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REPORT No. 205/19

PETITION 350-11

REPORT ON ADMISSIBILITY

WALTER ALEJANDRO GARCÍA JAIMES

PERU

Approved by the Commission at its session No. XXXX held on XX XX, 201X
1XXth Regular Period of Sessions

Cite as: IACHR, Report No. XX/XX, Petition XXX-XX. In/Admissibility. [name]. [State]. [Date of report].



I. INFORMATION ABOUT THE PETITION

Petitioner	F.N.
Alleged victim	Walter Alejandro García Jaimes
Respondent State	Peru ¹
Rights invoked	Articles not specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	March 16, 2011
Additional information received during initial review	March 29, 2011, March 5, 2012
Notification of the petition	March 19, 2014
State's first response	December 3, 2014
Additional observations from the petitioner	May 22, September 27, and December 17, 2015; May 10, 2016; June 21, 2017; August 20, 2018
Additional observations from the State	June 24, 2016

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention on Human Rights ³ (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) and 25 (judicial protection) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal provisions) of the same instrument
Exhaustion or exception to the exhaustion of remedies	Yes, on September 28, 2010
Timeliness of the petition	Yes, March 16, 2011

V. SUMMARY OF ALLEGED FACTS

1. The petitioner F.N. claims that the Peruvian State violated the human rights of Mr. Walter Alejandro García Jaimes (hereinafter "the alleged victim") by denying him access to ordinary recourse by which to obtain a comprehensive review of his conviction after he was first convicted by a second instance tribunal.

2. According to the petitioner, in 2007, criminal proceedings were brought against the alleged victim for a supposed crime against the sexual liberty of an adolescent male. On December 6, 2007, the alleged victim was acquitted at first instance. The judgment was annulled by the Superior Court of Justice in and for Huaura (hereinafter the "Superior Court") on April 28, 2008, which ordered a new oral trial. On September 24, 2008, the alleged victim was again acquitted at first instance. After the Prosecution filed an appeal, on January 28, 2009, the Superior Court voided the second acquittal and modified the judgment in order to sentence him to seven years of imprisonment.

3. The alleged victim filed an application for cassation, which was ruled inadmissible by the Supreme Court of Justice of the Republic (hereinafter "Supreme Court") on January 28, 2009. On October 20,

¹ In accordance with the provisions of Article 17(2)(a).a of the Commission's Rules of Procedure, Commissioner Francisco Eguiguren Praelli, of Peruvian nationality, did not participate either in the discussions nor the decision in the present matter.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter the "American Convention" or "Convention."

2009, the alleged victim presented a petition of habeas corpus to have the conviction declared void; however, on August 16, 2010, that petition was declared out of order by the Constitutional Court.

4. The petitioners argues that every person convicted of a crime should have simple and effective recourse to a comprehensive review of their conviction. He says that under Peruvian law there is no ordinary remedy that allows a comprehensive review of a conviction handed down for the first time at a second instance.⁴ He says that the option available for that purpose is the application for cassation, an extraordinary residual remedy with specific causes for its invocation and subject to narrow interpretation. He says that he sought a comprehensive review of his conviction by means of the available appeal remedies, such as an application for cassation and a habeas corpus petition, but both were denied on purely formal grounds. He also questions the use of the review remedy (*acción de revisión*) as an ordinary option, given that such a remedy requires a final judgment with the effect of *res judicata* to have been rendered and its object is to initiate a new proceeding against one that has concluded.

5. The State argues that the petition should be declared inadmissible for failure to exhaust domestic remedies; for being time-barred; and because the allegations do not amount to a colorable claim of a violation of human rights.

6. As to domestic remedies, on one hand, the State argues that the alleged victim did not refer to the violation of the principle of judicial review in the remedies that he invoked and, therefore, did not give the authorities the opportunity to pronounce on that supposed violation. It also says that the alleged victim had a suitable and effective remedy available to have his conviction reviewed; namely an application for review. That remedy could have been invoked at any time during the criminal proceeding to challenge the supposed “false or nonexistent fact” alleged as grounds for the conviction. At the same time, the State said that the application for cassation and the habeas corpus petition were erroneously presented by the alleged victim and rejected on account of formal defects. Therefore, it could not be argued that those remedies were exhausted. In addition, the State says that the petitioner contradicts himself by asserting that the application for cassation was not suitable and, at the same time, that it was exhausted.

