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REPORT No. 126/20
PETITION 913-08
REPORT ON ADMISSIBILITY

JORGE RICARDO NOVOA ROBLES
PERU

Approved electronically by the Commission on April 25, 2020.

Cite as: IACHR, Report No. 126/20, Petition 913-08. Admissibility. Jorge Ricardo Novoa Robles.
Peru. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jorge Ricardo Novoa Robles
Alleged victim:	Jorge Ricardo Novoa Robles
Respondent State:	Peru ¹
Rights invoked:	Articles 8 (right to a fair trial/due guarantees), 11 (right to privacy/honor and dignity), 23 (right to participate in government/political rights), 24 (right to equal protection of the law), and 25 (judicial protection) of the American Convention on Human Rights, ² in conjunction with Articles 1.1 thereof (obligation to respect rights); and other international treaties. ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	August 8, 2008
Additional information received at the stage of initial review:	May 26, 2010
Notification of the petition to the State:	January 28, 2014
State's first response:	July 25, 2014
Additional observations from the petitioner:	June 20, 2017, December 11, 2018, and October 30, 2019.
Additional observations from the State:	August 1, 2014, September 30, 2018, and February 19, 2019.
Notification of the possible archiving of the petition:	May 26, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	June 19, 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 (instrument 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
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¹ Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the discussion or decision in this matter.

² Hereinafter "Convention" or American Convention".

³ Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights.

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

Rights declared admissible	Articles 8 (humane treatment/personal integrity), 23 (right to participate in government/ political rights), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in conjunction with 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, February 15, 2008.
Timeliness of the petition:	Yes, August 8, 2008

V. FACTS ALLEGED

1. Mr. Jorge Ricardo Novoa Robles (hereinafter the "petitioner" or "the alleged victim"), alleges that the Peruvian State is internationally responsible for several violations of his labor rights and of due process as a consequence of the refusal of the Plenary of the Judicial Council (*Consejo de la Magistratura*) (hereinafter the "Council" or "CNM") to ratify him as the District Attorney (*Fiscal Superior*) of the Higher Joint Public Prosecutor's Office of the Judicial District of Cajamarca, a position he had held since October 1996. He complains that the Council convened him arbitrarily to take part in the ratification process before the 7-year term required by the Political Constitution had expired and resolved for no good reason not to ratify him in his position.

2. The petitioner states that, on July 7, 2003, the Supreme Public Prosecutor's Office for Internal Control began a disciplinary investigation against him for alleged irregularities in the performance of his functions and ordered that he be suspended and subsequently dismissed on September 3 of that same year. He appealed that measure to the Board of Supreme Public Prosecutors, arguing the existence of flaws in the disciplinary process. However, he states that while the Board's decision was still pending, and before the term of office specified in the Constitution had expired, on November 10, 2003, the Council convened him to take part in the evaluation and ratification process. He explains that the Council arbitrarily included in the seven years the months in which he had been suspended due to the disciplinary proceedings.

3. The petitioner points out that on February 7, 2004, the CNM resolved not to ratify him after a secret vote in which members of the council used ballots on which they marked either "yes" or "no" to his ratification. He considers that using a secret vote without any reason being given for not ratifying him is in itself contrary to judicial independence and the substantiation guarantee. He also argues that, although that was the procedure envisaged in the rules of procedure issued by the CNM, it was incompatible with the Constitution, which bans secret voting. He also complains that the plenary of the CNM did not issue a resolution of non-ratification as required by the Constitution, but merely placed it on record in the minutes. He stresses that the resolution declaring his non-ratification was issued only by the President of the Council, who is not vested with powers to refuse ratification or cancel titles. The petitioner further claims violation of his right to defense because when he was interviewed by the CNM he was subjected to what amounted to an interrogation, with ambiguous or imperious questions which he was coerced into replying with just a "yes" or "no", without being allowed any explanations. At the same time, he states that his right to appeal to a second instance was also violated, because the CNM's Rules of Procedure on Ratifications precludes any challenge to the outcome of a vote not to ratify.

