Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 45/04; Petition 369/01
Session:	Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause:	Luis Guillermo Bedoya de Vivanco v. Peru
Doc. Type:	Decision
Decided by:	First Vice-President: Clare K. Roberts; Commissioners: Evelio Fernandez, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez. In compliance with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Susana Villaran, a Peruvian national, did not participate in discussing or deciding this case.
Dated:	13 October 2004
Citation:	Bedoya de Vivanco v. Peru, Petition 369/01, Inter-Am. C.H.R., Report No. 45/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)

I. SUMMARY

1. In a petition lodged with the Inter-American Commission on Human Rights ("the IACHR" or "the Commission") on June 7, 2001, Luis Bedoya Escurra (hereinafter "the petitioner") denounced that the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") had violated, with respect to his father LUIS GUILLERMO BEDOYA DE VIVANCO, the right to personal integrity, to liberty, to a fair trial, the principle of legality, to equality before the law, and to political rights, enshrined respectively in Articles 5, 7, 8, 9, 11, and 23 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in conjunction with Article 1(1) of that same international instrument. The reported violations relate to the processing of the alleged victim's criminal prosecution before the Peruvian courts and his subsequent conviction for the crime of embezzlement, whereby he was sentenced to a five-year prison term and ordered to return the sum of USD $25,000 to the nation's treasury.

2. With respect to the admissibility of the complaint, the petitioner first claimed that it was impossible to exhaust domestic remedies because of the nonexistence of due process in Peru and, subsequently, held that the judgment of November 14, 2003, that ended the proceedings on appeal represented the end of Peru's domestic jurisdiction and established the IACHR's competence for ruling on the merits of the case.

3. The State in turn claims that none of the rights enshrined in the American Convention were violated and that the petitioner did not exhaust the available domestic remedies prior to involving the inter-American system for the protection of human rights.

4. In this report, the Commission analyzes the information available in light of the American Convention and concludes that the petition is not admissible under the Fourth Instance doctrine. It therefore resolves that the petition is inadmissible under Article 47(b) of the American Convention, conveys this report to the parties, and orders its publication in the Commission's Annual Report.

II. PROCESSING BY THE COMMISSION

5. The Commission received the complaint on June 7, 2001, assigned it No. 0369/2001, and conveyed its relevant parts to the Peruvian State on September 14, 2001, requesting its comments within the following two months. In communications of September 21, 2001, the State acknowledged receipt of the petition and clarified that it had not received the petition's annexes until September 18, 2001, and that it held that the deadline for responding to the Commission would commence as of that date. In a note of October 14, 2001, received by the IACHR Secretariat on November 20, 2001, the State submitted its written response to the filing; this written response was conveyed to the petitioner, for his comments, on November 27, 2001. On January 8, 2002, the Commission forwarded the annexes of the State's reply to the petitioner. On January 17, 2002, the Commission forwarded to the State additional information that the petitioner had supplied. On February 27, the Commission forwarded the State further additional information furnished by the petitioner. In a note from the Peruvian State of the same date, received by the IACHR Secretariat on March 1, 2002, Peru submitted new comments on the petition; these were forwarded to the petitioner on March 19, 2002. In a note of May 20, 2002, the Peruvian State submitted information, which was forwarded to the petitioner for comments on July 11, 2002. On July 16 and September 20, 2002, the IACHR sent the State new information that had been furnished by the petitioner. On October 22, 2002, the IACHR Secretariat received information from the State, which was forwarded to the petitioner on November 18, 2002. On November 10, 2003, the IACHR asked the petitioner and the State to update the information on the course followed by the legal proceedings before the domestic courts. On December 15, 2003, and January 12, 2004, the IACHR received information in response to this request from both the State and the petitioner.

