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**REPORT No. 107/20**  
**PETITION 416-09**  
REPORT ON ADMISSIBILITY

MIGUEL CHRISTIAN TORRES MÉNDEZ  
PERU

Approved electronically by the Commission on April 24, 2020.

**Cite as:** IACHR, Report No. 107/20. Petition 416-09. Admissibility. Miguel Christian Torres Méndez. Peru. April 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Miguel Christian Torres Méndez, Raúl Chanamé Orbe, Rubén Delgado Pimentel, Fabiola Barriga San Miguel, Hugo Munguía Calderón
Alleged victim	Miguel Christian Torres Méndez
Respondent State	Perú <sup>1</sup>
Rights invoked	Articles 8 (fair trial), 23 (right to participate in government), 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> in relation to its Articles 1.1. (obligation to respect rights) and 2 (domestic legal effects) and other international treaties <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

Filing of the petition	April 7, 2009
Notification of the petition	September 14, 2016
State's first response	December 15, 2016
Additional observations from the petitioner	August 15, 2012. April 20, 2016, September 14, 2016 and February 27, 2018

**III. COMPETENCE**

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (instrument of ratification 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), 23 (right to participate in government), 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, December 15, 2008
Timeliness of the petition	Yes, under the terms of Section VI

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioners claims alleged violations to the human rights of Mr. Miguel Christian Torres Méndez (hereinafter, "the alleged victim"), arguing that he was dismissed arbitrarily and in violation of due process from the position of Senior Regular Member of the Superior Court of Justice of Callao, to which he was appointed through a public selection process and which he held since January 16, 1996.

2. The petitioners explains that on July 6, 2003, the alleged victim was dismissed after the National Magistrates Council (hereinafter, "the NMC") issued a resolution in which it decided not to ratify him in the position he held. The alleged victim filed an action for the protection of constitutional rights -amparo- against this resolution which, on October 4, 2005, resulted in a judgment from the Sixth Civil Chamber of the Superior Court of Justice of Lima which declared the resolution inapplicable and ordered the reinstatement of the victim. The petitioners points out that the alleged victim resumed his post but was once again dismissed on January 18, 2006, after the NMC adopted a resolution deciding, for a second time, not to ratify the alleged victim.

<sup>1</sup> In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not take part in the debate or the decision of the instant matter.

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

<sup>3</sup> Article 14.1 of the International Covenant of Civil and Political Rights.

<sup>4</sup> The observations from each party were duly transmitted to the other party.

3. The petitioners claim that, before deciding for the second time not to ratify him, the NMC anticipated its position with regard to the alleged victim, publishing on October 23, 2005, a statement in the “*Expreso*” newspaper in which it claimed that the judgement that had ordered his reinstatement constituted “functional misconduct and constitutional violation”. The petitioners add that, on August 25, 2005, the NMC filed a complaint before the Oversight Body of the Judiciary for functional misconduct against the judges that adopted the judgment which was favorable to the alleged victim. The petitioners also highlight that two of the members of the NMC that signed the second resolution against ratification had also been members of the group that adopted the first one.

4. The petitioner points out that the State acknowledged (through a friendly settlement agreement which was approved by this Commission<sup>5</sup>) that the process for the ratification of judges and prosecutors, as it had been implemented before December 1, 2004, did not respect certain effective due process guarantees (mainly that of a reasoned decision). The petitioner claims that, despite this, at the time in which the non-ratification was decided, the law only allowed the constitutional review over the NMC ratification decisions if the decision was made without a prior hearing involving the interested party or without having a reasoned decision. For this reason, the petitioner claims that there was no judicial protection against other violations of due process, such as lack of independence or impartiality on the part of the NMC members. The petitioner adds that the alleged victim was also unable to file recusals against members of the NMC because the regulations applicable to the evaluation and ratification procedure did not allow it<sup>6</sup>. The petitioner points out that the so-called extraordinary appeal, which allows for a broader review of NMC decisions, was introduced in Peruvian legislation only after the second resolution against him was passed and that he therefore did not have access. The petitioners consider that the process of evaluation and ratification, as it was undertaken in relation to the alleged victim, is incompatible with the principle of judicial independence.

5. On April 3, 2006, the alleged victim filed an action for the protection of constitutional rights, requesting that the second non-ratification resolution be declared null. On April 6, 2006, the Fifty Third Civil Law Specialized Court of the Superior Court of Lima declared that the lawsuit was inadmissible as it considered that there was a reasoned resolution and that a previous hearing had been granted to the interested party. The alleged victim appealed this decision on April 27, 2006. However, on March 19, 2007, the Sixth Civil Law Chamber of the Superior Court of Lima confirmed the first instance decision. The alleged victim later filed a constitutional complaint appeal against this decision, which was declared inadmissible by the Constitutional Tribunal. The petitioners point out that the decision of the Constitutional Tribunal was notified on December 15, 2008, and considers that domestic remedies were exhausted with this decision.

