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File Number(s):	Report No. 105/06; Petition 32-01
Session:	Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause:	Guillermo Jaulis Cancho v. Peru
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Freddy Gutierrez Trejo, Paolo Carozza, Victor E. Abramovich.
Dated:	21 October 2006
Citation:	Jaulis Cancho v. Peru, Petition 32-01, Inter-Am. C.H.R., Report No. 105/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANT: Hugo Mollinedo Valencia
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## I. SUMMARY

1. On January 16, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission", or "the Inter-American Commission", or "IACHR") received a complaint filed by Mr. Hugo Mollinedo Valencia (hereinafter "the petitioner") on behalf of Mr. Guillermo Jaulis Cancho (hereinafter "the alleged victim") asserting the international liability of the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") claiming that the Peruvian National Police had arbitrarily punished Mr. Guillermo Jaulis Cancho by ordering his transfer to "non-active status" (situación de disponibilidad) pursuant to the issuance of a directorial resolution focusing on the party's alleged perpetration of acts harmful to the honor and decorum of the institution, by virtue of the fact that he was allegedly responsible for the escape of prisoners in his custody, for which crime the party in question has since been acquitted by the appropriate judicial authority.

2. The petitioner alleges that the State is responsible for having violated the rights enshrined in Articles 8 (Right to a Fair Trial), Article 11 (Right to Privacy), Article 17 (Rights of the Family), Article 19 (Rights of the Child), Article 26 (Progressive Development), and Article 29 (Restrictions Regarding Interpretation), of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention") in conjunction with Article 1.1 (Obligation to Respect Rights) set forth in the aforesaid instrument. Also according to the petitioner, the State allegedly violated the right to work as enshrined in Article 6 of the International Pact on Economic, Social and Cultural Rights. With regard to admissibility requirements, the petitioner asserts that the ruling in the supreme court appeal issued by the

Constitutional Court on July 19, 2000 exhausted the domestic remedies, and that the petition to the Commission was submitted within the 6-month period allowed for the purpose.

3. The Peruvian State, however, argues that criminal liability, administrative liability, and where appropriate, civil liability, are separate and independent issues, and that Mr. Jaulis Cancho's administrative responsibility for allegedly committing the crime of letting prisoners escape was established internally, as a result of which he was disciplined by means of transfer to "non-active status." The State has submitted no arguments regarding the admissibility of the claim under consideration here.

4. After analyzing the available information, and verifying compliance with the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the Commission declares the case inadmissible given that the facts alleged by the petitioner do not tend to establish a violation of the rights guaranteed by the American Convention or of the Pact of San Salvador. Accordingly, IACRH finds the petition inadmissible under Article 47.b of the American Convention; it has also decided to forward the report to the parties, to publish it, and order its publication in the Annual Report.

## II. PROCESSING BY THE COMMISSION

5. On January 16, 2001, the Commission received the petition dated December 28, 2000. On December 9, 2002, IACHR began processing the petition under number 32/01 and forwarded the relevant portions of the complaint to the State, with a two-month deadline for submitting observations in accordance with the appropriate rules of procedure.

6. On March 4, 2003, the State submitted its observations to the petition in Report No. 10-2003 CNDH/JUS-SE. These observations were forwarded to the petitioner on March 5, 2003. The petitioner was given a period of one month to respond.

7. On April 14, 2003, the petitioner presented his observations to the above-mentioned state report. The petitioner furnished additional information in a letter dated June 19, 2004, received at the IACHR Executive Secretariat on July 27, 2004.

## III. POSITIONS OF THE PARTIES

### A. Petitioner

8. The petitioner alleges international responsibility of the Peruvian State on the grounds that the National Police arbitrarily punished Mr. Guillermo Jaulis Cancho by imposing a punishment entailing the latter's removal from office or "transfer to nonactive status" on grounds of his allegedly having committed the crime of letting prisoners escape. As a result, the alleged victim has been arbitrarily deprived of his ability to do his job as a police officer, and for that reason, he has been deprived of the livelihood which has enabled him to be the breadwinner for his family.