III. POSITIONS OF THE PARTIES REGARDING ADMISSIBILITY

A. Petitioner

6. The petitioner relates that on January 7, 2001, television stations revealed the existence of a series of video recordings showing his father, Luis Guillermo Bedoya de Vivanco, in the act of receiving from Vladimiro Montesinos Torres, advisor to the National Intelligence Service, the amount of USD $25,000 as a contribution for his bid to run for election as the mayor of Miraflores municipality, a situation that he acknowledged publicly and before the officers of the judiciary by whom he was initially summoned for interrogation. The petitioner argues that this money was handed over by Vladimiro Montesinos on a personal basis, subject to no commitment of any kind, and that it was a minimal part of the total campaign funds used to fight that mayoral election.

7. On account of those actions, on January 22, 2001, the Attorney General's office began an investigation of Vladimiro Montesinos Torres as the suspected perpetrator of the crime of misappropriation of funds from the public administration, to the detriment of the State, and of José Tomás González Reatégui and Luis Bedoya de Vivanco, as suspected accomplices therein. On January 25, 2001, the Attorney General formalized the charges against these individuals, but on charges of embezzlement, for which there was no evidence. As a result of this, that same day the 41st Criminal Court of Lima initiated investigatory proceedings against Luis Bedoya de Vivanco on suspicion of complicity in the crime of embezzlement, issued a preventive custody order, and placed a preventive embargo on his assets in the amount of some USD $14,000.

8. The petitioner reports that the case was referred to the 38th Criminal Court of Lima, which, in a resolution of February 6, 2001, overturned the preventive custody ordered in the investigation commencement deed and instructed Mr. Bedoya de Vivanco to appear on bail. This decision was appealed by the Ad Hoc Prosecutor and, on May 2, 2001, the Special Criminal Chamber overturned the challenged deed, amending it to impose preventive custody. His father's defense filed a remedy for annulment against this decision, which was declared inadmissible on May 8, 2001, followed by a complaint for the denial of the annulment remedy, which was also dismissed on May 10, 2001. As a result of the preventive custody order, Mr. Luis Bedoya de Vivanco was suspended from his office as mayor of Miraflores.

9. The petitioner states that by changing the nature of the charges filed by the attorney general's office – from the crime of misappropriation to that of embezzlement – his father's right to liberty was undermined. For the crime of misappropriating public funds, the maximum prison term is less than four years,[FN2] and, for the crime of embezzlement, the maximum penalty is greater than four years.[FN3] Thus, changing the nature of the charges was intended to enforce preventive custody. In addition, that decision was taken in breach of the rules established in Article 135 of the Code of Criminal Procedure,[FN4] which sets three prerequisites for the imposition of preventive custody: that there be sufficient evidence of the alleged criminal act, that the applicable punishment be greater than four years, and that there be sufficient evidence that the defendant will attempt to flee from justice or disturb the evidentiary process.

[FN2] Criminal Code, Article 389: Any public official or employee who makes use of the money or assets he administers in a way different to that which they were intended, thus affecting the entrusted office or duties, shall be punished by a prison term of no less than one year and no more than four. If the money or assets administered belong to social support programs or development or assistance programs and are intended for a different final use, thereby affecting the entrusted office or duties, the term of imprisonment shall be no less than three years and no more than eight."(*) (*) Article in force under the amendment introduced by the Sole Article of Law No. 27151, published on 07.VII.99.

[FN3] Criminal Code, Article 387: Embezzlement. Any public official or employee who appropriates for himself or uses, in any way, for himself or for others, revenues or assets entrusted to his reception, administration, or safekeeping by reason of his position shall be subject to punishment by a prison term of not less than two years and not more than eight. The use of revenues or assets intended for social support or assistance programs shall be an aggravating factor. In such cases, the prison term shall be no less than four years and no more

