

OEA/Ser.L/V/II.
Doc. 55
25 April 2020
Original: Spanish

REPORT No. 45/20
PETITION 91-10
REPORT ON ADMISSIBILITY

FLORENTINO CERÓN CARDOZO AND FAMILY
PERU

Approved by the Commission electronically on April 25, 2020.

Cite as: IACHR, Report No. 45/20, Petition 91-10. Admissibility. Florentino Ceron Cardozo and family. Peru. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Florentino Cerón Cardozo
Alleged victim:	Florentino Cerón Cardozo, Lidia Juana Barrueta Gallardo, and M. ¹
Respondent State:	Peru ²
Rights invoked:	Articles 5 (humane treatment/personal integrity), 7 (personal liberty), 9 (freedom from ex post facto laws), 11 (right to privacy/honor and dignity), 17 (rights of the family), and 24 (equal protection) of the American Convention on Human Rights, ³ in conjunction with Articles 1.1 and 2 thereof.

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	January 11, 2010
Additional information received at the stage of initial review:	March 25, 2015
Notification of the petition to the State:	November 18, 2015
State's first response:	December 14, 2015
Additional observations from the petitioner:	May 26, November 26, 2016; January 22, 2017; January 7 and November 8, 2019.
Additional observations from the State:	February 17, 2016

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 July 28, 1978), Inter-American Convention to Prevent and Punish Torture ⁵ (instrument deposited on March 28, 1991), and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ⁶ (instrument deposited on June 4, 1996)

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, as referred to in Section VI
---	----------------------------------

¹ The name of the alleged victim (hereinafter "M") is not disclosed as she was a minor at the time of the facts reported in this case.

² 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.

³ Hereinafter the "the Convention" or "the American Convention."

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

⁵ Hereinafter "IACPPT."

⁶ Hereinafter "Convention of Belém do Pará."

Rights declared admissible	Articles 5 (right to humane treatment/personal integrity), 7 (personal liberty), 8 (right to a fair trial/due guarantees), 9 (freedom from ex-post facto laws), 11 (right to privacy/honor and dignity), 17 (rights of the family/protection), 19 (rights of the child), 24 (right to equal protection of the law), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in conjunction with Articles 1.1 and 2 thereof; Articles 1,6, and 8 of the IACPPT; and Article 7 of the Convention of Belém do Pará.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VII.
Timeliness of the petition:	Yes, under the terms of Section VII.

V. FACTS ALLEGED

1. The petition alleges that the State is responsible for the illegal detention of the alleged victims, the acts of torture to which they were subjected, and for the criminal proceedings against them on charges of terrorism, instituted in violation of their judicial guarantees, including their being tried twice for the same crime and under anti-terrorist legislation. The petitioner and alleged victim Florentino Cerón Cardozo states that he was unlawfully detained on July 5, 2003 in the town of Huancayo by members of the Antiterrorist Police, who acted without a court order. He alleges that he was kidnapped for three hours, tortured psychologically, and threatened with the death and disappearance of his family.

2. The petitioner points out that he was subsequently taken home, where he was visited by the Third Provincial Public Prosecutor's Office for Terrorist Matters (*Tercera Fiscalía Provincial de Terrorismo*), and that at that point he told the Public Prosecutor that his partner Lidia Juana Barrueta Gallardo (hereinafter "Mrs. Barrueta") was innocent and begged that she not be hurt because she suffered from serious illnesses. He states that he also told the authorities that her five-year-old and one-year-old daughters were with him, as he was looking after them for the time being. However, he maintains that the (woman) public prosecutor hit his partner, who was also rough-handed by the police who demanded that she incriminate herself and admit to being a member of the Shining Path ("Sendero Luminoso"). The petitioner maintains that, without a judicial warrant, his partner Lidia, and the two young girls were locked up first in the dungeons of the Antiterrorist Police in Huancayo and then transported to Lima.

3. The petitioner reports that the two girls spent 48 hours in the dungeons under the same conditions as he, Mr. Cerón, and Mrs. Barrueta. He indicates that on July 7, 2003, their five-year-old daughter ("M") was separated from her mother and subjected to a police interrogation in the installations of the Anti-Terrorism Directorate (hereinafter "DIRCOTE"), without the consent or presence of her parents. He alleges that during that procedure the girl allegedly connected the alleged victim with the commission of crimes. He alleges that DIRCOTE required her to undergo a "psychological expertise protocol" (*protocolo de pericia psicológica*). The petitioner further alleges that those procedures were conducted with the consent and in the presence of the Family Law Public Prosecutor and a State-appointed attorney (*abogado de oficio*).

4. The alleged victim maintains that the statements supposedly made by his daughter, which were both untrue and illegal, were used as evidence in the judicial proceedings against him and his spouse. He also states that DIRCOTE personnel threatened that they would kill his wife and take away their daughter. He alleges that, with the complicity of the Family Law Public Prosecutor's Office (*Fiscalía de Familia*) his daughter was placed, against the will of her parents, in a shelter for abandoned children. He states that both he and his partner expressly demanded that she be handed over to his brother and his wife. He states that, despite that, their request was ignored and their daughter was kept unlawfully in the San Ricardo Children's Home (*Aldea Infantil*) for more than three months. The petitioner adds that the situation got worse when the 11th Family Court in Lima failed to authorize visits by family members, so that the child was isolated and could not be contacted (*incomunicada*) for the whole time she spent at the shelter: a form of psychological torture.

