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PETITION 30-04

REPORT ON INADMISSIBILITY

LUIS ALEXSANDER SANTILLÁN HERMOZA
PERU

Approved by the Commission at its session No. 2065 held on April 15, 2014
157th Regular Period of Sessions

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REPORT No. 27/16¹
PETITION 30-04
INADMISSIBILITY
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I. SUMMARY

1. On January 14, 2004, the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission," the "Commission," or "the IACHR") received a petition initially lodged by Luis Alexander Santillán Hermoza (hereinafter "the petitioner") against Peru (hereinafter, "Peru" or "the State"). In lodging the petition, the petitioner represented himself,² and mainly alleged violations of due process and lack of judicial protection, claiming that he had been arbitrarily convicted of raping his underage daughter.

2. The petitioner maintains that in 1997 he was sentenced to four years' conditional imprisonment for the crime of raping his daughter, who, at the time the offense was committed, was 16 years old. He alleges that, following an appeal against the judgment, the court had handed down a final judgment of four years' imprisonment, without evidence being produced in the proceedings to show that he was guilty beyond any doubt. He alleges that, despite his having produced new evidence in the course of an appeal for a review of the judgment, that appeal had been rejected without substantiation of the reasons for rejection and an appeal for annulment of that resolution had been denied. The petitioner mentions that he had been forced to go into hiding to avoid incarceration, give up his job, and loses access to his home since his daughter had moved into the home he owned, which, prior to the warrant for his arrest, he alone had occupied. Based on the above, he alleges violations of his rights to personal liberty, a fair trial (due guarantees), honor, dignity, work, property, freedom of movement and residence, and equality before the law.

3. The State, for its part, points out that the petition is inadmissible because it does not allege facts that constitute violations of rights recognized in the American Convention on Human Rights (hereinafter "American Convention" or "Convention"), but rather seeks to have the IACHR acts as a "fourth instance." It also argues that the exception that the petition was filed extemporaneously applies to this case. As regards the alleged violation of the right to work, the State argues that this is not a matter over which the IACHR has competence.

4. Without prejudging the merits of the complaint, after analyzing the positions of the parties and pursuant to the requirements set forth in Articles 46 and 47 of the American Convention, the Commission has decided to declare the petition inadmissible. The Commission has further decided to notify the parties of this decision, and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

5. The IACHR received the petition on January 14, 2004. While processing this petition, and pursuant to Article 26 of its Rules of Procedure in force at the time, the IACHR requested the petitioning party to provide information in a note dated July 12, 2006 and received a reply dated August 18, 2006. Information was again requested on December 4, 2006. Additional information was sought from the petitioner on May 16, 2008. The petitioner answered the request for information on July 14, 2008. On June 15, 2011, the IACHR transmitted a copy of pertinent parts to the State, granting it two months to submit its observations, in accordance with Article 30.3 of its Rules of Procedure in force at that time. The IACHR received the response of the State on August 16, 2011, and forwarded it to the petitioner.

¹ In accordance with Article 17(2) a. of the Rules of Procedure of the IACHR, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion or decision in the present case.

² Subsequently, on August 18, 2006, lawyer Jaime Gálvez Meléndez took over as petitioner.

6. The petitioner presented additional comments on July 20, 2012. For its part, the State presented its additional observations on September 26, 2012. These communications were duly shared with the other party.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

7. A written complaint filed on January 14, 2004 alleges that on October 30, 1997, the alleged victim was sentenced by the Criminal Court for Lima's "Northern Cone" to four years' conditional imprisonment for raping his daughter, who at the time of the offense was 16 years old. After hearing an appeal against the judgment, on April 13, 1998, the Northern Cone Criminal Division had confirmed it and established that the petitioner had to serve an actual four-year prison term (*prisión efectiva*). The petitioner alleges that during the proceedings no proof beyond a doubt of his criminal liability had been shown no evidence that the crime had actually taken place because the victim had told the police that she had first been raped by Juan La Torre, the brother of his partner, and later on, before the judge, she had said she had had consensual sexual relations with that persons. The petitioner added that there were contradictions in the versions given by the alleged victim, which indicated the false nature of the facts of which he stood accused.