than ten. Any officer who willfully enables another person to withdraw revenues or assets shall be punished by a prison term of no more than two years or by between 20 and 40 days' community service. The use of revenues or assets intended for social support or assistance programs shall be an aggravating factor. In such cases, the prison term shall be no less than three years and no more than five. (*) (*) Article in force under the amendment introduced by the Sole Article of Law No. 26198, published on 13.VI.93.
[FN4] Criminal Code, Article 135. The judge may issue an arrest order if, in light of the first submissions presented by the provincial prosecutor, it can be determined that: (1) there is sufficient evidence of the commission of a willful crime indicating the defendant as the perpetrator thereof or a participant therein; being a member of the board, manager, partner, shareholder, director, or associate shall not constitute evidence when the crime is committed by a private corporation in pursuit of its activities; (2) is in excess of a prison term of four years; and (3) that there is sufficient evidence to indicate that the accused will attempt to flee from justice or disturb the evidentiary process. The punishment set forth in law for the crime in question does not constitute sufficient grounds for determining the intent to evade justice. In any event, the criminal judge may, on an ex officio basis, revoke a previously issued arrest order when new investigations weaken the evidence that gave rise to the measure.
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10. The petitioner criticizes the charge of being an accomplice to the crime of embezzlement leveled at the alleged victim, arguing that it is absurd to apply that legal definition in this case since, on the date of the incident, Bedoya de Vivanco was not a public employee. Furthermore, the accusation of complicity leveled at his father is based on an action that took place after the crime: the handing over of they money by Vladimiro Montesinos Torres, which took place after the state revenues had been appropriated, and the complicity in these crimes is dependent on actions without which the crime could not have taken place.

11. Had there been an appropriate and lawful identification of the act at the time the complaint was made and the investigation initiated, it would have had to have been for the crime of receiving stolen goods,[FN5] a crime punishable by less than four years in prison; consequently, preventive custody would not have been ordered. However, in order to prevent him from exercising his right of liberty and, consequently, the political right of serving as the mayor of Miraflores as entrusted to him by popular mandate at the ballot-box, the Peruvian State prosecuted him for the crime of embezzlement.

[FN5] Article 194. Any person who acquires, or receives as a donation, as surety, or for safekeeping, or holds, hides, sells, or assists in trading in a good that he knows to be of illicit origin or must assume to have come from a crime shall be punished by a prison term of not less than one year and not more than three and by a fine equal to between 30 and 90 days' minimum wage.
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12. Subsequently, says the petitioner, on December 6, 2001, Luis Guillermo Bedoya de Vivanco lodged a writ of habeas corpus against the Justices of the Criminal Chamber specializing in corruption cases, after that court upheld, on October 11, 2001, the decision of the

Special First Criminal Court of July 27, 2001, that resolved to uphold the preventive custody order to which he was subject.

13. The habeas corpus filing was finally resolved by the Constitutional Court in a judgment of January 29, 2002, which declared it admissible and ordered the repeal of the arrest order and its replacement by an order for appearance. The grounds for this decision were that prior to imposing the arrest order, the judge should have weighed up the evidence in light of Article 135 of the Code of Criminal Procedure, which requires that he jointly analyze all the prerequisites set by law for an arrest to be ordered. Similarly, for undermining the principle of in dubio pro reo by reducing the level of certainty indicated at that time in the summary proceedings regarding the origin of the funds given to Bedoya de Vivanco by former intelligence advisor Vladimiro Montesinos.

14. The petitioner notes that following that decision, a campaign of pressure and harassment was waged in Peru against the Court's justices. This campaign included the complaint filed against the justices of the Constitutional Court before Congress for the crime of malfeasance, which indicates the absence of the due separation of powers needed to ensure a fair trial and such rights as personal liberty and the presumption of innocence. Given that context, the petitioner sought to expand the complaint since it was evident that his father had been convicted in the absence of due process and the principle of legality.

