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REPORT No. 135/25
PETITION 1961-15
ADMISSIBILITY REPORT

PEDRO ANTONIO FAJARDO VÉLIZ
PERU

Electronically approved by the Commission on July 14, 2025.

Cite as: IACHR, Report No. 135/25. Petition 1961-15. Admissibility. Pedro Antonio Fajardo Veliz.
Peru. July 14, 2025.

I. PETITION DETAILS

Petitioner:	Modesto Bernardo Murillo Reyes and Diana Fajardo Vega
Alleged victim :	Pedro Antonio Fajardo Véliz
Respondent State:	Peru
Rights invoked:	Articles 7 (personal liberty), 8 (right to a fair trial), 9 (principle of legality), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 18, 2015
Additional information received during the study stage:	11 February 2016, 2 January 2017, 14 September 2017 and 2 April 2018
Notification of the petition to the State:	September 5, 2019
The State's First Response:	December 31, 2019
Additional Observations of the Petitioner:	February 20, 2020, October 26, 2020, November 28, 2021, and April 27, 2022
Additional observations by the State:	August 25, 2020, April 13, 2021 and September 2, 2022

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>:	American Convention (deposit of the instrument of ratification made on July 28, 1978)

IV. DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, CHARACTERIZATION, EXHAUSTION OF DOMESTIC REMEDIES AND TIME LIMIT FOR SUBMISSION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible:	Articles 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in relation to Article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. POSITION OF THE PARTIES**The petitioner**

1. The petitioners allege that the State violated the rights of Pedro Antonio Fajardo Véliz (hereinafter also "Mr. Fajardo" or "the alleged victim") in a criminal proceeding for the crime of aggravated robbery, as well as in subsequent judicial proceedings that increased his sentence from three to ten years of

¹ Hereinafter, "the Convention" or "the American Convention."

² The observations of each party were duly forwarded to the opposing party.

effective imprisonment. They maintain that that conviction was based on an erroneous and arbitrary interpretation of the facts.

2. The events originated on March 5, 2005 when the alleged victim participated with other neighbors in an act of recovery of a lot of land allegedly usurped by a lady, who would have occupied a space reserved as a communal green area. During this collective action, a third party unrelated to the neighborhood conflict intervened, who began to take photographs of the event with a personal camera. The petitioners allege that after a brief struggle, the neighbors snatched the camera from the aforementioned individual and handed it over to Mr. Fajardo Véliz, and that he subsequently voluntarily returned it to the police, as stated in a record of surrender.

Criminal conviction

3. As a result of this incident, the alleged victim was criminally prosecuted for the crime of aggravated robbery on the grounds that he had misappropriated the camera. Thus, on September 30, 2008, the Permanent Criminal Chamber of Lima Norte sentenced him in the first instance to three years of imprisonment, with execution suspended for two years, subject to rules of conduct. However, following a challenge by the senior prosecutor, on February 12, 2010, the Permanent Criminal Chamber of the Supreme Court annulled that sentence on the grounds that the principle of proportionality had not been respected in the imposition of the sentence, and that the facts were more serious. Consequently, it issued a new sentence in which it increased the penalty to ten years of effective imprisonment and set a civil reparation of five hundred nuevos soles. The petitioners consider that this decision was disproportionate, lacking sufficient reasoning, and based on an erroneous and subjective interpretation of the facts.

Habeas corpus proceedings

4. In response, they allege that the alleged victim's representation filed a habeas corpus petition against the Supreme Court justices, alleging violation of due process, personal liberty, and effective judicial protection. In response, on April 24, 2014, the Seventh Specialized Criminal Court declared it well-founded, considering that the sentence that increased the sentence in the second instance did not contain adequate reasoning, and lacked reasonableness and proportionality. For this reason, he annulled the conviction and ordered a new trial before a different court.

5. However, the Attorney General of the Judiciary appealed this last decision, and on August 5, 2014, the Permanent Criminal Chamber with Free Prisoners of Lima Norte – acting as a constitutional chamber – revoked it, stating that "*even when [the decision of the second instance] is brief or concise, it gives reasons that are sufficient to justify the decision to increase the quantum of the sentence; therefore, there is a due judicial reasoning, which is also not disproportionate or unreasonable [...]*", since it imposed a penalty provided for in the law. In response, Mr. Fajardo Véliz filed an appeal for constitutional grievance, but on September 21, 2015, the Constitutional Court of Peru declared it inadmissible, arguing that it was not a matter of constitutional relevance or a manifest violation of fundamental rights.

6. Finally, on November 4, 2016, Mr. Fajardo entered a prison. In their last communication of 2022, the petitioners reported that he was still in detention.