8. From the documentation submitted and the account of the facts, it transpires that the petitioner filed an appeal for annulment, which was dismissed by the Superior Court of Justice of Lima on June 19, 1998. Subsequently, he filed another appeal against the denial of his appeal for annulment before the Supreme Court. He alleges that in those proceedings the Chief Prosecutor for Criminal Cases had issued a legal opinion on December 16, 1998 in which he stated that in the decision challenged by the appellant the evidence had not been properly examined nor had due importance been attached to the contradictions in the victim's statements to the police and in her testimony, so that he considered the complaint well founded. The petitioner alleges that, on May 18, 1999, the former First Criminal Division of the Supreme Court handed down a judgment in which, without substantiation and ignoring the contradictions pointed out by the Chief Prosecutor, he declared the complaint baseless.

9. He says that he filed an extraordinary appeal for a review of the criminal proceedings with the Supreme Court based on five "new facts or evidence" that had not been considered in the two convictions.³ On October 3, 2002, the Supreme Court declared the appeal inadmissible. The petitioner argues that that resolution contained no express arguments of fact or law and therefore failed to comply with the duty to provide substantiation. He cites a report in which the judgment does not mention the considerations therein and states that that report is not attached to the judgment. The petitioner filed an appeal for annulment of this resolution in writs filed on November 28, 2002 and September 29, 2003. The petitioner mentioned that by the time his complaint was submitted, more than 14 months had elapsed without the matter being resolved, so that on January 7, 2004 he had filed a request for reiteration of the appeal for annulment.

10. In addition, in his complaint, the petitioner indicates that he has been living in hiding for more than four years and had to give being on active service in the Peruvian navy, which for him constituted

³ The new facts allegedly were: 1) the legal opinion issued by the Chief Prosecutor for Criminal Cases on December 16, 1998; 2) a notarial statement by Juan La Torres who, according to the petitioner, could not attend, even though he had been a witness, the only citation he had been served by the Criminal Court, in which he declares having had voluntary sexual relations with his (the petitioner's) daughter; 3) a copy of Supreme Decree No. 31-95 OCM of 1995 (not taken into account, according to the petitioner) showing that the municipal elections had been in November, not September, 1995 as the (alleged) victim had asserted, so that the alleged rapes did not occur, because his partner had not been away on travel in September 1995; rather he had been with the alleged victim; 4) the birth certificate of the daughter of the (alleged) victim showing that the father was her husband, which, according to the petitioner, was evidence that there had been no psychological, physical, or emotional damage, given that the alleged victim almost immediately after denouncing him had got married and had had a child by her husband; 5) an acquittal issued subsequently by the same criminal court for Lima's "Northern Cone" showing that in another rape proceeding the Court had correctly applied the principle of the presumption of innocence.

serious economic and moral damage. For all of the above, he alleges violation of the rights to personal liberty, judicial guarantees, presumption of innocence, and judicial protection.

11. Written documents submitted later on indicate that on March 11, 2008, the Criminal Division of the Supreme Court declared the request for annulment inadmissible, on the grounds that there is a report sustaining and materially substantiating the resolution that rejected the extraordinary appeal for review, so that there were no defects or irregularities that might affect the validity or effectiveness of said resolution. Regarding this decision, the petitioner again alleges that the arguments of fact and law that that report should contain are not transcribed, nor the date thereof, nor the name of the Chief Prosecutor who issued it.

12. In light of the above, it is argued that the alleged victim was condemned in a final judgment to four years in prison without valid proof, without the evidence presented in the proceedings being properly examined and compared, and without an examination of the contradictions in which the alleged rape victim incurred in her statements. On the assumption that he would suffer emotional and psychological harm the petitioner had had to flee arrest. For all the above reasons, the petitioner alleges violation of his rights to personal liberty, judicial guarantees, honor and dignity, and the right to work because, in order to avoid being arrested because of an arbitrary conviction, he had had to renounce being a member of the Peruvian Navy on active duty, give up his right to property since had had to leave his home (which to this day is still occupied by the alleged rape victim). He also alleges violation of his right to freedom of movement and residence and to equality before the law, since, in other proceedings, the Criminal Division had followed the principle that one is innocent unless proven guilty (presumption of innocence) by acquitting the accused in similar cases.

B. Position of the State

13. According to the State, the petition is inadmissible, given that facts are not alleged that would constitute violations of rights recognized in the Convention. Rather, the Commission was being asked to act as a "fourth instance," declaring the alleged victim in this petition to be innocent of the charges against him, despite the ample opportunities he had had to defend himself before domestic courts. For the above reason, the State requests that the petition be declared inadmissible pursuant to Article 47.b of the Inter-American Convention on Human Rights.