4. He adds that his non-ratification disqualifies him for life from re-entering the Public Prosecutors' Office (*Ministerio Público*), impairing his right to stay in public service. Accordingly, he is requesting that the Council reinstate him, as it allegedly did with a group of non-ratified magistrates, who, like him, were subjected to improper reevaluation and non-ratification proceedings. The petitioner maintains that, at his age of 75, the harm done by his arbitrary dismissal would be irreparable, because the age limit for practicing as a magistrate in Peru is 70. Because of his advanced age, he argues that his very subsistence and his health would be at risk if he cannot work and has no corresponding pension benefits.

5. The petitioner states that, on April 16, 2004, contesting the CNM resolution, he filed an action for protection of a constitutional right (amparo), requesting that his title as a public prosecutor be reissued and his reinstatement in his position, whereby the period in which he had not worked should count towards his pension. That action was rejected on July 13, 2004 by the Thirty-Eighth Civil Court in Lima, which declared that the alleged victim had completed seven years in office and that his non-ratification had not been a disciplinary punishment but the result of his losing a vote of confidence of the CNM. The petitioner states that he appealed to the Fourth Civil Division of the Superior Court of Justice of Lima, which, on October 30, 2006, confirmed the rejection of the first instance court. Finally, the petitioner adds that he filed an appeal for violation of the Constitution against the judgment handed down by the Superior Court of Justice before the Second Division of the Constitutional Court, which was rejected on November 15, 2007. He was notified of that ruling on February 15, 2008.

6. The petitioner states that the Constitutional Court maintained that the temporary suspension imposed on him during the disciplinary proceeding was a preventive measure and therefore did not stay the seven-year term and did not sever his labor relation ties to the Judiciary. As regards the alleged lack of substantiation, it pointed out that procedures for evaluating and ratifying magistrates before the CNM would violate fundamental rights if said authority were to be exercised arbitrarily, that is to say, when the decisions taken are not duly substantiated. However, it allegedly stressed that the changes of jurisprudence in cases relating to the procedures for evaluating and ratifying magistrates conducted by the CNM do not apply to his case because his non-ratification was decided prior to the Constitutional Court's setting of the new precedent. On this, the petitioner argues that that same Court, using a totally different criterion, established in several final judgments, including one handed down on November 7, 2002, that the seven-year term only count the time actually spent performing functions. Consequently, since no consideration had been given to his guarantees and fundamental rights, the alleged victim argues that he lacked effective legal protection (*tutela jurisdiccional*).

7. He points out that the time that has elapsed has inflicted irreparable harm due to his having passed the 70 years of age limit established by Peruvian law for practicing as a public prosecutor. That being so, he is requesting compensation for remunerations foregone in the amount of S/. 4,129,740.64 (four million one hundred and twenty-nine thousand seven hundred and forty soles and 64 cents). He also points out that, as a result of the emotional harm done to him and the instability to which he has been subjected, a brain tumor was detected that has left him crippled for life and without the economic resource needed to live a life of dignity. The petitioner further points out that his wife, who used to live a healthy life prior to the prolonged judicial proceedings, suffered a deterioration in her health as a result of having to see to his basic needs, and a deterioration of her immunological system that led to her dying of cancer on July 15, 2017. He adds that his petition was lodged in a timely fashion, on August 8, 2008, as confirmed by an e-mail in the file.

8. The State, for its part, indicates that it has adopted a series of measures to compensate those who, like the alleged victim, report having suffered harm as a result of their unsubstantiated removal from office following previous CNM evaluation and ratification processes. The State further maintains that it has implemented said measures for 176 magistrates with similar claims.

9. It states that the petition should not be admitted because it does not comply with the six-month deadline for filing established in Article 46.2.b of the American Convention, and indicates that notification by the Constitutional Tribunal was on February 15, 2008 and the petition lodged on August 16, 2008. It also states that the Commission lacks competence *ratione materiae* to hear the petitioner's allegations regarding violations of Peru's Political Constitution and the Universal Declaration of Human Rights. It also considers that the petitioner is attempting to get the Commission to act as a fourth instance to revise a domestic judicial ruling he disagrees with. It underscores that the petitioner's goal in his petition to the IACHR is to be reinstated in the position he held is identical to the appeal he filed, which was rejected in a final judgment by domestic courts.

