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REPORT No. 40/20
PETITION 1327-08
REPORT ON ADMISSIBILITY

CÉSAR RAMÍREZ POLANCO
PERU

Approved electronically by the Commission on April 20, 2020.

Cite as: IACHR, Report No. 40/20, Petition 1327-08. Admissibility. César Ramírez Polanco.
Peru. April 20, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	César Ramírez Polanco
Alleged victim:	César Ramírez Polanco
Respondent State:	Peru ¹
Rights invoked:	Article 25 of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	November 14, 2008
Additional information received at the stage of initial review:	March 24, 2009, May 3, 2010, and September 24, 2014.
Notification of the petition to the State:	December 6, 2016
State's first response:	March 6, 2017
Additional observations from the petitioner:	May 10, 2017
Additional observations from the State:	February 9, 2018

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 (instrument deposited on Friday, 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	Articles 5 (humane treatment/personal integrity), 8 (fair trial/judicial guarantees), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, taken in conjunction with Article 1(1) thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as referred to in Section VI
Timeliness of the petition:	Yes, as referred to in Section VI

V. FACTS ALLEGED

1. The petition addresses impairment of the right to health and the allegedly illegal dismissal of Mr. César Ramírez Polanco (hereinafter "the petitioners" or "the alleged victim"), who had been working since May 1, 1999 in the Health Social Security institution (hereinafter "ESSALUD"), as an enforcement officer (*ejecutor coactivo*).

¹ 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.

² Hereinafter "American Convention" or "Convention."

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

2. The petition states that on October 18, 2004 he filed a habeas corpus appeal against ESSALUD, alleging violation of his right to humane treatment/integrity, since that institution had denied his requests to be transferred from the town of Puno to Lima, where he was due to receive treatment for a psychiatric disorder as recommended in medical reports. In that regard, he explains that he had been suffering from adaptation issues, depression, and pervasive anxiety since 2003. He states that that request was declared inadmissible by the Fourteenth Specialized Criminal Court in Lima on November 9, 2004, as it considered that not all the requirements for authorizing his transfer to Lima had been met. He adds that on September 11, 2006, the Constitutional Court declared that his demand was well-founded and ordered ESSALUD to grant facilities (permission or license) for the plaintiff to continue his prescribed medical treatment in Lima and declaring that the aforementioned dismissal of his request as inadmissible constituted an impairment of his mental integrity and hence of his health.

3. The petitioner indicates that in the meantime, in reprisal for his having filed the habeas corpus appeals, ESSALUD fired the alleged victim on September 1, 2005, while he was on sick leave that was due to expire on September 9, 2005. He states that, in response, he filed an action to have his dismissal annulled, which was declared well-founded by the Twenty-Ninth Labor Law Court of Lima on August 9, 2006. The Court found that there had been no just cause for his dismissal and recognized a causal link between the facts invoked by the plaintiff and his dismissal. In addition, the Court ordered his reinstatement and payment of accrued remuneration as well as Employment Severance Indemnities known as compensation for time in service (hereinafter CTS). The petitioner points out that said judgment was confirmed by the Lima Labor Law Court (*Sala Laboral de Lima*) on March 26, 2007 and by the Supreme Court of Justice on November 14, 2007. The petitioner reports that only on the basis of that last-mentioned proceeding, ESSALUD finally complied with the orders of the labor law judicial authorities.

4. Petitioner argues that as a result of the constitutional judgment, on March 27, 2007 ESSALUD management authorized his temporary transfer to Lima until December 31, 2007, in order for his disorder to be treated as prescribed by doctors, whereby he would keep his hierarchical standing, career path, and occupational group status and would subsequently be reincorporated into the service in his place of origin. However, the petitioner states that in a new resolution on August 29, 2007 management ordered an end to his rotation and his return to Puno, alleging institutional necessity. He mentions that he filed a complaint against that decision with the Fourteenth Criminal Court in Lima, which declared ESSALUD's action to be a uniquely arbitrary act (*acto homogéneo*) that violated the fundamental right to physical integrity and health. The petitioner states that said resolution was appealed by ESSALUD and that, in an official letter, dated May 13, 2008, he, the alleged victim, requested that ESSALUD comply with the appeal judgment, which ESSALUD nevertheless failed to do. The petitioner describes how, along the same lines, on July 8, 2008, the Higher Court in Lima ratified the April 23, 2008 ruling and ordered ESSALUD management to make arrangements for the alleged victim to continue his treatment in Lima. He states that in injunctions issued on September 9 and 29, 2008, the judiciary asked ESSALUD to comply with the final judgment, which, to this day, it has failed to do.

5. The petitioner further points out that, given noncompliance with the judgment, on February 18, 2009, the Fourteenth Criminal Court in Lima decided to remit the files on the case to the Public Prosecutors' Office (*Ministerio Público*) for the corresponding criminal investigation. He states that proceedings were instituted for the crime of misuse of authority against two ESSALUD officials before the Fifty-Fourth Criminal Court of Lima, which decided to shelve (archive) the case on October 23, 2009, on the grounds that the crime had prescribed under the statute of limitations. The petitioner states that a second criminal proceeding against the two ESSALUD officials was instituted before the Twentieth Criminal Court of Lima on charges of disobedience and resistance to authority. Nevertheless, in that case, the petitioner states that he was only notified once, in 2010, and that he does not know the outcome.

6. Petitioner further holds that, on March 14, 2011, he filed an action for protection of a constitutional right (*amparo*) with the judge in Puno, requesting his definitive transfer to Lima, based on the psychiatric report of September 29, 2010, which again recommended that he be treated at the Almenara hospital in the capital (Lima). The petitioner stresses that on September 22, 2011, an innovative measure (*medida innovativa*) was granted in favor of the alleged victim, ordering his temporary transfer to the Almenara Hospital care network in Lima. He points out that thanks to appeals filed by Mr. Ramírez Polanco, resolution of

the amparo suit is pending before the Constitutional Court, while the [precautionary measure is in force. He points out that this new constitutional proceeding is not part of the petition.

