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REPORT No. 108/20
PETITION 40-08
REPORT ON INADMISSIBILITY

JORGE EDUARDO PÉREZ GÓMEZ
PERU

Approved electronically by the Commission on April 24, 2020.

Cite as: IACHR, Report No. 77/20. Petition 40-08. Inadmissibility. Jorge Eduardo Pérez Gómez.
Peru. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Jorge Eduardo Pérez Gómez |
| Alleged victim: | Jorge Eduardo Pérez Gómez |
| State denounced: | Peru ¹ |
| Rights invoked: | Does not specify articles of the American Convention. ² |

II. PROCEEDINGS BEFORE THE IACHR³

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| Filing of the petition: | March 9, 2008 ⁴ |
| Notification of the petition to the State: | February 19, 2013 |
| State's first response: | November 20, 2013 |
| Additional observations from the State: | February 21, 2020 |
| Notification of the possible archiving of the petition: | May 26, 2017 ⁵ |

III. COMPETENCE

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| Competence <i>Ratione personae</i>: | Yes |
| Competence <i>Ratione loci</i>: | Yes |
| Competence <i>Ratione temporis</i>: | Yes |
| Competence <i>Ratione materiae</i>: | Yes, the American Convention (instrument of ratification deposited on July 28, 1978) |

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, CHARACTERIZATION, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible: | None |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | No, in keeping with Section VI |
| Timeliness of the petition: | No, in keeping with Section VI |

V. FACTS ALLEGED

1. Jorge Eduardo Pérez Gómez (hereinafter “the petitioner”) denounces that his human rights were violated by an unconstitutional government which dismissed him from his post as a criminal court judge without any justification and no possibility of appealing this decision. The petitioner adds that a law was subsequently issued allowing former judicial officials who had been dismissed in circumstances similar to his to be reinstated, subject to an evaluation process by the *Consejo Nacional de la Magistratura* [National Judiciary

¹ In keeping with the provisions of Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the debate or decision on this matter.

² It mentions, without referring to a specific instrument or articles, the rights to guarantees of due process, equal protection under the law, and the right to judicial protection from violations of fundamental rights.

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ The petitioner, subsequent to his initial petition, has not provided additional substantive information, but has submitted several requests for information regarding the status of his case, the last of which was presented on January 4, 2019.

⁵ The petitioner did not respond to the notification of possible archiving of the petition; however, on January 4, 2019, he sent a note requesting information about the status of his case.

Council] (CNM); however, the CNM decided not to reinstate him—a decision made without due process or justification.

2. The petitioner recounts that on June 19, 1990, he was appointed as a Regular Judge to the Criminal Sentencing Court of the Judicial District of Tacna and Moquegua after obtaining a post via public competition. He states that he held that post until June 15, 1992, when he was dismissed in keeping with a decree law issued by the National Emergency and Reconstruction Government that he characterizes as unconstitutional and self-designated. The petitioner points out that in 2001 the Congress of the Republic issued Law No. 27433, which recognized that several judges had been dismissed without justification or access to real and effective judicial protection and provided that they be reinstated, subject to evaluation of the CNM. He alleges that on September 26, 2001, the CNM issued a decision not to reinstate him that violated the standards of due process inasmuch as said administrative decision was not duly substantiated.

3. He adds that on March 15, 2003, the Constitutional Court published a judgment declaring the unconstitutionality of Articles 3 and 4 of Law No. 27433 that established the CNM's evaluation as a requirement for reinstating judges who had been arbitrarily dismissed from their posts. Given this ruling on the provisions' unconstitutionality, the petitioner considers that Article 2 of said Law, which orders the reinstatement of the judges dismissed, must be complied with.

4. On March 6, 2003, the petitioner filed an *amparo* appeal against CNM and the Supreme Court of the Republic in order to have the CNM's decision not to reinstate him, as well as the measure to definitively dismiss him, overturned. He indicates that the *amparo* was upheld on September 30, 2004, by the 65th Civil Chamber of the Superior Court of Lima, which order his reinstatement as a judge. However, the judgment in his favor was challenged by the respondents and on March 26, 2006, the 3rd Civil Chamber of the Superior Court of Justice of Lima reversed the first-instance decision. The 3rd Civil Chamber ruled that the *amparo* appeal was inadmissible and provided that the claim needed to be redirected to the contentious administrative process. This decision was appealed by the petitioner on June 9, 2006, in a constitutional remedy (*recurso de agravio constitucional*); on September 20, 2006, the Constitutional Court upheld the appeal's inadmissibility because the Court found that it had been presented out of time. The petitioner alleges that the Court acted improperly as the deadline of 60 working days to file began to run as of March 15, 2003, the date of publication of the Constitutional Court's judgment ruling the evaluation requirement unconstitutional.