14. In a second document containing its observations, presented on September 26, 2012, the State asks that the petition be declared inadmissible because it fails to characterize facts that imply violation of provisions of the Convention. It points out that the petitioner's dissatisfaction with the outcome of proceedings before Peruvian courts cannot be the object of analysis by a supranational body which is subsidiary to and complements the domestic legal system. It states that the IACHR is not a "fourth instance", and especially not when the petitioner acknowledges that an extraordinary appeal for review submitted several years after final judgment had been rendered was rejected twice and the petitioner went to the IACHR only in 2004. For that reason, according to the State, the "expiration of the time to claim" exception applies to this petition.

15. In particular, the State argues with respect to the petitioner's allegation that he had been convicted without proof, that what the petitioner is seeking is analysis of the evidence offered, admitted and discussed in internal criminal proceedings. However, it is up to the domestic legal system to assess evidence, so that the Commission cannot weigh or re-examine it. With respect to the allegation of violation of judicial guarantees, the State adds that the decision reached by domestic courts was no arbitrary acts and that Article 8 of the Convention had been respected. As for the allegations of violations of the petitioner's honor and dignity, the State points out that criminal law enforcement has certain legal consequences that go with a conviction. With respect to the alleged violation of the right to work, the State argues that that right cannot be protected under the Conventions individual complaints system, as pointed out in Article 19.6 of the Additional Protocol to the Convention. Therefore, on this point, the State argues that this is not an area for which the Commission is competent. As for the alleged violation of the right to equality before the law, the State cites the Commission's jurisprudence that although Articles 8 and 25 of the Convention require States to

provide a certain degree of predictability in access to justice, that does not preclude divergent judicial decisions.

16. Finally, the State points out that the petitioner resorted to the Commission after his right to do so had expired, if it is considered that the six months allowed under Article 46.1.b of the Convention are counted from the filing of his extraordinary appeal for review of final judgment and not from the date of notification of final judgment on April 13, 1998, or even from the date of the Supreme Court's ruling on May 18, 1999, which declared the complaint groundless. The State maintains that the procedural close of the discussion regarding appeals against his conviction occurred when the First Transitional Division of the Supreme Court of Justice declared the complaint groundless on May 18, 1999. The State suggests that the appeal for review is really seeking to destroy "res judicata" under the very restricted conditions allowing a court to examine an already closed proceeding. The State points out that this extraordinary appeal does not have to be filed by a certain deadline. Rather, it is invoked when one or more of the grounds provided for in Article 361 of the Code of Criminal Procedure are given, so that access to that appeal cannot constitute a guarantee for access to the Commission, since, as in this case, it could be filed several years after a final judgment was handed down. The State also mentions that the Supreme Court declared the request for annulment filed by the alleged victim in this petition on March 11, 2008 inadmissible, and did so again on August 16, 2011. Accordingly, the State argues that the filing of the two extraordinary appeals for review did not stay the six-month deadline from the date of notification of the final judgment on May 18, 1999. It points out that between that date and January 14, 2004, three years and seven months elapsed, which does not constitute "a reasonable period of time" for presentation of the communication.

17. In conclusion, the State maintains that due to the absence of a characterization of the facts, the Commission's lack of competence in respect of the alleged violation of the right to work, and the fact that the complaint was filed extemporaneously, the petition is inadmissible and it asks the IACHR to declare it as such.

IV. ANALYSIS OF COMPETENCY AND ADMISSIBILITY

A. Competence

18. The petitioner is entitled under Article 44 of the American Convention to lodge petitions with the Commission. The petitioner identifies the alleged victim as an individual for whom the Peruvian State undertook to observe and guarantee the rights established in the American Convention. As regards the State, the Commission notes that Peru has been a party to the American Convention since July 28, 1978, when it deposited its instrument of ratification. Thus, the Commission has *ratione personae* competence to examine the petition. The Commission is competent *ratione loci* to examine the petition because it alleges violations of rights protected in the American Convention that are purported to have occurred within the territory of Peru, a state party to said treaty.

19. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of rights protected under the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

20. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission alleging violation of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

21. In the instant case, there is no dispute as to the exhaustion of domestic remedies. The State does not make that argument; rather it points out that the petitioner had access to justice and judicial remedies, which did not favor his case. The file on this case also shows that the petitioner made use of the judicial remedies available to him.