9. Specifically, the petitioner points out that on December 23, 1992, the alleged victim received notice of the official letter dated December 16, 1992, which provided for his "transfer to non-active status as a disciplinary measure" pursuant to the provisions of Directorial Resolution No. 4526-92-DG-PNP/DIPER. Accordingly, the petitioner wishes to point out that the preamble to the resolution establishes the following:

(...) investigations have established that the party appealing the action has engaged in serious actions which have undermined institutional discipline, duty, honor, decorum, morality, and prestige by virtue of his having allegedly perpetrated the crime of letting prisoners escape, by allowing prisoner Juan Laura Coronado to escape.

10. Faced with this situation, the petitioner indicates that on January 11, 1993 Mr. Guillermo Jaulis Cancho filed an appeal requesting reconsideration (*recurso de reconsideración*) of the above-mentioned Directorial Resolution on the grounds that the authorities "had not investigated the matter sufficiently, nor had they identified the personal administrative responsibility" of the individuals who were on guard duty on March 4, 1992, on which date the prisoners had escaped, and on the grounds that the prisoner's escape had occurred during the period of time in which he, Mr. Jaulis Cancho, was not on duty. On March 30, 1994, Mr. Jaulis Cancho was served notice of the Directorial Resolution dated December 30, 1993, which denied his appeal for reconsideration was denied.

11. Furthermore, the petitioner alleges that at the same time the administrative proceedings were set in motion, a criminal investigation was opened under court-martial jurisdiction, on grounds of the alleged crime of "permitting prisoners escape." In those proceedings, the petitioner declares that pursuant to a decision dated May 17, 1994, the Second Chamber of the Second Judicial Zone of the Police System acquitted Mr. Guillermo Jaulis Cancho, stating specifically that "in the case against the defendant, no criminal liability is found regarding the crime under investigation, with the result that he must be acquitted." The petitioner notes that the aforesaid decision has acquired final (*res judicata*) status inasmuch as it has not been appealed.

12. Subsequent to the acquittal, on April 25, 1994, Mr. Jaulis Cancho lodged an appeal (*recurso de apelación*) against the Directorial Resolution which had ordered his mandatory retirement. The documents attached to the petition reveal that on that particular occasion, the applicant specifically argued that it had been made impossible for him to assert his right to a defense under administrative law, on the following grounds:

If the provisions set forth in the By Laws of the Board of Investigation had been complied with, and if the evidence in my defense and my statement to the Board of Investigation had been received in a timely fashion, my transfer to non-active status would not have been recommended, nor would I have personally incurred any penalty, for I would have been allowed to refute the charges against me, just as I was able to refute them in the judicial proceedings instituted against me on these same grounds.[FN1]

The petitioner notes that the appeal (*recurso de apelación*) was decided against Mr. Jaulis Cancho pursuant to a Ministerial Resolution dated May 17, 1995.

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[FN1] Letter from the petitioner dated December 28, 2000.

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13. In response to this Resolution, the petitioner indicates that on August 16, 1995, Mr. Jaulis Cancho presented a special appeal (demanda de impugnación) before the Court Specializing in Civil Affairs challenging the Administrative Resolutions. The petitioner points out that the complaint was lodged against the Office of the Ministry of the Interior and against the Office of the General Director of the National Police, and in it, the alleged victim specifically requested that the administrative resolutions in question be declared invalid and that he be reinstated on active duty with the National Police, with financial compensation for the entire time that he was wrongly placed on "non-active status."

