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REPORT No. 139/20
PETITION 905-08
REPORT ON INADMISSIBILITY

CÉSAR AUGUSTO ALMEYDA TASAYCO
PERU

Approved electronically by the Commission on June 1, 2020.

Cite as: IACHR, Report No. 139/20, Petition 905-08. Inadmissibility. Jorge Eduardo Pérez Gómez. Perú. June 1, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	César Augusto Almeyda Tasayco
Alleged victim:	César Augusto Almeyda Tasayco
Respondent State:	Perú ¹
Rights invoked:	Articles 7, (personal liberty), 8 (judicial guaranties), 11 (honor and dignity) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	August 6 th 2008 ⁴
Notification of the petition to the State:	December 30 th 2014
State's first response:	April 1 st 2015
Additional observations from the petitioner:	December 17 th 2015 ⁵
Additional observations from the State:	June 16 th 2016 and October 15 th 2019

III. COMPETENCE

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 (deposit of the instrument made on July 28 th 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 of domestic remedies or applicability of an exception to the rule:	No, in the terms of Section VI
Timeliness of the petition:	No, in the terms of Section VI

¹ As set forth on Article 17.2.a of the Commission's rules, Commissioner Julissa Mantilla Falcón, Peruvian, did not participate in the debate nor in the decision of the present matter.

² Hereinafter "the American Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ The petitioner did not contribute substantial additional information after his initial brief, but has presented several requests of information in regards to the status of his case, last of which was presented on January 4th 2019.

⁵ This is the last substantial information received by the petitioner. However, on October 6th 2017 he presented a request for information as to the status of his petition.

V. FACTS ALLEGED

1. César Augusto Almeyda Tasayco (hereinafter “the petitioner”) claims he was subjected to an irregular criminal process in which he was sentenced despite the fact that the crime attributed to him was prescribed; and that such sentence was based on an unfit proof that was not subjected to the guarantee of the adversarial process. He also argues that during this process he was preemptively deprived form liberty for a disproportionate length, which even exceeded by 3 months the incarceration conviction he finally received. He also claims that on the second instance of the process intervened two women judges who were mentioned in the case file who he was not allowed to call as witnesses.

2. The petitioner narrates he was involved for many years in party politics of his country which is why he held many public offices, until in May 2003 when he quit the public sector and resumed his private professional activities. He points out that on February 28th 2004 a criminal proceeding was opened against him due to some audio recordings which had publicly spread and apparently implicated him in certain supposed acts of corruption. He states that such recordings supposedly came from a meeting held in 2001 between him and a client to whom he had provided legal counseling services and had been made by such client without his consent. However, he argues that the publicized recording did not actually correspond to what was discussed at such meetings; that the voices had been altered; and that none of them were his.

3. The petitioner points out that the process against him was influenced by the media, which exerted a strong pressure against him since he was “the closest person” to the President of the Republic at the time, Alejandro Toledo. He states that jurisdictional actors proceeded with excessive celerity against him in order to satisfy the public opinion and look after the image of the current president at that time, Toledo, who was also intended to be blamed for supposed corruption acts. He reports that several irregularities took place in the development of the process, such as the request for liberty limitation measures against him was handled directly by a judge instead of going through the random distribution system as it normally occurs. He also mentions that the Prosecutor did not perform any expert research to authenticate the recording, in spite of which it was accepted along with its transcript as proof and base against him to decide his provisional imprisonment; and that he had no chance to challenge the validity of this proof at the oral stage. He also claims that the court sentenced without previously solving a request to strike out a proof presented by his defense. The facts he was accused of had concluded on December 10th 2001, which is why the criminal action was prescribed; however, affirms that the court used a different thesis from the Prosecutor’s accusation as to claim that the facts extended until December 20th 2001 and so appear as if it was issuing its resolution one day before the prescription of the action.

4. He points out that it was later proven through official expert analyses that the recording had been altered; and that the Cuarta Sala Penal Especial de la Corte Superior de Justicia [Fourth Special Penal Room of the Higher Court] of Lima recognized that neither the recording nor its transcript could be deemed as valid proof. In spite of that, on June 5th 2007 such tribunal dispatched, on divided decision, a sentence based on circumstantial evidence, which condemned the petitioner to 4 years in prison for influence peddling. The petitioner filed a nullity petition against the first instance sentence; in return, the Segunda Sala Penal Transitoria de la Corte Suprema [Second Transitory Penal Room of the Supreme Court] considered that the audio constituted an important probatory element and that the lack of an express resolution of a strike-out request by the first instance court did not produce the sentence’s annulment. For these reasons, in the executory dated December 19th 2007 the Segunda Sala Penal [Second Penal Room] maintained the sentence, but reduced the penalty to 30 months in prison. He states this executory was a matter of a revision remedy, resolved on January 31st 2008.

