

OEA/Ser.L/V/II.

Doc. 140

16 August 2019

Original: Spanish

**REPORT No. 131/19**  
**PETITION 1594-09**  
ADMISSIBILITY REPORT

DANIEL GUILLERMO YANAC PADILLA  
PERU

Approved by the Commission electronically on August 16, 2019.

**Cite as:** IACHR, Report No. 13/20, Petition 1594-09. Admissibility. Daniel Guillermo Yánac Padilla. August 16, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Daniel Guillermo Yanac Padilla
<b>Alleged victim:</b>	Daniel Guillermo Yanac Padilla
<b>Respondent State:</b>	Peru <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (personal integrity), 7 (personal freedom), 8 (judicial guarantees), 9 (freedom from ex post facto laws) y 24 (equality before the law) of the American Convention on Human Rights <sup>2</sup> in relation to articles 1.1 (obligation to respect) and 2 (duty to adopt domestic legislation)

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	December 10, 2009
<b>Notification of the petition to the State:</b>	February 27, 2013
<b>State's first response:</b>	April 25, 2013
<b>Additional observations from the petitioner:</b>	March 11, 2014
<b>Additional observations from the State:</b>	May 31, 2016

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument on July 28, 1978)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 5 (personal integrity), 7 (personal freedom), 8 (judicial guarantees), 9 (freedom from ex post facto laws), 11 (privacy) and 25 (effective remedy) of the American Convention on Human Rights in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> Based on article 17.2.a of the Rules of procedure of the Commission, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the debate or decision of this matter.

<sup>2</sup> Hereinafter "America Convention" or "Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. Daniel Guillermo Yanac Padilla (hereinafter "the petitioner" or "the alleged victim") reports that on August 17, 1993, he was detained by agents of the Counter-Terrorism Directorate (DIRCOTE) without an arrest warrant or being in *flagrante delicto*, being kept detained until August 26, 1993 without having access to his family or a defense attorney. He alleges that during those ten days he was subjected to physical and psychological abuse. He argues that through these abuses (and the threat of disappearing his parents and his younger brother) they bend his will in order to make him confess to crimes he did not commit, resulting in him signing and putting his fingerprints in documents written by the police without first reading their content. He states that he was "disappeared" again until October 24, 1993 when he appeared in the dungeons of the Palace of Justice, where he remained incommunicado until December 21, 1993. He notes that he was then transferred to a maximum security prison where he was able to communicate with his family for the first time. He adds that since that date he has been deprived of liberty in maximum security centers.<sup>4</sup>

2. He notes that, based on the unlawful evidence obtained through torture, he was sentenced on October 10, 2005, to 20 years' imprisonment for his alleged participation in the confiscation of the Pilsen truck in the Bocanegra Human Settlement which took place on August 14, 1993 and of which he alleges he had no connection to whatsoever.<sup>5</sup> It argues that on May 11, 2007, through Supreme final judgement, his sentence was increased to 25 years in a decision that did not comply with the guarantee of a reasoned judgement because it was based on a "criteria of conscience". In addition, he denounces that the process that led to his conviction was plagued by irregularities, among others: 1) The police themselves practiced the proceedings of "recognition" through photographs, invading the work of the judge; 2) He remained incommunicado without access to his lawyer for a total of 31 days whereas the Constitution allowed a maximum of 15 days of detention in police units; 3) In most of the police proceedings, there was no participation of a representative of the Public Ministry, as required by law, but instead that of a "faceless" military prosecutor; 4) Declarations and acknowledgments made by his co-defendants obtained through torture and incommunicado techniques were assessed; 5) In August 1993 he was presented before a press conference in a striped suit, subjecting him to a situation of grievance and humiliation in violation of the presumption of innocence; 6) during the police investigation he was not informed of the facts he was charged with nor was he given the opportunity to communicate privately with the lawyer appointed by his family; 7) The lawyer appointed by his family did not had the opportunity to be heard to raise his defense nor was he present at the time the petitioner gave his statement.

