

OEA/Ser.L/V/II.
Doc. 258
6 September 2020
Original: Spanish

REPORT No. 242/20
PETITION 2531-12
REPORT ON ADMISSIBILITY

EDITH VILMA HUAMÁN QUISPE
PERU

Approved electronically by the Commission on September 6, 2020.

Cite as: IACHR, Report No. 242/20, Petition 2531-12. Admissibility. Edith Vilma Huamán Quispe. Peru. September 6, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Petitioners' identity is kept confidential ¹
Alleged victim	Edith Vilma Huamán Quispe
Respondent State	Peru ²
Rights invoked	Articles 7 (personal liberty), 8 (fair trial), and 9 (freedom from <i>ex post facto</i> laws) of the American Convention on Human Rights ³ and other international treaties ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	September 18, 2012
Additional information received during initial review	September 17 and 29, 2015; July 16, 2016; June 15 and 25, September 19, November 28, and December 3, 2017; February 13 and 22, April 18, 2018
Notification of the petition	July 16, 2018
State's first response	October 17, 2018
Additional observations from the petitioner	January 22, 2019
Additional observations from the State	August 1, 2019 and July 20, 2020

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 Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification on March 28, 1991)

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), 7 (personal liberty), 8 (fair trial), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioners claim that state agents arrested Ms. Edith Vilma Huamán Quispe (hereinafter "Ms. Huamán Quispe" or "the alleged victim") with violence without telling her the reasons for her detention or bringing her before a judge within a reasonable time. The State has not investigated the use of violence against the alleged victim at her detention, they say. At present, she serves punishment in a prison where she has no access to adequate medical treatment. Allegedly, her conviction was decided in a process that violated her rights to the presumption of innocence and a fair trial.

¹ Under Article 28.2 of the IACHR Rules of Procedure.

² Under the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not partake in the discussion or voting on this matter.

³ Hereinafter "American Convention" or "Convention."

⁴ Universal Declaration of Human Rights and International Covenant on Political and Civil Rights

⁵ The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioners submit that on October 15, 2005, in Villa Hermosa settlement (El Agustino district, Lima), Ms. Huamán Quispe and her daughter (aged 16 then, and with a disability) went out to a pharmacy because the latter was not in good health at that time. When they arrived at the pharmacy, at 6:00 a.m., a group of male plainclothes agents attacked and beat them and tried to take the alleged victim in a car. However, neighbors from that area prevented the men from succeeding. Then, one of the captors said he was a police major, and another pretended to be a prosecuting officer. These told the neighbors that they would take Ms. Huamán Quispe to the police station in Santa Anita without stating the grounds for her arrest.

3. The petitioners say that even though Villa Hermosa's police station had jurisdiction over the matter, the agents irregularly took the alleged victim to Santa Anita's police station. Here, officers made a police report without specifying a prosecuting officer or the grounds for arrest. The petitioners also allege that officers tried to take Ms. Huamán Quispe's statement when she was still shocked for the events and had no lawyer to assist her.

4. The alleged victim was appointed a defense counsel a few hours after she arrived at the police station, and only then did she learn that the 51st Criminal Court of Lima had issued an arrest warrant against her for drug trafficking. The petitioners say that this arrest warrant was based on the statements given by two people arrested in May 2005 during a police counter-narcotics operation. According to those arrestees, Ms. Huamán Quispe had partaken in two transactions involving cocaine hydrochloride.

5. After the proceedings at the police station, officers took the alleged victim to the Arrest Processing Unit of the National Police, where she demanded that a legal doctor see her and attest her injuries. However, the police officers in charge allegedly said that since the Center of Legal Medicine was closed on Saturdays, they would take her there on Monday, October 17, 2005. That day police brought Ms. Huamán Quispe before the 51st Criminal Court of Lima, where authorities did not take any measures despite attesting her bruises. On that same date, the alleged victim was admitted to the Chorrillos Female Prison. Prison doctors issued Health Certificate No. 053-2008-INPE/18-231-ASP to attest her injuries.

