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REPORT No. 20/18
PETITION 1360-07
REPORT ON INADMISSIBILITY

JULIO ERASMO TEJEDA POZO
PERU

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 20/18, Petition 1360-07. Inadmissibility. Julio Erasmo Tejeda Pozo.
Peru. February 24, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Julio Erasmo Tejeda Pozo
Alleged victim:	Julio Erasmo Tejeda Pozo
Respondent State:	Peru ¹
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), 9 (ex post facto laws), 10 (compensation), 11 (privacy) of the American Convention on Human Rights, ² in relation to Article 1(1) thereof (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	October 18, 2007
Additional information received at the stage of initial review:	December 28, 2011
Notification of the petition to the State:	January 27, 2014
State's first response:	September 22, 2014
Additional observations from the petitioner:	April 23, 2016
Additional observations from the State:	April 28, 2017

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 (ratification instrument deposited on July 28, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, April 20, 2007
Timeliness of the petition:	Yes, October 18, 2007

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguirguren Praeli, a Peruvian national, did not participate in the discussion or the decision on this matter.

² Hereinafter, "the American Convention" or "the Convention."

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

V. ALLEGED FACTS

1. Mr. Julio Erasmo Tejeda Pozo (hereinafter “Mr. Tejeda Pozo”, “the alleged victim” or “the petitioner”) alleges that he was arbitrarily prosecuted and punished by the criminal courts, which resulted in administrative proceedings against him that ordered his retirement. In this regard, the purpose of his petition is to request that the IACHR declare the criminal proceedings null and void and consequently recommend to the Peruvian State his reinstatement on the National Police force.

2. The petitioner indicates that in his capacity as a deputy officer of the National Police he was illegally and arbitrarily deprived of his liberty on March 23, 1998, as the result of an order to commence an inquiry that included an arrest warrant issued by the Fourth Criminal Court specialized in drug trafficking (hereinafter “the Fourth Criminal Court”). This court decision, pursuant to which criminal proceedings were formally initiated, corresponded to a complaint filed on March 17, 1998, by the Provincial Prosecutor of the Office of the Fourth Criminal Prosecutor specialized in drug trafficking (hereinafter “the Office of the Fourth Criminal Prosecutor”) for alleged unlawful acts committed by the petitioner in a police operation on February 26, 1998.

3. After his arrest, Mr. Tejeda Pozo lodged an appeal of the aforementioned order to the Fourth Criminal Court on March 24, 1998. In his appeal he argued that his actions as a deputy police officer during the anti-drug operation were lawful and the order to commence an inquiry that included an arrest warrant was not issued in accordance with provisions of the law. Mr. Tejeda Pozo affirms that he was never informed of the result of this appeal.

4. The petitioner indicates that on March 25, 1998, he filed a writ of habeas corpus with the Fourth Criminal Court alleging that he was unaware of the grounds for his arrest inasmuch as, according to him, he found out about the case through a newspaper article and not because it was explained in the arrest warrant. Nevertheless, on March 26, 1998, the Fifth Criminal Court of Huánuco found the recourse inadmissible as it deemed that the petitioner had been arrested subject to a court order issued under a proper procedure. Mr. Tejeda Pozo further alleges that the Office of the Fourth Criminal Prosecutor did not take his formal statement for inclusion in the investigative file until 35 days after he was arrested.

5. The alleged victim affirms that on April 28, 1999, the Provisional Superior Criminal Chamber Specialized in drug trafficking (hereinafter, “the Superior Criminal Chamber”) sentenced him to ten years in prison for crimes against the administration of justice provided for under Articles 404 and 405 of the Criminal Code—a sentence he served until March 4, 2000, when he was released as the result of a presidential pardon.

6. On the same day the judgment was issued, the alleged victim lodged an appeal for annulment which argued that the judgment did not state the period for disqualification from public office, as set forth in Article 38 of the Criminal Code. On October 7, 1999, however, the Supreme Court of Justice found the appeal inadmissible as it considered this omission easily correctable in keeping with procedural norms, without this entailing annulment of the judgement. Thus, the Court imposed on the alleged victim an accessory penalty, disqualifying him from public office for three years.

7. Mr. Tejeda Pozo points out that on February 25, 2000, he requested a pardon from the Ministry of Justice alleging that he had demonstrated exemplary behavior during his detention; his parents were under his care and depended on him economically; and he had been unjustly convicted of a crime he did not commit. This request was approved and on April 3 of that year, the Ministry of Justice, pursuant to Supreme Resolution 070-2000-JUS, granted a pardon to 167 individuals, among them Mr. Tejeda Pozo, who gained his freedom the following day. The petitioner states that he formally requested he be told the reasons why he had been granted a pardon and that the Ministry of Justice informed him that under Article 118(21) of the Peruvian Constitution, the pardon is a constitutional power of the President and need not be substantiated or justified.

8. Furthermore, the alleged victim states that on February 22, 2001, he filed an appeal for review with the Supreme Court of Justice, which he later requested be expedited on June 18, 2004 and January 26, 2007. Finally, on March 15, 2007, the Supreme Court rejected the appeal, of which the petitioner was notified on April 20, 2007. As seen in the ruling, Mr. Tejada Pozo's aim was to have the criminal proceedings from 1999 declared null and void pursuant to the appeal so he could request reinstatement on the police force. The Supreme Court, however, denied the appeal because it considered that the evidentiary items Mr. Tejada Pozo presented did not constitute new evidence that allowed for reversing the legal grounds upon which his conviction was based, which is the bar that had to be met under the special review proceeding.

