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## **REPORT No. 98/20**

### **PETITION 12-09**

#### REPORT ON INADMISSIBILITY

CRISTIAN ALPISTE ANDERSON AND OTHERS  
PERU

Electronically approved by the Commission on March 20, 2020.

**Citar como:** CIDH, Report 98/20. Petition 12-09. Inadmissibility. Cristian Alpiste Anderson and others. Peru. March 20, 2020.



**I. INFORMATION ABOUT THE PETITION**

Petitioner	Asociación Generación, Instituto de Investigación, Promoción y Comunicación Social (“Generación”)
Alleged victim	Cristian Alpiste Anderson y otros <sup>1</sup>
Respondent State	Perú <sup>2</sup>
Rights invoked	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights <sup>3</sup> , in relation to its article 1.1 (obligation to respect rights); article 13 (education) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. <sup>4</sup>

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

Filing of the petition	January 5, 2009
Additional information received during initial review	November 20, 2014 and January 22, 2015
Notification of the petition	November 24, 2015
State’s first response	February 25, 2016
Additional observations from the petitioner	June 3, 2017, June 14, 2018 and March 27, 2019
Additional observations from the State	March 9, 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 (deposit of instrument of ratification on July 28, 1978) and San Salvador Protocol (deposit of instrument of ratification on June 4, 1995)

**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	No
Timeliness of the petition	N/A

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner claims the responsibility of the State for the suspension of the authorization for the opening of the *Casa de Acogida de Generación* (hereinafter, “*Casa Generación*” or “*Casa*”) – a place that offers shelter, education, food, and basic health services to homeless boys and girls – and the eviction of approximately 70 boys, girls and teenagers, in contravention of its obligation to guarantee their rights to humane treatment and life. The petitioner points out that *Casa Generación* provided shelter to 70 boys and girls whose ages ranged between 10 and 18 years, all of whom had been brought in from the street for living in

<sup>1</sup> In the Annex I a list of the alleged victim is attached.

<sup>2</sup> In accordance with article 17.2.a of the Commission’s Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not take part in the discussion or decision of the instant matter.

<sup>3</sup> Hereinafter “the American Convention” or “the Convention”.

<sup>4</sup> Hereinafter “the San Salvador Protocol”.

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

particularly difficult or high-risk situations and, on average, served around 250 boys and girls per year. The petitioner alleges that the State failed to fulfill its duty to provide them with an alternative shelter. It adds that, for that reason, many of them are homeless, which increases the risk situation and vulnerability state in which they are, further augmented by them being children. It also alleges that some of them passed away as a result of not having access to the services provided by the *Casa*<sup>6</sup>. Finally, the petitioner claims that at the date of the filing the petition before the IACHR, the owner or legal representatives were still prohibited to enter the property, which violated the right to property of the boys, girls and adolescents that live on the street and have the right to possess, occupy and enjoy said property.

2. The petitioner claims that, on January 17, 2005, it was notified by the Municipality of a resolution passed in relation to *Generación*, granting it one day for it to cease its activities<sup>7</sup>, on the basis that the boys, girls and adolescents in the *Casa* were in a situation of neglect and lack of control. This resolution was challenged by the petitioner. However, the petitioner claims that, on January 20, 2005, before the appeal was decided, approximately 100 armed police officers allegedly showed up at the shelter house of *Casa Generación* to enforce the closure and eviction order which had emanated from the municipal Mayor, which ordered to evacuate the children that lived there and transfer them to a similar institution. The petitioner claims that, after the eviction, the children were forced to live on the street, or in other similar institutions or to return to their families in a precarious or impoverished situation, on top of not having access to the education, recreation, housing or health services that *Generación* provided them with. Likewise, the petitioner points out that, three days after, the Prosecutor from the Eleventh Provincial Office of the Prosecutor for Family Matters of Lima initiated a guardianship investigation of the boys, girls and adolescents found at the *Casa* and that, on January 24, 2005, the 13° Family Court of Lima initiated a guardianship investigation of 26 boys and girls that were found by the Office of the Prosecutor during its intervention of *Casa Generación*, for an alleged situation of abandonment. The petitioner points out that, following a decision of the Court, the boys and girls were handed over to their family members<sup>8</sup> or sent to shelter and centers for underage persons. On March 17, 2005, the appeal over the resolution of January 17 was found to be inadmissible, on the basis that said resolution did not entail and act that could be challenged.