3. The State, for its part, points out that the detention of the petitioner was carried out in accordance with the Constitution and the American Convention since, on the dates when it occurred, the Department of Lima was under a "state of emergency", declared in accordance with Article 231 of the Constitution by Supreme Decree No. 048-93-DE-CCFFAA of July 16, 1993 for a period of 60 days. It emphasizes that article 20 (g) of the Constitution (detention with a judicial order or by the police authorities in *flagrante delicto*) was among those that the Constitution allowed to suspend in the event of a state of emergency. It adds that the Criminal Chamber analyzed in its judgment of October 10, 2005, the allegations of torture made by the petitioner and concluded that these were unfounded since the legal medical evaluation determined that the petitioner did not present traumatic body injuries. The Chamber also valued the fact that in his statement the petitioner accepted responsibility for two facts but denied other accusations, concluding that it was illogical to think that the police had tortured him to accept only two facts and to deny others.<sup>6</sup> He maintains that the increase in the penalty imposed on the petitioner was carried out in accordance with the law. It also alleges that in the proceeding of the petitioner, all the evidence was assessed in accordance with the applicable rules, noting that the Constitutional Court had previously determined that "the evidence presented in the proceedings before the military jurisdiction (does not exclude the military prosecutor) is not vitiated nor barred from use due to the violation of the right to a competent judge".

<sup>4</sup> According to his last written submission received on March 11, 2014, on October 30, 1994 he was transferred to the maximum security prison Huacariz and then to the Pisci center of Chiclayo where he remained until 2004 when he was once again transferred to the Miguel Castro Castro prison, where he remained at the date of his submission.

<sup>5</sup> He indicates that in that same judgement he was acquitted of various other offenses they tried to charged him with.

<sup>6</sup> The Chamber also analyzed and rejected the arguments of the petitioner in reference to the testimonies of the co-defendants obtained through torture.

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

1. The petitioner states that he was prevented from filing a writ of habeas corpus or any other recourse against his arbitrary detention and subsequent incommunicado detention because Article 6 of Decree-Law 25659, in force at that time, established that constitutional guarantees' actions would not proceed for those detainees involved or prosecuted for the crime of terrorism. He indicates that during the criminal proceeding that followed, he presented, without success, the corresponding strike-offs against the evidence that was obtained illegally. Against his conviction, he unsuccessfully filed an annulment action and then a writ of habeas corpus,<sup>7</sup> being notified of the negative results of the latter on July 14, 2009.

2. The State, for its part, points out that in the case of questioning the evidence used in the police investigation, the petitioner's defense was able to file the necessary remedies to challenge the evidentiary means within the process itself. It indicates that, in the habeas corpus action resolved in final instance by the Constitutional Court, the petitioner complained mainly about the arbitrariness of his detention and the excessive time spent in preventive custody, but did not raised other facts alluded in his petition such as the alleged torture and mistreatment. It considers that since the petitioner has not shown that he reported these facts to the competent authorities, domestic remedies have not been exhausted with respect to them. It also alleges that the petitioner has not proven that he has filed any jurisdictional appeal.

3. The Commission observes that the State has not disputed the petitioner's allegations that he did not have the opportunity to question the legality of his detention until after the conviction had been handed down. For this reason, the Commission considers that the exception to the exhaustion of domestic remedies contained in Article 46 (2) (a) of the Convention applies to this point of the petition. Regarding the alleged violations of due process in the context of the criminal proceedings that led to his conviction, the Commission considers that the petitioner exhausted domestic remedies by filing the nullity and habeas corpus actions against the conviction, so that part of the petition meets the requirements of Article 46.1 (a) of the American Convention. Regarding the allegation that the petitioner has not shown that he had reported the alleged acts of torture to the competent authorities, the Commission considers that the State was aware of these allegations at least since the petitioner communicated them in the context of the criminal proceedings against him. In this regard, the Commission recalls its consolidated opinion that the obligation to investigate acts of torture must be executed *ex officio* by the corresponding authorities, and having been informed of these facts by the alleged victim, the exhaustion of additional processes or remedies cannot be required, since the procedural burden of urging a procedure of this nature does not fall on the alleged victim.<sup>8</sup> Given that the State has not indicated that investigations into these allegations have been initiated, despite the more than 14 years that have elapsed since it became aware of them, the Commission considers that the exception to exhaustion of domestic remedies contained in the article 46.2 (c) of the Convention is applicable to this part of the petition.

