

Institution:	Inter-American Commission on Human Rights
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Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Miriam Larrea Pintado v. Ecuador
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated:	23 February 2005
Citation:	Larrea Pintado v. Ecuador, Petition 12.238, Inter-Am. C.H.R., Report No. 8/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: Alejandro Ponce Villacis
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I. SUMMARY

1. The present report addresses the admissibility of petition 12.238, opened by the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission” or “IACHR”) pursuant to the receipt of a petition submitted on December 7, 1998. The petition was filed by Miriam Larrea Pintado (hereinafter “the petitioner.”) against the Republic of Ecuador (hereinafter “Ecuador” or “the State”) accusing it of impeding access to the judicial remedies provided by domestic legislation for the protection and reparation of her rights that have allegedly been violated. Ms. Larrea Pintado is represented by Dr. Alejandro Ponce Villacís.

2. The petitioner contends that the State is responsible for denying Ms. Miriam Larrea Pintado the right to effective judicial protection and guarantees, as recognized in Articles 8 and 25, of the American Convention on Human rights (hereinafter the “Convention” or the “American Convention”), all in relation to the general obligation set forth in Article 1(1) to respect and ensure the rights recognized in that treaty. She maintains that the facts denounced also give rise to violation of the right to petition, guaranteed by Article XXIV, of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration” or “Declaration”).

3. The State, for its part, contends that the petitioner has not exhausted the domestic legal avenues available, and requests that the Commission reject the petition because it does not meet the requirements set forth in Article 46(1)(a) of the Convention.

4. The Commission concludes in the instant report, without prejudging the merits of the case, that the petition is admissible in accordance with Articles 46 and 47 of the Convention, and that it will continue with its analysis in respect of the alleged violations of Articles 8(1), 25 1(1) and 2 of that instrument. It further decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

5. On December 16, 1999, the Commission initiated the processing of the petition by transmitting its pertinent parts to the State and requesting information in response within 90 days. The petitioner was informed accordingly by note of the same date.

6. By note dated April 6, 2000, the State submitted information regarding Ms. Larrea Pintado. The pertinent parts were transmitted to the petitioner on June 1, 2000, with a deadline of 45 days to present her observations. The State responded to the allegations in the petition and submitted that the petitioner had not exhausted domestic remedies by a communication dated July 6, 2000. The pertinent parts were forwarded to the petitioner on August 28, 2000, with the request that any observations be submitted within 30 days.

7. On November 29, 2000, the petitioner filed their observations to the State's response. The pertinent parts were transmitted to the State on May 30, 2001, with a deadline of 30 days to present any observations requested. By note dated August 29, 2001, the State filed its response, the pertinent parts of which were submitted to the petitioner on September 26, 2001, with a request to submit any observations within 30 days. The petitioner has not presented any further observations.

8. On October 27, 2003, the Latin American Association for Human Rights (Asociacion Latinoamericana para los Derechos Humanos ALCHI) asked the Commission to admit Ms. Larrea Pintado's petition. By a brief note dated January 28, 2004, Ms. Larrea Pintado reiterated her request to declare the present petition admissible. This note was transmitted to the State on March 7, 2004.

III. POSITION OF THE PARTIES

A. The Petitioner

9. The information presented by the petitioner and confirmed or not contested by the State, Ms. Larrea Pintado was held in preventive detention for one year, five months, and twenty-five days, from November 11, 1992 to May 6, 1994. She was arrested pursuant to an order for preventive detention issued against her by the Fourth Criminal Judge of Pichincha on November 11, 1992. On that day, the Fourth Criminal Judge formally charged Ms. Larrea Pintado with the offense of fraudulent transfer of property. While the criminal trial was in progress, the petitioner filed a writ of habeas corpus with the Supreme Court of Justice, and on May 6, 1994, the President of the Supreme Court of Justice released Ms. Larrea Pintado.

10. The criminal trial against Ms. Larrea Pintado for the offense of fraudulent transfer of property commenced on August 16, 1993, and concluded on October 31, 1994, with an acquittal. The acquittal was confirmed by Third Chamber of the Superior Court in Quito, on March 20, 1996, and then affirmed by the Second Chamber of the Supreme Court on February 4, 1997.

11. On May 8, 1998, the petitioner lodged a petition with the Attorney General of the State to secure compensation in the amount of 20 million sucres for the damages and injuries she suffered as a consequence of being preventively detained for a period of 18 months. The Attorney General of the State has not replied to the claim submitted by Ms. Larrea Pintado.

