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REPORT No. 187/19
PETITION 1013-11
REPORT ON ADMISSIBILITY

VÍCTOR LUIS PADILLA TEJADA
PERU

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 187/19. Petition 1013-11. Admissibility. Víctor Luis Padilla Tejada.
Peru. December 5, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Víctor Luis Padilla Tejada
Alleged victim	Víctor Luis Padilla Tejada
Respondent State	Peru ¹
Rights invoked	Articles 3 (juridical personality), 4 (life), 8 (fair trial), 10 (compensation), 17 (rights of the family), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ² in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); Articles I (life, liberty, and personal security), II (equality before law), VI (right to a family and protection thereof), VIII (residence and movement), IX (inviolability of the home), XVI (social security), XVII (recognition of juridical personality and civil rights), and XXIV (petition) of the American Declaration of the Rights and Duties of Man; ³ and other international instruments ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	July 29, 2011
Notification of the petition	July 23 2016
State's first response	September 23, 2016
Additional observations from the petitioner	October 20, 2011; September 6, 2012; January 28, 2013; September 8, 9, and 23, 2016; February 14, April 20, June 20 and 27, and August 8, 15 and 30, September 5 and 28, October 4 and 24, 2017; January 24, February 12, May 24, and September 8, 2018
Additional observations from the State	August 28, 2017

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes. American Convention (deposit of instrument of ratification 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 5 (humane treatment), 8 (fair trial), 21 (property), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes. October 9, 2013
Timeliness of the petition	Yes. July 29, 2011

V. SUMMARY OF ALLEGED FACTS

1. Víctor Luis Padilla Tejada (“the petitioner” or “the alleged victim”) indicates that starting on March 1, 1955, he worked as a teacher in the public sector and developed an outstanding career that led him

¹ Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion or the voting on this matter.

² Hereinafter “American Convention” or “Convention.”

³ Hereinafter “American Declaration” or “Declaration.”

⁴ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador,” and Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

⁵ The observations submitted by each party were duly transmitted to the opposing party.

to become dean of the School of Communication Sciences at San Martín de Porres University. He claims that in 1985, he was compelled to apply for voluntary termination of employment in order to preserve his life, for he had been exposed to several acts of violence.⁶ According to him, on July 1, 1985, he was terminated but not granted his teaching retirement pension, which he was entitled to under Law No. 20530,⁷ or additional benefits.⁸ He claims that the resolution recognized only 22 years, 3 months, and 25 days⁹ of his actual 34 years and 7 months of service.¹⁰ He alleges that on September 5, 1985, he lodged an appeal for reconsideration, of which he has had no answer. He adds that on June 30, 1998, he filed two applications to the Ministry of Education, one regarding a provisional post-termination pension and another regarding a life pension, none of which have been answered. He claims given the lack of administrative processing of his pension applications, from 2012 to 2016 he had to file several complaints and applications to the Local Unit for Educational Management (hereinafter “UGEL”) and the Ministry of Education, despite which his pension applications have not been processed.¹¹

2. He indicates that in 2005 he applied for a writ of mandamus requiring the Ministry of Education to fulfill its administrative duties. He alleges there was an unwarranted delay in the resolution of this legal action.¹² He submits that when he filed his petition in 2011, his case file was still pending; and only in 2013 did a trial court issue judgment. He adds that he filed a *habeas data* petition, ruled inadmissible by Constitutional Court No. 10 on October 30, 2015. He filed criminal complaint 541-2013 against the UGEL director, for abuse of power, crimes against public administration, and discrimination; however, the public prosecutor’s office dismissed it on June 4, 2015. He lodged a criminal complaint against a reluctant UGEL for abuse of power, discrimination, and coercion and a complaint with the Ombudsman’s Office, both of which remained unprocessed in 2016. Contrary to the State’s claims, he contends that he has not been granted any retirement pension under any scheme.

3. The State¹³ claims that there has been no unwarranted delay in the judicial process, because on January 24, 2013 a trial court dismissed the petitioner’s application for a writ requiring administrative processing; after the Provisional Court of Appeals for Contentious Administrative Matters No. 2 concluded that the petitioner did not meet two of the three statutory requirements to access the pension requested.¹⁴ It notes that the petitioner appealed this decision, but Court for Contentious Administrative Matters No. 4 of the Superior Court of Justice of Lima upheld it on October 9, 2013. It considers that the petitioner accepted the content of this judgment because he did file a cassation appeal.

