and dismissal does not violate his rights, as the authorities based their decision on the applicable laws and the petitioner's age. It further indicates that said rejection does not affect his right to a pension and compensation for length of service, which has already been recognized. As for the alleged unpaid amount given the incomplete payment of his pension, the State argues that the petitioner has not proved that the situation described in his petition to the IACHR persists; that, therefore, there is nothing to indicate a violation of his rights.

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

12. As for the part of the petition referring to the claim for damages, it was filed on October 15, 2007, and, according to the information on the case file, in more than 10 years there has been no judgment. The State argues that the petitioner has not exhausted the remedy of an amparo action to obtain protection of his right to a receive a decision within a reasonable period and refers to cases in which said remedy was successfully used to address situations similar to that presented by the petitioner. However, the State does not mention reasons attributable to the petitioner that could have delayed the resolution of his claim.

13. The Commission deems that filing an amparo action regarding a situation of procedural delay would constitute an extraordinary remedy. The Commission has held that, generally, the only remedies that petitioners need to exhaust are the ordinary, not the extraordinary, remedies.⁷ Although in some cases the Commission may consider it necessary to exhaust extraordinary remedies, given the circumstances of the case and the elapsed time, the Commission finds that the petitioner does need not to exhaust an amparo action. As a result, given the time elapsed since the filing of the claim, the lack of resolution, and the lack of elements that indicate that the delay is attributable to the petitioner, the Commission concludes that the exception to the requirement of prior exhaustion of domestic remedies established in Article 46.2.c of the American Convention applies to this case.

⁷ IACHR, Report No. 51/03. Petition 11819. Admissibility. Christian Daniel Domínguez Domenichetti, October 24, 2003, par. 45.

14. As for the lack of compliance with the judgments regarding the petitioner's unpaid pension amounts and the adjustment of his pension, the decisions that ruled these payments date from October 4, 2002, January 14, 2003, and January 3, 2008. If it is proven that non-compliance persists, more than 10 years will have passed since the issuance of those judgments without them having been complied with. As it has previously established, the Commission deems that, given the characteristics of the instant petition, the exception set forth in Article 46.2.c of the American Convention applies to this case.⁸

15. Regarding the purported illicit and incorrect application of budgetary norms, and the rejection of the petitioner's request for reinstatement and dismissal, the Commission will not continue with the analysis of these issues within the instant petition; therefore, it is unnecessary to examine the exhaustion of domestic remedies concerning them.

16. With respect to the requirement of timeliness, under Article 32 of its Rules of Procedure, upon deciding to apply the exception established in Article 46.2.c of the Convention, the Commission must examine if the petition was filed within a reasonable time considering the circumstances of the matter. Considering the time elapsed since the courts ordered the payments in favor of the petitioner and the time since he filed his claim for damages, the Commission finds that the instant petition was filed within a reasonable time.

VII. ANALYSIS OF COLORABLE CLAIM

17. The Commission considers that the petitioner's claims about the State's lack of compliance with the judgments in his favor for more than 10 years since they were issued and the lack of pronouncement on his claim for damages for more than 10 years since he filed it, if proven, may establish violations of Article 5 (humane treatment), 8 (fair trial), 21 (property), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

18. Regarding the petitioner's claim about the Judiciary's alleged wrongful and incorrect retroactive application of budgetary norms, the Commission believes that it is not competent to analyze whether it was possible for that institution, under its budgetary rules, to make the payments established by the courts. The analysis by the Commission will only determine whether the State violated the petitioner's human rights.

19. Concerning his request for reinstatement and dismissal, the State has proven that the competent authorities have already adjudicated on that, although their decision was contrary to the petitioner's interests. The Commission believes that the petitioner's claims do not establish other human rights violations, but the possible lack of reparation of a violation already recognized by the State (the wrongful termination of the petitioner's contract) or the lack of compliance with the friendly settlement agreement entered by the petitioner and the State and approved by the Commission. Therefore, the Commission will consider this part of the petition as part of its follow up to the friendly settlement agreement approved by Report No. 50/06 and not within the factual framework of the report on the merits of the instant petition.

VIII. DECISION

1. To find the instant petition admissible regarding Articles 5, 8, 21, 25 and 26 of the American Convention, in relation to its Articles 1.1 and 2;

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.

⁸ IACHR, Report No. 18/17. Admissibility. Ana Luisa Ontiveros López. Mexico. January 27, 2017, par. 7.

Approved by the Inter-American Commission on Human Rights on the 29th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.