Closing arguments

7. Based on the factual considerations set forth above, the petitioners argue that the judicial proceedings against Mr. Fajardo Véliz committed serious errors of fact and law, particularly with regard to the legal characterization of the facts and the imposition of a disproportionate penalty. They argue that there was never any malicious intent to appropriate the victim's camera, and that his conduct was improperly classified as aggravated robbery, without duly analyzing whether there was intent or whether the facts met the elements of a criminal offence. He argues that he was convicted on the basis of a form of strict liability proscribed by the Peruvian criminal system, and that the higher courts failed to properly examine the evidence presented. Finally,

they add that the injured party did not suffer serious damage, that the camera was returned, and that the facts did not put the life or integrity of the complainant at risk.

The Peruvian State

8. For its part, the State replies that the Commission lacks material competence to analyze the present case, since the petition is based on the alleged violation of constitutional norms and provisions of the Peruvian Criminal Code, such as Articles II, VII, and VIII of the Preliminary Title, which do not constitute international human rights treaties. Although it recognizes that allegations can be inferred in relation to Articles 8(1) and 9 of the Convention, it maintains that no facts have been identified that support the establishment of a violation of such rights.

9. It also alleges that the petitioners did not exhaust domestic remedies, since they did not file an appeal for review of their judgment against their conviction in the second instance. It affirms that the IACHR has already considered that such a procedural remedy is suitable in other cases, and has declared that the requirement of Article 46(1)(a) of the Convention has been met after the use of this remedy. It also adds that if it considered that the matter should have been analyzed by a justice of the peace because the alleged victim had only committed a misdemeanor, they could file preliminary objections or a recusal during the criminal proceedings. In a similar vein, he states that they also had criminal proceedings available to them if they thought that the authorities in charge of the case acted with malice. In view of the foregoing, he requests that this claim be declared inadmissible.

10. On the other hand, Peru argues that the petitioner intends for the IACHR to act as a court of appeal or "fourth instance," in contravention of its subsidiary mandate. It argues that all the contested judicial decisions were issued by competent national courts in the context of a regular process, in which the rights of the defence and the principle of legality were guaranteed. It states that the judicial authorities properly evaluated the evidence and that the increase in the sentence to ten years in prison was a reasoned decision and within the legal margins, in response to the appeal for annulment filed by the Public Prosecutor's Office.

11. With respect to the criminal proceedings and the increase in the sentence from three to ten years in prison, the State maintains that the modification of the sentence was a valid decision, adopted by the Supreme Court in the exercise of its jurisdiction pursuant to Article 300.3 of the Code of Criminal Procedure, which allows the penalty to be increased when it is not in accordance with the seriousness of the crime. It specifies that the increase was requested by the Public Prosecutor's Office through a duly substantiated appeal for annulment, and that the Court validly considered that the facts – including the participation of the accused in an act of collective aggression and the violent robbery of a camera from the injured party – were sufficiently serious to justify the sentence imposed.

12. With respect to the constitutional actions filed, the State indicates that the petitioner had access to habeas corpus, whose favorable judgment was later revoked by the First Criminal Chamber for Free Prisoners of Lima Norte, and confirmed by the Constitutional Court, which considered that the controversy had no constitutional relevance and that the challenged decisions did not violate fundamental rights. According to the State, this process also fully respected procedural guarantees.

13. With respect to the allegations of violation of the principle of legality, Peru maintains that the conduct imputed to the petitioner – the seizure of a camera, a mobile phone, and cash by force and with the participation of third parties – is clearly classified as aggravated robbery, without there having been any analogy or objective liability, as the petitioner asserts. It adds that the Supreme Court's ruling explained in a reasoned manner the reasons for aggravating the sentence and that it was not an arbitrary or disproportionate decision.

14. For the reasons set forth above, the State concludes that no violations of the right to due process or the principle of legality have been proven, and that the only real reason for the petition is the petitioner's disagreement with the jurisdictional decisions adopted in the domestic courts, which would not

authorize the intervention of the inter-American system. Consequently, he requests that the petition be declared inadmissible pursuant to Article 47(b) and (c) of the American Convention.

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

15. The Commission notes that the main purpose of this petition is to question the criminal conviction of Mr. Fajardo Véliz, and in particular the increase in his sentence. In order to exhaust domestic remedies, the alleged victim used the habeas corpus route, obtaining a final resolution from the Constitutional Court on September 21, 2015.

