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**REPORT No. 142/20**  
**PETITION 537-10**  
REPORT ON ADMISSIBILITY

TERESA ORTEGA LA ROSA VDA. DE MORÁN  
PERU

Approved electronically by the Commission on May 8, 2020

**Cite as:** IACHR, Report No. 142/2020. Petition 537-10 Admissibility. Teresa Ortega La Rosa Vda. de Morán. Peru. May 8, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Teresa Ortega La Rosa Vda. de Morán.
<b>Alleged victim::</b>	Teresa Ortega La Rosa Vda. de Morán
<b>Respondent State:</b>	Peru <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (fair trial), 21 (property), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> ; Articles 9 (right to social security) and 17 (protection of the elderly) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) <sup>3</sup> ; and Article XVI of the American Declaration of the Rights and Duties of Man. <sup>4</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>5</sup>**

<b>Filing of the petition:</b>	April 15, 2010
<b>Notification of the petition to the State:</b>	June 22, 2016
<b>State's first response:</b>	September 23, 2016
<b>Notification of the possible archiving of the petition:</b>	November 12, 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	February 1, 2019

**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 Declaration (instrument of ratification of the OAS Charter deposited on February 12, 1954), and 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**

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 8 (fair trial), 21 (private property), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in relation with Article 1.1 (obligation to respect rights) thereof; and Article XVI (social security) of the American Declaration
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, on November 27, 2009
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the discussion or decision in this matter.

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

<sup>3</sup> Hereinafter "Protocol of San Salvador."

<sup>4</sup> Hereinafter "the American Declaration" or "the Declaration".

<sup>5</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petitioner requests that the Peruvian State be declared internationally responsible for the violation of her rights to social security, private property, equality before the law, fair trial, and judicial protection, because of the administrative authorities' failure to pay her full monthly pension allowance; and due to the judicial rulings handed down in subsequent proceedings she initiated before the Peruvian courts, which, she maintains, failed to protect her rights. Mrs. Ortega La Rosa is an elderly person, aged 87 at the time of the present report, and she invokes in her petition the provision contained in Article 17 of the Protocol of San Salvador regarding the right to special protection in old age.

2. Mrs. Ortega describes how the Office of the General Manager of the Peruvian Judiciary acknowledged, in a resolution issued by the Judicial Human Resources and Payroll Manager on November 13, 2003, her entitlement to a widow's pension as the surviving spouse of a retired judge and established therein her monthly allowance. However, that same administrative decision authorized the deposit of only one half of that amount in Mrs. Ortega's bank account and ordered that the outstanding balance would be paid once the Ministry of Economy and Finance authorized allocation of the corresponding budgetary resources to the Judiciary.

3. Mrs. Ortega points out that for the next three years, each month she received one half the amount of her monthly allowance. On December 11, 2006, she initiated a judicial Compliance Proceeding seeking an order to implement the administrative acknowledgment of her entitlement to the pension and to pay her in full, both in respect of the money owed to her and of all future monthly payments. In a judgment handed down on June 26, 2007, the Fourth Civil Court of Lima declared her claim well-founded and granted Mrs. Ortega's requests. Nevertheless, that decision was appealed and the Fifth Civil Chamber of the Higher Court of Justice of Lima revoked it in a ruling of April 8, 2008, declaring the demand inadmissible, as it considered that the administrative act acknowledging the right to a pension lacked "sufficient force" to justify the issuance of a payment mandate. Mrs. Ortega argues that that ruling did not state its grounds for inadmissibility and instead proceeded to question the legal validity of the administrative decision that acknowledged her entitlement to a pension, which exceeded the legal scope of a judicial compliance proceeding, particularly since not even the entity sued in her appeal had questioned the validity of the act. Accordingly, the petitioner argues that the appeals court violated her right to defense when it issued a pronouncement on a matter legally outside of the scope of the compliance proceedings, in respect of which she was unable to exercise her fair trial guarantees.

4. The petitioner filed a constitutional request for remedy against that ruling, on July 30, 2008, which was turned down by the Constitutional Court on October 19, 2009, using arguments similar to those adduced by the Higher Court of Justice of Lima. The petitioner was notified of that decision on November 27, 2009. In Mrs. Ortega's view, the Constitutional Court did not issue a pronouncement on any of the arguments or claims she submitted in her constitutional complaint.

5. In addition, Mrs. Ortega points out that the Judiciary and the Constitutional Court have handed down different rulings in several cases of persons in the same situation as hers, acceding to demands for full payment of monthly pension allowances in such cases as the following: 2337-2006-PC/TC, 6552-2006-PC/TC, 0142-2003-AC/TC, 02576-2008-PC/TC, and 5125-2008-PC/TC, of the Constitutional Court, or in judgments handed down by the Eighth Civil Division of the Higher Court of Lima in Case File No. 340-2006, or by the Fourth Civil Division of the Higher Court in Case File No. 3029-2006, some of which she cites in her petition. The allegedly different treatment granted her by the courts constitutes, in the petitioner's opinion, a violation of her right to equality before the law.

