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REPORT No. 28/19
PETITION 155-08
REPORT ON ADMISSIBILITY

RODRIGO DÍAZ LATORRE
PERU

Electronically approved by the Commission on March 16, 2019.

Cite as: IACHR, Report No. 28/19. Petition 155-08. Admissibility. Rodrigo Díaz Latorre. Peru.
March 16, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Rodrigo Díaz Latorre
Alleged victim:	Rodrigo Díaz Latorre
Respondent State:	Peru ¹
Rights invoked:	Articles 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Articles 1(1) and 2

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	February 13, 2008
Notification of the petition to the State:	January 15, 2014
State's first response:	April 16, 2014
Additional observations from the petitioner:	July 19, 2017
Additional observations from the State:	March 9, 2018
Notification of the possible archiving of the petition:	May 26, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	July 19, 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 (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:	Articles 8 (fair trial), 11 (privacy), 23 (right to participate in Government), 25 (judicial protection), and 26 (progressive development) of the American Convention, in relation to its Articles 1(1) and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on August 13, 2007
Timeliness of submission:	Yes, on February 13, 2008

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 of the present case's decision.

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

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

V. FACTS ALLEGED

1. The petitioner, who had been a judge since 1984 and had been Head Criminal Judge of the Judicial District of Lima since 1994, states that in August 2002, the National Council of the Judiciary (hereinafter “CNM”), without affording him the opportunity to be heard or to defend himself, passed a resolution that lacked motivation and was nonappealable, through which it decided to not confirm him in his position.

2. He claims that the resolution’s lack of motivation, its nonappealable nature, and the lack of an administrative proceeding violate due process and the presumption of innocence. In addition, he says that this has negatively affected his honor, good name, and life plan, and that his non-confirmation resulted in his perpetual disqualification to work in the administration of justice. Therefore, he considers that the State is to be held responsible for violating his rights and that he should be reinstated and obtain compensation for the wages and employment benefits he has stopped receiving, as well as for moral damages and damages to his life plan.

3. According to the petitioner, in September 2002, he filed a motion for reconsideration of judgment, which was rejected by the CNM, as it considered it was unnecessary to motivate a confirmation of non-confirmation decision. Likewise, the CNM considered that this decision was not a punishment, so it was not necessary for a defense to be presented. In November 2002, the petitioner filed for a writ of amparo requesting the nullity of CNM’s resolution due to its lack of motivation, non-compliance with the right to a defense, and the violation of the presumption of innocence. As reparation, he requested his reinstatement in his position, the payment of the wages he had stopped receiving, employment benefits, and compensation for damages to his honor and good name.

4. The writ of amparo was dismissed in the first instance, since it was considered that the non-confirmation was not a punishment, which would require motivation, but rather a decision based on the lack of confidence, which does not depend on the defense an individual might present. As it was not a punishment, the court of first instance considered that the petitioner’s good name had not been damaged and the presumption of innocence had not been violated, and that the lack of defense had no impact on the decision. Said decision was appealed and confirmed in the second instance in 2006.

5. The Petitioner filed for a grievances remedy before the Constitutional Court. On March 21, 2007, this Court observed that, at the time of the petitioner’s non-confirmation, such decisions need not be motivated and that situation changed when it was acknowledged that this kind of resolution should be motivated and provide the interested party with the opportunity to be heard. However, it observed that, according to Judgment STC 3361-2004-AA/TC, the need to motivate non-confirmation resolutions was to be applied to resolutions issued after the 2004 judgment and had no impact on previously passed resolutions. Due to the foregoing, the Constitutional Court rejected the motion.

6. For its part, the State indicates that, even though non-confirmation decisions lacked motivation at the time, several legislative changes have been made to require the motivation of these decisions, to require the interested party to be heard, and to allow CNM resolutions to be appealed when they lack motivation or have been passed without a previous hearing of the interested party. In this regard, the Court states that the Peruvian Code of Procedure was modified in 2004 in order to stipulate that CNM resolutions would not be appealable if they were motivated and passed with a previous hearing of the interested party; requirements that previously did not exist. In addition, on July 1, 2005, the CNM approved the Regulations Governing the Assessment and Confirmation of Judges of the Judicial Branch and Prosecutors of the Prosecutor’s Office, which acknowledges the need for such resolutions to be motivated, the right to be heard, the right to a reasonable period of assessment and confirmation, as well as to personal interviews, which are now recorded through magnetic or optical means.

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

7. The IACHR observes that the only reference the State makes to exhaustion of domestic remedies exhaustion is linked to the fact that, due to legislative changes, it is now permitted to challenge CNM resolutions that lack motivation by means of a special remedy due to possible violations of due process. However, the State does not indicate whether this remedy might be used by the petitioner in order to challenge the lack of motivation of a resolution passed before the legislative change.

8. The IACHR notes that the petitioner has lodged different appeals to challenge 2002 resolution, in which violations of due process, the presumption of innocence, and honor and good name were alleged. Through these appeals, the petitioner has requested his reinstatement in the position he had before the non-confirmation, the payment of the wages he has stopped receiving, employment benefits, and compensation for moral damages and damages to his life plan.

9. The last remedy exhausted was decided by the Constitutional Court on March 21, 2007, and the petitioner was notified of said decision on August 13, 2007. Therefore, the IACHR considers that the petition complies with the requirements provided by Articles 46(1)(a) and 46(1)(b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

10. The IACHR considers that the facts alleged in relation to the lack of motivation of the resolution which decided to not confirm the petitioner in his position and his non-participation in the proceeding might, if proved, constitute a violation of Article 8 (fair trial) of the American Convention, pursuant to its Article 1(1). Likewise, at the merits stage, the IACHR will analyze if the alleged limited impossibility or possibility of challenging CNM resolutions might constitute a violation of Articles 8 (fair trial) and 25 (judicial protection) of the Convention, pursuant to its Articles 1(1) and 2.

11. In addition, at the merits stage the IACHR will analyze if the alleged damages caused by the non-confirmation, such as the damages to his honor and his perpetual disqualification to work in the administration of justice, if proved, might constitute a violation of Articles 11 (privacy), 23 (right to participate in Government), and 26 (progressive development) of the American Convention, pursuant to its Articles 1(1) and 2.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 (fair trial), 11 (privacy), 23 (right to participate in Government), 25 (judicial protection), and 26 (progressive development) of the American Convention in accordance with its Articles 1(1) and 2 in relation to the alleged victim.

2. To notify the parties of the present decision; to continue analyzing the matter, 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 16th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.