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**REPORT No. 74/19**  
**PETITION 1727-11**  
REPORT ON ADMISSIBILITY

C.V.F.Z.  
PERU

Approved electronically by the Commission on May 19, 2019.

**Cite as:** IACHR, Report No. 74/19, Petition 1727-11. Admissibility. C.V.F.Z. Peru. May 19, 2019.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Domingo Enrique Valladares Samanamud and Cleofe Zúñiga Pedraza
<b>Alleged victim:</b>	C.V.F.Z. <sup>1</sup>
<b>Respondent State:</b>	Peru <sup>2</sup>
<b>Rights invoked:</b>	None

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	November 29, 2011
<b>Additional information received at the stage of initial review:</b>	March 9, 2012
<b>Notification of the petition to the State:</b>	April 2, 2014
<b>State's first response:</b>	August 5, 2014
<b>Additional observations from the petitioner:</b>	December 19, 2016
<b>Additional observations from the State:</b>	March 9, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention on Human Rights (deposit of instrument on July 28, 1978)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Article 5 (humane treatment), Article 8 (fair trial), Article 11 (privacy), Article 19 (rights of the child), Article 24 (equality before the law) and Article 25 (judicial protection) of the American Convention in connection with its Article 1.1; and Article 7 of the Belém do Pará Convention.
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, August 23, 2011
<b>Timeliness of the petition:</b>	Yes, November 29, 2011

**V. FACTS ALLEGED**

1. The petitioners allege that, in 2009, the girl C.V.F.Z. (hereinafter "the alleged victim"), 13 years of age at the time of the incident, was raped by Yeyson Perey Berrio Palomino, of legal age, who worked

<sup>1</sup> The name of the alleged victim (hereinafter C.V.F.Z.) is confidential, because she is a child.

<sup>2</sup> According to the provisions in Article 17.2(a) of the Rules of Procedure of the Commission, the Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion or the decision-making for the present case.

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

as a journalist for Radio Antena Sur, a place that the alleged victim would regularly go to. The petitioners claim there were irregularities and violations regarding procedural guarantees by the Attorney General's Office as well as the courts, during the investigation of the crime, rejection of the requirement for pre-trial detention, and the ruling of dismissal and archiving of the case against the person charged, because certain evidence was not taken into account and the necessary steps were not taken to clarify the facts, as well as loopholes in the Criminal Proceedings Code, favoring the person charged, and during its implementation for not having protected the sexual integrity of the alleged victim. The petitioners allege that this led to material and moral harm for the alleged victim.

2. The petitioners indicate that, on December 11, 2009, they filed a criminal complaint against Yeyson Perey Berrio Palomino, who was 27 years of age at the time of the incidents, for the crime of inducing a minor to run away and the crime of rape against C.V.F.Z, with the Joint Provincial Prosecution Service of Huepetuhe (case file No. 2009-003-JIPH). On December 15, 2009, the Office of the Attorney General requested a preliminary detention warrant and on December 16, 2009, the Prosecution Service requested pre-trial detention. On December 17, 2009, the Investigation Court ruled that the request for pre-trial detention was inadmissible, in response to which the Prosecutor filed an appeal on December 22, 2009. The Criminal Court of Appeals upheld the ruling issued by the Investigation Court. The petitioners allege irregularities in this proceeding because the Prosecutor himself requested the preliminary detention of the accused because he was allegedly the perpetrator of the crime, the Superior Court had ordered the immediate localization of the accused and his arrest, and there was a medical certificate concluding the alleged victim had engaged in previous sexual relations.

3. On December 16, 2009, it was ruled that the investigation for the alleged perpetration of the crime of inducing the girl to run away would be archived, but that the preliminary investigation against Yeyson Perey Berrio Palomino for the alleged perpetration of the crime of rape would be formalized and continued. Nevertheless, when the preliminary investigation came to an end, on October 1, 2010, the Office of the Attorney General requested that a dismissal be ordered. In view of this, on October 25, 2010, the petitioners filed an opposition and requested that additional investigation actions be undertaken, that is, a hearing to bring witnesses face to face and the forensic examination of the body of the accused. On the basis of the information provided, it appears that a ruling of February 8, 2011 ordered a hearing to bring witnesses face to face at which Mr. Palomino claimed he did not know the alleged victim. On April 11, 2011, the Prosecution Service ratified the request for a dismissal and, on May 5, 2011, by means of ruling No. 21, the Preliminary Investigation Judge ruled that the above-mentioned request was well-founded and that the case be archived. On August 23, 2011, by means of Resolution No. 24, the Court of Appeals of the Superior Court of Justice of Madre de Dios upheld the dismissal of the proceedings, indicating that the Office of the Attorney General is the body exclusively in charge of referring the corresponding charges and that it had ascertained it did not have evidence for a conviction. The petitioners allege that, with this, remedies under domestic law were exhausted. Nevertheless, the mother of the alleged victim filed a cassation appeal on September 8, 2011, which was dismissed on September 12, 2011, by means of ruling No. 26.

