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REPORT No. 128/18
PETITION 435-07
REPORT ON ADMISSIBILITY

ANTONIO LUCIO LOZANO MORENO
PERU

Approved electronically by the Commission on November 19, 2018.

Cite as: IACHR, Report No. 128/18. Petition 435-07. Admissibility. Antonio Lucio Lozano Moreno. Peru. November 19, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Antonio Lucio Lozano Moreno and Edith Sebastián López
Alleged victim:	Antonio Lucio Lozano Moreno
Respondent State:	Peru ¹
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 24 (equal protection), 25 (judicial protection), in relation to Article 1 (obligation to respect rights) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	April 10, 2007
Notification of the petition to the State:	June 28, 2011
State's first response:	August 15, 2011
Additional observations from the petitioner:	September 9, 2011, February 22, 2013, June 7, 2016, June 7, 2017
Additional observations from the State:	September 24, 2012, September 12, 2013

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 instrument of ratification made on July 28, 1978) and Inter-American Convention to Prevent and Punish Torture ⁴ (deposit of instrument made on March 28, 1991)

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 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (freedom from Ex Post Facto laws), 10 (compensation), 11 (right to privacy), 24 (equal protection), 25 (judicial protection), in relation to Articles 1 and 2 of the American Convention; and Articles 1, 6, and 8 of the IACPPT.
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 In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner José Francisco Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussion or decision in the present case.

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

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

⁴ Hereinafter the "IACPPT"

V. FACTS ALLEGED

1. The petitioners allege that on April 2, 1992, Mr. Antonio Lucio Lozano Moreno (hereinafter "the alleged victim") was illegally detained near his home by members of the Navy. They report that during his detention he was tortured by police agents in order to incriminate himself as a member of terrorist groups. They also indicate that in order to incriminate the alleged victim, the officers prepared a record of house searches in the vicinity of the police, incorporating false information. They note that on April 3, 1992, at the request of the Executive Counter-Terrorism Directorate (hereinafter "DIRCOTE"), the alleged victim and other detainees were preliminarily examined by a doctor. Although this examination was superficial, they indicate that the doctor noticed excoriations and ecchymosis on Mr. Lozano Moreno's body, as well as a swelling in his nasal lobe. They allege that this was included in a medical certificate issued on April 20, 1992, but that it was never investigated.

2. They report that on April 20, 1992, the Fifth Provincial Criminal Prosecutor's Office of Callao formulated charges against the alleged victim for the crime of terrorism, and the following day the Fifth Criminal Court of Callao initiated criminal proceedings, and issued a formal arrest warrant. They maintain that the trial was carried out in violation of the guarantees of due process, since, among other aspects, it was conducted and decided by "faceless judges". In a decision of January 19, 1994, these judges sentenced him to 10 years in prison. They point out that the alleged victim filed an appeal for annulment against this decision, which was dismissed on December 20, 1994, by the Chamber of the Supreme Court of Justice, also composed of "faceless judges".

3. They indicate that Law No. 26655 of August 17, 1996, created a Commission with the purpose of advising the President of the Republic on granting pardons to individuals who had been prosecuted for terrorism based on insufficient evidence. This would allow for the reasonable presumption that they had no link whatsoever with terrorist elements, activities or organizations. On November 7, 1998, Supreme Resolution No. 367-98-JUS granted a pardon to the alleged victim while he was serving his sentence in the Miguel Castro Castro Prison, on the basis that his situation was within the scope of Law No. 26655. They report that Mr. Lozano Moreno was released from prison on November 8, 1998, in compliance with the foregoing.

4. They argue that the alleged victim and others filed an enforcement action seeking reparations for their deprivation of liberty. This remedy was admitted by the Constitutional Court on July 13, 2000, which ordered that compensation be paid once the judicial authorities had determined the corresponding amounts for the claimants. They maintain that due to the lack of financial means, on October 30, 2002, the alleged victim requested legal aid to pursue his reparation claim. They indicate that the Public Procurator filed four objections in these proceedings, three of which were dismissed but the objection of prescription was admitted by the Third Specialized Civil Court of Lima on December 20, 2004, on the grounds that the period of six months provided for in Law 24973 had elapsed between the date of detention and the filing of the claim.

5. They point out that the alleged victim challenged that decision, arguing that his case should not be analyzed under the provisions of Law 24973, but the provisions of Decree Law 22128 providing for the payment of compensation as a result of the pardon. They indicate that on September 19, 2006, the First Civil Chamber of the Superior Court of Justice of Lima upheld the decision on the grounds that the aforementioned law had not been repealed and that it therefore remained applicable. He was notified of this decision on October 13, 2006.