14. The petition states that on June 23, 1997, the 17th Court Specializing in Civil Affairs handed down a ruling favorable to Mr. Jaulis Cancho, specifically stating that:

“(...) at the time the administrative penalty was imposed on petitioner Jaulis Cancho, his responsibility for the crime in question had not been sufficiently established (...) and so inasmuch as the party at that time was the "alleged" perpetrator of a crime, the law made no provision for imposing a penalty as severe as the one that was imposed upon him (...) and consequently we find the action against petitioner Guillermo Jaulis Cancho to be irregular, since the Resolution rejecting the special appeal (recurso de apelación) makes no attempt to evaluate the evidence submitted (the acquittal ruling) which is sufficient in and of itself to invalidate the resolutions issued in the administrative proceedings that had been instituted against him”.[FN2]

In connection, the petitioner argues that on that basis, the Court decided "to find merit in the challenge with particular reference to the invalidation of the administrative resolutions and consequently, it found the resolutions null and void; it ordered the immediate reinstatement of the alleged victim to active duty status with the National Police, and awarded the petitioner such salary, bonuses, and other benefits as the petitioner had been deprived of beginning from the time when he was transferred to non-active status; and the court ordered payment of compensation in the amount of new soles 20,000."[FN3] Regarding the latter matter of compensation, the petitioner indicates that Mr. Jaulis Cancho lodged a special appeal (recurso de apelación) on the grounds that he considered it "insufficient".[FN4]

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[FN2] Letter from the petitioner dated December 28, 2000, received at the IACHR Executive Secretariat on January 16, 2001.

[FN3] Ibid.

[FN4] Ibid.

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15. The petitioner notes that this decision was also appealed by the adverse party, and that on March 9, 1998 the Specialized Temporary Superior Corporative Court (Sala Superior Corporativa Transitoria Especializada) found the appeal lacking in merit, declaring that "the breach of discipline which triggered the penalty imposed upon the named petitioner, has been

disproven, as a result of which the challenged administrative resolutions are null and void" and that although the "Law on the Status of National Police Personnel provides that transfer to non-active status on account of disciplinary proceedings be carried out independently of criminal penalties, this does not mean that the administrative action is extraneous to the outcome of the criminal proceedings (...) especially if we consider that in the case under consideration here, the facts asserted as a basis for the aforesaid administrative action have been thoroughly disproven in these proceedings." [FN5]

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[FN5] Ibid.

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16. The petitioner indicates that in response to this favorable appellate decision, the Office of the Chief State Counsel (Procurador Público) of the Ministry of the Interior filed a another appeal (Recurso de Casación), which was decided on July 19, 2000 by the Constitutional and Social Law Chamber of the Supreme Court which found against the alleged victim and ruled that this particular appeal did have merit, on the grounds that:

criminal investigation is a tool which makes it possible to determine the liability of the perpetrator for the acts for which he is charged by virtue of having committed an offense under criminal law (en la vía penal), which is no basis for invalidating the penalty assessed against the appellant on grounds of his liability under administrative law (en la vía administrativa) on the grounds that he engaged in serious acts detrimental to institutional discipline, duty, honor, decorum, morality, and prestige, as has duly been found to have occurred in the case before us here based on evidence invoked in the administrative proceedings, and which are not a matter for Supreme Court review, inasmuch as appeals to the supreme court (recursos de casación) deal with points of law rather than questions of fact and assessment of evidence. [FN6]

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[FN6] Supreme Court of Justice of Peru, Constitutional and Social Law Chamber, Ruling of July 19, 2000.

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17. Based upon the foregoing, the petitioner requests the Commission declare that the State of Peru is responsible for violating the rights envisaged in Article 8 (Right to a Fair Trial), Article 11 (Right to Privacy), Article 17 (Rights of the Family), Article 19 (Rights of the Child), Article 26 (Progressive Development), and Article 29 (Restrictions Regarding Interpretation) of the American Convention.

18. With regard to the right to a fair trial set forth under Article 8 of the Convention, the petitioner notes that the alleged victim incurred a penalty under administrative law and yet was simultaneously acquitted under regular criminal law for the same cause. That notwithstanding, the petitioner claims that the appeal filed to invalidate the administrative penalty was decided against the alleged victim on the basis of a misinterpretation of Article 40 of Decree Law 745 on the Status of Police Officers which formally establishes that criminal penalties, and administrative penalties, are independent.

