

REPORT No. 142/10
CASE 11.513
ADMISSIBILITY
MARÍA ZAMBRANO
ECUADOR
November 1, 2010

I. SUMMARY

1. On November 8, 1994 the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the IACHR,” or “the Inter-American Commission”) received a petition submitted by the Ecumenical Human Rights Commission (CEDHU) (hereinafter “the petitioner”) alleging responsibility on the part of the Republic of Ecuador (hereinafter “Ecuador” or “the State”) for various violations committed to the detriment of Mrs. María Zambrano in the context of a criminal process. It is also reported that Mrs. Zambrano suffered from mental problems and did not receive treatment consistent with that condition.

2. The petitioners allege that the State is responsible for violating the rights to personal integrity, personal liberty, judicial guarantees, and judicial protection established in Articles 5, 7, 8, and 25, respectively, of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) as they relate to the duty to respect and guarantee rights as indicated in Article 1.1 of that convention. In this regard, the petitioners claim that Mrs. Zambrano was arrested without an order from a competent authority; that she was not effectively provided with legal assistance; that despite being diagnosed with mental problems she continued to be held in prison centers; and that both the criminal process in general and pretrial detention continued beyond what was reasonable.

3. For its part, the State has not submitted arguments regarding the admissibility of the petition nor the facts reported. It only submitted copies of judicial proceedings appearing in the criminal file in the case against Mrs. María Zambrano.

4. Without prejudging the merits of the complaint, after analyzing the positions of the parties, and pursuant to the requirements of Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible for purposes of examining the alleged violation of the rights to personal integrity, personal liberty, judicial guarantees, and judicial protection established in Articles 5, 7, 8, and 25 as they relate to Article 1.1 (obligation to respect rights) thereof. The Commission also decides to inform the parties of its decision, publish it, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

5. The Inter-American Commission recorded the petition under No. 11.513 and forwarded the relevant sections to the State on July 18, 1995, allowing it a period of 90 days to submit information in accordance with Article 34 of the IACHR Rules of Procedure then in effect. The State’s response was received on October 27, 1995.

6. During the processing of the petition, communications with additional information were received from the petitioners on August 19, 1996 and May 12, 1997. Additional information was received from the State on January 29, 1997. Through a communication dated February 9, 1999, the Inter-American Commission made itself available to the parties for the purpose of reaching a friendly settlement. In correspondence received on April 12, 1999, the petitioners indicated their consent to this possibility. However, no response was received from the State in this regard.

7. The parties were asked for additional information on September 23, 2005. On September 28, 2009 the petitioners submitted information and indicated their interest in moving ahead with the process. On September 30, 2009, the Commission forwarded this latest brief from the petitioners to the State, granting it a period of one month to submit observations.

8. On November 4, 2009 the State asked for an extension, which was granted on November 18, 2009 for a period of 30 days. However, no response was received from the State.

9. Subsequently, on June 29, 2010, additional information was received from the petitioners. This was forwarded to the State on July 7, 2010 for its observations. However, as of the date of this report, no response has been received from the State.

III. POSITIONS OF THE PARTIES

A. The petitioners

10. The petition indicates that on June 27, 1989 an order to investigate was issued in criminal case No. 575-89-583 filed for the murder of Mrs. Martha Bedón Araujo, indicating as the co-defendant Mrs. María Zambrano (or María Pinargote Zambrano or Marta Zambrano Alava or María Elena Alava Pinargote as she is called indiscriminately in the case file). Pretrial detention was ordered and she was assigned a public defender.

11. The petitioners allege that even though the formal order of pretrial detention was issued on the above-mentioned date, a memorandum dated June 26, 1989 from the Second Police Chief indicates that he issued the arrest warrant after determining that the victim was [already] detained. Thus, the petitioners allege that the arrest was illegal because Mrs. Zambrano was not arrested *in flagrante delicto* and the arrest warrant was issued after she had already been detained.

12. The petitioners indicate that on June 27, 1989 Mrs. Zambrano was called to submit a signed statement. However, the record made of that proceeding indicates that she did not make a statement because she apparently suffered from a mental disturbance.

13. The petitioners point out that on July 3, 1989 the Director of the Social Rehabilitation Center of Esmeraldas informed the judge in the case that the alleged victim appeared to be mentally disturbed because she had reached the point of soiling herself in bed and the fear was that she would become violent. He thus asked the judge to order her transfer to a health care facility for treatment and recovery, given that the criminal center had neither the conditions nor the staff to care for her.

14. On July 4, 1989 the Second Criminal Judge for Criminal Matters was reassigned to the case after the Third Judge recused himself. At the same time, the Second Judge for Criminal Matters confirmed the pretrial detention orders.

