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**REPORT No. 38/20**  
**PETITION 1070-08**  
REPORT ON ADMISSIBILITY

ANDREA TINA LUQUE RAFAEL  
PERU

Approved by the Commission electronically on April 24, 2020.

**Cite as:** IACHR, Report No. 38/20, Petition 1070-08. Admissibility. Andrea Tina Luque Rafael.  
Peru. April 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Marcelo Héctor Luque Rafael
<b>Alleged victim:</b>	Andrea Tina Luque Rafael
<b>Respondent State:</b>	Peru <sup>1</sup>
<b>Rights invoked:</b>	Article 8(judicial guarantees) of the American Convention on Human Rights <sup>2</sup>

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

<b>Filing of the petition:</b>	September 16, 2008
<b>Notification of the petition to the State:</b>	October 03, 2012
<b>State's first response:</b>	December 04, 2012
<b>Additional observations from the petitioner:</b>	September 20, 2013
<b>Notification of the possible archiving of the petition:</b>	May 26, 2017
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	July 13, 2017

**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 (instrument deposited on Friday, 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>	7 (personal liberty), 8 (judicial guarantees), 9 (freedom from ex post facto laws), and 25 (judicial protection) of the American Convention, in conjunction with Articles 1.1 and 2 thereof.
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, March 17, 2008
<b>Timeliness of the petition:</b>	Yes, September 16, 2008

**FACTS ALLEGED**

1. The present petition alleges the illegal detention and violation of the judicial guarantees of Mrs. Andrea Tina Luque Rafael (hereinafter "the alleged victim") in connection with criminal proceedings against her. It states that the alleged victim, of 52 years of age, was working as a nurse for the Peruvian State Health Institution ESSALUD, in the Pedregal Joya Network, in the department of Arequipa, when she was

<sup>1</sup> In accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the discussion or decision in this matter.

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

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

deprived of her liberty on April 21, 2003. The petition mentions that she is currently serving a 25-year prison sentence in the Socabaya penitentiary in the city of Arequipa under an especially restrictive regime.

2. The petition indicates that on July 9, 1989, a public transport bus carrying three policemen was intercepted near the Huacapunco hamlet near Pampacolca in Arequipa by a group of persons pertaining to the Shining Path (*Sendero Luminoso*) organization. It describes how subsequently a second armed group arrived at the scene and, after identifying the policemen, proceeded to take them out of the bus, tie their hands, and execute two of them, while the third managed to escape. The petitioner states that the alleged victim was accused of forming part of that subversive group and of having participated in the first contingent that intercepted the bus. The petitioner then alleges that on November 9, 1989, preliminary criminal proceedings against her began on charges of terrorism and on April 21, 2003, she was detained at work, without her being shown any kind of arrest warrant.

3. Petitioner maintains that the charges against the alleged victim basically stemmed from statements made to the police by four persons, who stated that Mrs. Luque Rafael had taken part in the first platoon that ambushed the bus. He alleges that later on during the oral proceedings those same accused testified that they had been tortured physically and psychologically by policemen in order to get them to sign their statements, so that they did not ratify them and moreover declared that they did not know the alleged victim. The petitioner states that the National Criminal Division (*Sala Penal Nacional*) did not give due consideration to the uniformity of the supplementary statements nor to the evidence adduced by the competent administrative authority, placing on record that on July 9, 1989 the alleged victim had been on duty as a nurse (dresser) at the Pedro Díaz University Health Center of the San Agustín National University. The petitioner also argues that the statements made to the police are points of reference that can only serve as evidence when confirmed by the judiciary.

4. Petitioner indicates that on August 18, 2006, the National Higher Criminal Court for Terrorism Cases convicted the alleged victim of the crime of terrorism to the detriment of the State and sentenced her to 15 years in prison, which with rebates she was earning were due to end on April 20, 2018, a fine equal to 100 times the daily amount and two years' disqualification following completion of her sentence, and a sum to be paid to the State in compensation.

5. Petitioner points out that the alleged victim filed an appeal for annulment of that judgment and requesting that she be acquitted and that, for its part, the Public Prosecutor's Office (*Ministerio Público*), using the same appeal remedy, questioned the length of the sentence. The petitioner states that on December 11, 2007, the Second Transitional Criminal Chamber of the Supreme Court of Justice, without analyzing the arguments and evidence adduced by the alleged victim's defense counsel, declared the sentence null and void and increased it to 25 years in prison without parole, which will expire on April 20, 2028. Consequently, the Court issued its final judgment writ on December 11, 2007, and notification ensued on March 17, 2008.

6. For its part, the State argues that the Inter-American Commission cannot determine whether domestic courts applied domestic law correctly or whether the sentence handed down was mistaken or unjust; it can only determine whether criminal procedures were followed and guarantees of due process observed. It further holds that all the acts or omissions that the petitioner claims violated the American Convention, including those of a procedural nature, have already been assessed and resolved by national judicial bodies that are competent, independent, and impartial, through effective and efficient remedies and with full respect for judicial guarantees. The State maintains that the alleged victim disposed of several judicial mechanisms with which to assert her rights, that she made use of the remedies provided for in the Peruvian legal system, and that an adverse judgment in no way implies automatic violation of the rights upheld in the Convention.

7. The State also mentions that the judgment handed down by the National Criminal Division and confirmed by the Supreme Court contains detailed analysis of the facts alleged and their relation to the evidence adduced (*prueba actuada*). The State asserts that its judgment of the alleged victim met the due process standards of the Peruvian State's new legal framework and reorganized judiciary.

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

8. The Commission notes that the parties are not in dispute with regard to exhaustion of domestic remedies. Based on the information available, the IACHR notes that the petitioner exhausted domestic remedies with the judgment of December 11, 2007, handed down by the Second Transitional Criminal Chamber of the Supreme Court of Justice, which dismissed the appeal filed for annulment and which was notified on March 17, 2008. Therefore, the Commission concludes that in the instant case domestic remedies were used and exhausted in accordance with Article 46.1.a of the American Convention. The Commission further observes that the petition was filed on September 16, 2008, thereby complying with the requirement set forth in Article 46.1.b of the Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

9. In light of the matters of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission consider that the alleged illegal detention of the alleged victim, and the criminal proceedings against her on charges of terrorism under an ambiguous legal characterization of that offense, allegedly conducted in violation of her judicial guarantees (including presumption of innocence, failure to assess evidence, and lack of judicial substantiation) are not manifestly groundless and require in-depth examination, because, if corroborated, the facts alleged could constitute possible violations of Articles 7 (personal liberty), 8 (judicial guarantees), 9 (freedom from ex post facto laws), and 25 (judicial protection) of the American Convention, in conjunction with Articles 1.1. and 2 thereof.

10. Finally, with respect to the State's fourth instance argument, the Commission reiterates that it is competent to declare a petition admissible and rule on the grounds for it in respect of whether domestic judicial proceedings complied with due process and judicial protection guarantees and provided due guarantees of access to justice for the alleged victims in accordance with the provisions of the American Convention.

## **VIII. DECISION**

1. To declare the present petition admissible with respect to Articles 7, 8, 9, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof.

2. 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 24<sup>th</sup> day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.