⁶ He explains that due to the opening of the academic year, he and another dean from the university were subjected to death threats and kidnapped, spending 24 hours deprived of liberty; that the items of furniture of his school were stolen and forced; that his car was once shot, and the former dean of the school, who was with him at that moment, was shot thrice and killed; that those responsible for the latter episode were identified as terrorist groups.

⁷ He submits that under this law, teaching pensions are based on a teacher’s last salary, which in his case is equal to that of a vice-minister because he belongs to seniority level V.

⁸ He alleges that, among other things, he is entitled to an extra 10 percent of his salary given his academic rank and another 10 percent because the State awarded him a *Palmas Magisteriales* decoration.

⁹ He submits that even based on this number of years of service, he should have received a pension because under the law, in the case of men, workers are entitled to a pension on reaching 15 years of service.

¹⁰ He alleges that under the law, the State should have recognized him no less than four years for professional training, given his rank and degrees.

¹¹ According to him, petition of August 31, 2012, requesting the *ex officio* payment of his teaching pension; complaint of May 19, 2013, filed with the Ministry of Education given the lack of administrative processing of his record; appeal/complaint of September 5, 2014, with the UGEL director; complaint of September 10, 2014, with the Ministry of Education over the administrative inaction; petition of September 26, 2014, to the UGEL director for damages and quoting *in extenso* his petitions from 2012, 2013, and 2014; petition of October 3, 2014, to the UGEL director and administrative manager, quoting *in extenso* his petition for the payment of his teaching pension from administrative records dated 2012, 2013, and 2014; complaint of October 31, 2014, to the UGEL director over the suspicious administrative inaction; complaint of November 12, 2014, to the UGEL director over the administrative inaction and the director’s repeated request for illegal information; complaint of November 12, 2014, to the Ministry of Education over UGEL administrative inaction; complaint and appeal of May 22, 2015.

¹² In this regard, he underlines that the court took over four years to issue resolution No. 1 of all the record, regarding which it granted the Ministry’s appeal with suspensive effects.

¹³ The Commission takes note that the petitioner believes that the agents acting on behalf of the State are not duly qualified under the internal legal framework. However, the Commission has not found elements to question the capacity of the Supranational Specialized Public Prosecutor’s Office to act on behalf of the State regarding this admissibility procedure.

¹⁴ He was not employed or contributing to the pension scheme under Decree-Law No. 19990 when Law No. 25212 came into force on May 21, 1990.

4. The State moreover argues that the petitioner's claim for a pension equal to a vice-minister's income is contrary to the law and the Constitution due to an express prohibition to bring pensions into line with active workers' salaries. It refutes the petitioner's assertion that he does not receive his retirement pension, claiming that he has a retirement pension under the Decree-Law No. 19990 scheme.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The petitioner believes that a cassation appeal would have been inadmissible regarding the decision of October 9, 2013, because in Peru contentious-administrative matters are settled in the second instance of jurisdiction. Moreover, he considers that an exception to the exhaustion of domestic remedies applies in his case since when he filed the instant petition, there was an unwarranted delay in the resolution of his application for a mandamus order requiring the administrative processing of his record. According to the State, it is evident that domestic remedies had not been exhausted when the petition was filed back in 2011, as the petitioner continued filing remedies, and internal judgments were passed after that date. It also believes that the petitioner failed to meet the deadline set forth in Article 46.1.b of the American Convention, as the petition was filed before a final decision was made.

6. The Commission takes note of the State's allegation that domestic remedies had not been exhausted when the instant petition was filed to the Commission. In this regard, the IACHR reiterates its criteria that the exhaustion of domestic remedies should be analyzed in light of the situation at the time of the ruling on the admissibility or inadmissibility of the claim.¹⁵ The Commission also observes that according to the State, the petitioner accepted the decision of Court for Contentious Administrative Matters No. 4 of the Superior Court of Justice of Lima from October 9, 2013, because he did not challenge it. However, the State has not submitted elements indicating that a cassation appeal is an adequate and appropriate remedy that ordinarily must be exhausted regarding claims such as the one raised by the petitioner. In this regard, the Commission reiterates that it is the State that must identify the remedies that must be exhausted and demonstrate that those remedies that were not exhausted are "appropriate" for redressing the alleged violation—that is, that the function of those remedies within the national legal system is suitable for protecting the legal right infringed.¹⁶ Finally, the Commission observes that the State has not argued that the domestic remedies are not exhausted at the moment when the decision on the admissibility of this petition is being made, nor referred to domestic remedies pending to be exhausted that could be appropriate and effective for having the petitioner's claims heard at the national level.