6. In addition, the petitioners argue that there has been unequal treatment to the detriment of the alleged victim, since in other similar cases, the courts had dismissed the prescription objection and as a result, the individuals pardoned received compensation. Finally, the petitioners point out that Law 28592 does not contemplate the reparation of the damage caused to the alleged victim by the events reported, as it covers situations of restitution of citizens' rights, reparations in education, health, the promotion and facilitation of access to housing, among others.

7. The State maintains that the petition is inadmissible on the ground that the petitioner intends the Inter-American Commission to act as a fourth instance in the domestic proceedings. In this regard, it emphasizes that the statute of limitation argument filed by the State in exercise of its right to defense was declared valid by the national courts. Therefore, it argues that the Commission lacks competence to review this decision, since it cannot substitute the evaluation carried out by the Peruvian courts acting within their own jurisdiction.

8. Additionally, the State points out that the remedies set out in the domestic jurisdiction were not exhausted. On the other hand, it emphasizes that the facts described do not characterize violations of human rights, since the State has taken steps towards the allocation of housing for the alleged victim through a Comprehensive Program of Non-Pecuniary Reparations.

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

9. The petitioners argue that domestic remedies were exhausted by the decision issued by the First Civil Chamber of the Superior Court of Justice of Lima on September 19, 2006, which upheld the applicability of the statute of limitation on the reparation claim filed by the alleged victim. The State indicates that domestic remedies were not exhausted.

10. The Commission observes that in cases in which torture is alleged, the appropriate and effective remedy is an investigation and criminal prosecution, and that the State has the duty to promote and facilitate such remedies. In this regard, with respect to offenses subject to *ex officio* prosecution, the IACHR has repeatedly stated that "the authorities are obliged to conduct a thorough criminal investigation calculated to clarify the facts and determine blame."⁵ From the documentation provided by the parties, the Commission observes that the State was aware of the alleged torture and violation of physical from the time of the medical examination of the alleged victim on April 3, 1992, at the request of DIRCOTE, as stated in the medical certificate of April 20, 1992. Similarly, the Commission takes into account that the alleged victim reported these facts during the criminal proceedings initiated against him, without the judicial authorities ordering any type of investigation.

11. According to the information available, it does not appear that the authorities having knowledge of the allegations on torture against the alleged victim undertook the corresponding investigation. Consequently, the IACHR concludes that in accordance with the provisions of Article 46.2.c. of the Convention, the exception to the exhaustion of domestic remedies applies.

12. On the other hand, with regard to the criminal prosecution of the alleged victim for the crime of terrorism, his pardon and his resulting claim for compensation and damages, the Commission notes that since these proceedings were so closely connected, domestic remedies were effectively exhausted with the decision issued by the First Civil Chamber of the Superior Court of Justice of Lima, on September 19, 2006 upholding the prescription objection. This decision was notified to Mr. Lozano Moreno on October 13, 2006. Likewise, the IACHR observes that the State has failed to identify the remedies that should have been exhausted and whether said remedies were effective in terms of the present case.

13. Finally, the Commission received the petition on April 10, 2007, and the alleged events of the claim began on April 2, 1992, with certain effects continuing to the present day. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding timeliness is satisfied.

⁵ IACHR, Report No. 7/15, Petition 547-04. Admissibility. José Antonio Bolaños Juárez. Mexico. January 29, 2015, para. 22; Report No. 14/06, Petition 617-01. Admissibility. Raquel Natalia Lagunas and Sergio Antonio Sorbellini. Argentina. March 2, 2006, para. 44.

VII. ANALYSIS OF COLORABLE CLAIM

14. In view of the factual and legal elements submitted by the parties and the nature of the matter brought to its attention, the Commission considers that the alleged illegal detention of the victim, the alleged acts of torture committed against him, as well as the criminal prosecution for the crime of terrorism on the basis of an ambiguous criminal offense, allegedly carried out in violation of his right to a fair trial, including being tried by “faceless judges”, and the alleged lack of compensation and access to justice, could characterize possible violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (freedom from Ex Post Facto Laws), 10 (compensation), 11 (privacy), 24 (equal protection) and 25 (judicial protection) of the American Convention in relation to its Article 1.1, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 9, 10, 11, 24 and 25 in conjunction with Article 1.1 of the American Convention; as well in relation to Articles 1, 6, 8, of the Inter-American Convention to Prevent and Punish Torture;

2. 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 19 day of the month of November, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.