22. According to the file, the alleged victim had been sentenced in 1997 for four years' conditional imprisonment for rape, a resolution that was confirmed upon appeal in a judgment handed down on April 13, 1998, which altered the sentence issued by the court *a quo* by sentencing the alleged victim to four years actual imprisonment. The petitioner subsequently filed an appeal for annulment, which was declared inadmissible on June 19, 1998. The petitioners filed a cassation appeal against that decision, which was denied on May 18, 1999. Later on, he filed an appeal for review, which was dismissed on October 3, 2002. Finally, he filed an appeal for annulment, which was dismissed on March 11, 2008.

23. Therefore, the Commission concludes that in the instant case domestic remedies were used and exhausted in accordance with Article 46.1.a of the American Convention.

2. Time period for lodging the petition

24. Article 46.1(b) of the American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment.

25. In the instant case, the State has alleged that the complaint was filed extemporaneously, given that the procedural moment when the discussion of challenges to the petitioner's conviction closed was the decision on May 18, 1999, when a resolution on the complaint was reached. The State argues that the filing of the extraordinary appeals for review did not interrupt the six-month period from the date the petitioner was notified of the May 18, 1999 decision, so that the complaint was lodged after the six-month deadline had expired.

26. Regarding this argument, the Commission considers that that the fact that the appeals filed after the cassation appeal were admitted for processing by the courts and their merits examined, suggests that they were appropriate courses of action undertaken by the alleged victim to present his arguments in Peruvian courts. Nothing leads the Commission to regard the filing of those appeals as manifestly unreasonable or reckless. The complaint to the Commission was lodged on January 14, 2004 and internal appeals were exhausted on March 11, 2008, with the judgment resolving the appeal for annulment. Therefore the exhaustion of domestic remedies occurred when the case was being examined for admissibility. Under those circumstances, the Commission has consistently taken the view that fulfillment of the requirement regarding the time period for lodging the petition is intrinsically linked to the exhaustion of domestic remedies and should therefore be regarded as complied with⁴.

3. Duplication of proceedings and International res judicata

27. The case records do not show that the subject of the petition is pending other international settlement procedures, or that it replicates a petition already examined by this or another international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are considered as having been met.

⁴ IACHR, Report N° 46/15, Petition 315-01: Cristina Britez Arce. Argentina. July 28, 2015, par. 47.

4. Colorable claim

28. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged could characterize a violation of rights, or, pursuant to paragraph (c) of the same article, whether the petition is "manifestly groundless" or "obviously out of order." The criterion for analyzing admissibility differs from that used to analyze the merits of the petition, given that the Commission only conducts a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Convention. This is a matter of a cursory analysis that does not amount to prejudging or issuing a preliminary opinion on the merits of the matter.

29. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

30. The petitioner maintains that on October 30, 1997 he was sentenced to four years conditional imprisonment for the crime of raping his underage daughter and a judgment of April 13, 1998 ordered that he effectively serve that sentence. Subsequently, he resorted to various remedies such as cassation, review, and annulment appeals. First, he alleges that there was no proof beyond a doubt shown in the proceedings that would establish his criminal liability nor that the crime had actually taken place. Second, he alleges that the judgments handed down in the Peruvian courts were arbitrary and failed to take into consideration either the contradictions in the statements made by the allegedly raped victim or the evidence he had provided during an extraordinary appeal for annulment. Finally, he alleges that the judgments reached in the review and annulment appeals are unsubstantiated. IN particular, he claims that the Supreme Court's resolution of October 3, 2002 contains no explicit arguments of fact or law. Based on the above, he alleges violations of his rights to personal liberty, judicial guarantees, honor, dignity, work, property, freedom of movement and residence, and equality before the law.

31. For its part, regarding those arguments, the State claims that the petition is inadmissible because it does not allege facts that characterize violations of rights recognized in the American Convention. Rather it seeks to have the Commission act as a "fourth instance" to overturn the conviction handed down in Peru's justice system. The State argues that the alleged victim in this petition had ample opportunities to defend himself in domestic courts.

32. As regards the first two aspects put forward by the petitioner regarding alleged innocence and erroneous assessment of the evidence, in the case *sub judice* the Commission observes that what the petitioner raises is a matter relating principally to the determination of his guilt, while he alleges innocence and states that the judgments are arbitrary particularly with respect to the way the evidence presented at the trial was examined. With respect to his alleged innocence, the petitioner asserts that he was convicted without evidence beyond a doubt, since the versions given by the alleged rape victim were contradictory and therefore, in his opinion, false. Although, in the jurisprudence of the inter-American system, the lack of full proof of criminal liability in a conviction could constitute a violation of the presumption of evidence principle,⁵ the information provided in the instance case does not give the IACHR sufficient grounds for a revision during the merits stage. The Commission takes note of the fact that these aspects were analyzed and resolved by the domestic courts hearing the case and reiterates that "it cannot act as an appeals or revision court, and so on to determine domestic courts' errors of fact or law"⁶.