7. The petitioner states that the Constitutional Court's decision on September 11, 2006 exhausted domestic remedies and that he filed several actions to achieve compliance with that ruling. He argues that failure to comply with the judgment constitutes a violation of Article 25.2.c of the Convention and has exacerbated his illness, due to ESSALUD's stubborn refusal to comply. He adds that he did not file a civil compensation suit for indemnities in order not to obstruct the processing of his petition before the Inter-American Commission.

8. The State, for its part, maintains that it complied with all the measures ordered by the Twenty-Ninth Labor Law Court in Lima in connection with the action for annulment. Thus, it points out that ESSALUD reinstated the alleged victim and paid his foregone salary as well as CTS. The State further indicates that in this process the petitioner did not show evidence of any action filed in respect of the compliance procedure, so that available remedies had not been exhausted. It further alleges that the petition was filed extemporaneously, according to inter-American system rules.

9. The State alleges that in the proceeding regarding suppression of the arbitrary act (*acto homogéneo*) the only resolution is that of February 18, 2009 handed down by the Fourteenth Criminal Court in Lima which ordered remittance of the case to the Public Prosecutors' Office and which was improperly challenged by the petitioner. The State explains that on January 15, 2010, in turning down the constitutional wrong appeal (*recurso de agravio constitucional*), the Constitutional Court established that an appeal (*recurso de apelación*) should have been filed instead. For that reason, the State maintains that the alleged victim has not properly exhausted domestic remedies.

10. As regards the new amparo action brought by the alleged victim in 2011, the State maintains that on March 25, 2013, the Third Civil Chamber of the Higher Court of Justice in Puno declared it to be unfounded. It affirms that said resolution was confirmed on March 12, 2014 by the Civil Chamber of the Higher Court of Justice in Puno and subsequently challenged in a constitution wrong appeal to the Constitutional Court, which is still hearing the case. The State argues that, while the petitioner wishes to exclude that proceeding from the present petition, it pursues the same goal, namely his definitive transfer to Lima, so that, for as long as a resolution is pending, domestic remedies have not been exhausted. As for the compensation claimed, the State asserts that the petitioner has not initiated any civil proceeding to obtain it, whereby civil law procedures are the proper way to claim it.

11. The State asserts that the alleged facts do not constitute violations of human rights, since the alleged victim is already residing in Lima thanks to the precautionary measure granted by the Joint Law (Multiple) Judge (*Juez Mixto*) in Puno in 2011, so that the State has not failed to follow court orders.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The Commission observes that the petitioner complained of noncompliance with the constitutional judgment of September 11, 2006 to the Fourteenth Criminal Court, which declared that the arbitrary act (*acto homogéneo*) to be a violation on April 23, 2008, and that said decision was ratified by the Higher Court in Lima. The Commission likewise observed that the aforementioned court demanded on September 9 and 29, 2009 that ESSALUD comply with the court's ruling, so far to no avail.

13. As regards the argument of failure to exhaust remedies, from the information in the case file the Commission notes that the decision by the Fourteenth Criminal Court, on February 18, 2009, to remit the data on the case to the Public Prosecutors' Office was challenged by the alleged victim because he considered it to be an act of a subsidiary nature that did not guaranteed effective compliance with the court rulings. In that regard, on January 15, 2010, the Constitutional Court pointed out that given that the decision appealed was not a second-tier rejection but, rather, a first-instance ruling, the constitutional wrong remedy used by the petitioner was to be construed as an appeal agency, so that the judge needed to redirect that procedure through the proper channel. The Commission further notes that subsequently the criminal investigations into alleged

failure to comply with court judgments reportedly began but did not lead to punishment of ESSALUD authorities or to the execution of the judgments requested by Mr. Ramírez Polanco.

14. At the same time, the Commission notes, based on statements by the parties, that the amparo action brought in 2011, which the Constitutional Court has still to resolve and its precautionary measure currently in effect do not form part of the present petition.

15. In light of the above, the Commission concludes that the petitioner did file the judicial appeals that were available and that he deemed suitable, and that therefore the petition meets the requirement established in Article 46.1.a of the Convention.

16. As regards the timeliness of the petition, it was lodged with the IACHR on November 14, 2008, while the remedies were reported to have been exhausted on September 29, 2009, with the resolution handed down by the Fourteenth Criminal Court, while the petition was being examined with respect to its admissibility. According to IACHR doctrine, the review of the requirements set forth in Articles 46.1.b of the Convention and 32.1 of the Rules of Procedure must be conducted bearing in mind the situation at the time when a pronouncement is made on the admissibility or inadmissibility of the claim. That being so, the requirement must be considered met.

VII. ANALYSIS OF COLORABLE CLAIM

17. The Commission considers that the petitioner's allegations are not manifestly groundless and need to be examined in depth because, if they are corroborated, the facts alleged regarding non-compliance with court rulings ordering ESSALUD, as Mr. Ramírez Polanco's employer, to authorize his relocation to enable him to receive appropriate medical treatment as of 2006, along with the lack of effective judicial protection with respect to those facts, could constitute possible violations of Articles 5 (humane treatment/personal integrity), 8 (judicial guarantees), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, taken in conjunction with Article 1(1) thereof, to the detriment of the alleged victim.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 25, and 26 of the American Convention, in conjunction with Article 1.1;

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 20 day of the month of April, 2020. (Signed): Joel Hernández (dissenting opinion), President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana (dissenting opinion), Commissioners.