7. As to the timeliness of the petition, the State argues that, at best, it could be considered that the cassation remedy was exhausted and that the habeas corpus petition should not be considered a suitable remedy, since the Constitutional Court considered the habeas corpus to be out of order. Therefore, according to the State, if one were to consider the application for cassation suitable, the alleged victim was notified of the decision rejecting the remedy on October 5, 2009, which would make the petition time-barred.

8. Finally, in relation to the characterization of possible violations, the State argues that that it is not a violation of human rights to convict someone at a second instance. The State also argues that the alleged victim had had suitable and effective remedies available to him for the review of his conviction and that he was now resorting to the IACHR as a court of fourth instance because he disagreed with the outcome of his proceeding and the courts' decisions. It says that the intention of the alleged victim is for the Commission to reevaluate the evidence put forward in the domestic criminal proceeding, and that the IACHR lacks jurisdiction to do so.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The IACHR finds that the objective of the petition is to dispute, not the conviction at second instance after having been acquitted, but the impossibility of obtaining a comprehensive review of the conviction. The alleged victim says that under Peruvian law there is no suitable remedy available for the re-examination of his conviction at second instance. In spite of that, the alleged victim sought by means of an application for cassation—an extraordinary remedy—to have the evidence reassessed. The Commission notes that, according to the State, that remedy was refused on account of formal defects. However, an examination of that decision reveals that remedy was ruled inadmissible because the alleged victim had requested the reevaluation of the evidence through an application for cassation. The alleged victim challenged that decision by filing a petition of habeas corpus, which the Constitutional Court ruled out of order on the grounds that a habeas corpus petition could not be invoked for the purpose of having evidence re-examined. The Constitutional Court found insufficient connection between the evaluation of the evidence and a supposed

⁴ The alleged victim encloses multiple judgments by the Supreme Court that recognize that someone who has been convicted at second instance, having first been acquitted, is not afforded recourse with the qualities needed to challenge that conviction.

impact on the alleged victim's deprivation of liberty, and therefore it could not be resolved by means of said remedy.

10. In relation to the review remedy, the IACHR recalls that while in some cases extraordinary remedies may be suitable for addressing human rights violations, as a general rule the only remedies that need be exhausted are those whose function within the domestic legal system is appropriate for providing protection to remedy an infringement of a given legal right. In principle, these are ordinary rather than extraordinary remedies. It also reiterates that whenever a State alleges the petitioners' failure to exhaust the domestic remedies, it has the burden of identifying which remedies should be exhausted and demonstrating that the remedies that have not been exhausted are "adequate" for remedying the alleged violation, which means that the function of those remedies within the domestic legal system is suitable for protecting the legal right that has been infringed. In this case, the IACHR considers that the State has not shown that this extraordinary remedy would have been suitable to challenge the conviction issued by a second instance tribunal.

11. In the light of the foregoing, the IACHR considers that the exception envisaged at Article 46(2)(a) of the American Convention applies in this case, given that, according to the information in the record, it would appear *prima facie* that at that time the law did not provide an effective, ordinary remedy that the alleged victim could have invoked in order to obtain a comprehensive review of the conviction. Indeed, the alleged victim sought such a review by means of an extraordinary remedy so that the State might, as an exception, conduct said review, yet his applications were declared out of order precisely because they sought a review of the evidence. Bearing in mind that the conviction at second instance dates from April 28, 2009; that before resorting to the IACHR the alleged victim invoked extraordinary remedies affording the State the opportunity to conduct, as an exception, a comprehensive review of the judgment; that at the time of lodging the petition the alleged victim had still not succeeded in obtaining a comprehensive review of the conviction, and that said situation persists to this day, the Commission finds that the petition was lodged within a reasonable time in accordance with Article 32(2) of the IACHR Rules of Procedure.

VII. COLORABLE CLAIM

12. In relation to the State's submissions relating to the fourth-instance formula, the Commission acknowledges that it is not competent to review judgments handed down by domestic courts acting within their authority and in observance of the rules of due process and fair-trial guarantees. However, the Commission reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when the petition refers to domestic proceedings that could be in violation of rights guaranteed by the American Convention.

13. The IACHR finds that the alleged victim's purported impossibility of obtaining a comprehensive review of the conviction first imposed on him by a court of second instance could, if proven, amount to a violation of the rights enshrined at Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal provisions) of the same instrument.

VIII. DECISION

1. To declare the petition admissible as regards of Articles 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof; and

2. To notify the parties of this decision; to continue with its analysis of the merits of 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 6th day of the month of December, 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.