15. The petitioner also says that in the criminal prosecution of Mr. Luis Bedoya de Vivanco, they had lodged a remedy challenging the nature of the proceedings, in order to ensure that the crime with which he was charged was not that of embezzlement.[FN6] This motion was dismissed by the Temporary Criminal Chamber of the Supreme Court of Justice in a ruling of May 14, 2002. He further states that in the same decision the Court ruled irregularly against the decision of the Constitutional Court admitting the accused's habeas corpus writ, considering it a clear case of interference in the autonomy and independence of the judiciary, in that it was a decision within a criminal proceeding made by a court outside the judiciary that failed to take into account the context of organized crime prevailing in the country at the time; and that the same decision had ignored other facts, such as the money received by the accused in order to fund his campaign for the mayoralty of Miraflores, which represents a crime against the right to vote.

[FN6] Code of Criminal Procedure, Article 8. The admissible exceptions are the following:… 2. Inadmissibility of the action, when the allegations do not constitute a crime or cannot be justified in criminal terms.

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16. Subsequently, the petitioner reports, on May 29, 2003, the Criminal Chamber specializing in corruption crimes convicted Mr. Luis Guillermo Bedoya de Vivanco for being an accomplice to the crime of embezzlement. This decision, he says, violated the principle of legality by flouting the definition of the crime set forth in the Criminal Code, in that the court had performed extensive interpretations not authorizes by criminal law, such as holding that the origin of the money handed over by Vladimiro Montesinos had not been properly established,

that that person was not the qualified perpetrator of the criminal act, and that consequently the accusations of being his accomplice leveled at his father was ungrounded. He also says that no malice was proven in Mr. Bedoya de Vivanco's action, in that he was unaware of the origin of the money, which is an essential element in the crime of embezzlement.

17. The petitioner relates that after that decision was appealed, the Temporary Criminal Chamber of the Supreme Court of Justice, in a final judgment of November 14, 2003, upheld his father's conviction to a five-year prison term for being an accomplice to the crime of embezzlement, with a dissenting vote from two of the justices, who held that the sentence should be reduced to four years in consideration of the principle of proportionate punishment. The petitioner again referred to the violation of the principle of legality, in forcibly applying the definition of embezzlement to his father's actions when, in other cases involving moneys received from Mr. Montesinos, the incidents had been defined as receiving stolen goods. The petitioner criticizes the failure to indicate the collaboration with which the defendant was accused in the judgment of the case and, consequently, the violation of the presumption of innocence – not only by shifting the burden of proof, but also through the absence of evidence.

18. Finally, reports the petitioner, on June 27, 2002, the State issued Decree 27770, restricting the eligibility of those convicted of crimes against the public administration to receive criminal and penal benefits. He holds that in the case at hand, this law violates the principle of legality, in that it was enacted after the incident for which the conviction was given, and the prison rules previously in force were more favorable. For example, the previous legislation equated two days of work to one day of the sentence, whereas the new decree equates five work days for each day of imprisonment.

B. State

19. The State, in turn, says that on January 7, 2001, a video was broadcast in which Mr. Luis Guillermo Bedoya de Vivanco was shown receiving a sum of money given to him by former intelligence advisor Vladimiro Montesinos Torres, in order to cover the cost of his electoral campaign for the mayoralty of Miraflores.

20. As a result, an investigation was opened against Mr. Bedoya de Vivanco for the crime of misappropriating funds and, subsequently, the Attorney General's office formally charged him with the crime of embezzlement. During the proceedings, preventive custody of the accused was ordered; this decision was later amended to that of house arrest and, subsequently, as a result of a motion filed by the ad hoc prosecutor, preventive custody was reimposed.