15. According to the narration of the alleged facts, on July 5, 1989 the Second Judge for Criminal Matters ordered that Mrs. Zambrano be submitted for a psychiatric evaluation of her mental faculties. Pursuant to this judicial order, two physicians expressed the opinion in their report dated July 7 that Mrs. Zambrano was "suffering from severe mental problems and we thus believe she should be transferred to a psychiatric center for evaluation, diagnosis, and appropriate treatment."¹ The physicians who provide this expert testimony were appointed for the purpose by the judge in the case.²

16. The petitioners claim that even though it was convincingly demonstrated that Mrs. María Zambrano was affected by a mental disability and even though Article 34 of the Penal Code then in effect provided that the mentally ill could not be indicted and the judge in the case must order their admission to a psychiatric hospital, Mrs. Zambrano remained subject to the criminal process as a co-defendant, was held in pretrial detention until November 1994, and was not given any mental health treatment at all. They

¹ The petitioners refer to the expert forensic psychiatric report issued by Drs. Tito Granja and Demetrio Molina, attached to the communication from the petitioners received on June 29, 2010. Annex 1 (No. 9).

² The petitioners refer to the order issued on July 5, 1989 by the Second Judge for Criminal Matters, attached to the communication from the petitioners received on June 29, 2010. Annex 1 (No. 8).

report that during her detention Mrs. María Zambrano was in a state of neglect. For example, they state that in a document dated July 3, 1989 the Director of the Rehabilitation Center of Esmeraldas asked that Mrs. Zambrano be transferred and noted that she had reached the point of soiling herself in bed. In addition, in the psychiatric evaluation performed by the physicians appointed by the judge in the case, the physicians indicate that they encountered someone “with ragged clothes, who smelled bad, was stained with urine and feces, wore no shoes, and wore no underwear.”³

17. Regarding the conduct of the criminal proceeding, the petitioners indicate that on August 12, 1992 the prosecutor in the case refrained from indicting Mrs. Zambrano because he had no evidence or presumptions of culpability against her. Two years later, on March 22, 1994, the Fourth Criminal Judge of Esmeraldas was reassigned to the case, due to the recusal of the Second Criminal Judge. Upon noting that there was no evidence pointing to culpability on the part of Mrs. Zambrano, the Fourth Criminal Judge ordered her immediate release on that same day, sending the order of release to the Director of the Rehabilitation Center of Esmeraldas.⁴ However, the alleged victim was not released, so that in an official letter dated November 21, 1994 the Fourth Judge in Criminal Matters repeated the “Constitutional Order of Release from Prison” that had been sent to the Director of the Social Rehabilitation Center of Esmeraldas eight months earlier on March 22 of that year.⁵

18. Later, on September 15, 1995, the Fourth Judge for Criminal Matters ordered the provisional dismissal of charges against Mrs. María Zambrano, a decision that was upheld by the Superior Court of Justice of Esmeraldas in its ruling of May 10, 1996.⁶

19. The petitioners conclude that even though it was duly demonstrated in the domestic proceeding that Mrs. María Zambrano suffered from mental problems, she never received specialized treatment. On the contrary, she was subjected to a prolonged criminal process and pretrial detention, without being treated in a manner consistent with her condition, contrary to the provisions of the Ecuadoran Penal Code in effect and international standards in the area of mental health, which is alleged by the petitioners to constitute a violation of Article 5 of the American Convention.

20. It is alleged that Mrs. María Zambrano was illegally detained, that she continued to be illegally detained for eight months in 1994 when an order of release was not executed, and that she remained in pretrial detention for more than five years, from June 1989 until November 1994, which would be a violation of the provisions of Article 7 of the Convention. In addition, the petitioners allege that the criminal process in which she was a co-defendant lasted for seven years, from June 1989 until May 1996, when the dismissal of charges against her was upheld, and that this implies a violation of the right to be judged within a reasonable period of time as established in Article 8 of the Convention.

21. In addition, the petitioners report that Mrs. María Zambrano did not have an adequate public defense. In this respect, they state that due to her mental condition and lack of financial resources she never appointed a defense attorney, continuing to anticipate that the public defender assigned to her could act, [although] throughout the entire case he never submitted a single brief in her defense. In addition, the petition alleges that the proceeding for taking Mrs. Zambrano's statement was conducted without the presence of her defense attorney. For this reason, the petitioners believe that Mrs. Zambrano's right to be effectively assisted by counsel provided by the State, as established in Article 8 of the Convention, was violated.

³ The petitioners refer to the expert forensic psychiatric report issued by Drs. Tito Granja and Demetrio Molina, attached to the communication received from the petitioners on June 29, 2010. Annex 1 (No. 9).

⁴ The petitioners refer to the Constitutional Order of Release from Prison issued by the Fourth Court for Criminal Matters of Quinde, Esmeraldas dated March 22, 1994, attached to the communication from the petitioners received on June 29, 2010. Annex 1 (No. 21).

⁵ The petitioners refer to the official letter issued by the Fourth Court for Criminal Matters of Quinde, Esmeraldas dated November 21, 1994, attached to the communication from the petitioners received on June 29, 2010. Annex 1 (No. 24).

⁶ The petitioners refer to the Decision of the Superior Court of Justice of Esmeraldas dated May 10, 1996, attached to the communication from the petitioners received on June 29, 2010. Annex 1 (No. 26).

22. Finally, the petition alleges a violation of the right to judicial protection established in Article 25 of the Convention, based on the fact that the judge in the case did not heed the petitions filed during the process asking that Mrs. Zambrano be transferred to a psychiatric center. Thus, the judicial process did not protect Mrs. María Zambrano against allegedly arbitrary imprisonment under inhumane conditions.