6. The State, for its part, begins by asserting that the IACHR is not competent to hear claims invoking the right to social security protected under Article XVI of the American Declaration and in Article 9 of the Protocol of San Salvador. In the same vein, it asserts that the IACHR is not competent to hear petitions referring to alleged violation of the right to work, health, or protection of elderly persons, since the Protocol of San Salvador only grants it competence to take cognizance of claims based on rights protected by its Articles 8 (trade union rights) and 13 (education).

7. Peru then affirms that the petition must be declared inadmissible due to failure to exhaust domestic remedies, inasmuch as the judicial appeals filed by Mr. Ortega merely sought to protect her right to social security, and not the other rights that she invokes in her petition, such as the right to property, to equality before the law, judicial guarantees, and judicial protection. The State further argues in respect of payment of interest on amounts owed that "*as can be seen in the Case File Report in the Judiciary's System for Consulting Judicial Files (...), the case is still being processed so that, with regard to the aforementioned claim, available domestic remedies have not yet been exhausted.*" The State also asserts that the claim for damages in Mrs. Ortega's petition, based on alleged violation of her human rights, should have been channeled initially through civil declaratory proceedings via the domestic Judiciary.

8. The State also argues that the petition does not describe facts constituting violations of the American Convention, for which reason it requests application of Article 47.b of that treaty. It maintains that the judicial compliance proceeding initiated by Mrs. Ortega respected the fair trial guarantees and the right to equal treatment, and that both the ruling of the Higher Court of Lima and that of the Constitutional Court were correct applications of Peruvian law and constitutional jurisprudence.

9. Finally, the State argues that Mrs. Ortega's financial claims have been met, given that, in compliance with a judicial ruling handed down after her petition was lodged with the IACHR, the Executive Branch has actually been paying her the pension allowances owed to her. It explains that, following completion of the judicial compliance proceeding described in the petition, Mrs. Ortega filed a judicial action under administrative law, in which the Transitional Labor Law Division of the Higher Court of Justice in Lima declared the petitioner's pension allowance claim to be well-founded. That ruling was confirmed by the Second Transitional Constitutional and Social Law Division of the Supreme Court of Justice on June 9, 2015. Consequently, the Human Resources and Welfare Manager of the Office of the General Manager of the Judiciary reported that, as of August 9, 2016, the pension money owed to the petitioner was being paid in monthly installments. In light of those payments, the State argues that "*it is obvious that currently there is no impairment of the petitioner's human rights, so that the petition should be declared inadmissible.*" It also argues that the culmination of the judicial proceeding under administrative law indicates that Mrs. Ortega's right to judicial protection has been fully guaranteed.

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

10. The Commission observes, first, that the petitioner's claim, both domestically and in her petition to the IACHR, basically refers to an alleged failure to pay the full amount of her widow's pension. That, in her view, is directly linked to a series of administrative and judicial proceedings involving domestic authorities that allegedly violated her human rights.

11. In this sense, it is clearly established in the petition that Mrs. Ortega initiated judicial Compliance Proceedings for failure to make full payment of the pension allowance recognized her by the Office of the General Manager of the Judiciary, that resulted in a first instance ruling in her favor on June 26, 2007, followed by a decision adverse to the petitioner's interests handed down by the Higher Court of Justice of Lima on April 8, 2008, and finally, in a constitutional protection claim, resulting in a final judgment handed down by the Constitutional Court on October 19, 2009. Mrs. Ortega was notified of that judgment, which officially exhausted domestic remedies via constitutional proceedings, on October 27, 2009. For its part, the present petition was received by the IACHR on April 15, 2010. It is worth recalling, in this regard, that in previous cases involving Peru, the IACHR has considered that actions brought for protection of a constitutional right are an ideal channel for filing pension-related claims.<sup>6</sup> The State has not contested the exhaustion of this procedural channel. On the contrary, as the State reported in detail, Mrs. Ortega, in addition, also exhausted administrative law proceedings, which ended in a final judgment on June 9, 2015 protecting her rights and ordering the State to pay her what she was owed.

<sup>6</sup> IACHR Report No. 55/18, Petition 354-08, Admissibility, Carlos Alberto Moyano Dietrich, Peru, May 5, 2018, par. 10.