5. The petitioner also argues that during the criminal process he was deprived of liberty since February 28th 2004 until December 5th 2006 under the regime of provisional arrest. He points out that the 33 total months of provisional arrest exceeded the maximum limit of 18 months set forth in the Código Procesal Penal [Criminal Proceeding Code], as well as the 30-month imprisonment penalty he finally received. He presented a request for liberty for having transpired the maximum legal detention timeframe, which was dismissed based on the complexity of the cause, because of which the maximum applicable detention was 36 months. A nullity petition was filed against that decision, and the Segunda Sala Penal Transitoria [Second

Transitory Penal Room] decided on November 14th 2006 to order his release after considering noncompliance of the causes for complexity as to duplicate the maximum deadline of preventive imprisonment. The documentation provided also indicates that the 30-month penalty was declared fully served given the time he remained in preventive imprisonment. The petitioner claims that during the preventive arrest his health was seriously affected, and that did not receive due guarantees for his health since penitentiary authorities were pressured by the media that labeled his situation as a “false disease”.

6. The petitioner adds that in the recording that supposedly incriminated him the names of two women judges were mentioned whose decisions he allegedly had influenced. He points out that to the date of the process against him, such judges conformed the Primera Sala Penal Especial de la Corte Superior de Justicia [First Special Penal Room of the Higher Court of Justice] of Lima which had to know in appeal the order of detention against him, as well as the successive requests for variation of the detention order proposed by his defense. He claims such magistrates originally recused themselves from knowing on second instance these appeals since their names were referred to in the official transcripts of the recording. However, another Sala Penal Especial [Special Penal Room] resolved on majority vote not to accept the inhibition of both magistrates, decision that was further confirmed in appeal by the Sala Penal de la Corte Suprema [Penal Room of the Supreme Court]. He assures this decision affected his right to defense, since his request to summon both judges to appear in court as witnesses was rejected, based on the fact that they were judging on second instance. He remarks that the appeal to that rejection was resolved by the very same two magistrates, who decided not to give testimony.

7. He claims the domestic remedies became exhausted upon resolution of his petition for revision through the decision which was notified to him on February 5th 2008. He points out that the petition was forwarded to the Commission via fax and private messaging on August 6th 2008; and requests that the Commission apply flexibility when interpreting petition filing requirements, since once forwarded the effective submittal depends on operative aspects of the company.

8. The State, in return, argues that the petition is inadmissible for noncompliance of the requisite of exhaustion of domestic remedies. It states that the petitioner could have filed a request for defense or hábeas corpus versus the executory of the Segunda Sala Penal Transitoria [Second Transitory Penal Room] of December 19th 2007 which confirmed his sentence, and that these were the suitable and effective resources foreseen by the domestic system to question judicial resolutions on a res judicata status dictated within criminal processes where judicial guaranties may have been affected. The State observes that the petitioner filed several habeas corpus suits which received pronouncement from the Constitutional Tribunal, but that none of them aimed to question the condemnatory sentence. It also remarks that the petitioner has not provided information that confirms remedies were filed against the resolution of the Sala Penal Especial de la Corte Superior de Justicia [Special Penal Room of the Higher Court of Justice] that did not allow the inhibition of the two magistrates mentioned in the recording. Also, that this decision could be questioned by penal procedural mechanisms, as well as by constitutional mechanisms of hábeas corpus and protection. It also remarks that this point was not included in the nullity petition filed by the petitioner versus the first instance condemnatory sentence. It adds that the petitioner had not provided documentation either that would indicate he filed petitions against the opening proceeding of instruction supposedly for having initiated the criminal process over a prescribed crime. Likewise, sustains that the petitioner did not take the civil proceedings, which was an efficient judicial way to demand indemnity for damages to the Judicial Power.

9. It also considers that the petition is extemporary, since it was submitted to the Commission on August 11th 2008, and the decision that the petitioner considers as final was the one that notified him on February 5th 2008. It considers that the submittal via a private messaging company on August 6th 2008 cannot be considered the same as submittal before the Commission; and that, either way, if this petition date were to be valued it would still be extemporary. It sustains that there are no special circumstances that allow applying flexibility criteria on the date for filing the petition, and remarks that the petitioner is a lawyer, which is why he must be acquainted with basic legal norms such as deadlines.

10. It adds that the petition is inadmissible also based on Article 47(b) of the American Convention, since the facts alleged do not constitute breach of the petitioner’s rights. It points out that the

petitioner filed an habeas corpus petition regarding his excessive alleged preventive detention which surpassed the maximum time allowed by law, that was declared baseless by the Constitutional Tribunal, which considered that the applicable timeframe was 36 months because of it being a complex cause. Although the Sala Penal de la Corte Suprema de Justicia [Penal Room of the Supreme Court of Justice] strayed from the criteria of the Constitutional Tribunal and ordered the release of the petitioner, the State considers this as proof that the right to liberty of the petitioner was indeed upheld by national judicial authorities. It sustains that the fact that the time in preventive prison exceeded the time he was sentenced to serve, after this was reformed, does not entail violation to the personal right to personal liberty, since a compurgation of the penalty was disposed. It also indicates that the decisions adopted by national authorities were duly motivated in applicable procedural law and did not affect the petitioner's right to defense, specifically regarding the aforesaid prescription of the crime; the recording's probatory value; the decision of not summoning the two magistrates as witnesses; and the lack of an express resolution deciding an evidence strike out request. It adds that the petitioner did not provide proof to demonstrate his health ailments derived from actions performed while he was deprived of liberty.