21. The State explains that the charges against Mr. Luis Guillermo Bedoya de Vivanco were based on his having received, from Vladimiro Montesinos Torres, a former public official (i.e., the former presidential advisor at the National Intelligence Service, SIN), the amount of USD $25,000, taken from the public coffers, as a contribution to his "I Fight in Miraflores" political campaign in the 1999 municipal election. The handover of the money took place at the offices of the SIN on June 17, 1999, as duly accredited in the scrutiny deed of videos Nos. 1577 and 1578, with their respective audio tracks marked as No. 1579, and labeled "Meeting with Dr. Bedoya –

Reátegui," in the court's possession. These acts constitute the crime of embezzlement, in which Mr. Bedoya de Vivanco was accused of participating.[FN7]

[FN7] Article 25: Primary and secondary complicity. Any person who willfully assists the performance of a punishable act, without which assistance it would not have taken place, shall be subject to the same punishment established for the perpetrator. Those who willfully assist in any other way shall receive a prudentially reduced punishment.

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22. With respect to the allegations of political persecution, lack of flight risk, and alleged noncorrespondence of the charges leveled, the State says it falls to the judges and courts of Peru to determine, on an autonomous basis and in light of the criminal proceedings, whether Mr. Bedoya de Vivanco committed the acts with which he was charged and whether or not there are grounds for upholding the coercive measure that was imposed; and that said determination is to take place during the due process pursued by independent and professional judges and during which the defendant enjoys full enjoyment of his right of defense.

23. At the time the petition was answered, domestic remedies had not yet been exhausted in the criminal proceedings: to wit, the remedy challenging the nature of the proceedings, the appeal against the arrest order, and the request for provisional release – mechanisms contained in the current Code of Criminal Procedure. The State therefore holds that the petition is inadmissible in that domestic jurisdiction has not been exhausted.

24. The State further notes that Mr. Luis Guillermo Bedoya de Vivanco's defense, during the criminal trial, acted in the absence of any restriction or limitation, thus complying with the terms of Article 8 of the American Convention. Also, with the Constitutional Court's judgment of January 29, 2002, that admitted the accused's habeas corpus writ and ordered his immediate release – irrespective of the fact that the procedural measures necessary to ensure his appearance at trial were subsequently ordered – the causes that gave rise to the complaint lodged with the IACHR ceased to exist.

25. With reference to the alleged political interference in the judiciary and, consequently, the violation of due process guarantees in Mr. Bedoya de Vivanco's trial, the State says that there is no evidence of this. It also holds that the different reactions provoked by the Constitutional Court's decision to release the accused under the writ of habeas corpus indicate the importance of this case in terms of the social and legal imperative of fighting corruption, in that the actions with which the accused was charged constitute a clear and public act of corruption – consequently, the State cannot fail to investigate, prosecute, and punish, through judicial action, those individuals who commit acts of corruption.

26. With reference to the alleged noncorrespondence of the charge of being an accomplice to embezzlement, the State notes that although the actual perpetrators are required to be public officials, that status is not required of their accomplices: any person can be an accomplice, and that status arises from the principle of the limited accessory, whereby the perpetrator of the crime of embezzlement, as a public official, transmits that status to the accessory. This is further

strengthened by the principle of unity in accusations, whereby all those involved in a crime – perpetrators and accomplices alike – must face charges under the same criminal-law nomen iuris.

27. The State also reported that on January 7, 2003, the petitioner filed a motion for habeas corpus against the former president of the Superior Court of Justice of Lima, the judge of the First Special Criminal Court of the Superior Court of Justice of Lima, and the members of the Special Criminal Chamber of the Superior Court of Justice of Lima, for violating his constitutional rights to due process, to the effective protection of the law, to his natural judge, to equality before the law, to freedom of prosecution by extraordinary jurisdictional bodies and by ad hoc commissions created for the purpose, irrespective of how they are styled, and the principle of legality.

28. This action was dismissed at the first instance by the 33rd Criminal Court of Lima in a decision of January 14, 2003, ruling that administrative resolution No. 088-2001 had authorized the establishment of the Specialized Criminal Chamber to hear the proceedings that had been initiated against Mr. Vladimiro Montesinos Torres. Thus, the judges have discharged functions appropriate to their positions, and the arguments relating to the violation of the principle of legality in the trial faced by Mr. Luis Guillermo Bedoya de Vivanco should be analyzed before the regular criminal courts. The refusal of this habeas corpus filing was upheld on appeal by the Second Specialized Criminal Chamber. The State notes that this decision was questioned by means of an extraordinary appeal, which was dismissed as inadmissible by the Superior Court of Justice of Lima on February 17, 2003.