10. It argues that, with the exception of the judicial guarantee of a right to substantiation, the petitioner has not described instances of violations of the American Convention. It stresses that the resolution not to ratify the petitioner entailed interviews with him in person and that the petitioner was able to exhaust domestic remedies, being evident that he had access to justice. The State also points out that the petitioner has

not provided any further arguments to back his claim of a violation of his right to honor, because the fact that he was subjected to a procedure that concluded with his non-ratification does not in itself characterize such a violation. Likewise, the State asserts that the petitioner's right to equal protection of the law was not violated by the fact that the Supreme Public Prosecutor's Office for Internal Control declared that there were legitimate grounds for the ex officio investigation into the petitioner. The State adds that the compensation demanded by the petitioner is exorbitant and does not match the State's own calculations and it stresses that there is no evidence at all to corroborate the petitioner's claim that the State is responsible for the deterioration of his health.

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

11. The Commission observes that there is no dispute between the parties regarding exhaustion of domestic remedies, but the State maintains that the petition should not be admitted as it missed the deadline for lodging it provided for in Article 46.2.b of the American Convention.

12. The Commission notes that, at the time of the facts referred to in this case, applicable regulations did not provide for ordinary appeals challenging the non-ratification decisions issued by the CNM or for the possibility of their being subject to judicial review. According to information in the file on the case, the petitioner filed an amparo on April 16, 2004 requesting his reinstatement as a public prosecutor, which was rejected on July 13, 2004 by the Thirty-Eighth Civil Court in Lima, a decision that was confirmed upon appeal by the Fourth Civil Division of the Superior Court of Justice in Lima. Finally, on November 15, 2007, the Constitutional Court ratified the rulings of the other courts. The Commission notes that, following the Constitutional Court's decision, the State has not pointed to any other domestic remedies that were not exhausted that could have allowed for the petitioner's complaints to be addressed at the domestic level.

13. Based on these considerations, the Commission deems that the final ruling that exhausted domestic remedies was that handed down by the Constitutional Court on November 15, 2007 and notified to the petitioner on February 15, 2008. That being so, and given that the petition was lodged on August 8, 2008, the Commission concludes that the present petition meets the requirement of Article 46.1.a and b. of the American Convention. Although the State argued that the petition was lodged on August 16, 2008 and was therefore extemporaneous, the petitioner's first e-mail (which was relayed to the State) is dated August 8, 2008.

VII. ANALYSIS OF COLORABLE CLAIM

14. The Commission observes that the present petition includes allegations that the petitioner was dismissed from the position he held arbitrarily and without substantiation of the reasons; that he did not have access to effective judicial protection against the decision not to ratify him; that he was discriminated against because other magistrates who were dismissed under similar circumstances were reinstated or received compensation; and that he was unjustifiably subjected to an impediment to return to the Public Prosecutors' Office because of the cancellation of his appointment.

15. In light of those considerations and after examining the matters of fact and law presented by the parties, the Commission deems that the petitioner's allegation are not manifestly groundless and require a study on the merits as, if corroborated, the alleged facts could constitute violations of Articles 8 (right to a fair trial/due guarantees), 23 (right to participate in government/political rights), 24 (right to equal protection of the law), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention on Human Rights, in conjunction with Articles 1.1 thereof (obligation to respect rights) and 2 (domestic legal effects).

16. As regards the petitioner's claim regarding the alleged violation of Article 11 (respect for honor and recognition of dignity) of the American Convention, the Commission observes that the petitioner does not adduce arguments or factors that point *prima facie* to a possible violation of that right as a result of actions for which the State could be considered to bear international responsibility, so that said claim should not be declared admissible.

17. At the same time, with regard to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the Commission lacks competence to establish violations of the provisions of those international instruments; however, it may take them into account in its interpretation of the provisions of the American Convention at the merits stage of this case, under the terms of Article 29 of said Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 23, 24, 25, and 26 of the American Convention, taken in conjunction with Articles 1(1) and (2) thereof;
2. To declare this petition inadmissible in relation to Article 11 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 25th 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.