6. For its part, the State considers that the petitioner has not duly established that: i) the fact that two members of the NMC participated in both non-ratification decisions is contrary to judicial guarantees, given that the member were legitimately appointed to their positions; ii) that the statement published in the “*Expreso*” newspaper referred to the alleged victim; and iii) that the fact that the NMC filed a complaint against the judges that ruled in his favor had a negative impact on the rights of the victim. The State also claims that the alleged facts do not constitute human rights violations because: i) the constitutional tribunal analyzed the content of the NMC resolution and found that it included sufficient reason not to ratify the alleged victim as Judge (concerning his “limited ability”) and that he had had the right to exercise his right of defense throughout the proceedings before the NMC; ii) the position of judge is not political, and it is therefore incorrect to claim that the non-ratification for it infringed his political rights; and iii) that the Commission lacks competence to determine the responsibility of the State for an alleged violation of the right to work, which is the true claim of the petitioner.

7. The State argues that the alleged victim did not exhaust the domestic remedies to claim for the protection of his right to participate in politics, which has been included in his petition<sup>7</sup>. Likewise, it argues that it has not been established that the alleged victim has resorted to the reparation procedure available

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<sup>5</sup> IACHR, Friendly Settlement, Report No. 50/06, Petition 711-01 *et al.* (Miguel Grimaldo Castañeda Sánchez *et al.*). Peru, March 15, 2006.

<sup>6</sup> The petitioner claims that the rules of the procedure required that members abstained if they fell within one of the reasons that would preclude their involvement, but that none of the members abstained in the alleged victim’s case.

<sup>7</sup> The State points out that in the action for the protection of constitutional rights filed by the petitioner there is no evidence suggesting that the petitioner raised the infringement of this right.

through civil court to claim for reparations for the alleged violations which he has claimed at the international level.

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

8. The Commission notes that the petitioner considers that domestic remedies were exhausted by the decision of the Constitutional Tribunal which was notified to them on December 15, 2008. It also notes that the State has indicated that domestic remedies are not exhausted because the alleged victim has not filed actions at the domestic level to demand protection of his rights to participate in politics or to claim for civil reparations.

9. With regard to the allegation that the possible violation of political rights was not claimed at the domestic level, the Commission recalls that the requirement of prior exhaustion of domestic remedies has the objective of allowing national authorities to learn about the alleged violation of a protected right and, if appropriate, to settle the situation before it is heard by an international instance<sup>8</sup>. Likewise, the Inter-American Court has pointed out that “the organs of the Judiciary should exercise not only a control of constitutionality, but also of “conventionality” *ex officio* between domestic norms and the American Convention; evidently in the context of their respective spheres of competence and the corresponding procedural regulations. This function should not be limited exclusively to the statements or actions of the plaintiffs in each specific case”<sup>9</sup>. The State has not argued that the judicial authorities which were informed of the situation claimed as a violation were not competent to hear and repair the alleged violation of the alleged victim’s political rights. For these reasons, the Commission considers that the requirement of prior exhaustion of domestic remedies is met with regard to the claim concerning a possible violation of political rights.

10. With regard to the alleged lack of exhaustion of the civil reparation procedure, the Commission recalls that, in accordance with its longstanding criteria, it is the State that must prove that the remedies that have not been exhausted are “adequate” to repair the alleged violation, that is to say that the function of such remedies within domestic law is suitable to protect the infringed legal situation<sup>10</sup>. In this sense, the Commission considers that the State has not adequately established that the civil reparation procedure is a suitable remedy to provide reparation for the alleged violation, which has not been recognized at the domestic level.

11. In light of these considerations, the Commission concludes that the final decision with regard to the non-ratification of the alleged victim was the one adopted by the Constitutional Tribunal when deciding on its constitutional complaint appeal. Such decision was notified to the petitioner on December 15, 2008, and the petition before the Commission was received on April 7, 2009. Therefore, the Commission concludes that the petition meets the requirements set forth in Articles 46.1(a) and 46.1(b) of the American Convention.

## VII. COLORABLE CLAIM

12. The Commission notes that the instant petition includes allegations concerning the fact that the procedure that led to the non-ratification of the petitioner did not respect basic due process guarantees, as well as the absence of effective remedies to protect the guarantee of impartiality in the proceedings before the NMC.

13. In light of these considerations and after examining the factual and legal elements brought forth by the parties, the Commission considers that the allegations of the petitioner are not manifestly groundless and require a study on the merits because the alleged facts, if corroborated as true, could constitute violations of Articles 8 (fair trial), 23 (right to participate in government), 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).

14. With regard to the alleged violations to the International Covenant on Civil and Political Rights, the Commission lacks competence to determine violations of the rules of said treaty, regardless of which

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<sup>8</sup> IACHR, Report No. 82/17. Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para 12.

<sup>9</sup> Inter-American Court of Human Rights. Case of the Dismissed Congressional Employees (Aguado Alfaro *et al.*) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 215, para. 128.

<sup>10</sup> IACHR, Report No. 26/16, Petition 932-03. Inadmissibility. Rómulo Jonás Ponce Santamaría. Peru. April 15, 2016, para. 25.

it may take it into account as part of its interpretation of the rules of the American Convention during the merits stage of the instant, as established under Article 29 of the Convention.

**VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8, 23, 25 and 26 of the American Convention, in relation to its Articles 1.1 and 2.

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; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.