29. Similarly, on May 29, 2003, the Special Criminal Chamber of the Superior Court of Lima handed down convictions against Vladimiro Montesinos Torres (perpetrator) and José Tomás González Reátegui and Luis Guillermo Bedoya de Vivanco (accomplices) for the crime of embezzling the public administration, whereby Mr. Bedoya de Vivanco was sentenced to five years in prison. An appeal was lodged against this decision, in which the Temporary Criminal Chamber of the Supreme Court of Justice, in a ruling of November 14, 2003, overturned the criminal conviction handed down by the Superior Court of Lima with respect to the civil damages of two million new sols (PEN); this appeal decision amended the amount of compensation to be paid jointly to PEN 500,000 and ruled that there were no grounds for the annulment of the other parts of the ruling – in other words, the prison terms were not revoked.

IV. ANALYSIS

A. Competence ratione personae, ratione loci, ratione temporis, and ratione materiae of the Inter-American Commission

30. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its alleged victim, an individual person with respect to whom Peru had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. As regards the State, the Commission notes that Peru has been a party to the American Convention since July 28, 1978, when it deposited the corresponding instrument of ratification. The Commission therefore has competence ratione personae to examine the complaint.

31. The Commission has competence ratione loci to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR also has competence ratione temporis since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence ratione materiae since the complaint describes violations of human rights protected by the American Convention.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the American Convention provides that the admissibility of petitions lodged with the Commission is subject to the requirement that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." Article 46(2) of the Convention establishes three situations in which the rule requiring the exhaustion of domestic remedies does not apply: (a) when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated, (b) when the party alleging violation of his rights has been denied access to the remedies of domestic law or has been prevented from exhausting them, and (c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

33. During the processing of this petition, the State has, since its first reply, maintained that the petitioner and the alleged victim have not exhausted the available domestic remedies, in that Mr. Luis Guillermo Bedoya de Vivanco has still to lodge, within the criminal proceedings brought against him, the remedy challenging the nature of the action, the appeal against the arrest order, and the request for provisional release, which are all mechanisms contained in the current Code of Criminal Procedure.

34. The information provided by the parties indicates that the petitioner and the alleged victim did pursue those remedies before the Peruvian courts, albeit unsuccessfully. However, that does not mean that the remedies are not suitable, since the fact that a remedy fails to produce a favorable result does not constitute evidence of the absence of suitable remedies for resolving the situation in question.[FN8] At the same time, the parties have agreed that the domestic remedy was exhausted with the second-instance judgment ending the criminal trial that was handed down by the Temporary Criminal Chamber of the Supreme Court of Justice on November 14, 2003, whereby Mr. Luis Guillermo Bedoya de Vivanco was convicted of being an accomplice in the crime of embezzling the public administration, to the detriment of the State, and sentenced to a five-year prison term and to pay the amount of PEN 500,000 as civil damages in conjunction with the other persons thereby convicted: Vladimiro Montesinos Torres and José Tomás González Reátegui.

[FN8] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment on the merits of July 29, 1988, paragraph 67.
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35. Given that domestic jurisdiction was exhausted, the Commission believes that it must now rule on the admissibility of the petition in light of the arguments presented by the parties.

2. Timeliness of the petition

36. Since the petition was lodged with the Commission on June 7, 2001, prior to the exhaustion of domestic jurisdiction with the Supreme Court's judgment of November 14, 2003, it was presented within the deadline set by Article 46(1)(b) of the Convention.

3. Duplication of proceedings and res judicata

37. No prior procedure dealing with this complaint has been initiated by the Commission, nor is there any other procedure pending examination by any other international organization.