19. In relation to the right to privacy, the petitioner believes that these rights have been violated in a manner prejudicial to Mr. Jaulis Cancho inasmuch as the latter was "thrown out of the Peruvian National Police like an alleged criminal." With respect to the rights of the family and the child, the petitioner asserts that the Peruvian authorities arbitrarily left Mr. Jaulis Cancho out of a job and with no income, and thereby left the members of his family in a vulnerable position, especially his under-age children. Finally, with regard to Article 26, the petitioner argues that the State has violated the alleged victim's economic, social, and cultural rights by depriving him of employment arbitrarily. In the same way, the petitioner is asserting a violation of the right to work enshrined in Article 6 of the International Pact on Economic, Social and Cultural Rights.

20. As to the fulfillment of the admissibility requirements, the petitioner maintains that the remedies under domestic law were exhausted by with the ruling of July 19, 2000, handed down by the Constitutional and Social Law Chamber of the Supreme Court of Justice, notice of which was served upon him on July 20, 2000, thereby complying with the requirement that the petition be lodged within a period a six months from the date on which the party alleging violation of rights was notified of the final judgment, as specified by the convention.

21. Finally, it should be noted that in his observations to the report filed by the State, the petitioner declares that the supposed resolution of October 15, 1994 was only mentioned by the State in its report to the Commission, and no notice thereof was served upon him domestically nor was the matter brought up at any time in the judicial proceedings pursued by Mr. Jaulis Cancho. In this connection, the petitioner maintains that the State's arguments whereby the above-mentioned resolution was issued "to regularize the status" of Mr. Jaulis Cancho is an attempt to discredit a legal battle of 10 years' standing.[FN7]

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[FN7] Letter from the petitioner dated April 7, 2003, received at the Executive Secretariat on April 14, 2003.  
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B. The State

22. According to the State, on March 4, 1992, while the Senior Deputy Officer (Sub-Oficial de Primera) of the National Police of Peru, Guillermo Jaulis Cancho, was on duty with the Police Station at the Víctor Larco Herrera Hospital, Ward 16, prisoner Juan Laura Coronado escaped or fled from police custody. This triggered administrative investigations against Mr. Jaulis Cancho to ascertain his alleged responsibility for these actions.

23. The State asserts that Investigation Case File No. 004 JS-MSM-MD of March 5, 1992 established that Guillermo Jaulis Cancho was "the alleged perpetrator responsible for committing the crime of letting prisoners go free by allowing the escape of imprisoned terrorist NN, and had thereby engaged in serious acts that undermine institutional discipline, duty, honor, decorum, morality, and prestige." As a consequence, the Regional Investigation Council for Deputy Officers and Specialists of the National Police of Peru, in its writ No. 1033 of July 31, 1992,

recommended that the alleged victim be transferred "from active duty status to non-active status as a disciplinary measure." The State indicates that this recommendation was formalized through the issuance of Directorial Resolution No. 4526-92-DGPNP/DIPER of October 15, 1992.

24. The State notes that subsequently, pursuant to Directorial Resolution N° 4221-93-DGPNP/DIPER of December 30, 1993, a decision was made to declare without merit the appeal for reconsideration lodged by Mr. Jaulis Cancho against the Directorial Resolution mentioned earlier. The State declares that Mr. Jaulis Cancho was duly served notice of this administrative action.

25. The State goes on to say that on April 25, 1994, the alleged victim filed a special appeal (recurso de apelación) against the Directorial Resolution which had dismissed the party's earlier appeal for reconsideration as lacking in merit. The alleged victim took this step on the grounds that he had been acquitted (under criminal law) of the crime of letting prisoners escape. The State notes that this appeal was likewise found to be without merit pursuant to Opinion N° 1326-94-DGPNP-AJ of July 21, 1994. This opinion stated as follows: "(...) to reject the appeal as lacking in merit, inasmuch as the [administrative] action in question was issued in accordance with the law and the appellant has failed to back up his claim by using a different interpretation of the evidence produced, nor is he addressing issues of pure law, bearing in mind that the appellant has engaged in serious actions which jeopardize the reputation and prestige of the institution, and bearing in mind that administrative actions are independent of criminal actions."

