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REPORT No. 109/20
PETITION 1079-09
REPORT ON ADMISSIBILITY

ALEJANDRO ANTONIO TORRES TORO
PERU

Approved electronically by the Commission on April 24, 2020.

Cite as: IACHR, Report No. 109/20. Petition 1079-09. Admissibility. Alejandro Antonio Torre Toro. Peru. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Alejandro Antonio Torres Toro
Alleged victim:	Alejandro Antonio Torres Toro
State denounced:	Peru ¹
Rights invoked:	Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, ² in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; Article XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man, ³ and other international treaties ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	August 28, 2009
Notification of the petition to the State:	April 7, 2017
State's first response:	July 7, 2017
Additional observations from the petitioner:	November 30, 2009; February 28, 2013; February 14 and December 28, 2017
Additional observations from the State:	June 19, 2018

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 8 (right to a fair trial), 23 (right to participate in government), 25 (right to judicial protection), and 26 (economic social and cultural rights) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, March 17, 2009
Timeliness of the petition:	Yes, pursuant to Chapter VI

¹ In accordance with 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 decision on this matter.

² Hereinafter "American Convention" or "Convention."

³ Hereinafter "American Declaration" or "Declaration."

⁴ Articles 3 and 14 of the International Covenant on Civil and Political Rights

Article 8 of the Universal Declaration of Human Rights

⁵ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner denounces alleged violations of his human rights, claiming that he was removed unjustifiably from his position as a criminal judge, through improper proceedings, and without access to effective legal protection, due to a judicial decision he issued in the course of his duties.

2. He states that when he was a substitute judge of the Specialized Criminal Court of the Rioja Province under the San Martín Superior Court, he heard a motion for pretrial release filed by a defendant charged with aggravated theft. At first, the petitioner temporarily denied the motion because the defendant had not submitted his identification or his criminal record. After those documents were presented, the petitioner considered it appropriate to grant his release on the same case record. The Office of the Public Prosecutor appealed that decision, arguing that the motion should have been filed again as a new case. On March 22, 2001, the Criminal Chamber of the San Martín Superior Court of Justice ruled on the appeal, deciding to revoke the defendant's release and order that copies of the petitioner's record of proceedings be sent to the District Judicial Oversight Body of the San Martín Superior Court of Justice (ODICMA).

3. The petitioner alleges that through a decision issued on May 11, 2001, he was sanctioned by ODICMA with a fine of 10% of his judicial salary. The finding concluded that the decision to grant pretrial release was improper and violated the Criminal Procedural Code. Consequently, the petitioner filed an appeal with the Office of Judicial Oversight (OCMA). On January 23, 2002, OCMA, distorting the nature of his motion, decided the appeal by suggesting that the Supreme Court of Justice temporarily suspend him and request that the National Judicial Council (CNM) remove him from the bench. He alleges that OCMA violated Law 27,444 on Administrative Proceedings, Article 237(3), which states that, "When a sanctioned offender files a motion to appeal or challenge a finding, the decision on said motion shall not carry the imposition of more severe sanctions on such person."

4. The petitioner states that the Supreme Court of Justice sent the information to the CNM, which initiated disciplinary administrative proceedings against him and, on September 16, 2002, decided to return the record of proceedings to the Supreme Court of Justice for it to rule on the appealed fine. On January 18, 2003, OCMA decided to set aside its decision of January 23, 2002, overturn the fine, and propose again that the Supreme Court of Justice suspend him provisionally and request that the CNM remove him from the bench. Accordingly, the Supreme Court of Justice once again sent a removal request to the CNM, where a second administrative proceeding was opened on the same set of facts as the prior proceedings. According to the petitioner, he informed the CNM that administrative proceedings were already underway and requested that the two be joined. On September 24, 2003, the CNM decided to remove the petitioner from his position due to conduct unbecoming. The petitioner filed a motion for reconsideration, which he states was denied on January 20, 2004, before the CNM had considered the new evidence he had submitted.

