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REPORT No. 143/20
PETITION 344-07
REPORT ON INADMISSIBILITY

DAVID EDUARDO MILLA ESPINOZA
PERU

Approved electronically by the Commission on June 1, 2020.

Cite as: IACHR, Report No. 143/20, Petition 344-07. Inadmissibility. David Eduardo Milla Espinoza. Peru. June 1, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Leonardo Humberto Peñaranda Sadova
Alleged victim	David Eduardo Milla Espinoza
Respondent State	Peru ¹
Rights invoked	Articles 7 (personal liberty) and 8 (judicial guarantee) of the American Convention on Human Rights ² in relation to article 1.1 (obligation to respect rights) and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	April 3, 2007
Notification of the petition	April 30, 2010
State's first response	August 10, 2010
Additional observations from the petitioner	December 20, 2010 and May 23, 2016
Additional observations from the State	May 24, 2011
Notification of the possible archiving of the petition	May 9, 2016
Response to the notification regarding the possible archiving of the petition	May 23, 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 (deposit of instrument 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	None
Exhaustion or exception to the exhaustion of remedies	Yes, on January 15, 2007
Timeliness of the petition	Yes, on April 3, 2007

V. SUMMARY OF ALLEGED FACTS

1. The petitioner alleges that the State did not respect the right to due process of Mr. David Eduardo Milla Espinoza (hereinafter, "the alleged victim" or "Mr. Milla Espinoza"), a former police officer, during a process aimed at reaching an agreement of collaboration under Legislative Decree No. 824 (known as the Repentance Law) to obtain the benefit of exemption from punishment. This process was carried out in parallel to a criminal process in which he was sentenced to 20 years in prison. The petitioner alleges that there were irregularities in the process, which had a direct impact on the duration of the prison sentence that the alleged victim had to serve, and therefore, on the enjoyment of his right to personal liberty. He also alleges that there was an infringement to the *non bis in idem* principle and to the right to equality before the law, since others who were prosecuted for illicit drug trafficking were granted the benefit of the exemption from punishment, as well as to the right to defense and the principle of *res judicata*.

¹ Based on article 17.2.a of the Rules of procedure of the Commission, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the debate or decision of this matter.

² Hereinafter "American Convention" or "Convention".

³ Articles 5 and 9 of the International Covenant on Civil and Political Rights; and articles 2, 7, 8, 9 and 10 of the Universal Declaration on Human Rights.

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

2. The petitioner indicates that Mr. Milla Espinoza was arrested on April 15, 1999 by the Police of the Drug Enforcement Directorate of Peru (hereinafter “DIRANDRO”) in an investigation of illicit drug trafficking. By an order dated April 29, 1999, the Court Specialized in Crimes of Illicit Drug Trafficking (TID) opened a criminal proceeding against Mr. Milla Espinoza; on April 26, 2001, the trial stage began; and on October 17, 2001, the First Prison Criminal Chamber of the Superior Court of Justice of Callao sentenced him to twenty years in prison. Against this conviction, Mr. Milla Espinoza filed an appeal for annulment, since he had resorted to the Law of Repentance and because there was an exemption from punishment procedure pending resolution. On May 24, 2002, the Permanent Criminal Chamber of the Supreme Court of Justice rejected the appeal for annulment, on the basis that no grounds for invalidity were established with respect to the sentence imposed on the appellant.

3. On April 16, 1999, in parallel to the criminal proceeding, the alleged victim requested the benefit of exemption from punishment under the Law of Repentance, in exchange for providing timely and truthful information to identify and detain leaders or heads of drug trafficking organizations at national and international level. The petitioner states that Mr. Milla Espinoza's statements allowed the State to dismantle the “Varna” organization, dedicated to drug trafficking, as well as the confiscation of six hundred and eighty kilos of hydrochloride cocaine. Based on the information provided by Mr. Milla Espinoza, the judicial police prepared a file of repentance and assigned a key number to him, which began the process to exempt him from punishment. On July 17, 2000, the Specialized Prosecutor's Office declared the benefit of exemption from punishment appropriate and sent the file to the Special Criminal Chamber for TID crimes for ratification. However, on September 5, 2000, said Chamber denied the benefit, on the grounds that the person captured with the help of the information provided by the alleged victim did not have the status of leader of the criminal organization, so the legal requirements for granting the exemption were not met. Against this resolution, Mr. Milla Espinoza filed an appeal for annulment on September 22, 2000, which was denied on September 26, 2000 by the First Criminal Chamber of the Superior Court of Justice of Callao. Consequently, he filed a complaint on October 9, 2000, which was resolved favorably by the Supreme Court on April 25, 2001⁵. On June 7, 2001⁶, the exemption from punishment notebook was elevated to the supreme instance.