16. However, the Peruvian State questions that Mr. Fajardo Véliz did not file an appeal for review of his sentence against his conviction in the second instance; and that it did not activate other suitable available channels, so that the provisions of Article 46(1)(a) of the Convention would not have been satisfied.

17. In this regard, the Commission reiterates that the requirement of exhaustion of domestic remedies does not imply that the alleged victims have the obligation to exhaust all possible remedies available to them, since if the *latter* "raised the issue through one of the valid and appropriate alternatives according to the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international norm is fulfilled."³ Based on this, the Commission notes that in this case the alleged victim opted for an appropriate channel to directly challenge his conviction and increased sentence, without there being any indication that such a mechanism was used without complying with any requirement required by domestic law. On the contrary, the Commission appreciates that with this action Mr. Fajardo Véliz provided the State with the opportunity to resolve this situation through its internal mechanisms.

18. For the reasons set forth above, the Commission understands that the requirement of prior exhaustion of domestic remedies, set forth in Article 46(1)(a) of the Convention, is met in the instant case. Likewise, since the petition was filed on November 18, 2015, it also complies with the deadline provided for in provision 46.1.b) of said treaty.

VII. ANALYSIS OF COLORABLE CLAIM

19. In this regard, the Commission reiterates that the criterion for evaluating the admissibility phase differs from that used to rule on the merits of a petition; at this stage, the IACHR must carry out a *prima facie* evaluation to determine whether the petition identifies the basis for the possible or potential violation of a right guaranteed by the Convention. but not to establish the existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis that does not imply prejudging the merits of the case. For purposes of admissibility, the Commission must decide whether the alleged facts may constitute violations of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "manifestly out of order," pursuant to Article 47(c) of the American Convention.

20. According to the inter-American standard, any judicial decision that imposes or aggravates a custodial sentence must be duly motivated, in order to guarantee the right to due process and judicial protection. In the present case, the petitioners contend that the conviction imposed for the crime of aggravated robbery to the detriment of the alleged victim violated his rights, because it was excessively punitive and lacked adequate motivation. In this regard, the Commission observes that the reasoning of the Permanent Criminal Chamber of the Supreme Court was extremely succinct, limiting itself to pointing out that there were no mitigating circumstances in favor of the accused. Based on this, and without *prima facie* evidence of the use of other arguments or justifications, the sentence was increased by seven years of imprisonment.

³ IACHR, Report No. 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas et al., Retirees of the Venezuelan Aviation Company VIASA, Venezuela, October 15, 2004, para. 52.

21. In line with the foregoing, the Inter-American Court of Human Rights has interpreted that the scope of the State's obligation to provide a judicial remedy, contained in the text of Article 25 of the Convention, is not limited to the mere existence of formal courts or procedures, but that the State must also adopt positive measures to ensure that these remedies are effective in settling whether there has been a violation of human rights and provide for the possible reparation⁴. In the instant case, the Commission considers it pertinent to analyze whether Mr. Fajardo Véliz had an effective and ordinary mechanism to be heard and whether the domestic courts issued a reasoned decision regarding the increase in his sentence in the face of the sentence initially imposed on him.

22. By virtue of the foregoing, and in view of the apparent lack of reasons for the increase in a custodial sentence, the Commission considers that the petitioners' allegations merit an analysis of the merits. If the petition's assertion is corroborated, the facts could constitute possible violations of Articles 7, 8, and 25 of the American Convention, in relation to Article 1(1) thereof.

23. With respect to Article 9 (principle of legality) of the American Convention, the Commission considers that the petitioner does not provide arguments or information that would make it possible, *prima facie*, to identify that its possible violation is internationally attributable to the Peruvian State.

24. Finally, it should be recalled that the Commission does not constitute a fourth instance that can make an assessment of the evidence regarding the possible guilt or not of the alleged victim in the instant case. The purpose is not to determine the innocence or guilt of Mr. Fajardo Véliz, but to define whether or not the judicial authorities have affected obligations stipulated in the Convention, in particular the duty to state reasons, the principle of presumption of innocence, judicial guarantees, and the right to judicial protection.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 7, 8, and 25 of the American Convention; and

2. To declare the present petition inadmissible under Article 9 of the Convention; and

3. To notify the parties of this decision; to continue with the analysis of the merits of the matter; and 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 14 days of the month of July, 2025. (Signed:) José Luis Caballero Ochoa, President; Andrea Pochak, First Vice President; Arif Bulkan, Second Vice President and Edgar Stuardo Ralón Orellana, Commissioners.

⁴ Inter-American Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C No. 63, para. 237, and *Case of the Garifuna Community of Punta Piedra and its Members v. Honduras*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of October 8, 2015, Series C No. 304, para. 232