5. The petitioner states that he filed a motion for a writ of amparo, requesting that the decisions issued against him on January 23, 2002, and January 18, 2003, by OCMA, on June 25, 2002, and March 27, 2003, by the CNM, and on May 11, 2001, by ODICMA be overturned, as they violated his constitutional rights to work, due process, honor, and effective legal protection. On January 4, 2006, the 54th Specialized Civil Court of Lima denied the motion on the grounds that a violation of the invoked rights had not been proven. According to the petitioner, this decision was made based on incomplete information, given that the CNM had not sent the full disciplinary case files. The petitioner filed an appeal against that decision, which was denied on June 4, 2007, by the Third Civil Chamber of the Lima Superior Court of Justice. He then filed a constitutional appeal, which was denied by the Second Chamber of the Constitutional Court on December 11, 2008, on the basis that the CNM's findings were unchallengeable, since it had established a legal basis for its findings and given the petitioner a hearing. The petitioner believes that this decision was unfounded because the Court limited itself to confirming the CNM's removal power without justifying why the arguments presented on the violation of the principles of *non bis in ídem* and *no reformatio in peius* were without merit.

6. The Office of the Attorney General decided to open an investigation against the petitioner for the alleged crimes of malfeasance and concealment, which the petitioner states was declared unfounded on April 3, 2006, on the grounds that the acts in question did not amount to a crime, but to serious conduct unbecoming without criminal intent.

7. The petitioner alleges that his human rights have been violated as a result of his removal over mere disagreement on the part of the authorities with a finding he issued regarding a procedural matter (i.e. if he could grant pretrial release on the same case record or if the defendant was required to refile his motion). He points out that his finding was consistent with the principle of procedural economy and the protection of the defendant's rights. He also believes that his right against double jeopardy was violated, given that two disciplinary proceedings were opened against him for the same conduct, and, when he appealed a sanction, he received a more severe sanction than the one he had appealed, in violation of the law. Furthermore, he maintains that his right to effective legal protection was violated, since none of the courts that heard his motions decided on his claims regarding violations of *non bis in idem* and *no reformatio in peius*, or provided any rationale as to why they were unfounded. He also holds that his right to due process was violated, given that, despite his asking that the complete case files be requested, all of the courts that heard his motions issued findings based solely on incomplete copies sent by the CNM. He stresses that his improper removal has prevented him from applying to be an appeals court justice, serving as a university professor, and holding public office. Lastly, he maintains that domestic remedies were exhausted with the decision handed down by the Constitutional Court on his appeal, of which he received notification on March 17, 2009.

8. The State, for its part, holds that the alleged facts do not constitute human rights violations because: (i) the Inter-American Commission on Human Rights (IACHR) lacks competence *materiae* to hear cases involving violations of the right to work, as the American Convention neither provides for nor protects this right; (ii) there were not two sanctions proceedings against the petitioner for the same conduct; the finding of January 22, 2004, indicates that the records of the initial disciplinary proceedings were returned and a sanction was not imposed, thus, the proceedings are not underway as the petitioner incorrectly states; (iii) the petitioner has had the opportunity to present all remedies, memorandums, and exhibits that he wishes at judicial and administrative proceedings, as demonstrated by the hearing on August 19, 2003, and the petitioner's statement in disciplinary proceedings; and (iv) the petitioner inappropriately seeks to have the Commission act as a fourth instance of jurisdiction and replace the domestic courts' evaluation of the facts with its own.

9. The State also holds that neither the decisions of first and second instance, nor the Constitutional Court decisions, reflect that the petitioner mentioned in his memorandums that the CNM had provided blurry and incomplete copies of the administrative case files from disciplinary proceedings. The State considers that the petitioner cannot raise that argument if he did not do so at the domestic stage. It also argues that the alleged victim has not exhausted domestic remedies, since he has not filed an administrative action against the abovementioned findings. He could have filed a new claim in administrative court. Also, as he has stated that the Office of the Public Prosecutor has a case against him, he could challenge his legal situation before that entity. Under that assumption, he has not exhausted all domestic remedies.

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

10. The Commission notes the petitioner's claim that domestic remedies were exhausted with the decision issued by the Constitutional Court on his constitutional appeal, of which he received notification on March 17, 2009. It also notes the State's argument that domestic remedies have not been exhausted because the petitioner has not pursued the contentious administrative jurisdictions, and because the Office of the Public Prosecutor's case against him is still underway.

11. The petitioner's claims concern possible violations of human and constitutional rights during the process that lead to his removal. The Commission considers that the Constitutional Court was the ideal venue to resolve these claims domestically and, as such, its decision on the alleged victim's constitutional appeal was the final one regarding his removal. The petitioner was notified of that decision on March 17, 2009, and the petition filed with the Commission was received on August 28, 2009. Accordingly, the Commission finds

that the petition fulfills the requirements provided for in Articles 46.1(a) and 46.1(b) of the American Convention.