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

11. The petitioner claims that the domestic remedies became exhausted with the decision of the petition of revision filed against the sentence by the Segunda Sala Penal Transitoria [Second Transitory Penal Room] which confirmed the sentence against him. He states he was notified of such decision on February 5th 2008 and that his petition was timely sent via private messaging on August 6th 2008; and requests applying the flexibility criteria when assessing the time for the submittal of his petition. In return, the State considers that the remedies are not exhausted because the petitioner did not file protection actions nor habeas corpus against the condemnatory sentence nor its confirmation, nor a demand for indemnity against the judicial power by the civil proceedings; and adds that he didn't take actions versus the denial of inhibition request of the two magistrates whose names were mentioned in the recording nor regarding the alleged prescription of the crime before the sentence came out. The State also sustains that the petition is extemporary if the submittal date before the messaging company was valued, and that there is no base to apply the criteria of flexibility.

12. Upon the exposed by the parties the Commission considers proper to remember Article 28 of its Rules which establishes that the petitions must contain pertaining information as to "the actions taken to exhaust remedies in the domestic jurisdiction or the impossibility to do so".

13. As for the denial for the request of inhibition by the magistrates whose names appeared in the criminal process and the fact that they had decided on second instance over certain procedural controversies, including their own refusal to appear as witnesses, the petitioner has provided no information whatsoever as to any action taken to claim for possible violations of his right to an impartial judge, nor has he alleged lack of effective remedies for such purpose, or that he had been deprived or dissuaded to exhaust them. For such reasons, the Commission considers that this aspect of the petitions results inadmissible for not meeting the requirements of Article 46.1(a) of the American Convention.

14. Regarding the petitioner's preventive detention exceeding the maximum term permitted by internal law, by the time of the final conviction, and the effects caused by it, the Commission reminds that when an excessive extension of preventive imprisonment is alleged "it merely takes a request for liberty and its denial to exhaust remedies"⁶. At the present case, the Commission observes that the petitioner presented a liberation request which was initially rejected; and then filed a nullity petition that was decided in his favor and resulted in his liberty. Likewise, the Commission takes note that the petitioner's sentence was finally set in a shorter term of imprisonment than the one served in preventive detention which was declared immediately fulfilled given the time already served. In these circumstances, the Commission regards necessary to analyze whether the exhaustion of domestic remedies requisite is met in regards to the lack of reparation due to the petitioner's time served in preventive prison illegally or disproportionately. In this sense the Commission appreciates that the State has indicated that the petitioner had access to civil proceedings to demand an indemnity to the Judicial

⁶ CIDH, Informe No. 49/18, Petición 1542-07. Admisibilidad. Juan Espinosa Romero. Ecuador. 5 de mayo de 2018, párr. 13.

Power for damages; and that the petitioner has not provided information on actions he may have taken to request reparation or demand responsibilities for having been deprived of liberty beyond the timeframe allowed by law or beyond the time of his sentence, nor alleged any cause of exception to the exhaustion requirement. Therefore, the Commission concludes that in this aspect of the petition does not meet the requirements of Article 46.1(a) of the American Convention either.

15. Regarding the other aspects of the petition referred to a violation of the due process or arbitrary decisions in the development of the criminal process against the petitioner, the State has pointed out that the petitioner did not exhaust constitutional remedies at his reach versus his final sentence final as res judicata. The Commission has sustained that the requirement of exhaustion of domestic remedies does not mean that the alleged victims are necessarily forced to exhaust all remedies available; consequentially, if he approached the matter through one of the valid and proper alternatives according to the internal legal order and the State had the opportunity to remedy the matter in its jurisdiction, the aim of the international norm is met⁷. For this reason, it considers that the internal remedies regarding the criminal process and the condemnatory sentence became exhausted with the decision of the revision petition on January 31st 2008, notified on February 5th 2008; the petition was received by the Commission on August 11th 2008 when the 6-month period foreseen in Article 46.1(b) of the American Convention. The petitioner points out he sent the petition via private messaging and via fax on August 6th 2008. Although the Commission has applied certain flexibility for the valuation of the deadline in case of postal delivery⁸, even if August 6th 2008 were considered, the present petition would qualify as extemporary by one day. The Commission does not find special circumstances in the file either which may justify even greater flexibility towards the petitioner. For such reasons, this aspect of the petition results inadmissible due to noncompliance of the requirements of Article 46.1(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

16. Given the conclusions exposed on Section VI of the present report the Commission shall not carry out an analysis as to whether the facts alleged by the petitioner may constitute violations to the American Convention or other treaties of its competence.

VIII. DECISION

1. To find the instant petition inadmissible with base on Articles 46.1(a) and (b) and 47(a) of the American Convention; and

2. To notify the parties of this decision; 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 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.

⁷ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24th 2018, par. 12.

⁸ CIDH, Report No. 173/17, Petition 1111-08. Admissibility. Marcela Brenda Iglesias, Nora Ester Ribaldo and Eduardo Rubén Iglesias. Argentina. December 29th 2017, par. 8.