5. Petitioner asserts that following a series of procedures pursued by his brother, the girl M was delivered with evident traumas and emotional damage and riddled with mites and lice. He maintains that the mistreatment of his daughter was deliberate as a way of torturing him psychologically and putting pressure on him during judicial proceedings. The petitioner alleges that Mrs. Barrueta was tortured both physically and psychologically, that her illness got worse because she was constantly fainting, and that she was dragged to the DIRCOTE installations before being taken to Hospital Loayza. He alleges that under those conditions she was coerced into incriminating herself and to sign a statement and false declarations against him, the alleged victim.

6. The petitioner states that unlawful and illegal police testimony was concocted, under pressure and coercion. He also states that he was not allowed an attorney of his choice during proceedings before the police, which constituted a violation of judicial guarantees. The petitioner states that, in a series of writs, all the violations committed against him, his daughter, and his partner were reported to the International Red Cross, the Ombudsperson's Office on September 8, 2004, the Human Rights Commission of the National Congress on August 20, 2004, as well as the Public Prosecutor's Office (*Fiscalía*) and the authorities present at the oral hearings. He further specifies that the physical tortures are documented in the medical examinations conducted by the DIRCOTE, in the minutes of the oral hearing, and in the clinical records of the health center at the penitentiary in Chorrillos.

7. Petitioner reports that Mrs. Barrueta was convicted of terrorism to the detriment of the State and confined to the Women's Prison Annex in Chorrillos. He alleges that the Second Criminal Court specializing in Terrorist Matters acquitted her, based on Article 4 of Decree law 25475. He states that said judgment was ratified by the Supreme Court of Justice on October 6, 2006 and by the Criminal Division on December 26, 2006. He argues that she was imprisoned for 2 years and 4 months for a crime she did not commit.

8. As regards Mr. Cerón Cardozo, the petitioner states that he was confined in the Miguel Castro Castro prison and that he was illegally identified with several different names with a view to opening 13 judicial proceedings against him, which were joined by the National Criminal Division (Sala Penal Nacional). He states that subsequently he was excluded from those cases, when it was proved that different people were involved. He alleges, nevertheless, that he was charged with being a political and military leader of Sendero Luminoso and that, on November 19, 2004, the First Criminal Chamber of Huánuco sentenced him to 15 years in jail for the crime of terrorism. He reports that, based on the claim that he had command responsibility (as an "*autor mediato*") for various actions undertaken by the terrorist movement, that verdict was confirmed by the Supreme Court of Justice on May 10, 2006, and he was notified on July 3, 2009.

9. The alleged victim states that, in a second trial, he was accused of the same crime and sentenced to 35 years imprisonment on October 25, 2005, a judgment that was ratified by the Supreme Court of Justice on October 2, 2006. Notification was delivered in the Piedras Gordas Maximum Security Prison on January 5, 2007. He points out that he was tried twice for the same matter, a contravention of the "non bis in idem" principle. He maintains that he filed an appeal for annulment of both judgments to the Supreme Court, but both were confirmed. The petitioner states that on July 12, 2007, he filed a habeas corpus with the Fourteenth Criminal Court of Lima which was declared inadmissible on January 31, 2008. He indicates that he appealed that decision, but does not know the outcome because, because he had no income, and due to the political persecution unleashed against lawyers defending persons being tried for terrorism, his attorney abandoned the case and he lost all contact with him.

10. He further states that in 2013, as part of a political persecution, a third criminal proceedings was instituted against him, accusing him, along with others, of having committed a terrorist attack in a street named Tarata in Lima in July 1992. He states that on September 11, 2018, the National Criminal Division sentenced him to life in prison. He indicates that he is still awaiting notification of the final writ of execution of that decision.

11. The State argues that the Commission should declare the present petition inadmissible, since it was lodged after the deadline established in Article 46.1.b of the Convention. It points out that the most recent notification is dated July 3, 2009 and the petition was received by the IACHR on January 11, 2010. It also points

to duplication in that the petitioner asked to be joined to P-156-03, which was reportedly rejected, and that since both cases are based on the same arguments and facts, the present petition should be dismissed.

12. The State maintains that the Commission lacks competence to assess the criminal proceedings conducted against the alleged victim, because it is not entitled to act as a fourth instance. The State also alleges that the evidence used in the judicial proceedings complied with judicial guarantees. It indicates that interpretation of the law, procedure, and assessment of evidence are matters pertaining to domestic law, and are outside the remit of the Commission.

VI. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA

13. The Commission takes note of the State's argument regarding the alleged duplication of the petition. In that regard, the Commission points out that the processing and review of the present petition from the initial review stage was conducted autonomously and separately from the petition referred to and that therefore there are no grounds for duplication that would prevent the Commission from pronouncing on the facts reported here.

