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REPORT No. 145/21
PETITION 1959- 12
REPORT ON ADMISSIBILITY

MARVIN KILLER PAREDES TUESTA
PERU

Approved electronically by the Commission on July 8, 2021.

Cite as: IACHR, Report No. 145/21. Petition 1959- 12. Admissibility. Marvin Killer Paredes Tuesta. Peru. July 8, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Romelia Clorinda Paredes Tuesta and Elmer Siclla Villafuerte
Alleged victim:	Marvin Killer Paredes Tuesta
Respondent State:	Peru ¹
Rights invoked:	Articles 5 (personal integrity), 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (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

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	November 2, 2012
Notification of the petition to the State:	January 29, 2016
State's first response:	April 29, 2016
Additional observations from the petitioner:	November 27, 2017
Additional observations from the State:	June 5, 2020
Warning about possible closing of the case:	March 17, 2021
Response of the petitioner to the warning about the possible closing of the case:	April 21, 2021

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 (personal liberty), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights, 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, the exception established in Article 46.2(a) of the American Convention is applicable, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the discussion or decision of the present case.

² Hereinafter "the American Convention" or "the Convention".

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

V. ALLEGED FACTS

1. The petitioner invokes the international responsibility of Peru for the violation of the human rights protected under the American Convention due to the criminal prosecution, conviction and deprivation of liberty of Marvin Killer Paredes Tuesta.

2. The petitioner states that on March 9, 2006, Mr. Paredes, who was 20 years old and the father of two young children at the time, was arrested in the province of Zarumilla by the Peruvian Police while he was driving a vehicle with fake license plates which had been stolen by two armed individuals five days earlier in Trujillo, La Libertad. According to Mr. Paredes, while he was working at a hotel in Trujillo, a person offered him a sum of money in exchange for driving the vehicle to Zarumilla. He accepted the proposal, allegedly unaware of the fact that the car had been stolen. He was arrested for this.

3. On May 29, 2007, the High Prosecutor of Trujillo submitted a formal accusation against the accused, including Mr. Paredes, for the crimes of aggravated theft and forgery, and requested a sentence of fifteen years in prison. On January 4, 2008, the Third Special Criminal Chamber of the Supreme Court of La Libertad issued a decision dismissing the formal accusation for the crime of aggravated robbery against Mr. Paredes and sentencing him to three years in prison for the crime of concealment of stolen goods. He was found not guilty of the crime of forgery. On January 7, 2006, the High Prosecutor filed a motion to annul against this judgment, considering that Mr. Paredes had indeed participated in the theft of the vehicle and in the forgery. Mr. Paredes also appealed the judgement and requested the sentence to be deferred. On September 26, 2008, the Permanent Criminal Chamber of the Supreme Court of Justice overruled the contested judgment insofar as Mr. Paredes's actions had been classified therein as concealment of stolen goods. The Supreme Court decided to reclassify the crime as aggravated robbery and to impose on Mr. Paredes a sentence of fifteen years in prison. With regard to the crime of forgery, the same Court found the judgement void and ordered a new oral trial. In addition, it dismissed Mr. Paredes's appeal, since the content of the contested judgement had been changed and Mr. Paredes had agreed to this. On April 6, 2009, the Third Special Criminal Chamber of the Superior Court of La Libertad found Mr. Paredes guilty of the crime of forgery and sentenced him to two years in prison.

4. Mr. Paredes filed a habeas corpus against the court arguing that several constitutional rights had been violated. He believed that the Supreme Court had acted arbitrarily when annulling his sentence for the crime of concealment of stolen goods and convicting him for aggravated robbery, for there was not enough evidence to support the conclusion that he was guilty. On June 3, 2010, the Constitutional Court, with the vote of a single judge, declared the habeas corpus inadmissible since it considered that Mr. Paredes's intention had been for the constitutional justice to assume the powers reserved to the lower criminal court and to re-examine the Supreme Court's ruling. The Constitutional Court considered that this was beyond the purpose of a habeas corpus and that this remedy was not designed to establish the innocence or criminal responsibility of the accused.

5. The petitioner questions the legal basis of the Supreme Court's ruling that changed the classification of the crime and sentenced Mr. Paredes for aggravated robbery. The petitioner also calls into question the manner in which the Supreme Court weighed the evidence and set out various factual arguments that proved that Mr. Paredes was innocent of the theft of the vehicle. The petitioner also states that Mr. Paredes had no criminal record, and that he was a father at the time of the incident. In addition, the petitioner claims that said judgement violated Mr. Paredes's right to defense, *"given that he did not have the opportunity to question the excessive sentence imposed on him"*, since the ruling of the lower court that was later overruled had convicted Mr. Paredes for the crime of concealment of stolen goods, and because in his motion he was only able to show his disagreement with the nature of the penalty, but not with the type of crime. The petitioner also claims that Mr. Paredes's rights were violated given that his legal situation was aggravated by the Supreme Court.