3. The petitioner indicates that on April 11, 2005, the Municipality requested an injunction ordering the provisional suspension of all activities carried out by *Generación* and, as a consequence, that the temporary relocation of all boys, children and adolescents of *Casa Generación* be ordered. This measure was approved on April 18, 2005, by the 12° Family Court of Lima and, on May 17, 2005, the Court entered the premises of *Generación* to evict the children that were sheltered in the *Casa*, as well as any other person present<sup>9</sup>, and to suspend the plans and programs that provided attention to the children. The petitioner claims that the children were left on the street or driven to the Municipality, which only has administrative offices. It also claims that, of the children that were placed under supervision of the 12° Court, 6 eventually allegedly died of tuberculosis. *Generación* requested the intervention of the Office of the Ombudsman, which concluded that the resolution of April 18 was not properly motivated. An appeal against the resolution was filed and declared improper on May 26, 2005 for not fulfilling the requirements as it did not described in a clear and coherent manner the factual and legal basis on which it was grounded. A *remedy of complaint* was then filed, which was dismissed.

4. Likewise, on May 18, 2005, the Municipality filed a complaint concerning the protection of the individual and collective interests pertaining to the boys, girls and adolescents sheltered by *Generación*<sup>10</sup>. By

<sup>6</sup> Hermenegildo Quispe Mezahuanca, José Machuca, Hilda Santiago Huertas, Maria Jesús Garcia Mosquera, Peter Cárdenas, Sebastián Santiago Huerta, Claudio Peña Altamirano, Carlos Núñez Meza, Víctor Allca.

<sup>7</sup> It indicates that on January 19, the Prosecutor for Prevention of Crime conducted a proceeding in the Municipality of Magdalena. He requested the institution to exert control over the girls and boys under its guardianship in order for the Municipality to bring the shelter to a close.

<sup>8</sup> The petitioner indicates that in that decision it was not taken into account that these children, despite having a family were living on the streets without determining the underlying reasons why these children decided not to live with their parents. Later on, these children once again abandoned the family home and went back to *Generación*.

<sup>9</sup> The petitioner alleges that the judge left a group of policemen hired by the municipality to impede the access to the house to the owner and users. The Municipality had allegedly set up a tent to help people requesting help -but the petitioners contend that when Hermenegildo Quispe presented there ill he did not receive help.

<sup>10</sup> It alleged that the reversal of the licence to function was based in the existence of 300 complaints made by neighbors and a situation of total lack of control and negligence in the treatment of minors which contributed to high indices of robbery, assaults and faults against

its judgment of January 26, 2007, the 12° Family Court of Lima found that the lawsuit was justified and ordered the definitive cessation of the social activities of receiving, sheltering and or developing plans and programs of attention for children and adolescents undertaken by the *Casa*, as well as the definitive relocation of the children and adolescents and their inclusion in the special programs established in *the Code of Children and Adolescents*<sup>11</sup>. That decision was grounded on, among other factors, the conclusions of the Prosecutor, which had considered that the irregular situation of many children and adolescents merited judicial involvement<sup>12</sup>. The petitioner then filed an appeal, claiming that the decision had not taken into account the best interests of the child. The judgment was confirmed on April 8, 2008, by the First Specialized Family Chamber. An appeal in cassation was then filed, which was declared inadmissible by the Permanent Civil Chamber of the Supreme Court of Justice on June 17, 2008, and notified on July 4, 2008, on the basis that the appeal lacked real foundation as the appealed judgment was adequately motivated.