26. The State declares that in order to regularize the interested party's unresolved status, a new Directorial Resolution N° 5966-95-DGPNP/DIPER was issued on December 4, 1994, ordering that the alleged victim be transferred to retirement status by virtue of the fact that he had reached the maximum period of time that he was allowed to remain in non-active status, and this regularization resolution was dated October 15, 1994.

27. Finally, the State sustains that criminal liability, administrative liability, and where appropriate, civil liability, are separate and/or independent issues, and that it has been internally established that the petitioner was liable, under administrative law, for the escape of the prisoner, which justified the penalty imposed irrespective of whether the alleged victim was acquitted under criminal law.

#### IV. ANALYSIS CONCERNING ADMISSIBILITY

A. Jurisdiction of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

28. The petitioner has authority under Article 44 of the American Convention to lodge petitions on behalf of the party alleging violation of his rights, whose rights, enshrined in the American Convention, the Peruvian State had undertaken to respect and guarantee. Peru has been a State party to the American Convention since July 28, 1978, the date on which it deposited its instrument of ratification. Accordingly, the Commission has jurisdiction *ratione personae* to examine the petition.

29. In addition, the Commission has jurisdiction *ratione loci* to consider the petition, because the petition alleges violations of rights protected under the American Convention which ostensibly took place under the jurisdiction of the State in question. The Commission has jurisdiction *ratione temporis* to consider the claim because the obligation to respect and guarantee the rights protected under the American Convention was already in force for the State of Peru on the date on which the facts alleged in the petition are supposed to have occurred.

30. Finally, the Commission has jurisdiction *ratione materiae* to try this case, because the petition refers to possible violations of human rights protected under the American Convention. With respect to possible violations under the International Pact on Economic, Social and Cultural Rights, the Commission wishes to observe that this is an instrument which does not empower the Commission to apply the Pact in the exercise of its powers within the system of individual petitions, and accordingly declares that it lacks jurisdiction *ratione materiae* to pass judgment on the matter.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

31. Article 46.1.a of the American Convention states that admission by the Commission of a petition or communication lodged in accordance with Article 44 shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is designed to ensure that the national authorities can assess an alleged violation of a protected right, and, if appropriate, resolve it before it is tried by an international court.

32. The requirement of prior exhaustion of remedies is applied when the national system does actually have available mechanisms that are adequate and effective for remedying the alleged violation. Thus, Article 46.2 specifies that the requirement is not applied 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; the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. According to Article 31 of the Rules of Procedure of the Commission, when the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

33. As may be inferred from the principles of international law, as reflected in the precedents of the Commission and the Inter-American Court, the fact remains, in the first instance, that the defendant State may expressly or tacitly waive the right to invoke this rule.[FN8] Second, in order for it to be timely, the objection that domestic remedies have not been exhausted must be raised in the early stages of the proceedings before the Commission, failing which the interested State shall be presumed to have tacitly waived the option to avail itself of this objection.[FN9] Third, depending upon the burden of proof applicable in such cases, the State invoking the

objection that domestic remedies have not been exhausted shall specify which domestic remedies have still to be exhausted in addition to showing proof of their effectiveness.[FN10] Consequently, if the State in question fails to submit timely arguments concerning this requirement, the State shall be deemed to have waived its right to invoke failure to exhaust domestic remedies and thus to have failed to meet its burden of proof in the matter.

