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REPORT No. 121/19
PETITION 356-09
REPORT ON INADMISSIBILITY

JESÚS WILLIAM CÓNDOR ÁVILA
PERU

Approved electronically by the Commission on July 22, 2019

Cite as: IACHR, Report No. 121/19, Petition 356-09. Inadmissibility. Jesús William Cóndor Ávila. Peru. July 22, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Lenin Alex Camiloaga Márquez
Alleged victim:	Jesús William Córdor Ávila
Respondent State:	Peru ¹
Rights invoked:	Articles 1.1 (obligation to respect rights), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 10 (compensation), and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	March 23, 2009
Additional information received at the stage of initial review:	March 31, 2009
Notification of the petition to the State:	October 25, 2012
State's first response:	December 28, 2012
Additional observations from the petitioner:	August 20, 2013
Additional observations from the State:	June 2, 2014
Notification of the possible archiving of the petition:	June 8, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	June 27, 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 (deposit of ratification instrument 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, October 2008
Timeliness of the petition:	Yes, March 23, 2009

V. ALLEGED FACTS

1. According to the petition, Mr. Jesús William Córdor Ávila (hereinafter “Mr. Córdor” or “the alleged victim”) has been a victim of human rights violations by the State of Peru. The petitioner claims the alleged victim’s wrongful prosecution and conviction for an offense against public administration—bribery—, in a trial held contrary to judicial guarantees.

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguirguren Praeli, a Peruvian national, did not take part in the discussion or voting on this petition.

² Hereinafter “Convention” or “American Convention.”

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

2. The petitioner indicates that Mr. Córdor was a legal technician at the Family Courts of the Superior Court of Justice in Lima. On Friday, February 21, 2003, Mr. Carlos Raúl Pari Chávez ("Mr. Pari"), also working at these courts, asked someone for money in exchange for a legal notice in favor of that person. The following Monday, this person came to the court and confronted Mr. Pari, who lied and said that the request for money had been ordered by the person in charge of the area, Mr. Córdor. Although Mr. Córdor denied his involvement in the facts, an investigation was filed. On February 23, 2003, the Attorney General's Office filed a criminal complaint against Mr. Pari and Mr. Córdor. On December 4, 2007, the Superior Court of Justice in Lima ("the Superior Court") sentenced both men to four years to life in prison.

3. The petition states that Mr. Córdor lodged an appeal for annulment with the Supreme Court of Justice ("the Supreme Court") to challenge the trial court's judgment and have the evidence reassessed, in accordance with the criminal code of procedure in force then. However, according to the petitioner, on May 27, 2008, the Supreme Court merely mentioned the purported factual grounds of the lower court's judgment without considering the claims in the appeal. As a result, this decision was not duly founded either.

4. According to the petitioner, after the trial of May 27, 2008, the alleged victim was deprived of access to the file until January 2009. He claims that access was essential for a well-grounded action for the legal protection of constitutional rights and that when they finally accessed the file, the deadline for filing this remedy had been due.

5. Mr. Córdor claims to be innocent of the charges and that his conviction has violated his human rights. In this regard, he alleges that i) the sentence was not based on conclusive evidence, ii) the Superior Court did not consider the exculpatory evidence submitted by the witnesses, and iii) the authorities reversed the burden of proof by making him prove his innocence.

6. As to the first allegation, the petitioner submits that Mr. Córdor's conviction was based only on Mr. Pari's inconsistent statements and that the testimonies reportedly proving his account of the facts merely reproduced information that Mr. Pari himself had given to these people, in connection with the alleged victim's involvement in the facts. Meaning by this that these people testified to the Superior Court that Mr. Pari had told them that the money request had come from Mr. Córdor. As for the second claim, the petitioner submits that in its judgment, the Superior Court did not examine the testimonies for the defense. In particular, he claims that the Superior Court disregarded the testimony given by one of the magistrates of the Family Courts of the Superior Court who met with Mr. Pari and Mr. Córdor to investigate the facts. Reportedly, in this meeting, Mr. Pari accepted full and sole responsibility for the attributed offenses and asserted that the alleged victim had not taken part in the facts. Regarding the third claim, the petitioner affirms that the Superior Court failed to adjudicate based on conclusive evidence; that, instead, in obliging the alleged victim to prove his innocence, it violated his right to the presumption of innocence.

7. He moreover claims that the conviction was not duly founded. He submits that according to the Superior Court, the alleged victim's criminal liability was based on Mr. Pari's direct, consistent, and repeated statements, which were in turn supported by the statements given by two witnesses and a video recording. However, it is not clear what is meant by Mr. Pari's direct, consistent, and repeated statements, nor are there details on the corroboration procedures.