5. *Generación* then filed an action to recuse the Judge of the 12° Family Court, Carmen Torres Valdivia, claiming that the due process of law principle had been violated during the protection procedure. However, this action was declared inadmissible on June 24, 2005, as it was found that the Judge did not found herself in any of the causes for recusal established in the Procedural Code. The petitioners requested that this resolution be annulled; request was declared inadmissible on July 15, 2005. *Generación* also filed a complaint against Judge Torres Valdivia before the Office of the Prosecutor for the crime of obstruction of justice, which was declared inadmissible. The petitioner filed a *remedy of complaint*, which was found to be groundless by the Supreme Prosecutor of Internal Control in December of 2005, given that the decisions that were adopted fell within the jurisdictional scope.

6. On June 2, 2005, *Generación* filed an action for the protection of constitutional rights against the Mayor of Magdalena del Mar, seeking that the resolutions canceling the license to operate of *Casa Generación* and ordering its closure be declared inapplicable<sup>13</sup>, on the argument that it constituted violation of the rights to privacy, humane treatment, health, life, education and others of the children and adolescents. The petitioner argued that members of the National Police, sent by the Mayor, had implemented the order to close their institutional premises before the appeal of the resolution of the Municipality was resolved, and without having notified the alleged 1200 complaints from neighbors – which existence has not been proved. The action was declared inadmissible on June 3, 2005, a decision that was later confirmed by the Fourth Civil Chamber of Lima in a judgment dated May 3, 2006, and the Constitutional Tribunal, in a judgment dated December 11, 2006, as it was considered that said action was not the appropriate remedy since a specific and equally satisfactory procedural mechanism existed, and that the petitioners should have resorted to administrative litigation. The petitioner claims that the Constitutional Tribunal did not consider the urgent nature that the protection of boys, girls and adolescents requires.

7. On June 6, 2005, *Generación* filed a writ of *habeas corpus* against the Judge of the 12° Family Court and the Commander of the National Police of Peru, for violation of their fundamental right to the inviolability of the domicile caused by the injunction of April 18, 2005, on the basis that the prohibition on the operation of the *Casa* made it impossible to continue providing assistance to the children and adolescents. The action was declared inadmissible on June 15, 2005, by the Ninth Criminal Court, which concluded that the police commissioner had acted within his attributions and that the facts did not fall under the cases established by article 25 of the *Constitutional Code of Procedure*, as no violation of the constitutional right invoked was found. This judgment was confirmed on July 12, 2005, by the Fifth Specialized Chamber for Procedures Involving Free Inmates of the Superior Court of Lima, which concluded that the plaintiff intended that, through an unsuitable route, the substance of the decision of the ordinary judge be reviewed. The petitioners appeared before the

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peace and public safety. It mentioned that the minors were in a material and moral state of abandonment and were interned in that institution without receiving the proper rehabilitation treatment that every child in said situation of abandonment needs.

<sup>11</sup> By the Tribunal's decision the majority of the children living in the street and whom have been hosted by *Generación* were returned to their relatives. Others were sent to public youth Shelters.

<sup>12</sup> The tribunal based its resolution in the fact that the *Generación* institution did not carry out adequate educational reintegration programs for the minors it housed; that it is proven that in *Generación*, subjects of legal age of doubtful reputation coexisted with the minors that said entity housed, that the *Generación* representative, Lucy Borja, has had a procedural conduct contrary to the procedural duties of truthfulness and probity when she did not met the requirements necessary in her psychological evaluation before the before the Public Ministry. Demonstrating that *Generación* violates with its social purpose of protecting and safeguarding the rights of children and adolescents by the negligent and dismissive attitude of their representatives; and that *Generación* cannot function or house minors because it does not have the operating license and the MINDES Authorization.

<sup>13</sup> Judgment of January 17, 2005 confirmed on March 17, 2005.

Constitutional Court, in a constitutional claim, which on December 6, 2005, declared the appeal of habeas corpus inadmissible, observing in its ruling that the state and constitutional organs concluded that the Institute had not fulfilled the role attributed to it by Article 4 of the Constitution, that is, the protection of children and adolescents.