5. The petitioner holds that domestic remedies were exhausted with the decision ruling his claim inadmissible, inasmuch as the Constitution stipulates that decisions of the Constitutional Court cannot be appealed. He further holds that his right to due process was violated because an erroneous date was used to calculate the filing deadline's expiration. He also denounces the violation of his right to equal protection under the law, as all his colleagues arbitrarily dismissed by the illegitimate government have been reinstated except for him. He adds that once he became aware of the Constitutional Court's decision, he met with the vice-president of the Court, who advised him to present a request for clarification of the decision, with the commitment to rectify the error committed. The Court, however, ruled the remedy for clarification unfounded, pursuant to its decision of February 16, 2007, which he was notified of on July 12, 2007.

6. The State, for its part, considers that the petition is out of time and therefore should not be admitted in keeping with Article 46(1)(b) of the American Convention. The State underscores that, according to the petitioner's assertions, domestic remedies were exhausted with the decision of the Constitutional Court ruling that his claim was inadmissible. The State points out that said decision was dated September 20, 2006, and his petition was submitted on January 9, 2008, thus exceeding the 6-month time period provided for under Article 46(1)(b) of the American Convention. The State also points out that none of the exceptions to exhaustion of domestic remedies provided for under Article 46(2) thereof are applicable to the petition.

7. Additionally, the State alleges that the petitioner inappropriately seeks to have the Commission act as a higher court in order to conduct a new evaluation of what has already been decided in the domestic legal system. The State indicates that the petitioner brought his claims before a domestic court via an *amparo* appeal that was rejected for being out of time in accordance with the deadline provided for under

Article 44 of the Code of Constitutional Procedure⁶ and the petitioner's negligence cannot give rise to the State's international responsibility. It has provided a copy of the Court's decision that indicates that, although the deadline could not be counted as from the date of dismissal—inasmuch as the decree law used as a basis for the same prohibited filing an appeal—the deadline did run as from when the CNM issued its decision against his reinstatement. The State adds that the petitioner had access to all domestic legal remedies and the fact that decisions were not favorable to him did not mean they were a violation of the American Convention. The State underscores that on September 14, 2010, the petitioner filed an enforcement action [*demanda de cumplimiento*] against the CNM, which the Civil Chamber of the Superior Court of Justice of Tacna ruled inadmissible inasmuch as his claim had already been ruled on in the prior *amparo* appeal proceedings. Furthermore, the State indicated in its brief of November 20, 2013, that in March 2013 the petitioner had filed an administrative action against the CNM with the 20th Specialized Labor Court of Tacna, which was still pending.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioner has indicated that domestic remedies were exhausted with the Constitutional Court's decision on his constitutional remedy, which ruled his claim inadmissible. He then unsuccessfully sought to have that decision reversed through a remedy of clarification. The petitioner also holds that the deadline for submitting his *amparo* appeal should have started to run as of the publication date of the ruling that the evaluation requirement for reinstating judges dismissed without cause was unconstitutional. For its part, the State has alleged that the petition is out of time because the deadline for its presentation began to run as from the decision rejecting the constitutional remedy; it further alleges that the petitioner's *amparo* appeal was rejected because it was presented out of time.

9. The Commission has previously determined that petitioners are required to exhaust domestic remedies in keeping with domestic procedural law, provided that the law is consistent with the State's obligation under the American Convention. For this reason, the Commission cannot find the petitioner to have duly complied with this requirement if domestic remedies have been rejected based on reasonable and non-arbitrary procedural grounds, such as the action not being filed by the deadlines provided for under domestic law.⁷

10. Based on this criterion, the Commission notes that the *amparo* appeal presented by the petitioner was rejected because it was not filed by the deadline provided for under domestic procedural laws. The petitioner has not alleged that the provisions establishing said deadline are per se a violation of the American Convention or any of the instruments that confer competence to the Commission, nor is this shown by any evidence in the case file either. The petitioner has argued that the deadline should have started to run as from the publication of the judgment that ruled the CNM's prior evaluation requirement unconstitutional; however, he has not argued that this ruling was a requirement for filing an *amparo* appeal, nor does the case file show this. What is more, the file does not show, nor has the petitioner alleged, that he was hindered or dissuaded from filing the *amparo* appeal in a timely fashion. For these reasons, the Commission concludes that this petition is inadmissible inasmuch as it does not comply with the requirements of Article 46(1)(a) of the American Convention.

VII. ANALYSIS OF CHARACTERIZATION OF THE FACTS ALLEGED

11. In light of the conclusions provided for in Section VI hereof, the Commission will not conduct an analysis of the facts asserted by the petitioner to determine whether they might characterize violations of the American Convention or other applicable instruments.

⁶ The language of the provision refers to "sixty business days as of the violation's occurrence, provided that the party affected was aware of the harmful act and was able to file the action."

⁷ IACHR, Report N° 90/03 (Inadmissibility), Petition 0581/1999, Gustavo Trujillo González, Peru, October 22, 2003, para. 32.

VIII. DECISION

1. To find the instant petition inadmissible pursuant to Articles 46(1)(a) and 47(a) of the American Convention.

2. To notify the parties of this decision; 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.