6. The petitioners submit that on May 9, 2008, the Criminal Division for Proceedings involving Imprisoned Convicts, under Lima's Superior Court of Justice, sentenced the alleged victim to a term of 20 years of both imprisonment and disqualification from commercial business and public office, and fined her 10,000 nuevos soles (around USD 3000 today) for drug trafficking. They claim that the court convicted her based only on the testimony given by two persons facing prosecution for the same crime. Ms. Huamán Quispe's defense counsel appealed the sentence. However, on March 18, 2009, the Supreme Court's Permanent Criminal Division partly confirmed the decision by a split vote, reducing her term of disqualification from commercial business and public office to five years. Under this decision, those testimonies were definite proof of Ms. Huamán Quispe's criminal liability. The petitioners also say that the alleged victim sought a review of this judgment and that on November 11, 2011, the Permanent Criminal Division found her request inadmissible because no evidence had been filed to discredit her conviction.

7. The petitioners say that on May 15, 2010, the alleged victim's counsel filed a habeas corpus petition claiming arbitrariness on the part of the prosecutor's office aimed at benefiting her codefendants, that her conviction was based only on such people's testimony, and that she sustained torture at her detention. Nonetheless, they explain, on January 4, 2011, the Tenth Criminal Court, under Lima's Superior Court of Justice, found that petition groundless. Ms. Huamán Quispe's defense counsel appealed. On August 19, 2013, the Fourth Criminal Division for Proceedings involving Freed Convicts, under Lima's Superior Court of Justice, found the habeas corpus petition inadmissible, the petition says. In view of this, the defense counsel lodged an extraordinary constitutional remedy. However, on October 22, 2014, the Constitutional Court confirmed the inadmissibility. It concluded that the claims in their petition questioned merely the lawfulness of the judgments and were unrelated to the constitutionally protected content of the rights protected by habeas corpus. Lastly, Ms. Huamán Quispe filed an appeal for reversal on the grounds of error, but on September 22, 2015, the Constitutional Court dismissed this on considering that its ruling was well-founded, the petitioners say.

8. The petitioners claim that state officers subjected the alleged victim to an irregular detention and failed to bring her before a judge within a reasonable time and ensure her right to timely legal aid. They

inform that they filed a petition with the United Nations Working Group on Arbitrary Detention. Allegedly, on February 9, 2017, the Group issued an opinion stating as follows: i) the State failed to promptly inform Ms. Huamán Quispe of the grounds for her arrest; ii) it did not ensure her right to promptly appear before a judge; and iii) it did not protect her right to prepare her defense with both enough anticipation and the necessary means and speak with a defense counsel of her choice, either.

9. Additionally, they argue that the alleged victim's conviction was based only on two codefendants' testimony, which violated her right to the presumption of innocence. They submit that although Ms. Huamán Quispe proved that she was in Ayacucho when the charged transaction took place, the judicial authorities omitted this information. Moreover, they argue that the codefendants testifying against her had entered a guilty plea bargain to obtain a lesser punishment and protect their criminal organization's actual leaders. They claim that state officers were complicit because these allowed those responsible to remain in liberty and benefited these two witnesses against her. Furthermore, they allege that Ms. Huamán Quispe lacked access to an adequate defense because her public defender also represented her codefendants, whom he benefited throughout the process. They also hold that the alleged victim filed several complaints against the officers involved in her case and that, as a result, she began receiving threats inside the prison instead of measures to protect her rights.

10. Lastly, the petitioners claim that since the alleged victim's admission to prison, her health has significantly deteriorated and that the State has not provided her with adequate medical treatment. She suffers from "hypertension due to treatment of/and hypertensive heart disease, pain in the lumbosacral region, and mixed anxiety-depressive disorder," but the State does not give her adequate treatment, they claim. Thus, she is alleged to sustain constant suffering. They submit that since 2017, prison officers have not allowed her to leave the prison for medical treatment that nor do these allow private doctors to enter the prison to duly examine her. They also allege that she is maltreated at the hands of prison authorities in reprisal for her complaints.

11. The State contends that the petition is inadmissible because there is a duplication of procedures. It claims that facts denounced were known by the Working Group on Arbitrary Detentions of the United Nations, therefore, in accordance with article 47.d of the American Convention the IACHR cannot examine the present matter.