12. On June 6, 1998, the petitioner filed a suit against the State seeking damages for the harm caused as a result of being held under preventive detention with the First District Administrative Tribunal. On July 13, 1998, the First District Administrative Tribunal dismissed the petitioner's complaint on the grounds that it lacked competence. The petitioner appealed this decision to the Administrative Chamber of the Supreme Court, and on July 20, 1998, the appeal was denied by the First District Administrative Tribunal on July 20, 1998. In response, the petitioner filed a "recurso de hecho" with the Administrative Chamber of the Supreme Court on July 22, 1998. The proceedings culminated with the dismissal of this appeal by the First District Administrative Tribunal on July 24 of the same year.

13. The essence of the complaint is that the State failed to provide the petitioner an effective recourse and violated her right to a competent tribunal for the determination of her rights. Although the petitioner alleges that she was illegally detained for a period of 18 months, she does not allege a violation of the right to personal liberty, guaranteed by Article 7 of the Convention. According to the petitioner, the illegality of her detention is demonstrated by the order of release issued by the Supreme Court in response to the writ of habeas corpus she presented, and by the subsequent acquittal for the crime of fraudulent transfer of property. As a result of the foregoing, the petitioner contends that the State is responsible for the damages arising as a result of being held under preventive detention.

14. The petitioner reports that on the day her detention was ordered, she was separated from her child who at the time was less than one year old. She claims that during her detention she was held in a prison cell that lacked water, electricity, sanitation services, that she denied a presumption of innocence, and that her visitors were excessively restricted. The petitioner claims that on account of the separation from her child and the dreadful prison conditions, she developed a severe depression for which she had to seek professional treatment. The petitioner reports that she incurred substantial costs for treating her depression, and Ms. Larrea Pintado contends that she should not be expected to bear these costs considering her preventive detention was illegal. The petitioner further alleges that the preventive detention and criminal trial ordered against her terminated her career as a banker for 18 years and destroyed her family structure.

15. As a result of this, on May 8, 1998, the petitioner filed a complaint with the Attorney General of the State seeking payment of damages for the harms caused as a result of being illegally deprived of her liberty. The petitioner adds that since she received no reply from the Attorney General she submitted a request for the application of the administrative silence rule to her case. This rule provides that if a public official fails to respond to a petition lodged by a

citizen within a period of fifteen days, his silence shall be taken as constituting tacit acceptance. Nevertheless, the State at no time contacted the petitioner. The petitioner contends that because the Attorney General either failed or refused to process her complaint, her right to judicial protection has been violated.

16. Due to the Attorney General's silence, the petitioner indicates that she filed a suit against the State in the First District Administrative Tribunal to secure indemnification. The petitioner alleges that dismissal of her case on the grounds that the First District Administrative lacked competence, violated her right to access the courts. In support of this allegation, the petitioner refers to the Supreme Court decision of December 5, 1997, in which it held that the Administrative Tribunal had competence to hear all civil or administrative trials based upon actions taken by the State. The petitioner further alleges that the State violated her right to judicial protection because the remedies she pursued were denied without an examination of the merits.

17. The petitioner maintains that she has satisfied the admissibility requirements established in the American Convention and the Commission's Rules of Procedure. The petition sets forth that domestic remedies were exhausted by virtue of the State's failure to respond to the claim lodged by the petitioner with the office of the Attorney General, and with the dismissal of the petitioner's appeal and "recurso de hecho."

18. In response to the State's argument on the failure to exhaust the appropriate remedies, the petitioner argues that the civil remedy against a judge for judicial error put forth by the State is not an adequate or effective remedy because it is a personal suit against a judge or magistrate. The petitioner explains she has a complaint against the State, not the judge who ordered her preventive detention. As to the "recurso de apelación" remedy suggested by the State, the petitioner points out that this remedy was pursued and denied without reason.

B. The State

19. In its reply of July 6, 2000, the State alleged that the petition is inadmissible on the grounds that the petitioner did not exhaust the adequate remedies provided by domestic legislation.

20. Article 46 of the American Convention provides that admission of a petition 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". The purpose of this requirement is to afford the State the opportunity to settle disputes within its own legal framework. Therefore, the State requests that the instant petition be declared inadmissible.

21. The State argues that the petitioner has not exhausted the remedies of domestic jurisdiction, because the appropriate remedy is a civil action against the judge or magistrate for the judicial errors arising from the alleged inappropriate administration of justice. The State maintains that the recourse pursued by the petitioner before the First District Administrative Tribunal was not the appropriate remedy to protect and restore the rights that were alleged violated. The State contends that the petitioner's suit seeking damages for judicial error or

unwarranted delay, constitutes a civil action, and as such is expressly excluded from the competence of Administrative Tribunals under the Law on Jurisdiction of Administrative Tribunals (La Ley de la Jurisdicción Contencioso Administrativa).

