

OEA/Ser.L/V/II.
Doc. 114
16 September 2018
Original: Spanish

REPORT No. 101/14
PETITION 476-07
REPORT ON ADMISSIBILITY

ARTURO CASTILLO CHIRINOS
PERU

Approved electronically by the Commission on September 16, 2018.

Cite as: IACHR, Report No. 101/18. Petition 476-07. Admissibility. Arturo Castillo Chirinos.
Peru. September 16, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Arturo Castillo Chirinos and Harold Alberto Castillo Veintimilla
Alleged victim:	Arturo Castillo Chirinos
State denounced:	Peru ¹
Rights invoked:	Articles 8 (right to a fair trial), 11 (right to privacy), 23 (right to participate in government), 24 (right to equal protection), 25 (right to judicial protection), 27 (suspension of guarantees), 29 (restrictions regarding interpretation) and 30 (scope of restrictions) of the American Convention on Human Rights ² in connection with Articles 1 and 2 thereof.

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	April 18, 2007
Additional information received at the stage of initial review:	May 3 and September 4, 2007; January 9, and July 14, 2008
Notification of the petition to the State:	April 15, 2014
State's first response:	July 22, 2014
Additional observations from the petitioner:	August 15, November 13, 2014; March 24, April 28, November 1, 2016; May 5, 2017
Additional observations from the State:	March 10, September 11, 2016; December 7, 2017

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 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 8 (fair trial rights), 11 (right to privacy), 23 (right to participate in government), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in connection with Articles 1.1 and 2 thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, pursuant to section VI
Timeliness of the petition:	Yes, pursuant to section VI

¹ Pursuant to Article 17.2.a. of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not take part in the discussion or the decision of the instant matter.

² Hereinafter, "Convention," "American Convention" or "ACHR."

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

V. ALLEGED FACTS

1. The petitioners submit that Mr. Arturo Castillo Chirinos (hereinafter, “the alleged victim”) was elected Mayor of the Provincial Municipality of Chiclayo for the term of 2003-2006. They assert that the Municipality was ordered by the courts to reinstate in their positions a considerable number of public servants, who had been wrongfully dismissed during the prior administration’s term. They claim that the chief Human Resource officer failed to reinstate 7 employees and did not advise or provide any explanation to the alleged victim. Consequently, in a judgment of September 28, 2004, issued by the 14th Criminal Court of Chiclayo, the alleged victim was convicted and sentenced to a two-year prison term and disqualification from holding public office for the crime of resisting and disobeying the authority. They note that on December 16, 2004, the Single-Judge Criminal Chamber of the Appellate Court of Lambayeque upheld the prison sentence and overturned the punishment of disqualification.

2. They submit that on October 4, 2005, the Supreme Court of Justice (hereinafter, CSJ, from its Spanish language initials) overturned the appeals court judgment because it had been issued without ruling on a motion for recusal filed against the Single-Judge Court. They contend that on May 12, 2006, the Single-Judge Tribunal of the Criminal Chamber of Lambayeque found that the statute of limitations of the criminal action had lapsed (*prescripción extintiva extraordinaria*) and, therefore, the criminal conviction never became final.

3. The petitioners note that, when the appellate court upheld the conviction, a male citizen linked to the municipal workers’ trade union applied for the vacancy left by the alleged victim as Mayor of Chiclayo. This was because the Organic Law of Municipalities establishes as one of the grounds to declare a public office vacant that the officeholder has been convicted by a trial court of any willful criminal offense. They indicate that on March 3, 2005, the Municipal Council denied the application to fill the vacancy and this decision was appealed and adjudicated by the National Elections Jury (hereinafter, JNE) in Resolution No. 156-2005-JNE of June 6, 2005. They submit that the JNE declared the office vacant, appointing the current lieutenant Mayor as the new mayor.