4. Since the final decision regarding the habeas corpus action was notified to the petitioner on July 14, 2009, and the petition was filed on December 10, 2009, the Commission concludes that, with respect to the alleged violations in the context of the criminal proceeding against the petitioner it was presented within the terms of Article 46.2 (b) of the American Convention. In the same way, with respect to the points of the petition to which exceptions to the exhaustion of domestic remedies are applicable, the petition was presented within a reasonable period in the terms of Article 32 (2) of the Commission's Rules of Procedure.

## VII. ANALYSIS OF COLORABLE CLAIM

4. The petitioner maintains that the State is responsible for the violation of his human rights.<sup>9</sup> It considers that the fact that a state of emergency had been decreed does not justify his detention or subsequent incommunicado detention and torture. He highlights that the legislation in force at the time of his arrest allowed the police to detain and keep a person incommunicado without placing him under the order of a competent authority for a maximum of 15 days, a period that in his case was exceeded. In addition, he argues that, even if that period had been met, it was excessive, making said legislation in itself incompatible with the

<sup>7</sup> Requesting that the condemning judgement be declared null and unenforceable due to impeding flaws

<sup>8</sup> IACHR, Report N° 14/08 (Admissibility), Case 652-04, Hugo Humberto Ruiz Fuentes, Guatemala, March 5, 2008 par. 64.

<sup>9</sup> See rights claimed in Section I of the present report.

American Convention. In the same way, he considers that the rules in force at the time of the events were incompatible with the Convention and the Constitution because they allowed the police to conduct investigations for alleged acts of terrorism without the intervention of any independent authorities. He also argues that the process that led to his conviction did not conform to the parameters of due process. He adds that his arrest, incommunicado detention and the investigation process that led to his conviction were carried out on the basis of illegitimate decree laws dictated by a dictatorial government in violation of the Constitution in force at the time.

5. In turn, the State affirms that the alleged facts do not amount to a colourable claim for violations of human rights because the petitioner's detention was in accordance with the rules of the state of emergency, the domestic courts determined that the petitioner was not a victim of torture, and all his judicial guarantees were respected in all the processes in which he was involved. It alleges that the petitioner improperly pretends the Commission to act as a fourth instance to review the determinations reached by the domestic courts, when it is up to the latter to assess the evidence and determine its legality based on the applicable procedural rules.

6. The Commission considers that, if verified as true, the alleged facts that the petitioner was subjected to arbitrary deprivation of liberty and incommunicado detention, torture and public humiliation; that he was deprived of his liberty for more than 12 years without a conviction of first instance; and that in the trial that led to his conviction, due process was violated and evidence obtained through torture was used; these could amount to violations of articles 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (privacy) and 25 (judicial protection) of the American Convention in relation to its articles 1.1. (obligation to respect rights) and 2 (domestic legal effects). Likewise, the commission will examine at the merits stage whether the petitioner's detention, incommunicado detention and criminal prosecution was in accordance with the requirements of Article 9 (freedom from ex post facto laws) of the Convention.

7. As to the alleged violations to article 24 (equal protection) of the American Convention, the Commission finds that the petitioner has not provided arguments or elements that would allow it conclude, prima facie, the possibility of its violation.

## **VIII. DECISION**

5. To find the instant petition admissible in relation to Articles 5, 7, 8, 9 and 25 of the American Convention, in accordance with articles 1.1 and 2;

6. To declare inadmissible the present petition in relation to Article 24;

7. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 16<sup>th</sup> day of the month of August, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.