8. In addition to the violation of judicial guarantees, the petitioner alleges that Mr. Córdor's unjust conviction for malfeasance in office has damaged Mr. Córdor's and his family's physical, mental, and moral integrity as well as ruined the alleged victim's life project.

9. According to the State, the alleged victim wrongly seeks that the Commission work as an instance of jurisdiction for the review and/or appeal of domestic legal proceedings even when these were held in accordance with due process and the respect of the right to judicial protection. It claims that in the criminal action, Mr. Córdor and the plaintiff were equally able to submit evidence. It alleges that he had never questioned the procedural aspect and/or the development of the proceedings nor alleged his deprivation of the right to access justice or to file an appeal. Therefore, it claims that Mr. Córdor seeks that the IACHR work as a fourth instance of jurisdiction. It notes that given the subsidiary and complementary nature of the IACHR,

the alleged victim's dissatisfaction with the domestic courts' judgments may not be analyzed by the Commission.

10. It further indicates that the facts alleged in the complaint do not establish a violation of the rights to humane treatment, personal liberty, fair trial, compensation for miscarriage of justice, and judicial protection. In this regard, it argues that i) in this case, the judgment was a well-founded decision passed by a collegiate court containing the legal and factual elements leading to the alleged victim's conviction; ii) a decision unfavorable to the petitioner's interests does not amount to a denial of justice; iii) imprisonment for enforcing a sentence of deprivation of liberty is not a violation of the alleged victim's right to humane treatment; and iv) as there was no miscarriage of justice, the alleged victim or his family are not entitled to compensation as the petition requests.

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

11. According to the information on the file, an appeal for annulment was filed against the sentence of December 4, 2007, and the Supreme Court ruled on that appeal on May 27, 2008. The petitioner alleges that this decision was notified to the alleged victim on an unspecified date in October 2008. For its part, the State does not refer to the exhaustion of remedies nor to the timeliness of the petition.

12. Based on the foregoing, the IACHR accepts the petitioner's view that the decision of May 27, 2008, was notified to the alleged victim later in October 2008, when domestic remedies were exhausted. In connection with the six months set out in Article 46.1.b of the American Convention, the IACHR notes that regardless of the date of notification in October 2008, the six month's period was due in April 2009 and that the petition was filed in March 2009. Thus, the IACHR finds that the complaint meets the requirements outlined in Article 46.1, paragraphs a and b, of the Americana Convention.

VII. ANALYSIS OF COLORABLE CLAIM

13. In this case, the petitioner alleges that i) Mr. Córdor was criminally convicted for committing bribery, based on the mere, unproven accusation by a codefendant; ii) there was proof that Mr. Córdor was not involved in the fact in question, but the judicial authorities disregarded it; iii) both the conviction by the Superior Court and the Supreme Court's decision on his appeal were not duly founded; iv) the authorities reversed the burden of proof. In his appeal, Mr. Córdor informed the Supreme Court that the trial court had not analyzed the inconsistencies in the testimonies nor considered the exculpatory evidence, and that in the appealed judgment it had failed to rule and/or adjudicate on his criminal responsibility in due manner. In his appeal, Mr. Córdor specified those inconsistencies and the exculpatory evidence that had not considered.

14. The Commission notes that in the judgments of first and second instances of jurisdiction, the authorities referred to Mr. Pari's statements incriminating the alleged victim and to the evidence supporting this testimony. It also notes that in their decisions, the authorities considered the statements rendered by other witnesses which, according to the alleged victim, proved his innocence. Therefore, it appears that the judicial authorities did analyze the evidence that the alleged victim deems exculpatory, that they regarded it differently, and that his conviction was not based on an unproven accusation by a codefendant.

15. Additionally, in the sentence, there is nothing to indicate a reversal of the burden of proof because the authorities considered the evidence of the accusation—declared proven—and the alleged victim's statements, which were declared unproven as "adequate supporting evidence." The above consideration indicates that the authorities did take into account the available evidence (both incriminating and exculpatory evidence) and that the conviction was based not on a purported lack of exculpatory evidence, but on the prevalence of incriminating evidence ruled proven. Likewise, these considerations also demonstrate that the resolutions by the courts were well-founded.

16. Based on the foregoing, the IACHR believes that the alleged victim is dissatisfied with the national courts' assessment of the evidence and that his petition seeks a reassessment of the evidence by the

Commission. However, the Commission reiterates that it is not to the IACHR to rule on the guilty or innocent verdict of a defendant or a person accused in a criminal action or to undertake a reassessment of the evidence. Therefore, the Commission rules that the facts alleged in this petition do not tend to establish a violation of the alleged victim's human rights and that the petition is inadmissible.

VIII. DECISION

1. To find the instant petition inadmissible; 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.

Approved by the Inter-American Commission on Human Rights on the 22nd day of the month of July, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.