

OEA/Ser.L/V/II.
Doc. 214
26 December 2018
Original: Spanish

REPORT No. 189/18
PETITION 359-07
REPORT ON INADMISSIBILITY

VICENTE RODOLFO WALDE JAUREGUI
PERU

Approved electronically by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 189/18. Petition 359-07. Inadmissibility. Vicente Rodolfo Walde Jauregui. Peru. December 26, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Vicente Rodolfo Walde Jauregui
Alleged victim::	Vicente Rodolfo Walde Jauregui
Respondent State:	Peru ¹
Rights invoked:	Articles 8 (fair trial), 9 (freedom from ex post facto laws), 11 (privacy), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects); Article 6 (right to work) of the Additional Protocol to the American Convention on Human Rights regarding Economic, Social and Cultural Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	March 26, 2007
Additional information received at the stage of initial review:	April 13, May 8, and August 17, 2007; July 21 and 23, 2007; July 21, 2008; April 21, 2010
Notification of the petition to the State:	May 26, 2016
State's first response:	August 29, 2016
Additional observations from the petitioner:	April 28, 2017
Additional observations from the State:	February 9, 2018

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 ratification instrument made on July 28, 1978)

IV. ANALYSIS OF 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, under the terms of Section VI
Timeliness of submission:	Yes, under the terms of Section VI

V. FACTS ALLEGED

1. The petitioner indicates that the Peruvian State is responsible for the violation of his human rights for having removed from his position as magistrate of the Peruvian Supreme Court (hereinafter "the

¹ Pursuant to Article 17.2 of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the debate or decision of the present case.

² Hereinafter "American Convention" or "Convention."

³ Hereinafter "Protocol of San Salvador."

⁴ The observations presented by each party were duly forwarded to the opposing party.

Supreme Court”) in a discriminatory and illegal manner, for preventing him from obtaining a full review of the punitive decision, for not compensating him, and for not paying the wage he was entitled to receive.

2. The petitioner, a member of the Supreme Court’s Constitutional and Social Law Chamber (hereinafter “the Constitutional Law Chamber”), indicates that in 2003 this chamber confirmed a first instance judgment issued by the Supreme Court’s Permanent Civil Chamber. He indicates that the respondent party filed for a motion to annul this decision, stating that the Constitutional Law Chamber had not considered that its decision was contrary to a judgment issued by the Constitutional Court. Due to the foregoing, he indicates that the Constitutional Law Chamber declared the annulment of its own decision and then issued a new judgment exonerating the defendant. He indicates that the said decision was not challenged by the parties during the proceeding and it remained in force.

3. He states that in light of the foregoing, a member of Congress filed a complaint to the National Council of the Magistracy (hereinafter “CNM”) against the alleged victim and other magistrates of the Constitutional Law Chamber for considering that they had violated *res judicata* by annulling their own decision. On October 3, 2005, after the end of the administrative proceeding, the alleged victim was removed from his position.

4. According to the petitioner, his removal was discriminatory and illegal. Regarding its discriminatory nature, he says that another magistrate from the Constitutional Law Chamber was also reported to the CNM, and the latter decided that he should not be removed from his position and that a lesser punishment should be imposed. Therefore, he affirms that the right to equal protection was not assured for him. Furthermore, in relation to the unlawfulness of the removal, he indicates that CNM resolution was not duly motivated and was contrary to the principle of legality.

5. Since it is not possible to appeal CNM decisions due to legal restrictions, after his removal, the petitioner submitted a review before said body, but it was rejected. Due to this rejection, on November 11, 2005, he filed for a writ of amparo requesting the court to find that: i) the CNM’s resolution violated his constitutional rights; ii) as a consequence of this violation, his removal resolution should be annulled; and iii) he should be reinstated in his position as a magistrate of the Supreme Court, and that by reestablishing things to the way they were before the violation, he should enjoy the full exercise of his constitutional privileges.

6. After the writ of amparo was rejected in the first and second instance, the alleged victim filed a constitutional writ. On June 26, 2006, the Constitutional Court concluded that the CNM resolution was not duly motivated, so it declared the claim well-founded, voided CNM resolutions and ordered it to issue a new resolution.

7. He indicates that on November 30, 2006, the CNM passed a new resolution re-stating the alleged victim’s removal, thus once again violating due process and the principle of legality. He indicates that he filed for a series of other remedies against this resolution, among which there is a new writ of amparo in which he once again requested the court to find that: i) his constitutional rights had been violated; ii) the resolution should be voided; and iii) he should be reinstated in his position as a magistrate of the Supreme Court, and that by reestablishing things to the way they were before the violation, he should enjoy the full exercise of his constitutional privileges. After the writ of amparo’s rejection in the first and second instance, the alleged victim once again resorted to the Constitutional Court by means of a constitutional writ remedy.