22. The State further argues the office of the Attorney General is not a suitable remedy to address the alleged infringements of the petitioner's rights. The State notes that the purpose of the Attorney General is to intervene on behalf of public interests, as either plaintiff or defendant, in defense of the State and its institutions. The State maintains that the office of the Attorney General is not a court of law, and its powers and functions do not include judging actions carried out by either state agents or private citizens. The State holds that the Attorney General is neither competent nor responsible for the alleged violations, and neither is it the right body for making compensation payments.

23. With respect to the petitioner's demand to recover compensation for damages caused by her allegedly unjustified imprisonment, the State contends that the appropriate remedy to correct the errors committed by the lower courts and to protect the petitioner's interests has not been exhausted. The State indicates that it has civil responsibility for the judicial errors arising from the inappropriate administration of justice, as set forth in Article 22 of the Ecuadorian Constitution. The State notes that it also has a right of recovery with respect to the judge or official involved, thus suing the judge or magistrate responsible for the mistake for damages is a possibility. The State quotes Articles 1031 and 1036 of the Ecuadorian Civil Code, which allow civil action against a judge or magistrate who, in the performance of his duties, causes economic harm to the parties in a trial, or to third parties, through an inappropriate administration of justice. If the suit were admitted, the State notes, the judgment would specifically require the payment of both damages and costs. If applicable, the corresponding criminal proceedings would be ordered. The State believes that the petitioner should have filed suit against the judges or magistrates she believes responsible for the alleged illegal detention. In addition, the State alleges that remedy of appeal "recurso de apelación" was another effective remedy available to the petitioner. Consequently, the State holds the petitioner did not exhaust the domestic remedies applicable to her compensation claim.

24. The State indicates, moreover, that the petitioner has had free access to the domestic remedies and that the State has guaranteed the full and free exercise of the judicial guarantees in favor of the petitioner.

IV. ANALYSIS OF ADMISSIBILITY

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

25. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its victim, an individual person with respect to whom Ecuador had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Ecuador has been a party to the American Convention since depositing the corresponding instrument of

ratification on December 28, 1977. The Commission therefore has competence *ratione personae* to examine the complaint.

26. The Commission has competence *ratione loci* to deal with the petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The Commission has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Convention was already in force on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae*, since the petition denounces violations of human rights that are protected by the American Convention.

A. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

27. The petitioner argues that domestic remedies were exhausted by virtue of the Attorney General's failure to respond to her petition and by the dismissal of the appeals filed with the First District Administrative Tribunal of the Administrative Contentions on July 20, 1998, and July 24, 1998.

28. On this point, the State contends that the adequate domestic remedies were not exhausted, and it points to the right of recovery against the judge or magistrate involved, as the appropriate, effective remedy to be exhausted by the petitioner, and recourse of appeal.

29. As for the distribution of the burden of proof for establishing whether the rule requiring exhaustion of local remedies has been met, the Commission reiterates that a State alleging non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.[FN1] If the State alleging the failure to exhaust local remedies proves that there are domestic remedies that should have been used, the petitioner will have to show that those remedies were exhausted or that one of the exceptions provided for in Article 46(2) of the Convention obtains. The Inter-American Court has ruled that "It must not be rashly presumed that a State Party to the Convention has failed to comply with its obligation to provide effective remedies." [FN2]

[FN1] Inter-American Court of Human Rights, Velázquez Rodríguez Case, Preliminary Objections, Judgment of July 29, 1988.

[FN2] Inter-American Court of Human Rights, Velásques Rodríguez Case, Judgment of July 29, 1988, para 20.

30. The case in question involves a dispute over the civil remedy the alleged victim could have filed against the judge or magistrate for judicial error. It is up to the Commission to determine whether that remedy had to be exhausted in order for the alleged victim to have access to an international body.

31. To determine whether a remedy is “adequate” and, by extension, whether there is a probability that relief for the violations claimed by the alleged victim will be granted, the Commission must examine whether that remedy is set forth in the domestic laws in such a way that it can be used to remedy the violations being alleged. For purposes of admissibility, the standard of analysis used for the *prima facie* assessment of the adequacy and effectiveness of the remedies under domestic law is not as high as the one required to determine whether a violation of Convention-protected rights has been committed.

32. In this regard, the Commission notes that the essence of the complaint is that petitioner was impeded access to the domestic remedies that would permit the petitioner to sue the State for the damages arising from the alleged illegal deprivation of her liberty.