12. Also, states that the petitioners have not exhausted domestic remedies regarding the alleged violations of Ms. Huamán Quispe's rights to humane treatment and the protection of health. It stresses that the alleged victim has not filed a judicial or administrative remedy to challenge the alleged beatings she suffered at her detention and that neither has she disputed the dismissal of the health certificate attesting to those incidents. Moreover, it argues that at the national level, Ms. Huamán has not filed any remedy to report her alleged maltreatment in prison or lack of medical treatment even though she could have brought these issues to the attention of the judge of criminal enforcement and other constitutionally autonomous bodies.

13. The State also alleges that the facts reported by the alleged victim do not constitute human rights violations. It holds that the criminal process where the alleged victim was involved abided by the applicable constitutional and legal framework, affording her all judicial guarantees and due process. It claims that her conviction followed an exhaustive analysis of the evidence from the prosecutor's office and that the sentence conformed to the duty to state reasons. Accordingly, it requests the IACHR to declare the instant petition inadmissible under Article 47.b of the American Convention. It believes that the petitioners expect that the Commission will work as a higher court, which contravenes the subsidiarity principle.

14. Finally, it claims not to have violated Ms. Huamán Quispe's right to the protection of health. It explains that, at the alleged victim's request, a panel of prison doctors met three times in the last two years, reached a diagnosis, and recommended she undergo medical examination and treatment. It asserts that Ms. Huamán Quispe received five diagnoses and takes four types of medicine for these. In addition, the State alleges that the Head of the Prison Health Section claims to have never prevented private doctors from coming to the prison to treat the alleged victim and that the National Institute of Prisons has no records attesting her physical

maltreatment. Therefore, it concludes that since Ms. Huamán Quispe's health has not deteriorated, the IACHR should declare this part of the petition inadmissible.

VI. DUPLICATION, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

15. The petitioners claim that Ms. Huamán Quispe has exhausted every ordinary and extraordinary domestic remedy to challenge her conviction. They moreover allege that she has repeatedly complained with state officers about her violent detention and her lack of adequate medical treatment and protection against abusive treatment in the prison she is at. In turn, the State contends there is a duplication of procedures. Also, states that the alleged victim has not filed any administrative or judicial remedy against the alleged acts of violence she suffered at her detention nor remedies with the criminal enforcement judge or the competent authorities to dispute the purported lack of protection or medical treatment.

16. The IACHR has indicated that for a petition to be inadmissible due to duplication, in addition to having identical subjects, purposes, and claims, the petition must be under consideration or have been ruled upon by an international organization that is competent to adopt decisions on the specific facts contained in the petition and measures for effective settlement of the matter in dispute⁶. Based on this, in a recent decision the IACHR has pointed that it does not have a comparable mandate to the Working Group on Arbitrary Detentions of the United Nations, in order to generate a duplication of procedures⁷. Consequently, the fact the above mentioned organism has known, in whole or in part, the events denounced in the present petition do not prevent the IACHR from being able to analyze them through its system of petitions and cases.

17. As for the criminal punishment at issue, the Commission notes that the alleged victim's counsel filed in 2010 a habeas corpus proceeding, given the denial of their appeal for reversal. This proceeding concluded on September 22, 2015, with a denial from the Constitutional Court. Based on this information, the IACHR sees that this habeas corpus proceeding exhausted domestic remedies when the petition was still under study at the admissibility stage. Thus, the Commission concludes that the instant petition meets the requirements established in Article 46.1 paragraphs (a) and (b) of the Convention.

18. Concerning the alleged acts of violence at Ms. Huamán Quispe's detention, the IACHR reiterates that the domestic remedies to be considered for admissibility in petitions involving offenses against personal security at the hands of state officers are those concerned with the criminal investigation and punishment of the perpetrators.⁸ Such an investigation must be conducted ex officio and promptly to protect the interests of the victims, preserve the evidence, and safeguard the rights of anyone deemed a suspect in the framework of this procedure. In this case, the Commission notices that state officers became aware of Ms. Huamán Quispe's being injured at her detention, thanks to Health Certificate No. 053-2008-INPE/18-231-ASP.⁹ It also notes that the alleged victim reported these acts of torture with judicial bodies and the Constitutional Court. At the same time, the Commission considers that the State has not proved its fulfillment of the duty to investigate to ascertain the facts and punish those responsible. Under the circumstances, the IACHR decides to apply the exception to the requirement of prior exhaustion of domestic remedies under the provisions of Article 46.2.c of the Convention.¹⁰ In addition, the IACHR considers that the facts in this part of the petition are still relevant because they have not been investigated. It also believes that the petition was filed within a reasonable time under Article 32.2 of the IACHR Rules of Procedure.