4. The petitioners allege that the preliminary investigation came to end without the Prosecutor taking steps aimed at corroborating the reported incidents. They claim he did not discharge his job and duty of investigating, arguing the new material evidence was not examined scientifically, that is, new evidence that could have fully and reliably established the crime reported, and that the time-limits for the investigation expired without any tests being carried out to establish the date of the vaginal defloration of the alleged victim using the scientific instruments of a gynecologist; nor were the witness statements appearing in the briefs verified; the scene of the crime was not reconstructed onsite; he did not order a psychological examination of either the alleged victim or the person charged; and he did not request any contracts or documents certifying that the person charged was present at the radio broadcasting station in order to prove the facts that were reported. They also allege that the Investigation Court confined itself to waiting for and ordering the steps requested by the Office of the Attorney General, instead of helping the investigation, which constituted negligence. Furthermore, they allege that, because the victim was not authorized to challenge the rulings of the judges regarding the dismissal of the case in the last instance and was only permitted to file a claim for civil reparations and the victims are not allowed to file a cassation appeal, the new Criminal Proceedings Code is being applied in a discriminatory fashion.

5. Furthermore, the petitioners indicate that they filed a complaint with the President of the Superior Court of Justice of Madre de Dios against prosecutors who intervened in the case, alleging corruption, on December 28, 2011. The complaint was dismissed because the Court indicated that the duties of the prosecution are to be exercised freely and autonomously, that the public officials did not commit any misconduct in the discharge of their duties, and that the complaint could not be used to challenge the merits of functional decisions. On January 31, 2012, it was ruled that there was no reason for launching a preliminary investigation against the prosecutors targeted by the complaint filed by the petitioners. On the basis of the case file, there is no indication that said ruling has been the subject of an appeal.

6. As for the state, it alleges that none of the facts pointed out by the petitioners presume that there had been violations of the rights recognized in the American Convention. Therefore, the petition must be declared inadmissible under its Article 47(b). It also claims that the petitioners are appealing to the IACHR as a court of fourth instance because they disagree with the court rulings issued at the various jurisdictional levels. Nevertheless, the Commission is not empowered to review the rulings of domestic instances, especially when these courts have abided by the procedural guarantees recognized in the American Convention. Therefore, the petition must be declared inadmissible.

7. The state alleges that the proceeding abided by the applicable framework of the Convention and the Constitution, as well as the guarantees of due process of law. It claims that, in the request for dismissal, there was mention of the steps taken during the preliminary and preparatory investigation for the purpose of substantiating the above-mentioned request, including the statement made by the accused in which he declared that he did not know the alleged victim, the examination of the body of the person charged, the report on the phone calls made from the alleged cell phone of the person charged, as well as the statements of the alleged victim, which contained contradictions, and the medical examinations of the alleged victim. It also indicates that, on December 12, 2009, the alleged victim was the subject of a forensic examination that determined that the minor showed prior engagement in sexual relations and signs of a pregnancy, although she had stated on December 11, 2009 that, up to that time, she was a virgin. In her statement of December 13, 2009, the alleged victim asserted that she had engaged in sexual intercourse and that she had not said so in her initial statement for fear of her mother, thus highlighting evident contradictions with her previous statement. On December 15, 2009, she was examined forensically, which confirmed that she had engaged in sexual relations and that they had taken place with her consent, exactly as she herself stated. The state also indicates that the examination of the accused person's body did not make it possible to corroborate what was said by the alleged victim. It claims that the existence of contradictions in the statement provided by the alleged victim, compounded by the absence of evidence that would make it possible to deduce that the person charged did indeed have sexual relations with her without her consent, fully justified the prosecution's decision to request a dismissal of the case.