4. They submit that on June 21, 2005, the alleged victim filed an *amparo* suit for constitutional relief to overturn Resolution No. 156-2005-JNE on the grounds that it had been issued without a final conviction, because as of that date the special motion to review the lower body’s decision (*recurso de queja excepcional*) was still pending before the CSJ. They indicate that the 4th Civil Court of Chiclayo stayed execution of the aforementioned Resolution as a precautionary measure, which the JNE rejected and did not comply with, inasmuch as it found the measure irrelevant. They further note that on October 17, 2005, the Court ruled in favor of the *amparo* claim.

5. The petitioners submit that the *amparo* decision was challenged by the new Mayor and by the JNE. They note that, prior to the decision on the challenge, on December 8, 2005, the Congress of the Republic enacted Law 28642, holding that claims of violations of constitutional rights may not be brought against the decisions of the JNE. They contend that this law was issued with the intent to deny the alleged victim judicial protection, inasmuch as on February 21, 2006, the Joint Superior Chamber on Vacancies of Lambayeque, ruled against the *amparo* claim on appeal, citing said law as its basis.

6. They report that on January 25, 2006, the National Identification and Marital Status Registry informed the alleged victim that the entry of his identity document had been revoked arguing that he was disqualified due to his criminal conviction. They contend that his identity document was expunged from the registry at the request of the JNE, even though it was fully aware that he had not received any criminal punishment. Consequently, they argue, he was unable to exercise his right to vote in presidential and congressional elections in 2006.

7. In response, on February 27, 2006, the alleged victim filed a constitutional claim (*recurso de agravio constitucional*) to appeal the court’s *amparo* decision and the revocation of his identification document. The petitioners submit that on July 21, 2006, the Constitutional Court ruled in favor of the challenge claim and overturned Resolution no. 156-2005-JNE, on the grounds that the JNE acted outside of its

legal authority, inasmuch as the appellate court judgment in the criminal proceeding could not be considered *res judicata* because the matter was still before the CSJ. Additionally, it found a violation of the Constitution because the precautionary measure ordered by the Civil Court of Chiclayo was not obeyed and because the plaintiff's right to vote and to participate in political life was infringed. Lastly, the applicability of Law 28642 was called into question, because the National Constitution recognizes the right of every person to not be subjected to proceedings that have not been previously established by law.

8. The petitioners assert that the Constitutional Court's judgment of July 21, 2006 exhausted domestic remedies. They contend that the JNE, arguing that no constitutional or legal provision empowers the Constitutional Court to overturn its resolutions, repeatedly disregarded, over a lengthy period of time, the final judgment on the *amparo* claim. In support of this contention, they attach several publications, official communiqués and press interviews in which the JNE emphasizes that the only accredited municipal authority was the Mayor named under Resolution No. 156-2005-JNE.

9. Petitioners indicate that the 4th Civil Court of Chiclayo issued several rulings and orders for the judgment of the Constitutional Court to be executed. These measures included requesting the Mayor at the time to hand over the office; charging him with the crime of disobeying the authority; ordering the premises of the municipal government building to be broken into, if necessary; and advising all public agencies of the locality that the position of Mayor belongs to the alleged victim. They noted that the alleged victim also filed requests for criminal investigations to be opened and resorted to the National Police and the Ministry of the Interior to be reinstated in his position and for public order to be maintained in Chiclayo. The petitioners contend that the lieutenant mayor refused to leave office and, consequently, on September 7, 2006, the day that Mr. Castillo Chirinos was supposed to be reinstated to his office as mayor, the lieutenant mayor used allies of his administration to keep from being expelled, with intense rioting and fires breaking out and the Provincial Municipal Government headquarters building being partially destroyed. They claim that the police accompaniment was inadequate even though a sufficient number of police officers had been requested to prevent this type of disturbance.

10. The petitioners note that, supported by the JNE, the lieutenant mayor attempted to continue governing from the Municipal Library. Consequently, the alleged victim filed a motion to freeze the bank accounts of the Municipality of Chiclayo in order to prevent any diversion of money. They further claim that the lieutenant mayor also took over the facilities of the office in charge of solid waste removal, which prevented this essential public service from being provided and required the Ministry of Health to take the appropriate actions to prevent an outbreak.