8. Finally, the *Instituto Generación* filed an administrative litigation action against the municipality of Magdalena, which was declared inadmissible by means of a resolution of December 1, 2005. The tribunal found that the resolution of the Municipal Management contained a revocation ex officio, and that the period of 3 months to bring legal action against the administration had expired. The judgment was confirmed by the Specialized Chamber on Administrative Litigation through a resolution of April 27, 2007.

9. In a subsequent communication, the petitioner indicated that on January 29, 2010, the Second Office of the Prosecutor for Crime Prevention received a preventive complaint made by the NGO "*Asociación Civil Generación Instituto de investigación, promoción y Comunicación Social*", against the Mayor and official of the Municipality of Magdalena del Mar, in order to prevent the commission of illicit acts against the Public Administration - abuse of authority, and against the patrimony - misappropriation, which was made known to the Municipality on the same day. In a resolution of February 21, 2012, it was resolved to proceed to the final archive of the complaint, as it was not possible to individualize the accused as material authors. The resolution was confirmed on April 12, 2012.

10. For its part, the State emphasizes that the petition is confusing and inaccurate regarding the identification and concrete determination of the facts or omissions by the Peruvian State that are considered by the petitioner as harmful. In the same way, there is an absence of causal connection and / or linking of certain facts referred to, and how these are attributable to the State and would generate its international responsibility. The State alleges that the petition does not include facts that constitute the violation of any of the rights that have been alleged by the petitioner before the IACHR, as required in Article 47 (b) of the Convention. No significant basis is provided as reasons for why certain facts presented would have resulted in violations of rights to the detriment of the alleged victims, and for why they would be attributable to the Peruvian State. Likewise, the State alleges that it is not possible to identify with precision the group of the alleged victims from the petition and the attached documentation.

11. The State argues that the petitioner improperly intends to claim, as part of the present petition, facts and grounds related to alleged violations that only and strictly impacted *Generación* - such as those related to the violation of the right to judicial guarantees and the right to property -, a legal person excluded from the Inter-American system. The State emphasizes that the petitioner has not included a specific reference and explanation regarding the domestic remedies that were allegedly filed in favor of the alleged victims in order to claim for the guarantee of such rights. Almost all of the petitioner's arguments and approaches on domestic remedies are limited to judicial and administrative litigation processes promoted by the Association, and in which it constitutes the aggrieved party. The State alleges that the petitioner's actions in relation to the administrative procedure resulting in the revocation of its license were not intended directly to protect the rights of the alleged victims, but rather to preserve the interests of the petitioner. Regarding the guardianship investigation, the State observes that it could not be considered as a remedy exhausted by the petitioner with the purpose of protecting some right of the alleged victims, but rather a process initiated by the Office of the Prosecutor, in order to carry out an investigation in relation to children housed by *Generación*. In relation to the precautionary measure process, the State warns that it is evident that the party that allegedly would be affected by the decision of the 12° Family Court would only be the *Generación*, since the procedure was carried out against it. The same conclusion applies to the *habeas corpus* procedure, which was presented to protect the right to inviolability of *Generación*. Finally, the State emphasizes that the claim for collective and individual interests has been initiated by the Municipality of Magdalena del Mar, and in favor of the alleged victims. The petitioner intends that it be considered as a resource promoted by itself in order to protect the rights of the alleged victims, when the reality is that *Generación* was forced to participate in said process because its particular interests would have been seen affected.

12. Likewise, the State submits that the petitioner does not refer to other domestic remedies that had been filed and would include the alleged victims as direct victims. In a subsidiary manner, the State argues that the petitioner did not comply with the requirement regarding the timeliness the petition, as it received

notification of the Supreme Court ruling on July 4, 2008<sup>14</sup> and the date of submission to the Commission was January 5, 2009. It also emphasizes that the other judicial and administrative remedies referred to by the petitioner culminated in the years 2005, 2006 and 2007.