8. On September 3, 2010, the Constitutional Court declared the writ well-founded and determined that CNM resolutions had violated the principle of legality. Therefore, the court declared the annulment of CNM resolutions and ordered the alleged victim’s reinstatement. The sentence was served and the alleged victim was reinstated in his post. However, the petitioner states that he was denied justice since he was never compensated for the damages and he has not received the wages he had stopped earning. Likewise, he indicates that everything that happened has seriously damaged his tranquility, honor, and health, due to the extended period of time he was removed from his position.

9. For its part, the State indicates that the petition should be declared inadmissible due to: i) the IACHR's lack of competence to declare a violation of Article 6 of Protocol of San Salvador; ii) the fact that the reasons for the petition have ceased to exist; iii) the lack of exhaustion of domestic remedies; and iv) the absence of a colorable claim.

10. It expresses that, at domestic level, the alleged victim requested his reinstatement as a magistrate of the Supreme Court, has had access to justice through the filing of several remedies and writs, and that his request has been granted in proceedings carried out within a reasonable period of time and pursuant to legal due process. The State declares that, according to the terms of the petition submitted by the petitioner, the reinstatement in his post constitutes sufficient reparation, which prevents the petition from being admitted, and indicates that any potential violation of Articles 8, 9, 24 and 25 has been repaired domestically.

11. It also adds that domestically, the petitioner has not submitted the argument that the impossibility of appealing CNM decisions constitutes a violation of his human rights, and that in spite of that, he was able to challenge CNM resolutions through several means which turned out to be favorable. In this regard, it informs that in 2006 the Constitutional Court annulled the first removal resolution, since it considered it was not duly motivated, and ordered the CNM to issue a new resolution. This order was fulfilled by means of the second removal resolution of November 2006. Similarly, in September 2010, referring to its own jurisprudence and the IACHR's jurisprudence, the Constitutional Court recalled that it has competence to review CNM decisions and determined that the CNM resolution of November 2006 had been issued in violation of the principle of legality. In light of the foregoing, the Constitutional Court annulled the CNM's resolution and ordered that the alleged victim be reinstated in the position he held before his removal.

12. The State also indicates that the petitioner has not requested the competent authorities to provide compensation and pay for the wages he had stopped receiving. In this regard, it indicates that if the petitioner wants a compensation and the wages he stopped earning, he should resort to the competent authorities by means of filing of a damages complaint, which is the ideal mechanism in order to obtain compensation for moral damages, damages to life plan, loss of profits, damages to the individual, and consequential damages. Therefore, it indicates that the petition should not be admitted due to the lack of exhaustion of domestic remedies with respect to the payment of compensation and the wages he stopped earning, as well as with respect to the impossibility of appealing CNM resolutions.

13. It states that the facts alleged by the petitioner do not characterize a violation of the rights protected by Articles 11 and 24 of the American Convention. In relation to Article 11, it indicates that the petitioner claims a violation of his honor and good reputation simply because he was removed from his position. Regarding Article 24, it indicates that the administrative proceedings carried out against the alleged victim cannot be compared to the proceedings initiated against another magistrate from the Constitutional Law Chamber, since the proceedings are based on different facts. In this regard, it states that proceedings against the other magistrate was initiated, since as the judge-rapporteur of the appeal decided in 2003 by the Constitutional Law Chamber, he should have taken into account a judgment by the Constitutional Court, which was omitted, and because of this mistake, the Chamber issued a ruling contrary to the previous decision made by the Constitutional Court. On the other hand, proceedings initiated against the alleged victim were based on the fact that, after the Constitutional Law Chamber had issued a ruling, he and other magistrates of this Chamber passed a resolution annulling their previous decision and, through their conduct, violated *res judicata*. Unlike the alleged victim and the other magistrates of the Constitutional Law Chamber, the magistrate who did not consider the existence of the Constitutional Court's judgment did not sign the resolution annulling the chamber's previous ruling, thus he did not violate *res judicata*.

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

14. The Commission recalls that when assessing the admissibility of a petition, the situation to be considered is the one at the time of assessing the admissibility, since the date of the filing of the complaint and the date of ruling on admissibility are different.⁵ In this regard, the IACHR considers that the remedies filed with the purpose of annulling the CNM resolutions, obtaining the recognition of violations of due process, principle of legality, honor and dignity, and the absence of equal protection from the law, as well as reinstating the alleged victim in his position, were exhausted on September 3, 2010, the date on which the Constitutional Court annulled the CNM's resolution of November 2006 for considering that this resolution violated the principle of legality and specificity and ordered the alleged victim's reinstatement in his position.

15. Regarding a potential violation of Articles 8 and 25 of the Convention in relation to the impossibility of appealing CNM resolutions, the State indicates that this has not been questioned internally by the petitioner and that this plea should be declared inadmissible. The IACHR recalls that when a State alleges the lack of exhaustion of domestic remedies on the part of the petitioners, it has the duty of identifying the remedies to be exhausted and proving that the remedies that have not been exhausted are "appropriate" for redressing the alleged violation—in other words, that the function of those remedies within the national legal system is suitable for protecting the infringed legal right.⁶ In this case, the State has not indicated the ideal remedy that should have been exhausted by the petitioner. Moreover, the IACHR observes that in the writs of amparo, the alleged victim mentioned the impossibility of challenging the CNM's decisions and the exception to this rule created by the Constitutional Court's jurisprudence which allows the revision of these decisions whenever they affect constitutional rights. Therefore, the IACHR considers that the said plea was domestically submitted in the above-mentioned remedies.