33. Thus, given the complementary nature of the international protection afforded by the inter-American system, "the Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed acting within the boundaries of

⁵ IACHR. Report No. 82/13. Case 12.679. Merits. José Agapito Ruano Torres and Family. El Salvador. November 4, 2013, par. 119.

⁶ IACHR, Report N° 104/06, Petition 4593-02: Inadmissibility. Peter Anthony Byrne. Panama. October 21, 2006, par. 35.

their jurisdiction, unless there is unmistakable evidence of violation of the guarantees of due process enshrined in the American Convention⁷. Accordingly, the Commission considers that the petitioner has not submitted sufficient information to substantiate a level of denial of justice or violation of the right to due process that allows the Commission to assert that the domestic courts violated rights protected by the American Convention.⁸ For the above reasons, regarding those two aspects, the Commission cannot assert, based on the elements provided by the parties, that they amount to a possible violation of a right guaranteed by the American Convention.

34. As regards the third aspect raised by the petitioner, namely, the lack of substantiation in the judgments, the Commission construes that that allegation refers to defects in the judgment handed down on October 3, 2002, rejecting the extraordinary appeal for review, in respect of the reasons given to deny that appeal, given that the resolution restricts itself to maintaining that "according to the report on pages 154, 155, 156, and 157, whose arguments are reproduced (...) the court resolves to declare inadmissible the appeal for review submitted (...) against the judgment of April 13, 1999,"⁹ allegedly without explaining the reasons for its rejection, referring only to a report whose contents are neither transcribed nor attached to the resolution in question. The petitioner argues that this situation was then validated by the resolution of March 11, 2008, which declared the request for annulment inadmissible, adding, regarding this latter resolution, that it acknowledges the existence of a report "but there is no transcription of the fundamental or concrete portion of that report, nor any mention of the date of the report or [name of] the Chief Prosecutor, who ought to have explained the legal grounds for having requested the inadmissibility of the review, and referred to the five new facts submitted in the review request that for the Prosecutor writing the report must not have constituted new facts"¹⁰.

35. The Commission considers that it transpires from the same resolution of October 3, 2002, that the report was in the files, on the pages referred to in the judgment itself, so that access to its contents was possible by reviewing the records of the proceedings. Here, the Commission lacks sufficient information to reach the conclusion that the alleged victim would not have had access to said report, since it was in the files. Nor does the petitioner argue that he or his defense counsel were prevented from accessing the files. He only argues that the report was not transcribed in the resolution. For the above reasons, the Commission considers that there are not sufficient grounds to maintain that the alleged victim in this petition was prevented from accessing the contents of the report and thus from exercising his right to defend himself in the proceedings.

36. In light of the above, and as regards the petitioner's claim with respect to violation of Articles 1, 7, 8, 11, 21, 24, and 25 of the American Convention, the Commission observes that the petitioner does not offer arguments or substantiate their alleged violation, so that his claim cannot be declared admissible.

V. CONCLUSIONS

37. Based on the arguments of fact and law set forth above, and without prejudging the merits of the matter, the Commission concludes that the petition does not meet the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, therefore,

⁷ IACHR, Report N° 66/14, Petition 1180-03: Inadmissibility. Germán Cristino Granados Caballero. Honduras. July 25, 2014, par. 36; Report No. 45/04, Petition 369-01, Inadmissibility, Luis Guillermo Bedoya de Vivanco, Peru, October 13, 2004, paragraph 41; Report No. 16/03, Petition 346-01, Inadmissibility, Edison Rodrigo Toledo Echeverría, Ecuador, February 20, 2003, par. 38.

⁸ Ibid.

⁹ Judgment handed down by the Supreme Court of Justice of the Republic on October 3, 2002.

¹⁰ Brief submitted by the petitioner on July 14, 2008.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case inadmissible in relation to Article 47.b of the American Convention.
2. To notify the parties of this decision.
3. To publish the present decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 22nd day of the month of July, 2016. (Signed): James L. Cavallaro, President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.