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

13. The Commission notes that several appeals were filed regarding the revocation of the authorization granted to the *Casa Generación*. However, out of the actions filed by the petitioners, none were presented on behalf of the alleged victims, that is, the children and adolescents housed or attended by *Generación*. It is observed that the State presented resolutions and appeals against *Generación* in favor of the alleged victims, to which *Generación* presented responses aimed at preventing the closure of the *Casa* and the revocation of its license. Likewise, it is observed that the remedies of *habeas corpus* and the administrative litigation action, filed by *Generación*, were presented in favor of the Institute itself, and not of the alleged victims.

14. The Commission observes that on January 17, 2005, the Municipality notified a resolution revoking the authorization to open the establishment granted to *Generación*, against which the petitioners filed an appeal, rejected on March 17, 2005. Meanwhile, on January 20, 2005, the Prosecutor initiated a guardianship investigation of the children and adolescents found in the *Casa Generación* and, on January 24, 2005, the 13° Family Court of Lima opened a guardianship investigation concerning 26 children and adolescents for alleged state of abandonment. Likewise, on April 11, 2005, the Municipality requested that a precautionary measure be issued demanding the provisional suspension of the activities carried out by *Generación* and the relocation of children and adolescents. This measure was admitted by resolution of April 18, 2005 by the 12° Family Court of Lima. *Generación* appealed that resolution, and the appeal was declared inadmissible on May 26, 2005, for not meeting the admissibility requirements. A *remedy of complaint* was then filed, also rejected. Finally, the Municipality filed a suit for protection of collective and individual interests that concerned the children and adolescents attended by *Generación*. Said action was declared founded on January 26, 2007 by the 12° Family Court of Lima and the final cessation of the social activities and programs of attention of children and adolescents by *Generación* was ordered, as well as the relocation of every boy, girl and teenager staying in the House. The sentence was confirmed by the First Specialized Family Chamber on April 8, 2008, and the appeal filed by the petitioners was declared inadmissible on June 17, 2008, with notification on July 4, 2008.

15. The Commission notes that the petitioners filed appeals on behalf of *Generación*, against the suspension of their license. On June 2, 2005, an action for the protection of constitutional rights was filed against the Magdalena del Mar district mayor, against the resolutions that canceled the operating license and ordered the closure of the House. Both the Fourth Civil Chamber of Lima, in a judgment dated May 3, 2006, and the Constitutional Court in its judgment on the appeal, dated December 11, 2006, confirmed its rejection for considering that the action was not the appropriate remedy, when a specific procedural route which was equally satisfactory existed, and that the parties should have filed an administrative litigation action. Also, on June 6, 2005, *Generación* filed a *writ of habeas corpus* against the Judge of the 12° Family Court and the Commander of the National Police of Peru for violation of their fundamental right to the inviolability of the domicile, in relation to the execution of the precautionary measure of April 18, 2005, requested by the Municipality. Said appeal was declared inadmissible by the Constitutional Court on December 6, 2005. Finally, *Generación* filed an administrative litigation action, whose rejection, because it was filed late, was confirmed on April 27, 2007.

16. The Commission notes that the petitioners allege that the State has failed to provide the alleged victims with a substitute shelter after the suspension of the activities of *Generación*, resulting in many of them being homeless, in degrading conditions, and in impact to their health as some of them suffer from high-risk diseases. However, the petitioner does not provide information as to remedies that would have been filed in this regard, in favor of the children and adolescents identified as alleged victims. Nor can it be observed that remedies were filed demanding that the Municipality comply with the relocation orders obtained before the courts. Thus, from the information provided, the Commission concludes that it cannot be verified that the petitioners filed remedies intended to protect the rights of the alleged victims, nor instructing the State to take care of the children - in protection of their rights to life and humane treatment - affected by the closure of

<sup>14</sup> The State observes that the appeal was only linked to the alleged violations of the right to fair trial, judicial protection and right to property.

*Generación*. Therefore, the Commission considers that this petition does not meet the requirement of exhaustion of domestic remedies in accordance with the provisions of Article 46, paragraph 1 (a), of the American Convention.