11. They submit that the Executive Branch of the national government did not adopt a neutral position in response to this situation and was not inclined to abide by the decision of the Constitutional Court. In this vein, they contend that the President of the Republic issued Supreme Decrees No. 067-2006 and 027-2006 of October 13, 2006, declaring a state of emergency in the Province of Chiclayo, because of an alleged power struggle that led to misgovernment, public disturbances and a failure to provide public services. According to petitioners' arguments, the prefect (the chief executive) of the Department of Lambayeque, who was a personal friend and political ally of the President, was appointed as the new mayor of the Municipality. They further contend that Supreme Decree 087-2006 extended the state of emergency until December 31, 2006, and, at that time, the prefect handed over power to the Mayor elected in the municipal elections of 2006.

12. The petitioners submit that the lieutenant mayor's disobedience was the cause of the misgovernment and turmoil in Chiclayo and, as a consequence, the Executive Branch had to direct the National Police to execute the court order and, as a last resort, declare the state of emergency in order to reinstate him in his office. They claim that, contrary to what was expected, the state of emergency was used to restrict the term of the alleged victim and transfer non-delegable duties of a Mayor, who was elected at the polls, to a different authority. They contend that fair trial rights were not available to them to be able to challenge the aforementioned decrees on grounds of unconstitutionality, because the state of emergency was in force for a 60-day period, and this means that the judicial proceeding had to be adjudicated in less than 2 months. Additionally, they would have had to obtain reinstatement in office prior to December 31, 2006, as

that is the date that his term came to an end, rendering such a possibility a moot point. They note that an *amparo* suit is not a prompt or simple remedy, inasmuch as the proceeding to challenge the JNE decision took one year and one month for a final disposition to be issued. They further contend that the alleged victim could not afford to hire legal counsel to defend him against these administrative acts.

13. The petitioners argue that, as retaliation, the JNE filed a lawsuit for damages against the alleged victim, which was dismissed as groundless on July 24, 2012. They note that, in response, he filed a civil suit for compensatory damages against the JNE for unlawfully removing him from office as Mayor, revoking his identification record and failing to obey the decisions of the Constitutional Court. They indicate that his claims were denied in rulings at the appellate level and the level of last resort (*casación*), the latter ruling being issued by the Transitory Civil Chamber of the Supreme Court of Justice on March 22, 2016. They submit that said Civil Chamber found that the JNE had not committed any illicit or illegal act, nor was its conduct derelict, arbitrary, willful or negligent. The alleged victim asserts that, as a result of the events described above, his health and assets have been adversely affected. He further claims that because he was considered a criminal with a final conviction and was accused of being the cause of the turmoil in Chiclayo, his name has been significantly tarnished and his honor has been damaged, rendering him unable to get a job or cover his living expenses.

14. Lastly, the petitioners contend that the legislative branch has failed to fulfill its duty to adopt domestic legislation to incorporate a simple, prompt and effective recourse against the rulings issued by the JNE, as recommended by the IACHR.⁴ They argue that, contrary to this duty, the Congress issued Law 28642 expressly prohibiting challenges against said decisions on grounds of unconstitutionality. They claim that even though the Constitutional Court found on June 19, 2007 that this law was unconstitutional, the JNE secretary general asserted in some media outlets that some legal and constitutional provisions still precluded the filing of *amparo* claims against its decisions.

15. In response, the State asserts that the JNE adjudicated the declaration of vacancy in keeping with its constitutional powers and current law. It submits that Resolution No. 156-2005-JNE was issued in accordance with the law, inasmuch as both levels of appeal had already been exhausted in the criminal proceeding. Additionally, it contends that the decisions of the JNE are not subject to review and are not the subject of claims in court, because its functions in electoral matters are exclusive and exclude involvement of other bodies, as provided for under the Constitution itself. In this regard, it argues that Law 28642 reinforced the express prohibition of the admissibility of constitutional proceedings against the decisions of the JNE. It argues that said statute was issued in keeping with institutional and parliamentary procedures in force and that later, on June 19, 2007, the Constitutional Court found it unconstitutional. Accordingly, the State claims that corrective measures to the originally challenged situation have been taken through the legal instruments provided for by domestic law.