6. As for the time limit established for submitting the petition, the petitioner admits that more than six months have elapsed since the adoption of the ruling of the Constitutional Court, but she claims that the time limit *"would not be computable, since the beneficiary is still held in a public prison, and therefore the*

violations of due process and personal liberty are permanent, so we hope that the criteria used by the IACHR in this case will be favorable to the inmate."

7. The State requests that the petition be declared inadmissible because it believes that (i) domestic remedies have not been exhausted; (ii) the IACHR is being resorted to as an international court of appeals; (iii) the petition was filed in an untimely manner; and (iv) the petition does not set forth any violations of the rights established in the American Convention.

8. As for the lack of exhaustion of domestic remedies, the State claims that, at the time that the motion to annul the first-instance judgement was filed before the Supreme Court of Justice, Mr. Paredes' lawyer could have submitted to that high court *"an oral or written report in order to present his position on the matter, even more so when there was a possibility that the final decision of the Supreme Court could have a negative impact on Mr. Paredes."* However, he refrained from doing so. It also argues that the habeas corpus did not claim Mr. Paredes' disagreement with the grounds for the appeal filed by the competent High Prosecutor's Office - which is an argument sketched in the petition, the IACHR notes-

9. In addition, the State questions whether the legal basis of Mr. Paredes' habeas corpus against the Supreme Court's ruling was appropriate. Taking up the argument of the Constitutional Court in the judgment that overruled the habeas corpus, the State asserts that, although Mr. Paredes' claim was clear with regard to the questioning of the change in the legal classification of the crime made by the Supreme Court, the basis for such claim was not legally appropriate and thus resulted in an unfavorable judgement.

10. As for the argument about the Commission being an international "fourth instance", the State alleges that the petitioners have resorted to the IACHR *"to seek that this supranational body intervene and decide on the present case because they do not agree with the evaluations and pronouncements of the national courts that decided to convict Mr. Paredes for the crime of aggravated robbery;"* and that they have questioned the assessment of the evidence and the legal basis of the Supreme Court's decision to convict Mr. Paredes, as well as the reasoning in the Constitutional Court's ruling to dismiss the habeas corpus.

11. On the alleged untimeliness of the petition, the State holds that, notwithstanding its other arguments, if the IACHR considers that the ruling of the Constitutional Court on the habeas corpus exhausted all domestic remedies, the traditional six-month time limit must be counted from the date on which the judgment was published on the Court's website, which was October 1, 2010. As a result, it considers that the petition was manifestly extemporaneous.

12. Finally, with regard to the manifestly unfounded nature of the petition, the State describes the petitioner's allegations as unclear, confusing, unsupported and inaccurate. It considers that insufficient grounds have been provided to claim that there has been a violation to the right to personal integrity. The State also presents various substantive arguments to rule out any violation to the right to a fair trial or to the rights to personal liberty and judicial protection, arguments centered on the powers of the Supreme Court under the Peruvian legal system. Likewise, it also informs the IACHR that Mr. Paredes was granted parole by the judge of the Ninth Unipersonal Criminal Court of Trujillo on December 11, 2013. As a result, he has been released since that date.

13. The IACHR received from the petitioner a copy of the order of Mr. Paredes's final release, which had been issued on March 8, 2021, by the National Penitentiary Institute of Peru.

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

14. The traits of the case under review demand paying special attention to the manner and the procedural moment at which the alleged violations of the Convention were allegedly configured, so as to identify the adequate domestic resources, if any. It is noted that Mr. Paredes was charged on May 29, 2007, with the crimes of aggravated theft and forgery. However, the first-instance decision resolved to drop the aforementioned charges and convict him for the crime of concealment of stolen goods. Mr. Paredes filed a

motion to annul against this resolution, focusing on the mode of implementation of the sentence. In parallel, the Office of the Prosecutor filed a motion to annul questioning the classification of the crime and requesting it to be reclassified back to aggravated robbery. Resolving both appeals in a judgment of September 26, 2008, the Permanent Criminal Chamber of the Supreme Court of Justice annulled the conviction imposed on Mr. Paredes and reclassified the crime as aggravated robbery. It then imposed on him a sentence of fifteen years in prison. It also ordered a new trial for the crime of forgery, which was effectively conducted and resulted in a conviction.