4. Characterization of the alleged facts

38. The petitioner claims that the Peruvian State violated, with respect to Mr. Luis Guillermo Bedoya de Vivanco, the rights protected by the American Convention in Articles 5, 7, 8, 9, 11, and 23, during his prosecution for the crime of embezzlement.

39. These allegations arise, according to the petitioner, from the Peruvian State's defining of Mr. Bedoya de Vivanco's actions as the crime of embezzlement, even though the details of the crime did not fit the definition and even though other individuals who were investigated, prosecuted, and tried for the same type of actions instead faced charges of misappropriating public funds. Additionally, his right to freedom was undermined by the imposition of preventive custody at the start of the investigation, which affected his personal integrity and his political rights vis-à-vis serving as the mayor of Miraflores. Also, at trial, he was denied his rights in that his arguments were not heard in the different instances.

40. The Commission notes that with regard to the right of liberty set forth in Article 7 of the American Convention, once the definition of the alleged victim actions was changed from the crime of misappropriation of funds to that of embezzlement, Mr. Bedoya de Vivanco was ordered held in preventive custody. It also notes, however, that subsequently, and through the filing of a habeas corpus motion, in a judgment of January 29, 2002, the Constitutional Court ordered the release of the accused and changed the custody order to an order of house arrest. Thus, the domestic courts resolved the matter in the petitioner's favor in this dispute. Now, that measure was tied in with the result of the proceedings whereby he was finally convicted and sentenced to a five-year prison term.

41. With regard to the appraisal of the evidence in the criminal proceedings, the applicability of the criminal definitions used, and the corresponding judgment, the Commission believes that it is not competent to analyze the decision of Peru's Supreme Court of Justice. This is because it is not a function of the IACHR to supersede the assessment of facts made by domestic courts

with its own interpretations: as a general rule, it is the job of those courts to assess the evidence placed before them and to adopt the applicable juridical decisions. By acting otherwise, the Commission would be setting itself up as a "fourth instance." The jurisprudence of the Commission on this point has been constant. The Commission's job is to determine whether the judicial procedure, as a whole, was impartial.

42. Thus, the IACHR has maintained, since its first pronouncement on this issue, that:

The Commission is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.[FN9]

[FN9] IACHR. Report No. 39/96, Case 11.673 (Marzioni, Argentina), October 15, 1996.

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43. In the case at hand, the Commission believes that the petitioner had the opportunity to legally exercise his rights in the different venues before which he appeared, and that the issuing of an unfavorable judgment does in no way imply a violation of the rights enshrined in the Convention. The Commission finds no evidence to indicate arbitrary behavior in the judicial proceedings – merely a simple disagreement with the legal decision. Thus, the rulings handed down by the different courts in processing the case contain a reasoned analysis of the facts and legal arguments, which reflect a similarly reasoned interpretation of the applicable provisions of criminal law. As to the alleged discrimination in the criminal punishment imposed for the crime in question in comparison to that imposed on other accused Peruvians, the Commission notes that the presence of a differentiated treatment lacking an "objective and reasonable justification"[FN10] has not been proven.

[FN10] Ibid., paragraph 42.

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44. In light of the above, the Commission believes that it lacks competence to resolve the underlying matter and, consequently, disqualifies itself from analyzing it since the facts do not tend to establish a violation of rights enshrined in the American Convention.

V. CONCLUSIONS

45. Based on the foregoing considerations of fact and law, the Commission believes that the petition is inadmissible under the requirements set in Article 47(b) of the American Convention,

in that it does not indicate facts that tend to establish any violation of the rights protected by that Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify this decision to the petitioners and to the State.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 13th day of October 2004. Signed: Clare K. Roberts, First Vice-President; Commissioners: Evelio Fernández, Paulo Sérgio Pinheiro, Freddy Gutiérrez and Florentín Meléndez.