8. In addition, the state contends that the petitioners, acting as a civil party, were entitled to request the Prosecutor to conduct all the actions they deemed relevant, if they believed there were actions and steps that had to be undertaken by the Office of the Attorney General, although this did not imply that the duty of investigating should be taken over by the civil party. Likewise, the Preparatory Investigation Court declared that the opposition remedy filed by the petitioners was partially well-founded and ordered extending the time-limits for the investigation and ordered additional investigative actions to be undertaken. Likewise, on the basis of the ruling of February 8, 2011, a hearing to bring witnesses face to face was ordered, after which the Prosecutor confirmed his decision to request dismissal of the case. Regarding this, the Criminal Court of Appeals upheld the ruling in a substantiated decision, based on the exclusive duty of the Attorney General's Office to undertake criminal proceedings. Finally, rejection of the cassation appeal was based on the law, because the causes required by law were not established, and the necessary factual grounds were not presented in order to legitimately sustain the establishment of the above-mentioned causes.

9. The state alleges that the actions of the court officers, target of the complaint made by the petitioners, were in accordance with the framework of the Convention, the Constitution, and the law, which have been appraised by the Internal Audit Office, which ruled that there was no reason for launching a preliminary investigation against the prosecutors being complained about, because the grounds for the complaint filed involved challenging the rulings made by the court officers on the basis of the merits of the

case, as well as their functional duties granted to them by law, as a result of which the decisions and actions of said prosecuting bodies did not establish any functional misconducts punishable by law for said office. In addition, it claims that the petitioners insist on challenging in general the bodies in charge of administering justice, without any ties to the case at hand.

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

10. The petitioners filed a criminal complaint on December 11, 2009. They indicate that, on December 17, 2009, the Investigation Court declared that the request for the pre-trial detention of the accused was inadmissible, and this decision was upheld by the Criminal Court of Appeals. On October 1, 2010, the Office of the Attorney General requested the order of dismissal. In view of this, the petitioners filed an opposition remedy on October 25, 2010. Nevertheless, on April 11, 2011, the Prosecution Service ratified the order for dismissal and, on May 5, 2011, by means of ruling No. 21, the Preparatory Investigation Judge ruled to declare that the above-mentioned order was well-founded and that the case would be archived. On August 23, 2011, the Court of Appeals of the Superior Court of Justice of Madre de Dios upheld the dismissal of the proceedings. On September 8, 2011, the petitioners filed a cassation appeal, which was dismissed on September 12, 2011. In addition, the petitioners filed a complaint with the President of the Superior Court of Justice of Madre de Dios, against the prosecutors who had intervened in the case, which was dismissed on January 31, 2012. The state makes no observations about the exhaustion of remedies under domestic law nor does it challenge what is indicated by the petitioners regarding this.

11. The Commission observes that the petitioners filed a criminal complaint against the person accused for the crime of rape against the alleged victim and that, on August 23, 2011, the Court of Appeals of the Superior Court of Justice of Madre de Dios upheld the dismissal of the proceeding and archiving of the case, on the basis of which remedies under domestic law were exhausted. As for compliance with the requirement of meeting the time-limits for the filing, the Commission observes that the final ruling that exhausted the domestic jurisdiction was issued on August 23, 2011 and that the petition was filed on November 29, 2011, that is within the six months set by Article 46.1.b of the Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

12. Based on the elements of fact and law submitted by the parties and the nature of the matter brought before it, the Commission finds that, if proven, the alleged acts of revictimization and the application of gender stereotypes in the assessment of the victim's testimony, in addition to the absence of effective judicial protection, as well diligent realization of certain tests, in the criminal investigation launched as a result of the purported rape perpetrated against the alleged victim when she was 13 years of age, could tend to establish possible violations of Article 5 (humane treatment), Article 8 (fair trial), Article 11 (privacy), Article 19 (rights of the child), Article 24 (equality before the law) and Article 25 (judicial protection) of the American Convention in connection with its Article 1.1, to the detriment of the alleged victim, as well as Article 7 of the Belém do Pará Convention.

## **VIII. DECISION**

1. To declare the present petition admissible in connection with Articles 5, 8, 11, 19, 24, and 25 of the American Convention, in connection with its Article 1.1; as well as Article 7 of the Belém do Pará Convention.

2. To notify the parties of the present decisions; to continue examining the merits of the case; 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 19<sup>th</sup> day of the month of May, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice

President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.