9. Mr. Tejada Pozo indicates that on September 10, 1999, separately from the criminal proceedings brought against him, the Examining Magistrate of the Second Court Replacing the Second Chamber of the Judicial Zone imposed an administrative penalty on him of fifteen days of arrest for serious misconduct in the exercise of his duties, in keeping with Article 84 of the Code of the National Police. This penalty was overturned on November 19, 1999 after the President of the Superior Council of Justice of the National Police affirmed that Mr. Tejada Pozo was merely following his superior's orders.

10. Nevertheless, on November 8, 1999, the National Police, pursuant to a Directorate Resolution, ordered Mr. Tejada Pozo's retirement as a disciplinary measure, finding that he had committed a serious offense of disobedience for having released one of the drug traffickers captured during the raid; and that he did not present evidence to the respective investigative council to prove he was not responsible for these events. On October 4, 2002, the alleged victim lodged a writ of *amparo* against this decision with the Constitutional Court; however, as the petitioner himself indicates, on July 16, 2003, the Court found the action inadmissible given that the petitioner had not duly exhausted administrative remedies, an indispensable prerequisite for lodging the respective appeals out of time. Finally, the alleged victim asserts that the State should pay him compensation for the damages that he suffered during the criminal proceedings brought against him.

11. For its part, the State alleges that Mr. Tejada Pozo did not exhaust domestic remedies provided for by national legislation, which hindered the corresponding State authorities from issuing a decision in this regard. The State asserts that the alleged victim did not file any suit for damages for having purportedly been accused and convicted unjustly. It indicates that Mr. Tejada Pozo could have filed a tort claim for damages using abbreviated or ordinary proceedings, as provided for in the Code of Civil Procedure, based on Article 139(7) of the Peruvian Constitution, according to which "compensation shall be provided for judicial errors in criminal proceedings and for arbitrary detentions," given that this would have been an appropriate, effective, and suitable remedy to resolve the claim for compensation.

12. The State likewise alleges that the final judgment against the alleged victim was issued on October 7, 1999, and that he was fully aware of it. This means that his petition to the IACHR, which was submitted seven years and six months later, was out of time according to the deadline established in Article 46(1)(b) of the American Convention. The State argues that the petitioner seeks to have the deadline for submitting his petition calculated as from the decision on his appeal for review in April 2007. The Commission should reject this, the State contends, as said appeal for review only assesses subsequent facts not known during the proceedings; furthermore, when analyzing the documents presented by Mr. Tejada Pozo, it can be seen that not one of the documents constitutes new evidence allowing for reversal of the grounds his conviction was based on and is not, therefore, a remedy for protecting the rights invoked in the petition.

13. Finally, the State holds that the petition does not present facts that constitute violations of rights provided for in the American Convention given that the alleged victim's arrest was not arbitrary or illegal as it was made in keeping with the constitutional and legal framework in force. Furthermore, the criminal proceedings brought against him were conducted in accordance with the provisions already set forth under national legislation, respect for the guarantees of due process, and his right to defend himself.

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

14. The alleged victim points out that the Superior Criminal Chamber issued a judgment on April 28, 1999, sentencing him to ten years of imprisonment. This judgment was upheld by the Criminal Chamber of the Supreme Court of Justice on October 7, 1999. Thereafter, he lodged a special appeal for review with the Supreme Court of Justice on February 22, 2001, which was ultimately found inadmissible on April 20, 2007, the day Mr. Tejada Pozo was notified thereof. The State, for its part, argues that the domestic remedies in the criminal proceedings brought against Mr. Tejada Pozo concluded with the judgment of October 7, 1999, seven year prior to submitting the petition, and not with the special appeal for review subsequently decided in 2007. Furthermore, the State posits that were the petitioner to have felt wronged by the competent authorities' actions, a suit for damages was available to him.

15. Based on the arguments of the petitioner and the information provided by both parties, the Inter-American Commission notes in this case that the essential purpose of the petition to the Commission is to request that the criminal proceedings brought against the petitioner be overturned as a way of then requesting that the decision to retire him be reversed, and thus achieving reinstatement in the police force. The petitioner stated this same objective in the appeal for review decided by the Supreme Court of Justice on March 15, 2007. The State has not questioned the sequence of remedies filed, and based on available information, the Commission has determined that the requirement to exhaust all domestic remedies provided for under Article 46(1)(b) of the American Convention has been fulfilled.

VII. ANALYSIS OF COLORABLE CLAIM

16. In keeping with the arguments of the petitioner, after he was pardoned, he filed a special appeal for review as a legal mechanism to have his criminal conviction overturned for purposes of being reinstated on the National Police force. The IACHR notes that in the Supreme Court of Justice's analysis of the special appeal lodged by the petitioner, the court considered that the pardon was not sufficient new evidence to disprove the legal grounds [for conviction] and nullify the criminal proceedings. In this regard, after considering the arguments and information provided by both parties, the Inter-American Commission has not found alleged facts that *prima facie* constitute potential violations of the American Convention as provided for under Article 47(b).

VIII. DECISION

1. To find the instant petition inadmissible in relation to Article 47(b) of the American Convention; and

2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitino, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.