4. On January 5, 2004, the Permanent Criminal Chamber of the Supreme Court declared the annulment of the order declaring inadmissible the benefit of exemption from punishment; granted said benefit; and ordered the immediate release of the alleged victim⁷. However, the National Penitentiary Institute requested the court, in several urgent writings⁸, to clarify the mandate of liberty⁹, since the alleged victim had a conviction sentence. On January 16 of that year, the same Permanent Criminal Chamber of the Supreme Court issued a resolution by which it suspended for a short time the effects of its resolution – which, according to the petitioner, is not contemplated in the Criminal Procedure Code – arguing that it did not know about the conviction against the alleged victim at the time of granting the exemption from punishment. Therefore, the decision of January 5 contravened the prohibition of reemerging dead processes with an already firm and enforceable resolution. The petitioner contends that on January 21, 2004, the Supreme Court notified the First Criminal Chamber of the Superior Court of Justice of Callao of the preparation of a second decision, which declared the resolution of January 5, 2004 null and void, leaving the mandate of liberty without effect, although, according to the petitioner, it would have already acquired the constitutional authority of *res judicata*. He also alleges that the decision of January 16, 2004 was contrary to the Criminal Procedure Code, since it violated *res judicata* - while there was no appeal to challenge this decision pending - and violated the rights of the alleged victim. The petitioner argues that there is no provision that states that in the event that the beneficiary is sentenced before the resolution of a request for exemption, the court must suspend the procedure, and that

⁵ This instance indicated that despite the fact that the annulment appeal was not established in Decree N°824 as a mean to appeal unfavorable decisions, it did not prevent from initiating the process.

⁶ The petitioner explains that after the Fujimori government left office, there was a reorganization of the Judicial Power that resulted in the elimination of specialized tribunals; hence proceedings were resent to the first tribunal that entertained them. Therefore, the case of Mr. Milla Espinoza was sent to the First Criminal Chamber of Prisons of the Superior Justice Court of Callao as the Superior Specialized Chamber in TID was deactivated.

⁷ He affirms that said resolution was notified to the director of the prison establishment establishing his release date on February 15, 2004.

⁸ On January 12, 13 and 14, 2004.

⁹ With the ruling of the Permanent Criminal Chamber of the Supreme Court issued on January 5, 2004, establishing that “freedom is ordered as long as there is no arrest warrant or mandate emanating from competent authorities”.

this does not allow to rule on the inadmissibility of the exemption benefit. In addition, he maintains that there was a copy of the judgment in the exemption file¹⁰. He also alleges that the delay in the exemption process cannot be attributed to the alleged victim, and notes that the law provides for a term of three months to resolve such request, which was not followed. Finally, he alleges that some of the members subscribed to the resolution without having intervened in the hearing of the case¹¹, in violation of the right to defense of the alleged victim.

5. As a result of this second resolution, on January 16, 2004, the alleged victim filed a habeas corpus action against the members of the Permanent Criminal Chamber of the Supreme Court, without receiving an answer. On March 23, 2004, he presented a new habeas corpus because of the double judgement and the effect they had on his right to freedom, which was denied on July 13, 2004 by the judge of the Sixteenth Criminal Court of Lima, which found no irregularities in the procedure. Mr. Milla Espinoza appealed this decision to the Superior Court of Justice of Lima, which on November 9, 2004 confirmed the resolution appealed in support of the decision of the Permanent Criminal Chamber of the Supreme Court issued on January 16. Against this last judgement, Mr. Milla Espinoza filed a constitutional grievance action before the Constitutional Court, that was declared inadmissible for considering that habeas corpus is intended as a means to protect constitutional rights and not judicial benefits such as the exemption from penalty; the decision was adopted on May 16, 2005 and notified on November 27, 2006. Subsequently, on November 30, 2006, he requested an explanatory resolution, to which to date the Constitutional Court would not have responded. The petitioner indicates that on January 15, 2007, the Constitutional Court terminated the habeas corpus process and forwarded the file to the Second Specialized Criminal Chamber of the High Court of Justice of Lima for its definitive archive. The petitioner alleges that beyond the benefit of the exemption from punishment, his fundamental rights to freedom and due process were violated. The members omitted pronouncement on the procedural irregularity denounced by the alleged victim. Finally, the petitioner indicates that Mr. Milla Espinoza has been free since July 2014 for after having complied with his sentence.

6. For its part, the State argues that the petition is inadmissible, because it does not state facts that amount to violations of the rights enshrined in the American Convention. It considers that *prima facie* there is no evidence that the guarantees of due process of the petitioner have been violated, nor his rights to equality and personal liberty. Peru considers that the petitioner is not satisfied with the outcome of the decisions taken by domestic tribunals and intends for the Commission to act as a fourth instance; and notes that this body cannot rule on aspects that the national magistrates have resolved within the framework of their competence and with due regard to due process.

7. The State alleges that due process guarantees, as well as the norms established in the national legislation, were respected both in the criminal process and in the exemption of penalty process. It also maintains that the alleged victim was advised by a freely chosen lawyer and that he had the opportunity to question all the procedural acts alleged by means of the corresponding remedies, both in the exemption of penalty process and in the main criminal process, including the sentence that condemned him to 20 years of imprisonment and that, in fact, Mr. Milla Espinoza had an active procedural participation. Additionally, his sentence was confirmed by the Criminal Chamber of the Supreme Court by Supreme Execution dated May 24, 2002, when it reached the status of *res judicata*. On the other hand, the State argues that criminal proceedings are resolved on a case-by-case basis and cannot be analyzed through analogies, and therefore considers that Mr. Milla Espinoza cannot claim that he has been the victim of discriminatory treatment only by the fact that the decisions taken at domestic level does not favor him.