⁶ IACHR, Report No. 33/15, Petition 11.754. Admissibility. U'wa People. Colombia. July 22, 2015, par. 41

⁷ IACHR, Report No. 6715. Petition 211/07. Admissibility. Jorge Marcial Tzompaxtle Tecpile et al. México. October 27, 2015, par. 35.

⁸ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala. June 20, 2018, par. 10.

⁹ In this regard, the IACHR has established that doctors have a duty to speak out and to report any unethical, abusive, or inadequate treatment of patients. IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II, Doc. 64, December 31, 2011, par. 564.

¹⁰ IACHR, Report No. 77-19, Petition 74-08, Admissibility. Claudio Roberto Fossati. Ecuador. May 28, 2019, par. 13; Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, par. 64.

19. Finally, regarding the allegations of abusive treatment and lack of medical treatment in prison, the petitioners submit that prison officers were informed of this situation but have not adopted any measures. The petitioners claim that Ms. Huamán Quispe sent several letters to governmental and judicial bodies of Peru, complaining about the maltreatment and the lack of medical treatment. Allegedly, the officers responsible have not addressed nor remedied this situation. In this regard, the IACHR considers that the competent authorities were aware of the alleged victim's situation and that domestic remedies have been exhausted. Thus, it considers that the instant petition meets the requirements of Article 46 of the Convention.¹¹

VII. COLORABLE CLAIM

20. Given the factual and legal elements submitted by the parties and the nature of the matter brought to its attention, the Commission finds that, if proven to be true, the alleged irregularities at the alleged victim's detention, the violation of both her right to the presumption of innocence and the duty to state reasons given her conviction on codefendants' testimony only;¹² and the purported attacks on her personal security all may constitute violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Furthermore, at the merits stage of this case, the IACHR will determine if the medical treatments afforded to the alleged victim are suitable based on the elements submitted by the parties, including the specific data from the State, under Articles 5 (humane treatment) and 26 (economic, social, and cultural rights) of the American Convention.

21. As for the claim about a possible violation of Article 9 (freedom from *ex post facto* laws) of the American Convention, the Commission notes that the petitioners have not submitted allegations or evidence sufficient for a *prima facie* consideration of a possible violation. Additionally, the IACHR reiterates that it lacks competence *ratione materiae* to decide on violations of rights embodied in treaties from outside the inter-American system, although it may resort to standards established in other treaties to interpret the rules in the Convention, under Article 29 thereof.

22. Lastly, regarding the State's allegations of a court of fourth instance, the Commission reiterates that for the purpose of admissibility, the IACHR must decide whether the facts alleged could characterize a violation of rights under the provisions of Article 47.b of the American Convention or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of the said article. The criterion used for evaluating these requirements differs from that used for ruling on the merits of a petition. Moreover, within its mandate, the Commission is competent to declare a petition admissible when this concerns domestic legal proceedings that may be in violation of the rights protected by the American Convention. Thus, by declaring a petition admissible, the IACHR does not seek to replace domestic judicial authorities' competence, but to analyze it and rule on its merits because it involves domestic proceedings that may be in violation of the rights protected by the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 7, 8, 25, and 26 of the American Convention, in relation to Article 1.1 thereof; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and

2. To declare the instant petition inadmissible in relation to Article 9 of the American Convention; and

¹¹ IACHR, Report No. 89/17, Petition 788-08. Admissibility. Curtis Armstrong a.k.a. Tyrone Traill. Jamaica. July 7, 2017, par. 10.

¹² IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzáles. Perú December 4, 2018, par. 13; I/A Court H.R., *Case of Zagarra Marín v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 15, 2017. Series C No. 331, pars. 127 et seq.

3. 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 6th day of the month of September, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.