16. Due to the foregoing, the IACHR considers that the petition complies with the requirement set forth in Article 46.1.a of the Convention regarding the alleged aforementioned violations. Moreover, given the fact that the remedies were exhausted while the petition was already being analyzed by the IACHR, the petition also complies with the requirement set forth in Article 46.1.b of the Convention.

17. On the other hand, the State also indicates that the petitioner has not exhausted domestic remedies on the payment of compensation and of the wages he had stopped earning, and claims that the ideal remedy to fulfill these aims is a damages remedy. Likewise, in order to prove said remedy's effectiveness, the State provides a copy of a judgment for a damages proceeding, which was partly favorable regarding the pretensions of an individual who had requested a compensation from the State for loss of profits, moral damages, damages to life plan, and consequential damages stemming from a criminal proceeding initiated against this person. The petitioner indicates that, in the briefs submitted to the IACHR, it was informed that the petition also has the purpose of obtaining a fair compensation and an integral reparation for the damages suffered, but he does not reject or present information rejecting or replying to the State's arguments on the lack of filing a damages complaint and on the effectiveness of this remedy.

18. The IACHR established that the requirement of exhaustion of domestic remedies does not necessarily mean that alleged victims have the obligation to exhaust all the remedies available to them. Consequently, if the alleged victim expressed the matter by means of any of the valid and appropriate alternatives pursuant to domestic legal code and the State had the opportunity to redress the matter in its jurisdiction, the purpose of the international rule is fulfilled.⁷ However, in the present case, the IACHR observes that in the remedies filed by the alleged victim, he did not request compensation and the payment of the terminated wages. Therefore, the IACHR considers that the absence of a judicial decision on the payment of wages and compensation is due to the fact that these matters were not part of domestic litigation, due to the manner in which the alleged victim submitted his claims. Moreover, the victim does not allege or prove

⁵ IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 29, 2016, para. 33.

⁶ IACHR, Report No. 26/16, Petition 932-06. Inadmissibility. Rómulo Jonás Ponce Santamaría. Peru. April 15, 2016, para. 13.

⁷ IACHR, Report No. 16/18. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

that the judicial authorities, when analyzing the remedies domestically submitted, had the duty of deciding on these matters *proprio motu*. Likewise, the information available does not establish that the victim had requested those payments by means of other administrative or judicial proceedings. Therefore, in this case, the IACHR considers that the alleged victim has not domestically litigated this matter and that, in this respect, the petition does not comply with the requirement set forth in Article 46.1.a of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

19. Based on the findings of fact and law filed by the parties, the IACHR considers that the petition should not be declared admissible with respect to the alleged violations of Articles 8 (fair trial), 9 (freedom from *ex post facto* laws) and 25 (judicial protection) of the American Convention, as a result of the alleged victim's removal. In this regard, the IACHR recalls that, as a general rule, in the case of an arbitrary removal of a magistrate, an integral reparation implies that the State shall compensate those magistrates for the wages and benefits they have stopped receiving.⁸ However, in the present case, these payments have not been litigated at domestic level and the State has granted the only request presented by the alleged victim in the remedies he filed: his reinstatement in his former position.

20. Likewise, the IACHR observes that, in this case, in spite of the impossibility of appealing the CNM's decisions, the alleged victim was able to review the resolutions which removed him from office by judicial means on the basis of jurisprudence from the Constitutional Court. This review resulted in the annulment of these resolutions and the alleged victim has been reinstated in his position. Therefore, the IACHR considers that these allegations do not tend to characterize a violation of the rights protected by Articles 8 and 25 of the American Convention.

21. Similarly, the Commission considers that, from the information provided by the parties, the alleged facts do not tend to characterize a violation of Article 24 (equal protection) of the Convention, given that the different CNM decisions were issued in administrative proceedings which were not based on the same conduct of the magistrates. Moreover, the IACHR considers that the alleged victim has not provided support for the *prima facie* consideration of a potential violation of Article 11 (honor and dignity) of the Convention.

22. Finally, the Commission recalls that it is not competent in order to decide on the allegation of Article 6 of the Protocol of San Salvador (right to work) but, in light of Article 29 of the American Convention, the IACHR could take it into account to interpret and apply the American Convention and other applicable instruments.

VIII. DECISION

1. To declare the present petition inadmissible;
2. To notify the parties of this decision, 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 26th day of the month of December, 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.

⁸ Inter-American Human Rights Court, Case Reverón Trujillo vs. Venezuela, Judgment of June 30, 2009, Preliminary Exception, Merits, Reparations and Costs, para. 126.