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

14. The petitioner mentions that in a first criminal proceeding he was sentenced to 15 years in prison and that the judgment confirming that decision was handed down on May 10, 2006 and notified on July 3, 2009. He declares that in the second proceeding, the sentence to 35 years in prison was confirmed on October 2, 2006 and notification delivered in the Piedras Gordas Maximum Security Prison on January 5, 2007. He maintains that he filed a habeas corpus action against both decisions, which was rejected on January 31, 2008, and that he filed an appeal, but to this day is unaware of the outcome. He further reports that in connection with the proceedings against him on account of the Tarata case, he was sentenced to life in prison on September 11, 2018. For its part, the State maintains that the petition was extemporaneous, because it was lodged after the six-month period established in the Convention.

15. The Commission reiterates that in cases in which torture and/or violations of the right to personal integrity are alleged, the appropriate and effective remedy is an investigation and criminal proceedings, which the State is obliged to promote and conduct. Thus, in connection with crimes that must be prosecuted ex officio, the IACHR has repeatedly stated that "the authorities must carry out an effective criminal investigation to clarify the facts and ascertain responsibilities."⁷ From the documentation provided by the parties, the Commission observes that the alleged torture and impairments of personal integrity committed against Mr. Cardozo, Mrs. Barraeta, and the girl "M" were or should have been known to the State from the complaints filed by the petitioner with a series of authorities and from writs submitted during the proceedings against him to the judges hearing his case. Thus, the Commission notes that, to this day, the judicial authorities have not ordered the start of any kind of investigation. Consequently, the IACHR concludes that the exception to exhaustion of domestic remedies established in Article 46.2.c of the Convention applies in the instant case.

16. As regards the allegations of illegal detention and the criminal proceedings against the alleged victim, the information provided by the parties indicates that Mr. Cardozo challenged the two convictions, both of which were upheld by the Supreme Court of Justice in judgments handed down on May 10 and October 2, 2006. In addition, the Commission observes that a habeas corpus appeal was filed on July 12, 2007 and that when it was rejected an appeal was filed against that rejection, the outcome of which remains unknown. At the same time, the Commission notes that the petitioner reported that he is awaiting notification of the final writ of execution of the conviction handed down on September 11, 2018. Consequently, the Commission finds that the present petition meets the requirement of Article 46.1.a of the American Convention.

⁷ IACHR, Report N° 176/18, Petition 1040-08. Admissibility. José Luis Altamirano Salvador. Peru. December 26, 2018, par. 9.

17. Finally, the Commission observes that the petition dated December 2009 and sent by mail was received by the IACHR on January 11, 2010, and the last notification was on July 3, 2009. Accordingly, based on IACHR practice in this regard, and taking into account the days presumed to have elapsed while the petition was in the mail as well as the nature of the facts reported, the Commission considers that the petition was filed in a timely manner and therefore meets the requirement in Article 46.1.b of the American Convention.

VIII. ANALYSIS OF COLORABLE CLAIM

18. In light of the matters of fact and law described by the parties and the nature of the case brought to its attention, the Commission considers that the alleged illegal detention of the alleged victims, the acts of torture to which they were allegedly subjected, as well as the criminal proceeding on charges of the crime of terrorism, allegedly conducted in violation of their judicial guarantees, including being tried twice for the same crime and under anti-terrorist laws, are not manifestly groundless and require an in-depth examination, because, if corroborated, the facts denounced could constitute possible violations of Articles 5 (right to humane treatment/personal integrity), 7 (personal liberty), 8 (right to a fair trial/due guarantees), 9 (freedom from ex-post facto laws), 11 (right to privacy/honor and dignity), 17 (rights of the family/protection), and 25 (judicial protection) of the American Convention, in conjunction with Articles 1.1 and 2 thereof; and of Articles 1, 6, and 8 of the IACPPT; and Article 7 of the Convention of Belém do Pará, to the detriment of Mr. Florentino Cerón Cardozo and Mrs. Lidia Juana Barrueta Gallardo.

19. Likewise, the alleged illegal detention, interrogation, separation from her parents, and placement of the girl M in the San Ricardo children's shelter, as well as the alleged maltreatment she received there are not manifestly groundless and could constitute violations of Articles 5 (right to humane treatment/personal integrity), 7 (personal liberty), 8 (right to a fair trial/due guarantees), 9 (freedom from ex-post facto laws), 11 (right to privacy/honor and dignity), 17 (rights of the family/protection), 19 (rights of the child), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in conjunction with Articles 1.1 and 2 thereof to the detriment of the girl "M".

20. Finally, in relation to the State's arguments regarding the fourth-instance formula, the Commission acknowledges that it is not competent to review judgments handed down by domestic courts acting within their sphere of competence and observing the rules of due process and fair-trial guarantees. However, the Commission reiterates that, within the framework of its mandate, it is competent to declare a petition admissible and to rule on the merits when the petition refers to domestic proceedings that could be in violation of rights guaranteed by the American Convention.

IX. DECISION

1. To declare the present petition admissible as regards of Articles 5, 7, 8, 9, 11, 17, 19, 25, and 26 of the American Convention, in conjunction with Articles 1(1) and 2 thereof; as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará;

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 25th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.