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REPORT No. 186/20
PETITION 1673-10
REPORT ON INADMISSIBILITY

ALBERTO QUIMPER HERRERA
PERU

Approved electronically by the Commission on July 6, 2020.

Cite as: IACHR, Report No. 186/20, Petition 1673-10. Inadmissibility. Alberto Quimper Herrera.
Perú. July 6, 2020.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Domingo García Belaúnde, Licurgo Pinto Ruiz and Carmen Luisa Castro de Quimper |
| Alleged victim: | Alberto Quimper Herrera |
| Respondent State: | Perú ¹ |
| Rights invoked: | Articles 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention on Human Rights ² and other international treaties ³ |

II. PROCEEDINGS BEFORE THE IACHR⁴

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| Filing of the petition: | November 23, 2010 |
| Additional information received at the stage of initial review: | January 20, 2011, February 21, 2011, March 7, 2011, July 14, 2011, April 20, 2011, July 19, 2011, July 20, 2011, August 3, 2011, December 13, October 2011 and October 18, 2011 |
| Notification of the petition to the State: | December 10, 2015 |
| State's first response: | March 14, 2016 |
| Additional observations from the petitioner: | February 19, 2019 |
| Additional observations from the State: | June 12, 2020 |
| Notification of the possible archiving of the petition: | November 16, 2018 |
| Petitioner's response to the notification regarding the possible archiving of the petition: | February 19, 2019 |

III. COMPETENCE

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| Competence <i>Ratione personae</i>: | Yes |
| Competence <i>Ratione loci</i>: | Yes |
| Competence <i>Ratione temporis</i>: | Yes |
| Competence <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

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible | None |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | No, in the terms of section VI |
| Timeliness of the petition: | No |

¹ Pursuant to Article 17.2.a of the Commission's Regulations, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the debate or decision on this matter.

² Hereinafter "the American Convention" or "the Convention".

³ The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petitioner claims that Mr. Alberto Quimper Herrera (hereinafter “the alleged victim” or “Mr. Quimper Herrera”) had a criminal proceeding initiated by means of evidence unlawfully collected, causing him to be removed from his public office and imposed a precautionary measure of house arrest.

2. The petitioners narrate that Mr. Quimper Herrera was appointed director of the state company “PeruPetro SA” on September 8, 2006. On October 5, 2008, the television program “Cuarto Poder” broadcast nationwide four audios obtained by third parties through clandestine telephone interception mechanisms, in which the voice of the alleged victim could be heard, conducting improper negotiations to favor certain people. As a result, on October 5, 2008, Mr. Quimper Herrera was removed from his position as director of the aforementioned company, and on October 21, 2008, the Judge of the Third Special Criminal Court of the Superior Court of Justice of Lima, at the request of the prosecution, ordered a house arrest measure and opened a criminal investigation against him for the crimes of illegal sponsorship, passive bribery and incompatible negotiation.

3. They indicate that on June 25, 2009, the alleged victim filed a habeas corpus against the aforementioned decision, claiming that the aforementioned audios could not be used against him, as they were altered evidence that lacked credibility and was obtained unlawfully, in violation of their right to secrecy of communications. They argue that on September 21, 2009, the Fifty-second Specialized Criminal Court of Lima declared the lawsuit unfounded, considering that the actions denounced did not violate any judicial guarantee. On January 12, 2010, the Fifth Special Criminal Chamber for Trials with Free Prisoners of the Superior Court of Lima, upon review, declared the action inadmissible. Given this, the alleged victim filed a constitutional complaint, and on October 27, 2010 the Constitutional Court confirmed the inadmissibility of the lawsuit, arguing that it was filed prematurely because to verify a possible violation of rights due to the use of prohibited evidence, it is necessary to analyze the entire criminal process and not only the opening order.

4. The petitioner adds that, in parallel to the criminal proceeding, the defense of the alleged victim filed a contentious administrative lawsuit questioning his dismissal as Director of the company “PetroPeru SA”, alleging that the resolution that removes him from said charge did not have an adequate motivation, since it was based on the audios obtained irregularly. However, on May 4, 2009, the Third Administrative Litigation Court of the Superior Court of Lima declared the action inadmissible, stating that the contested resolution is an act of management of the President of the Republic that does not have the nature of an administrative act. On June 21, 2010, the Third Specialized Administrative Litigation Chamber of the Superior Court of Lima, upon review, confirmed the inadmissibility of the action. Faced with these adverse decisions, on September 7, 2010, Mr. Quimper Herrera filed a cassation appeal and on August 23, 2012 the Permanent Constitutional and Social Law Chamber of the Supreme Court of Justice declared the appeal inadmissible, indicating that the previous sentences did not commit any regulatory infraction.