**VIII. DECISIÓN**

1. To find the instant petition inadmissible;
2. To notify the parties of this decision; 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 20<sup>th</sup> day of March 2020. (Signed) Joel Hernandez, President; Antonia Urrejola, First -President; Esmeralda; Flávia Piovesan, Second Vice-President; E. Arosemena Bernal de Troitiño, and Edgar Stuardo Ralón Orellana, Members of the Commission.

## APPENDIX 1

### List of alleged victims

Niños, niñas y adolescentes que vivían en la casa hogar al momento de su cierre

1. Cristian Alpiste Anderson
2. Marisol Estefanía Arregui Barrientos
3. Jorge Aguado Cristóbal
4. Jefferson Bellido Salazar
5. Jhon Kevin Casas Jiménez
6. Juan Luis Caldas Milla
7. Williams Flores Contreras
8. Ruben Johan Cruzado Montenegro
9. Roxana Lissett Cruz Barrientos
10. Alcides Díaz Rojas
11. Cesar Montoya Dueñas
12. Joel Escobedo Palacios
13. Juan Carlos Echevarría Salvador
14. Miguel Ángel Garavito Muñoz
15. Miguel Garcia Ramirez
16. Cristian Raúl Garcia Benito
17. Jorge Luis Gutiérrez Reyes
18. Lino Guerrero Bacilio
19. Luis Antonio Huapaya Borda
20. Jean Carlos La Torre Portocarrero
21. José Jonatán La Torre Portocarrero
22. Cristian La Rosa Saavedra
23. Cristofer Orlando Luque Vásquez
24. Jesús Martínez Murillo
25. Daniel Martínez Murillo
26. Jhonny Nestares Hilario
27. Jefferson Origo Huamán
28. José Orozco Villanueva
29. Sofia Osorio Meléndez
30. Moisés Pinares Gonzales
31. Alberto Paucar Jesús
32. Paulina Quispe Bello
33. Roberto Quispe Soto

34. Joselin Quispe Carranza
35. Marisol Quispe Reyes
36. Yolver Rodríguez Aguilar
37. Billy Salcedo Romaní
38. Guadalupe Saavedra Villena
39. Katterin Betsabe Solís Berrocal
40. José Jesús Chura Campos
41. Sandy Vera Martinez
42. Gino Gianfranco Villanueva Chávez
43. Jorge Luis Zelada Baldeon
44. Michel Ramirez Valencia
45. Marvin Agapito Salinas
46. Javier Rivera Rivera
47. Luis Reynoso Huayllino Huamán
48. Diego Gamarra Soriano
49. Jimmy Zarate Martinez
50. Rosalinda Evelyn Monteverde Ortiz
51. Katherine Tello Lesas
52. Isaac Arce Vilca
53. Víctor Ramirez Valencia
54. Jhonatan Cevallos Hiraola
55. Manuel NN David
56. Kenyi Stuart Valente Luyo
57. Jonathan Díaz Puyo
58. Raúl Eulogio Quispe Fabián
59. Kimberly Osorio Meléndez
60. José Luis Isla Robles
61. Geraldine Estela Sánchez Fuentes
62. Carmen Geraldin Vílchez Arapa
63. Briggite Esmeralda Chumbe Vega
64. Melany Sáenz Ayala
65. Anderson Romero Espinoza
66. José Núñez Lara
67. Arturo Ángel Remuzgo Lopez
68. Hermenegildo Quispe Mezahuanca, fallecido
69. José Machuca, fallecido

70. Hilda Santiago Huertas, fallecida
71. Maria Jesús García Mosquera, fallecida
72. Peter Cárdenas, fallecido
73. Sebastián Santiago Huerta, fallecido
74. Claudio Peña Altamirano, fallecido
75. Carlos Núñez Meza, fallecido
76. Víctor Allca, fallecido

Adults who lived in the shelter at the time of its closing

77. Roy Martillo Quispe
78. Carlos Antonio Ventura Espinoza
79. Isabel Vega Pareja
80. Esperanza Blas Lopez
81. Edson Tinco Quispe