8. The State also affirms that, although the First Permanent Criminal Chamber of the Supreme Court granted the benefit of exemption from punishment to the alleged victim on January 5, 2004, said benefit had been erroneously granted due to the impossibility to identify the alleged victim, since it was identified by a key number, which caused problems in its identification and consequently in the determination of his sentence. The State considers that the Supreme Court acted in accordance with the law by issuing the second resolution of January 16, 2004, which annulled the resolution of January 5, 2004. It also maintains that there was a legal basis for the annulment of said resolution, given that it contravened the main ruling that had already acquired the status of *res judicata*. In addition, the State argues that there has been no exhaustion of suitable

¹⁰ The petitioner indicates that on September 19, 2003, the Superior Court of Justice of Callao sent copies of the sentence, which were attached to the penalty exemption notebook.

¹¹ The petitioner alleges that Drs. Pajares and Molina Ordonez did not participate in the procedure, although they signed the Execution Office on January 16, 2004.

and effective domestic remedies, since the aforementioned annulment does not prevent the alleged victim from requesting the remission of punishment or pardon, provided for in the Law of Repentance; and that being the ideal way to obtain freedom. It argues that the alleged victim did not exhaust these domestic remedies, that they were suitable and effective, and that consequently the present petition is inadmissible. Finally, it indicates that constitutional processes such as habeas corpus have as their object of protection the content of constitutionally protected fundamental rights, but not judicial benefits such as the exemption from punishment.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. On January 16, 2004, the petitioner filed habeas corpus actions against the second resolution of that same date, which left without effect the mandate of liberty of January 5, 2004; and resubmitted another habeas corpus on March 23 of the same year. On July 13, 2004, this remedy was denied by the judge of the Sixteenth Criminal Court of Lima, as it found no irregularities in the process. Mr. Milla Espinoza appealed this decision to the Superior Court of Justice of Lima, which confirmed the decision appealed on November 9, 2004. Against this last decision, the alleged victim filed a constitutional grievance appeal before the Constitutional Court, which declared it inadmissible by decision of May 16, 2005, notified on November 27, 2006. On November 30, 2006, the alleged victim requested an explanatory resolution to which the Constitutional Court would not have responded to date. With a resolution of January 15, 2007, the Constitutional Court terminated the habeas corpus process initiated by Mr. Milla Espinoza. The State does not dispute that the aforementioned judicial proceedings have concluded with the decisions noted, but considers that there are still adequate remedies to be exhausted, and that the alleged victim had his right to the benefit of the remission of punishment or a pardon under the Law of Repentance.

10. The Commission reiterates that the exhaustion of domestic remedies does not imply that the alleged victim must exhaust all possible or possibly appropriate judicial remedies, but that if he did so by any of the procedurally appropriate means, said requirement is met¹². On the other hand, the Commission observes that the figure of the pardon is of an administrative and discretionary nature in charge of the Executive Power and that, therefore, its exhaustion is not in principle enforceable. In a case like this, the Commission does not observe elements that indicate that such mechanism was suitable for solving the situation raised by the petitioner. Likewise, the Commission observes that the petitioner filed two habeas corpus remedies, which culminated in the decisions of the Constitutional Court of May 16, 2006 and January 15, 2007. In view of the above considerations, the Commission concludes that the present petition complies with the requirement of exhaustion of domestic remedies established in Article 46.1.a of the American Convention.

11. Regarding the deadline for submission, the Commission observes that the petition was received on April 3, 2007, and that the domestic judicial remedies were definitively exhausted with the aforementioned judgment of the Constitutional Court of January 15, 2007. Therefore, it concludes that the petition complies with the requirement established in Article 46.1.b of the American Convention.

VII. COLORABLE CLAIM

12. The Commission notes that the present claim is essentially based on the alleged violation by the State to the due process and judicial guarantees of the petitioner in the context of the penalty exemption process, a benefit that was not granted to the alleged victim. The Commission observes that the petitioners' claims were analyzed and resolved internally on several occasions. The Commission recalls that it is not competent to review judgments issued by national courts that act in the sphere of their jurisdiction and apply due process and judicial guarantees¹³. Likewise, the petitioners have not presented elements of fact or law that indicate that the proceedings before or the decision of the domestic judicial authorities suffer from any vice that implies violation of the American Convention.

13. That is why, based on the aforementioned considerations, this Commission concludes that the petition does not comply with the requirement established in Article 47.b of the American Convention, since there are no *prima facie* facts that could characterize violations to the rights invoked by the petitioner.

¹² CIDH, Report No. 16/18, Petición 884-07. Admisibilidad. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24th, 2018, par. 12.

¹³ See CIDH, Report No. 33/19. Petition 870-11. Inadmisibilidad. Ana María Rantighieri. Uruguay. March 31st, 2019.

VIII. DECISION

1. To find the instant petition inadmissible;
2. To notify the parties of the decision; and 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 1st day of the month of June, 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.