16. The State submits that the state of emergency was decreed by the President of the Republic in keeping with the authority granted to him by the Constitution and conventions. It asserts that the decrees addressed a situation of public disturbance of the peace and of domestic order, which were triggered by misgovernment and fear among the population. Accordingly, measures were taken immediately to minimize risk, by suspending constitutional rights pertaining to personal freedom and security, the inviolability of the home and freedom of movement and territory. It concludes that the right to participate in government was not violated because, contrary to the petitioners' argument, the prefect of Lambayeque was not appointed as Mayor, he was only entrusted with enforcing domestic order and providing essential public services.

17. The State argues that domestic remedies were not exhausted inasmuch as, at the time of the lodging of the petition, the civil proceedings for compensatory damages had not come to an end. Additionally, it contends that because the Constitutional Court ruled in his favor, the alleged victim had not been harmed in any way that would grant him standing to go before the Commission, as required by Article 44 of the American Convention.

⁴ The petitioners cite: IACHR Report N° 119/99. Case 11.428. Merits. Susana Higuchi Miyagana. Peru. October 6, 1999.

18. The State notes that the suit brought by the JNE against the alleged victim was dismissed as groundless on July 24, 2012. It argues that this decision was issued prior to the date the Commission notified it of the petition and, therefore, he enjoyed effective judicial protection in the domestic arena. Furthermore, it asserts that the suit for damages filed by the JNE was adjudicated lawfully and with respect for fair trial rights. It submits that the CSJ found that the vacancy of the alleged victim was not arbitrary or unlawful, because even though the Constitutional Court had granted the motion for relief through *amparo*, in the civil arena no liability was found, inasmuch as neither willfulness nor negligence was proven and, therefore, the claim could not be the subject of examination in an *amparo* case, because of the very nature thereof.

19. Lastly, the State argues that the Inter-American Commission is not a fourth instance, being that it was not created to review domestic judicial decisions as the petitioners are intending for it to do with regard to the decisions of the JNE, which acts as an electoral tribunal. It contends that the alleged victim could have challenged his removal from office and resorted to the Constitutional Court, which ruled in favor of his claims in its judgment. As for the alleged failure to execute the *amparo* judgment, it asserts that the Peruvian legal system offered him the opportunity to file a suit for damages in a civil proceeding, and this proceeding was adjudicated while assuring due process and fair trial rights.

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

20. The petitioners submit that, because of the JNE's decision to remove him from office, the alleged victim filed a suit for constitutional relief via *amparo* (*acción de amparo constitucional*) and subsequently an appeal of denial of constitutional relief (*recurso de agravio constitucional*). They contend that on July 21, 2006 the Constitutional Court vacated Resolution No. 156-2005-JNE, ordered him to be reinstated to his office and declared a violation of his fundamental rights because of the revocation his identity record, which prevented him from exercising his right to vote. Nonetheless, they argue that said decision was not honored by the state authorities. For its part, the State argues that domestic remedies were not exhausted, inasmuch as at the time the petition was lodged, the civil case for damages had not concluded.

21. As to the removal from his office as Mayor, the Commission takes into account that the alleged victim filed a petition for constitutional relief via *amparo*, which the appeals court denied citing provisions of Law 28642. In response, Mr. Castillo Chirinos filed a motion against denial of constitutional relief, which was granted, the decision of which, however, was never executed. In this regard, the IACHR notes that the 4th Civil Court of Chiclayo pursued execution of said judgment through several means, without achieving compliance with the decision.

22. Moreover, the Commission takes note that the petitioners' argument that, given the time it takes for constitutional actions to be adjudicated and how soon the next election for mayor was taking place, there was no effective judicial remedy available at that time in order for the alleged victim to regain his office as Mayor. The IACHR also notes that the State does not refute the petitioners' argument that even though Law 28642 was found unconstitutional, as of the present date, no provisions of law have been implemented to provide for an effective recourse against the decisions of the JNE.