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[FN8] IACHR, Report No. 69/05, Petition 960/03. Admissibility, Iván Eladio Torres (Argentina), October 13, 2005, para. 42; I/A Court H. R., Case of Ximenes Lopes. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H. R., Case of the Serrano Cruz Sisters.. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN9] I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; I/A Court H.R., Castillo Petruzzi Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and the Court found that the early stages of the proceedings are to be defined as the stage of admissibility of the proceedings before the Commission, or rather, prior to any considerations as to the merits. See, for example, IACHR, Report No. 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, citing, I/A Court H. R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN10] I/A Court H.R., Report N° 32/05, Petition 642/03, Admissibility. IACHR, Report No. 32/05, Petition 642/03, Luis Rolando Cuscul Pivaral et al. (persons living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra, Note 3, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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34. In the present case, the State failed to enclose with its filings any arguments concerning the fulfillment of admissibility requirements by the petition under consideration here. As a result, the Commission finds that the State has tacitly waived its right to assert such a defense.

35. In any event, the Commission considers that domestic remedies were conclusively exhausted with the decision by the Constitutional and Social Law Chamber of the Supreme Court of Justice of March 13, 2000, which passed a final judgment on the proceedings (*acción de nulidad*) seeking to invalidate the resolutions which disciplined the party alleging violation of his rights and which issued decisions on the regular appeals under administrative law. Accordingly, the Commission finds that the requirement of prior exhaustion of domestic remedies has been met.

2. Period for lodging the petition

36. Article 46.1.b of the Convention states that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the requirement that the petition be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment under domestic law.

37. Based upon the documentation submitted with the petition, the Commission finds that the decision handed down by the Constitutional and Social Law Chamber of the Supreme Court of Justice on March 13, 2000, which exhausted the remedies under domestic law, was served on the party alleging violation of his rights on July 20, 2000. The petition was lodged on January 16, 2001, and consequently, the Commission deems that the above-mentioned admissibility requirement has been met.

### 3. Duplication of proceedings and res judicata at the international level

38. Article 46.1.b provides that admission of a petition or communication is subject to the requirement "that the subject of the petition or communication is not pending in another international proceeding for settlement," while Article 47.d of the Convention states that the Commission shall consider inadmissible any petition or not admit a petition when "the petition or communication is substantially the same as one previously studied by the Commission or by another international organization." The record does not suggest that the subject matter of the petition is awaiting decision in another international proceeding for settlement nor does it indicate that the petition is the same as one previously studied by the Commission or by another international organization. Accordingly, the requirements specified in the above-mentioned articles are considered to have been met.

### 4. Establishing the alleged facts

39. Article 47.b of the Convention establishes that the Commission shall declare inadmissible a petition when it does not state facts that tend to establish a violation of the rights guaranteed by this Convention. Accordingly, the Commission shall then analyze whether the facts denounced on this occasion constitute a violation of the articles of the Convention invoked by the petitioner.

40. In the case at hand, the petitioner alleges violations of the rights enshrined in Articles 8, 11, 17, 19, 26, and 29 of the American Convention, in conjunction with Article 1.1 thereof, in addition to violation of Article 6 of the International Pact on Economic, Social and Cultural Rights. For its part, the State maintains that the proceedings whereby Mr. Guillermo Jaulis Cancho incurred the penalty of removal from office were conducted in accordance with internal rules and regulations and with the guarantees of due process.

41. First, as noted earlier the Commission is not competent to pass judgment on the International Pact on Economic, Social and Cultural Rights, and accordingly, the characterization of the alleged facts will focus strictly on the provisions of the American Convention. Furthermore, with particular reference to the alleged violation of the rights enshrined in Articles 11, 17, 19, 26, and 29 of the American Convention, the Commission finds that the alleged facts do not correspond to the content of any of these provisions, and in consequence, the Commission shall rule the case inadmissible with particular reference to these assertions.

42. Second, concerning the alleged violation of the right to a fair trial enshrined in Article 8 of the Convention, the Commission notes that the petitioner asserts that the alleged victim incurred a penalty under administrative law while simultaneously being acquitted of those same charges under criminal law. Notwithstanding the above, the petitioner alleges that the appeal to the supreme court (*recurso de casación*) which the alleged victim filed in an effort to overturn the administrative penalty was decided against him as the result of a misinterpretation of Article 40 of Decree Law 745 on the Status of Police Officers according to which criminal penalties, and administrative penalties, are separate matters.