7. Based on the above considerations, the Commission believes that, in this case, the domestic remedies were exhausted with the judgment issued by Court for Contentious Administrative Matters No. 4 of the Superior Court of Justice of Lima, on October 9, 2013. Therefore, and since the petition was filed on July 29, 2011, the Commission finds that this petition meets the requirements in Article 46.1, subparagraphs (a) and (b) of the American Convention.

VII. COLORABLE CLAIM

8. The petitioner deems that the State has violated his human rights¹⁷ because it has not recognized him a pension which, he argues, he is legally entitled to and has failed to respond in due course to the several administrative and legal actions filed internally, even though he explained that his situation was urgent as he depended on the payment of his pension to afford a dialysis treatment required by his fragile condition. He contends that, contrary to the State's allegation, he does not receive any retirement pension under any scheme. The State affirms that the petitioner seeks that the Commission unlawfully work as a fourth instance of jurisdiction and review the decision made by the national courts, which have lawfully found that the petitioner's claims are groundless. It refutes that the petitioner has been financially deprived of

¹⁵ IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 29, 2016, para. 33.

¹⁶ IACHR, Report No. 26/16, Petition 932-06. Inadmissibility. Rómulo Jonás Ponce Santamaría. Peru. April 15, 2016, para. 25.

¹⁷ See Rights invoked in Section I hereof.

affording his health needs because he has received a retirement pension under the scheme of Decree-Law No. 19990.

9. The Commission observes that the national courts have found that the payment of a pension in the terms required by the petitioner was not applicable. Nonetheless, the State submits that the petitioner has been recognized and is paid a retirement pension under a different pension scheme. In turn, the petitioner denies these allegations, claiming that he has never received a pension under any scheme. The factual claims submitted by the parties being incompatible and none of the parties having submitted elements to prove their claims, the Commission deems necessary to undertake a merits report because, if proven, the petitioner's lack of access to his retirement pension; as well as the claims regarding an unwarranted delay in the resolution of the petitioner's administrative and legal actions aimed at obtaining his pension might establish violations of Articles 8 (fair trial), 21 (property), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects). The Commission also takes note of the petitioner's allegations that the administrative and judicial officials failed to observe their international obligations in that they did not process his actions as an urgent matter despite this being required by his health condition. The Commission shall examine these claims in the merits stage in the light of Article 24 (equal protection) of the American Convention in connection with its Article 5 (humane treatment).

10. In regard to the alleged violations of Articles I, II, XVII, and XXIV of the American Declaration, the Commission has previously established that once the American Convention becomes effective in relation to a State, it is this and not the Declaration that becomes the primary source of law applicable by the Commission, provided that the petition concerns a violation of similar rights set forth in both instruments and that it is not an ongoing situation. In this case, the alleged violations of these articles fall under the scope of Articles 5, 8, 24, and 25 of the American Convention. Accordingly, the Commission shall examine these pleadings in the light of the American Convention. As for the claim about the alleged violation of Article XVI (social security) of the American Declaration, in addition to the observation on the primary source of law applicable and considering that Article 26 of the Convention broadly refers to economic, social, and cultural rights and that these shall be determined in relation to the OAS Charter and other applicable instruments, the Commission believes that when a petition concerns a specific violation of the Declaration that is related to the general content of Article 26, such correspondence and identity shall be analyzed in the merits stage.

11. As for the allegations regarding violations of Articles 3, 4, 10, and 17 of the American Convention, as well as the right to life, the right to a family and the protection thereof, the freedom of residence and movement, the inviolability of the home and the recognition of juridical personality and civil rights, the Commission believes that in the case file there are no factual or legal elements to consider, not even *prima facie*, that they may have been violated.

12. The Inter-American Commission lacks competence *ratione materiae* to rule, within its system of petitions, on possible violations of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities and articles of the Protocol of San Salvador other than those referred to in article 19.6 of this treaty. However, pursuant to Article 29 of the American Convention, the Commission may consider them to interpret or apply the American Convention or other applicable instruments.

13. As for the State's claim on the fourth instance of jurisdiction, the Commission observes that in declaring this petition admissible, it does not seek to replace the competence of national judicial authorities. Instead, this means that in the merits stage, the Commission shall analyze if the domestic proceedings were held pursuant to the American Convention.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5, 8, 24, 25, and 26 of the American Convention in accordance with its Articles 1.1 and 2, and article XVI of the American Declaration; and

2. To declare the instant petition inadmissible with regard to Articles 3, 4, 10, and 17 of the American Convention, as well as to the right to life, the right to a family and the protection thereof, the freedom of residence and movement, the inviolability of the home and the recognition of juridical personality and civil rights; and

3. 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 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.