15. In view of this scenario, the IACHR understands that the main alleged violation of Mr. Paredes' human rights took place when the Supreme Court, in resolving an appeal presented by him, which had been centered on the mode of implementation of the sentence, decided to change the classification of the crime and to considerably increase the penalty imposed. Mr. Paredes did not have the opportunity to present allegations in his defense concerning the crime of aggravated robbery, neither in the motion to annul that he raised (for another matter), or after the conviction, since the Supreme Court's judgments cannot be challenged through additional regular remedies given that it is the highest court in the country. The alleged violations of the American Convention raised in the petition were therefore committed after the filing of the appeal by Mr. Paredes. Said violations were then consolidated in the judgment issued on September 26, 2008.

16. Under the Peruvian Constitution and law, judgments issued by the Supreme Court are final and unappealable. Against them there are no ordinary or extraordinary remedies that can be filed, and in the case of Mr. Paredes, the habeas corpus was declared inadmissible by the Constitutional Court, precisely because it was intended to dispute a judgment issued by the highest criminal court of the country. In light of this scenario, the IACHR concludes that the exception to the duty to exhaust domestic remedies set out in Article 46.2(a) of the American Convention applies to the case under study, since "the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated". Under the Peruvian legal system, Mr. Paredes did not have any mechanisms that allowed him to challenge the change in the classification of the crime made by the Supreme Court when it resolved a motion to annul that he had raised, and in which he did not include his arguments about the commission of aggravated robbery, for which he was ultimately to be convicted.

17. The State has also argued that a suitable domestic remedy available to Mr. Paredes was the possibility that he had to file a brief with the Supreme Court explaining his arguments on the motion to annul filed by the Prosecutor's Office. However, the IACHR believes that a legal remedy is, by definition, a means of judicial defense enshrined in the domestic legal order in favor of those who feel that their rights have been violated by any State action, and which allows them to seek reparation for such violation. The mere possibility of intervening in judicial proceedings does not technically constitute a remedy under the terms of the American Convention.

18. Bearing in mind that the conviction of the Supreme Court was issued in September 2008; that an habeas corpus against this judgment was denied by the Constitutional Court in a decision published in October 2010; that Mr. Paredes remained deprived of liberty from March 2006 until December 2013; that this extended deprivation of liberty was alleged by him and his family members as a continuing violation of his rights; and that the petition was received by the IACHR in November 2012, the Commission concludes that the petition was received by the Executive Secretariat within a reasonable period of time under Article 32.2 of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

19. Noting the State's argument that the petitioner has resorted to the IACHR as an international court of appeals, the Commission reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when said petition refers to domestic judicial proceedings that could be in violation of the rights enshrined in the Convention. To the same extent, the IACHR recognizes that

it has no competence to review judgments rendered by national courts that have acted within the scope of their jurisdiction and have applied due process and judicial guarantees.⁴

20. The petitioner alleges a violation of his right to defense and other judicial guarantees due to the change in the classification of the crime made by the Supreme Court, in resolving a motion to annul filed by Mr. Paredes, which did not contain arguments on the alleged aggravated robbery, but rather focused on the mode of implementation of the sentence. In other words, Mr. Paredes did not in fact have any procedural opportunity to challenge his conviction for aggravated robbery.

21. The IACHR believes that this allegation entails a possible violation of the rights enshrined in the American Convention that must be examined on its merits, bearing in mind that its study and that of the substantive arguments presented by the State exceed the *prima facie* analysis criterion of the admissibility stage. Therefore, the present case is not about re-evaluating the judicial reasoning in the domestic judgments, but about determining whether the guarantees protected under the American Convention were violated. As a result, the State's argument about the IACHR being a "fourth international instance" is dismissed.

22. In view of these considerations and after examining the elements of fact and law set forth by the parties, the Commission considers that the claims of the petitioner are not unfounded and need to be studied on their merits since the alleged facts, if corroborated, could imply violations of Articles 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof, to the detriment of Mr. Marvin Killer Paredes Tuesta.

23. With regard to the claim on the alleged violation of Articles 5 (humane treatment) and 24 (equal protection) of the American Convention, the Commission notes that the petitioners have not provided sufficient arguments or grounds to consider *prima facie* their possible violation.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 7, 8 and 25 of the American Convention in connection with Articles 1.1 and 2 thereof;

2. To declare this petition inadmissible in relation to Articles 5 and 24 of the American Convention; and

3. To notify the parties of this decision; to proceed with the merits of the case; 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 8th day of the month of July, 2021. (Signed): Antonia Urrejola Noguera, President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández (dissenting opinion), and Edgar Stuardo Ralón Orellana, Commissioners.

⁴ IACHR, Report No. 122/19. Petition 1442- 09. Admissibility. Luis Fernando Hernández Carvajal et al. Colombia. July 14, 2019; Report No. 116/19. Petition 1780- 10. Admissibility. Carlos Fernando Ballivián Jiménez. Argentina. July 3, 2019; para. 16; Report No. 111/19. Petition 335- 08. Admissibility. Marcelo Gerardo Pereyra. Argentina. June 7, 2019; para. 13.