33. In the instant case, the remedy suggested by the State offers the right to recovery against a judge, not the State. The Commission has stated that there is a difference between the personal responsibility of a State officer or agent, and the responsibility of the State itself, and the petitioner is required only to exhaust the remedies intended to establish State responsibility. Consistent with international human rights law, the Commission has held that the obligation to remedy human rights violations committed by its agents directly corresponds to State, and not to its agents. Moreover, in several occasions, the Commission has indicated that Member States’ international obligation to compensate victims of human rights violations committed by their agents is one of its direct, main responsibilities, i.e. it is a direct responsibility of the State and does not require that victims first take personal action against those agents, regardless of the content of domestic provisions on the matter.^[FN3] In the present case, the State has not indicated what remedies are available for suits against the State or demonstrated the effectiveness. Therefore, the Commission considers that the State has failed to show that judicial remedies remain to be exhausted.

[FN3] IACHR, Zulema Tarazona Arriate, Norma Teresa Pérez Chávez y Luis Alberto Bejarano Laura, Report N° 83/01, Perú.

34. According to the principles set forth above, the Commission finds that the remedy mentioned by the State is not relevant for purposes of Article 46(1) of the Convention, in so far as it did not permit the petitioner to claim her rights against the State.

2. Time period for submission of the petition

35. In accordance with Article 46(1)(b) of the Convention, a petition must be lodged within a period of six months from the date on which the complaining party was notified of the final judgment at the domestic level.

36. In the present matter, because the First District Administrative Tribunal dismissed the petitioner’s final appeal on July 24, 1998, and the petition was submitted on December 7, 1998, the Commission concludes that the present petition was filed in compliance with the six-month time limit.

3. Duplication of proceedings and res judicata

37. Article 46(1)(c) sets forth that admission of a petition is subject to the requirement that the subject “is not pending in another international proceeding for settlement,” and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which “is substantially the same as one previously studied by” it “or by another international organization.” In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

4. Characterization of the facts alleged

38. In the present case, it is necessary to emphasize that although the petitioner alleges she was illegally detained for a period of 18 months, she does not allege a violation of the right to personal liberty, guaranteed by Article 7 of the Convention. Likewise, the petitioner does not denounce the conditions in which she detained or the length of time held under preventive detention. Accordingly, the Commission is not requested to rule on the legitimacy or duration of the preventive detention nor the conditions of detention, in so far as that these are not the reasons for the petition. Moreover, it has not been alleged in the petition that a preventive detention followed by an acquittal requires that the State indemnify the person in these circumstances.

39. Instead, the petitioner alleges violations of the right to judicial guarantees and the right to judicial protection recognized in Articles 8 and 25, respectively, of the American Convention, in connection to Article 1(1) of the Convention. The Commission considers that the petitioner’s allegations relating to the inexistence of judicial remedies to petition for the patrimonial responsibility on behalf of the State for violations to one’s rights, could constitute a violation of Articles 8 and 25 of the Convention, in connection to Article 1(1) of the same instrument. Particularly, the Commission notes that Article 25 establishes “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention.” Furthermore, Article 23 of the Constitution of Ecuador in effect at the time of the events established that “The State and additional bodies of the Public Sector shall be obligated to indemnify the persons for the injuries sustained as a consequence of public services or of the actions of its officials and employees in the performance of their duties.”

40. Considering that this proceeding is presently in the admissibility stage, and without prejudging the merits of the petition, the Commission notes that the petitioner argues that there is no remedy provided for by domestic legislation to effectuate the right provided for by Article 23 of the Constitution in compliance with that required by Article 25 of the Convention. The State, on its part, up to this point, has only indicated the availability of remedies to establish the personal, patrimonial responsibility of its judicial agents but not a remedy that permits an action for the civil responsibility of the State.

41. The Commission considers that the debate over the existence of violations of Articles 8 and 25 of the American Convention in connection to Article 1(1) must be examined when the merits of the case are analyzed. For admissibility purposes, the Commission concludes that the

petition does state facts that tend to establish violations of human rights and that the petition is not obviously groundless or patently out of order.

V. CONCLUSIONS

42. The Commission concludes that it is competent to take cognizance of the instant case, and that the petition is admissible with respect to alleged violations of Articles 8(1), 25, 1(1), and 2 as defined above, pursuant to Articles 46 and 47 of the American Convention.

43. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible with respect to alleged violations of the rights recognized in Articles 8(1) and 25, in relation to Articles 1(1) and 2 of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights on February 23, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners: Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez y Florentín Meléndez.