B. The State

23. In its communications, the State has submitted copy of some of the proceedings in the criminal process against Mrs. María Zambrano. However, it has not submitted any arguments regarding the admissibility of the petition or the facts reported by the petitioners.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

24. In principle, the petitioners are authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as the alleged victim an individual with respect to whom the Ecuador State agreed to respect and guarantee the rights established in the American Convention. With respect to the State, the Commission notes that Ecuador has been a State Party to the American Convention since December 28, 1977, the date on which it deposited its ratifying instrument. Thus, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention that took place within the territory of the Republic of Ecuador, a State Party to the Convention.

25. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the facts alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in accordance with generally recognized principles of international law as a requirement for the admission of complaints regarding the alleged violation of the convention. The purpose of this requirement is to allow domestic authorities to become aware of an alleged violation of a protected right and, if appropriate, to resolve it before it is heard by an international body.

27. In the instant case, the petitioners have indicated that criminal proceeding No. 575-89-583, to which Mrs. María Zambrano was tied as a co-defendant, formally ended with respect to her on May 10, 1996 when the Supreme Court of Justice of Esmeraldas upheld the provisional order dismissing the charges against her. Moreover, they claim that by express mandate of the Penal Code it was the duty of the judge in the case, after her mental health status had been established in 1989, to declare that she could not be indicted and to officially order her admission to a psychiatric hospital. They also allege that the procedural conduct of the official public defender of Mrs. Zambrano was characterized by total inaction.

28. For its part, the State did not dispute the allegations made by the petitioners regarding the exhaustion of domestic remedies nor did it refer to other suitable remedies for addressing the alleged violations.

29. Therefore, in view of the context and the characteristics of the instant case, the Commission believes that the domestic judicial remedies were exhausted on May 10, 1996 when the

Superior Court of Justice of Esmeraldas confirmed the provisional dismissal of charges against Mrs. María Zambrano. In addition, the Commission notes that within the framework of the criminal process the authorities knew of the situation now presented to the Commission and had the opportunity, if appropriate, to remedy it.

30. Given its nature and purpose, Article 46.1.a is a provision with autonomous content *vis à vis* the substantive provisions of the Convention. Therefore, the determination regarding the exhaustion of the domestic remedies that are applicable to the case in question should be made prior to and separate from the analysis of the merits of the case, in that it depends on a standard of assessment different from that used to determine the possible violation of Articles 8 and 25 of the American Convention. It should be made clear that the causes and effects of the exhaustion of judicial remedies to which reference has been made will be analyzed in the report that the Commission adopts regarding the merits of the dispute, in order to determine whether there are violations of the American Convention.

C. Deadline for submitting the petition

31. The American Convention establishes that in order for a petition to be admissible by the Commission it must be submitted within a period of six months after the date the alleged injured party was notified of the final decision.

32. In this respect, the IACHR notes that the original petition was received on November 8, 1994 and that the final judicial decision adopted in the criminal process conducted against the alleged victim is dated May 10, 1996. Consequently, the IACHR deems that the petition was obviously submitted within the period established by Article 46(1)(b).

D. Duplication of proceedings and international *res judicata*

33. The case file does not indicate that the subject of the petition is pending settlement in another international proceeding nor that it duplicates a petition already examined by this or any other international body. Therefore, it is appropriate to consider that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

E. Characterization of the alleged facts

34. For purposes of admissibility, the Commission must decide whether the alleged facts could tend to establish a violation of rights as stipulated in Article 47(b) of the American Convention or whether the petition is “manifestly groundless” or “obviously out of order” in accordance with paragraph (c) of that article. The criterion for evaluating these requirements differs from that used to rule on the merits of a petition. The Commission must perform a *prima facie* assessment to determine whether the petition establishes 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 represents a primary analysis that does not entail prejudging the merits of the case.⁷

35. In view of the factual and legal arguments presented by the parties and the nature of the case submitted for its review, the IACHR feels that the facts alleged by the petitioners could tend to characterize possible violations of the rights protected in Articles 5, 7, 8, and 25 of the American Convention as they relate to Article 1(1) thereof.

V. CONCLUSIONS

36. The Commission concludes that it is competent to examine the complaints submitted by the petitioners regarding the alleged violation of Articles 5, 7, 8, and 25 consistent with Article 1(1) of the American Convention with respect to alleged violations committed to the detriment of Mrs. María Zambrano in the context of the criminal process in which she was accused, and that they are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

37. Based on the factual and legal arguments presented above and without implying any prejudgment regarding the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this complaint admissible as regards Articles 5, 7, 8, and 25 in relation to Article 1(1) of the Convention.
2. To inform the Ecuadoran State and the petitioner of this decision.
3. To continue with analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

⁷ Among other precedents, see IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010. para. 46; IACHR, Report No. 10/10, Petition No. 214-08, Admissibility, Koempai *et al.*, Suriname, March 16, 2010. para. 43.

Done and signed in the city of Washington, D.C., on the 1st day of the month of November 2010.
(Signed): Felipe González, President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.