23. In view of the foregoing, the Commission concludes that the alleged victim brought judicial actions in the domestic arena against his removal from office of Mayor and, in response to the failure of government bodies to comply with the judgment of the Constitutional Court, which ruled in his favor, he brought several judicial and administrative actions without any of them being effective prior to the end of the term in office, for which he was elected. Therefore, the exception to exhaustion in Article 46.2.c. of the American Convention is applicable. Taking into consideration that the judgment of the Constitutional Court was issued on July 21, 2006, several judicial and administrative proceedings were pursued in order to achieve compliance, and the petition was lodged with the Commission on April 18, 2007, the IACHR concludes that the petition was submitted within a reasonable period of time as provided for in Article 32.2 of its Rules of Procedure.

24. With respect to the alleged tangible and intangible damages suffered as a consequence of his removal from office, the alleged victim filed a civil suit that was dismissed on March 22, 2016 by the Transitory Civil Chamber of the Supreme Court of Justice. The IACHR finds that said suit for compensatory damages stemming from extra-contractual liability is an adequate and available remedy to obtain reparation for the damages he is claiming. Therefore, with respect to this claim, domestic remedies were properly exhausted, pursuant to the requirements of Article 46.1 of the Convention. In this regard, the Commission notes exhaustion of domestic remedies with respect to this subject matter took place while the case was under consideration of admissibility. Based on IACHR doctrine, the analysis concerning the requirements set forth in Articles 46 and 47 must be conducted in light of the situation existing at the time the Commission rules on the admissibility of the claim, inasmuch as in this case the petition was filed at a different time than when the Commission is ruling on admissibility.⁵ Accordingly, the IACHR finds that the requirement established in Article 46.1.b of the Convention has been met.

VII. ANALYSIS OF COLORABLE CLAIM TO THE ALLEGED FACTS

25. In view of the elements of fact and law submitted by the parties and the nature of the matter brought to its attention, the Commission finds that, should the unlawful removal of the alleged victim from his office as Mayor of Chiclayo, the revocation of his identification record and consequent infringement of his right to participate in government, the alleged non-compliance with the Constitutional Court judgment, as well as the obstacles to gaining access to an effective and simple recourse against the decisions of the JNE, and the alleged denial of full reparation for the damages suffered by him, be proven, they could tend to establish potential violations of Article 8 (fair trial rights), 11 (right to privacy), 23 (right to participate in government), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in connection with Articles 1.1 and 2 thereof.

26. Article 26 of the American Convention makes general reference to economic, social and cultural rights and that these rights must be determined in connection with the OAS Charter and, therefore, this instrument must be taken into account during the merits stage. Additionally, in keeping with its consistent practice and the rules of interpretation provided for in Article 29 of the Convention, in order to determine the scope and content of Article 26 of the Convention in the particular case in question, during said stage, the Commission will also consider other relevant instruments to which the State concerned is a party.

27. As for the claim on the alleged violation of Articles 10 (right to compensation), 27 (suspension of guarantees), 29 (restrictions regarding interpretation) and 30 (scope of restrictions) of the American Convention, the Commission notes that the petitioners have not offered arguments or sufficient grounds to enable it to consider *prima facie* a potential violation thereof.

VIII. DECISION

1. To declare admissible the instant petition as to Articles 8, 11, 23, 25 and 26 in connection with Articles 1.1 and 2 of the American Convention;
2. To declare inadmissible the instant petition as to Articles 10, 27, 29 and 30 of the American Convention; and
3. To notify the parties of the instant decision; proceed to the analysis of the merits; and 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 16th day of the month of September, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de

⁵ IACHR, Report N° 108/17. Petition 562-08. Admissibility. Pedro Herber Rodríguez Cárdenas. Colombia. September 7, 2017, par. 14; Report N° 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, par. 27.

Troitiño, First Vice-President; Luis Ernesto Vargas Silva, Second Vice-President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Member of the Commission.