

OEA/Ser.L/V/II
Doc. 6
19 January 2021
Original: Spanish

REPORT No. 6/21
PETITION 1345-11
REPORT ON INADMISSIBILITY

NELLY SOCORRO FLORENCIA PAREDES HUERTA
PERU

Approved electronically by the Commission on January 19, 2021.

Cite as: IACHR, Report No. 6/21, Petition 1345-11. Inadmissibility. Nelly Socorro Florencia Paredes Huerta. Peru. January 19, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelly Socorro Florencia Paredes Huerta
Alleged victim:	Nelly Socorro Florencia Paredes Huerta
Respondent State:	Peru
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	September 30, 2011
Additional information received at the stage of initial review:	February 12, 2013, August 2, 2014 and June 15, 2016
Notification of the petition to the State:	June 23, 2016
State's first response:	September 23, 2016
Additional observations from the petitioner:	February 26, 2018
Additional observations from the State:	October 4, 2019

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 the instrument of ratification made 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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

¹ Hereinafter "the American Convention".² The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petitioner manifests that the Social Security of Peru, known as EsSalud, had ceased social security services, among these, access to medical and pharmaceutical service, because of the divorce between her and her husband on August 28, 2008. She points out that she always dedicated to her home and that during forty years she benefitted from the services provided by EsSalud. She states that she filed several judicial remedies, concluding with a Constitutional remedy which was dismissed by the Constitutional Court. The alleged victim also claims that at no time she was notified that her medical attention would be definitively suspended; and that due to such suspension of these services by EsSalud and of the sentence issued by that higher court, her rights to a fair trial, judicial protection, humane treatment, property, life, health and nondiscrimination were infringed.

2. The petitioner specifies that on June 8, 2009 she filed a request for defence against EsSalud, requesting the continuity of the benefit of medical assistance, by considering herself rightful beneficiary of her ex-husband, since she received medical assistance from such entity for more than forty years. By means of sentence of July 5, 2010 the Judge of the Fourth Civil Court of Arequipa declared the defence request founded, acknowledging that the alleged victim had right to social security as a fundamental right, recognizing her rights to medical assistance services from EsSalud. However, in second instance, by sentence (49-2011-SMV) of the March 11, 2011, the Vacation Chamber of the Higher Court declared the demand unfounded by considering that the condition which entitled the alleged victim to such right became expired with the divorce.

3. Counter to this sentence of March 11, 2011, the petitioner filed a Constitutional remedy before the Constitutional Court, which, by means of sentence of July 13, 2011 of its First Chamber, decided to declare the Constitutional remedy inadmissible, concluding that no breach to the alleged victim's right to social security had been credited, and reaffirming that such invoked right had expired due to the divorce between her and her ex-spouse, since he was the actual rightsholder, and she was his dependent.

4. On its part, the State claims that the IACHR lacks competence in virtue of the matter regarding such alleged violations of her right to health, since the topics related to the right to health are beyond its jurisdiction. As for the exhaustion of domestic remedies, it claims that the petition is inadmissible, since the suitable domestic jurisdiction's remedies to safeguard the access to health and the right to equality were not exhausted. Peru points out that the petitioner should have exhausted the contentious-administrative path to challenge the decisions that she considered contrary to her purposes, prior to her request for defence. Also, that several of the rights invoked by the petitioner, were not questioned in the domestically filed remedies.

5. Finally, the State points out that the proceeding that affected the alleged victim was conducted according to applicable legal and Constitutional regulations, and in full compliance with fair trial and due process. It requests that the petition be declared inadmissible based on article 47(b) of the American Convention, since, in its view, the facts claimed by the petitioner do not conform violations to the rights to life, humane treatment, equality before the law and nondiscrimination, fair trial, judicial protection, property and non-regression of rights.

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

6. On the instant case, the Commission observes that the petitioner resorted to the request for defence in order to restore her access to social security, specifically, medical and pharmaceutical attention. In this sense, she turned to existing instances in civil jurisdiction, exhausting this path by means of a request for defence which was dismissed on June 8, 2009 and, finally, via a Constitutional remedy, dismissed on June 13, 2011. The State on its part claims that the petitioner could have chosen to file other available remedies from the domestic legislation such as, the administrative remedy.

7. That being said, in regard to the raised by the State, the Commission insists on its permanent position that has established that the requisite of having exhausted domestic remedies does not mean that the alleged victims have necessarily the obligation to exhaust all domestic remedies. Consequentially, if the alleged

victim approached the matter through any of the appropriate alternatives, as in the case of this petition, and the State had the chance to solve the situation, the purpose of the norm is fulfilled³. In the present case it is observed that none of the three courts which ruled regarding her complaint informed the petitioner that the suitable way to address it was the contentious-administrative jurisdiction, instead, they heard her complaint and decided on it considering its merits. In first instance the alleged victim received a favorable decision to her interests and in the other two higher instances, negative decisions, yet in all of them there were judicial sentences regarding the subject matter.

8. In light of these considerations, the Commission concludes that the present petition meets the requirement of exhausting domestic remedies set forth in article 46.1.a) of the American Convention. Likewise, considering that the final decision was issued on July 13, 2011, and the petition was filed on September 30, 2011, the IACHR concludes that it meets the requirement set forth in article 46.1.b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

9. The Commission observes that the current petition includes allegations related, mainly, to the presumed irregular suspension of the social security system of the petitioner after divorce. Additionally, notes that the internal justice bodies resolved this issue and determined that there was no violation of rights, since the referred restriction was carried out on the basis of the rules established by the domestic legislation and under reasonable parameters.

10. In this regard, the Commission reiterates that it is competent to declare a petition admissible and rule on its grounds when the contested judgment may, materially, affect any right guaranteed by the American Convention⁴. In that sense, it recalls that it has admitted petitions when, from the allegations of the parties, it appears *prima facie* that the judicial decisions or the procedures followed could have been arbitrary or imply possible arbitrary unequal treatment or possible discrimination⁵.

11. In the current case, after analyzing the arguments and the information provided by the parties, including the consideration of the internal judicial processes as a whole, the Inter-American Commission considers that no information has been provided that allows the identification of a possible violation of rights. In this regard, the IACHR notes that the petitioner's claims were raised and addressed at the domestic level by the competent judicial bodies, based on reasonable parameters that, in principle, do not contravene the international obligations established in the American Convention or other treaties of the inter-American system. In that sense, and after carrying out the referred analysis of the present petition, the Commission considers that there are not sufficient grounds, according to article 47.b) of the American Convention, to establish *prima facie* a violation of rights to the detriment of the petitioner.

VIII. DECISION

1. To find the instant petition inadmissible; and
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 19th day of the month of January, 2021. (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.

³ IACHR, Report No. 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas and others, Pensioners of venezolana de aviación VIASA. Venezuela, October 15, 2004, para. 52.

⁴ IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, para. 52.

⁵ IACHR, Report No. 64/14, Petition 806-06. Admissibility. Laureano Brizuela Wilde. México. July 25, 2014, para. 43.