43. For its part, the Peruvian State argues that criminal liability, administrative liability, and where appropriate, civil liability, are separate and independent matters, and that Mr. Jaulis Cancho's administrative liability for allegedly committing the crime of letting a prisoner escape was established internally, whereupon Mr. Jaulis Cancho was disciplined through involuntary transfer to "non-active status" (*situación de disponibilidad*).

44. In this connection, the Commission considers it pertinent to point out that criminal law, and administrative/disciplinary law, serve entirely different purposes. Criminal law is designed to pass judgment and, where appropriate, to punish those responsible for perpetrating crimes or criminal offenses established under the pertinent criminal codes. In contrast, administrative/disciplinary law is designed to determine official responsibility and if necessary to discipline government employees who fail to fulfill their duties in accordance with pertinent staff regulations. In this respect, the Commission believes that while the guarantees of legal due process should be applied in both legal systems, the latter are nonetheless separate entities and one particular fact or situation may be analyzed from the perspective of criminal law as well as from the perspective of disciplinary law, inasmuch as the two approaches are designed to achieve different objectives and entail the application of different standards for the assessment of the challenged conduct.

45. This conclusion has been reaffirmed in various ways in the decisions of European courts, in the sense that it has been recognized that one particular fact may give rise to criminal penalties on the one hand, and to administrative penalties on the other hand.[FN11] And these can be mutually compatible even if they are imposed on one and the same person.[FN12]

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[FN11] European Court of Human Rights, *Oliveira v. Switzerland*, judgment of July 30, 1988, para. 26.

[FN12] *Ibid.*

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46. Nonetheless, European court decisions have also delineated the nature of these penalties and the nature of criminal and administrative proceedings, with each legal sphere being governed by different standards.[FN13] On that basis, it is possible to argue that the same facts may give rise to independent proceedings in different jurisdictions, and consequently, may lead to different results depending on whether the goal is to determine administrative liability, or criminal liability, regarding one particular action.

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[FN13] Cf. European Court of Human Rights, *Ravnsborg v. Sweden*. Judgment of March 23, 1994, paras. 34 and 35.  
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47. In light of the foregoing considerations, the Commission believes that the interpretation and decision of the Constitutional and Social Law Chamber of the Supreme Court of Justice, in its decision of March 13, 2000 regarding the separate nature of the criminal and administrative procedures pursued against Mr. Jaulis Cancho, entails no violation of the American Human Rights Convention.[FN14]

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[FN14] The Constitutional and Social Law Chamber of the Supreme Court of Justice found as follows in its July 19, 2000 ruling:

criminal investigation is a tool which makes it possible to determine the liability of the perpetrator for the acts for which he is charged by virtue of having committed an offense under criminal law (en la vía penal), which is no basis for invalidating the penalty assessed against the appellant on grounds of his liability under administrative law (en la vía administrativa) on the grounds that he engaged in serious acts detrimental to institutional discipline, duty, honor, decorum, morality, and prestige, as has duly been found to have occurred in the case before us here based on evidence invoked in the administrative proceedings, and which are not a matter for Supreme Court review, inasmuch as appeals to the supreme court (recursos de casación) deal with points of law rather than questions of fact and assessment of evidence.  
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48. The arguments submitted by the parties and the evidence in the record point to no judicial arbitrariness, nor do they suggest that the party alleging violation of his rights has been prevented from gaining access to remedies under domestic law in accordance with due process guarantees.

49. The Commission finds that in light of the foregoing considerations, the petition does not state facts that tend to establish a violation of the rights recognized in the American Convention and accordingly the petition shall be ruled inadmissible.

## V. CONCLUSIONS

50. Based on the de jure and de facto arguments set forth above, the Commission considers that the petition is inadmissible under the requirements established in Article 47.b of the American Convention, as it fails to state facts tending to establish a violation of rights protected under the Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.

2. To serve notice of this decision on the petitioners and on the State.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006.  
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.