12. Regarding the claim that the petitioner failed to pursue the contentious administrative jurisdiction, the IACHR has previously established that the requirement to exhaust domestic remedies does not necessarily mean that alleged victims must exhaust every remedy available to them. If the alleged victim raised the issue through one of the options that was valid and appropriate according to domestic law, and the State had the opportunity to remedy the situation within its jurisdiction, the purpose of the international rule is fulfilled.⁶

13. With respect to the claim that domestic remedies have not been exhausted in light of the criminal proceedings against the petitioner, the Commission considers that the petition solely alludes to alleged violations in administrative and constitutional proceedings, so it is not necessary to determine whether domestic remedies have been exhausted with regard to criminal proceedings.

14. The Commission notes that the parties have presented conflicting accounts as to whether the petitioner presented his arguments during domestic proceedings that the copies sent by the CNM were incomplete. The Commission will review that aspect of the dispute at the merits stage.

VII. ANALYSIS OF COLORABLE CLAIM

15. The Commission notes that the instant petition includes allegations that the petitioner was sanctioned because of a disagreement with a decision he issued, infringing upon his judicial independence; that the administrative authorities, when deciding his appeal, imposed a more severe sanction than the one he was appealing, in violation of the law and their competencies; and that the petitioner did not have access to a remedy through which judicial authorities would review a possible violation of his judicial independence and right to due process.

16. Given the nature of the allegations, the Commission should note that it has already found that “under international law, the grounds for disciplinary investigation and sanctions imposed on a judge should never be a legal opinion or judgment he or she wrote in a decision”.⁷ It has also expressed that “in their disciplinary systems, States must provide a possibility to have a decision reviewed by a higher body, which will examine the facts of the case and the law, in order to assure a suitable and effective judicial recourse against possible violations of rights that happened during the disciplinary process.”⁸ Likewise, the Inter-American Court has determined that “when a judge’s tenure is affected in an arbitrary manner, the right to judicial independence enshrined in Article 8(1) of the American Convention is violated, in conjunction with the right to access and remain in public office, on general terms of equality, established in Article 23(1)(C) of the American Convention.”⁹

17. In light of these considerations, and after examining the factual and legal elements presented by the parties, the Commission finds that the petitioner’s allegations are not manifestly unfounded and require a study of the merits, given that, if the alleged facts were proven true, they could amount to violations of Articles 8 (right to a fair trial), 23 (right to participate in government), 25 (right to judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

18. As for the arguments on violations of the American Declaration, the Inter-American Commission has previously established that, once the American Convention becomes effective in relation to a State, it is this, and not the Declaration, that becomes the primary source of law applicable by the Commission,

⁶ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

⁷ IACHR. Guarantees for the Independence of Justice Operators. OAS/Ser.L/V/II.Doc. 44/13 para. 216.

⁸ IACHR. Guarantees for the Independence of Justice Operators. OAS/Ser.L/V/II.Doc. 44/13 para. 238.

⁹ I/A Court H.R. Case of the Supreme Court of Justice (Quintana Coello *ET AL.*) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2013. para. 155.

provided that the petition concerns an alleged violation of identical rights set forth in both instruments and is not an ongoing violation. The alleged violations of Article XVIII (right to a fair trial) of the American Declaration do not fall outside of the scope of protection of Articles 8 and 25 of the American Convention, so the Commission will examine the pleadings in light of these articles.

19. With respect to the alleged violations of the International Covenant on Civil and Political Rights, the Commission lacks competence to determine violations of this treaty, notwithstanding which it may take it into account as part of its interpretative exercise of the American Convention at the merits stage of the instant case, pursuant to Article 29 of the Convention.

20. Lastly, regarding the State's argument on the "fourth instance formula," the Commission notes that, in admitting this petition, it does not intend to replace the competence of domestic judicial authorities. Instead, it will examine at the merits stage of the instant petition whether domestic judicial proceedings respected the rights to due process and judicial protection and properly ensured access to justice for the alleged victim in accordance with the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 23, 25, and 26 of the American Convention, in relation to Articles 1.1 and 2; 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 on the 24th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.