12. As regards the State's argument that the petitioner failed to comply with the exhaustion of domestic remedies requirement in connection with alleged violations to the rights to property, equality, judicial protection, and fair trial guarantees invoked in her complaint, and only did so in relation to her right to social security, the Commission notes that said claims are part and parcel of the principal claim referred to above. Therefore, in the Commission's view, they do not require exhaustion of any remedies in addition to those already referred to. It is also worth recalling in this regard that the Commission has established that "*the rule requiring exhaustion of domestic remedies does not mean that alleged victims necessarily have to exhaust all remedies available. Therefore, if the alleged victim raised the issue by any of the valid and appropriate alternative means under the domestic system of laws and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has been met.*"<sup>7</sup>

13. As for the State' argument that Mrs. Ortega did not exhaust available domestic remedies for applying for monetary compensation of the damages she allegedly endured as a result of the administrative and judicial decisions regarding her pension, the IACHR recalls that monetary compensation is one of the reparation measures that the organs of the Inter-American system may order in specific cases, and that the right to reparation arises *ipso jure* for victims of human rights violations when the State has been declared internationally responsible for violating its obligations in that regard.<sup>8</sup> Legally speaking, it is therefore incorrect to assert, as the Peruvian State does in its reply, that it is necessary to exhaust a domestic judicial channel for monetary reparation of damages before being able to request and order financial reparation at the inter-American level.

14. In light of the above considerations, the Inter-American Commission concludes that the present petition meets the requirement of exhaustion of domestic remedies, as well as the deadline for lodging the petition established, respectively, in Articles 46.1.a and 46.1.b of the American Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

15. First, the State takes note of the State's argument regarding an alleged lack of material competence to hear the allegations based on Article XVI of the American Convention, which upholds the human right to social security. Here, the Commission reiterates that once the American Convention enters into force with respect to a State, it is that instrument, and not the Declaration, which becomes the specific source of law to be applied by the Inter-American Commission, provided that the petition alleges violations of rights which are essentially identical in both instruments,<sup>9</sup> which is not the case of the right to social security embodied in the American Declaration, for which there is no matching provision in the Convention.<sup>10</sup> Therefore, at the merits stage, the Commission will analyze the possible application of Article XVI of the American Declaration to the matter under review.

16. In light of the foregoing considerations and after examining the legal and factual elements presented by the parties, particularly the fact that the petitioner is an elderly person whose rights must be protected through positive measures by the State, the Commission concludes that the petitioner's allegations are not manifestly groundless and warrant a study on the merits because, if corroborated, the alleged facts could constitute violations of Articles 8 (fair trial), 21 (property), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention on Human Rights, in conjunction with Article 1.1 thereof (obligation to respect rights); and of Article XVI (social security) of the American Declaration.

<sup>7</sup> IACHR Report No. 16/18. Admissibility. Victoria Piedad Palacios Tejada de Saavedra, Peru. February 24, 2018, par. 12.

<sup>8</sup> IACHR. Report No. 124/06. Case 11.500 (Merits). Tomás Eduardo Cirio (Uruguay). October 27, 2006, par. 129; and I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Series C No. 7, par. 25.

<sup>9</sup> IACHR, Report No. 15/15, Petition 374-05, Admissibility, *Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia*, Colombia, March 24, 2015, par. 32.

<sup>10</sup> IACHR, Report No. 79-16, Petition 1077-98 and others. Admissibility, *Emiliano Romero Bendezú et al.*, Peru, December 30, 2016, par. 29.

17. With regard to the alleged violations of Articles 9 (right to social security) and 17 (protection of the elderly) of the Protocol of San Salvador, the Commission acknowledges that the competence envisaged in Article 19(6) of that treaty for the IACHR to decide on an individual case is limited to Articles 8 and 13. Regarding the other provisions, pursuant to Article 29 of the American Convention, the Commission may take them into account in its interpretation and enforcement of the American Convention and other applicable instruments.<sup>11</sup>

18. As regards the State's argument that the petition is not currently relevant because certain payments have been made to the petitioner, in compliance with the ruling in administrative law proceedings that protected her rights, the IACHR takes note of that fact, which it will indeed take into account as part of the factual context of the petition at the review of the merits stage in this report.<sup>12</sup>

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Article XVI of the American Declaration and to Articles 8, 21, 24, 25, and 26 of the American Convention, in conjunction with Article 1.1. thereof; and

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

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<sup>11</sup> IACHR Report No. 76/19. Admissibility. Hugo Eduardo Ibarbuden. Argentina. May 21, 2019, par. 12.

<sup>12</sup> In this regard, see, for instance, IACHR, Report No. 55/08, Petition 532-98. Admissibility. Workers of Empresa Nacional de Puertos S.A. (ENAPU). Peru. July 24, 2008, par. 46.