5. Subsequently, on January 21, 2013, Mr. Quimper Herrera filed an amparo action, alleging that the aforementioned judgment of the Supreme Court violated his right to due process. However, on August 27, 2015, the Judge of the Seventh Constitutional Court of Lima declared the lawsuit inadmissible, as there was no evident violation of the content of any constitutionally protected right. On May 17, 2017, the Second Civil Chamber of the Superior Court of Justice of Lima, upon review, confirmed the inadmissibility of the appeal. Finally, Mr. Quimper Herrera filed a constitutional complaint, which was denied by the Constitutional Court on August 22, 2018, considering that the allegations presented did not constitute an affectation of fundamental rights.

6. Based on these events, the petitioners argue that the rights to personal liberty and judicial guarantees of Mr. Quimper Herrera were violated. That the house arrest measure and the beginning of the criminal process were based on illegal evidence, so the authorities should declare the nullity of said actions. Similarly, they allege that his dismissal as Director of “PetroPeru S.A.” was also irregular due to the use in the motivation of the mentioned evidence.

7. The State, for its part, maintains that the petition is inadmissible, since domestic remedies were not exhausted. It indicates that, as stated by the Constitutional Court, it was necessary for the criminal process to end in order to determine a possible violation of judicial guarantees for the use of illegal evidence. It specifies that on October 30, 2014, the Third Criminal Chamber for Liquidation of the Superior Court of Justice of Lima declared the prescription of the criminal action and that such decision would be pending confirmation in the second instance, so that to date resources have not been exhausted at the domestic level.

8. On the other hand, it argues that the criminal process against Mr. Quimper Herrera was carried out in accordance with the applicable legal framework and in full respect of judicial guarantees and due process. It also indicates that currently the alleged victim is with no restrictions, as he has no precautionary measure against him, and is excluded from the aforementioned criminal proceeding, due to the previously mentioned statute of limitations. Likewise, it argues that on September 8, 2015, in a parallel criminal proceeding, the Third Criminal Chamber for Liquidation of the Superior Court of Justice of Lima determined that Mr. Quimper Herrera was the victim of the crime of telephone interception, for which there are guarantees that the aforementioned audios will not be used against him. For this reason, it requests that the petition be declared inadmissible based on Article 47 (b) of the American Convention, since it considers that the petitioner's claim is that the Commission act as a court of appeal, in contradiction of its complementary nature.

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

9. The petitioner indicates that domestic remedies were exhausted with the sentences of the Constitutional Court of October 27, 2010 and August 22, 2018, which declared, respectively, the inadmissibility of the habeas corpus and amparo lawsuits filed by the defense of the alleged victim. The State, for its part, considers that the national jurisdiction has not been exhausted, since the criminal proceedings against Mr. Quimper Herrera have not yet ended.

10. In accordance with the arguments presented, the Commission finds that the criminal proceeding against Mr. Quimper Herrera for the crimes of illegal sponsorship, passive bribery and incompatible negotiation has not yet been completed, while the application of a statute of limitations in his favor is pending in second instance. In this regard, the IACHR considers that such a judicial remedy must be exhausted before seeking relief from the Inter-American system, the ordinary criminal process itself represents the means for the jurisdictional authorities to internally analyze the legality of the audios in question. Likewise, the petitioner has not provided evidence or allegations that would allow deducing that in this case an unreasonable period is established in the resolution of the dispute. For this reason, based on the information provided, the IACHR concludes that the remedies of domestic jurisdiction have not been exhausted, and therefore cannot confirm the admissibility requirement set forth in Article 46.1.a of the Convention with respect to these allegations.

VII. ANALYSIS OF COLORABLE CLAIM

11. On the other hand, regarding the allegations raised by the petitioners regarding the character of public official that Mr. Quimper Herrera had, they denounce that he was improperly removed from the position of Director of the company "PeruPetro SA", violating his right to judicial guarantees at the administrative level. However, the IACHR confirms that according to the judicial decisions analyzed and the internal legal framework⁵, the aforementioned position is appointed by means of the Supreme Resolution of the Executive Power, being a position of trust that does not enjoy job stability. In this sense, the separation of the alleged victim and the rejection of his claims at the domestic level did not imply a violation of the rights established in the American Convention. Therefore, the Commission concludes that the petition is inadmissible based on Article 47 (b) of the American Convention, given that these violations do not reveal, even *prima facie*, possible violations of said treaty.

⁵ Law No. 26225, Law of Organization and Functions of PERUPETRO S.A." Article 12.- The Board of Directors of PERUPETRO S.A. It will be made up of five (5) members; whose President will be designated by Supreme Resolution and the remaining four (4) by Ministerial Resolution (...).

VIII. DECISION

1. To declare the present petition inadmissible; and
2. To Notify the parties of this decision; 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 6th day of the month of July, 2020.
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.