

REPORT No. 154/11
PETITION 12.197
ADMISSIBILITY
RAMÓN ROSENDO ALARCÓN
ECUADOR
November 2, 2011

I. SUMMARY

1. On April 5, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition submitted by José Leonardo Obando Laaz (hereinafter "the petitioner") alleging that the Republic of Ecuador is responsible for the alleged detention without a warrant of Ramón Rosendo Alarcón (hereinafter "the alleged victim") in November of 1994, as well as for the continuation of preventive detention beyond the time period established by domestic legislation and the alleged psychological torture to which he was subjected during the detention.

2. The petitioner alleged that the State was responsible for the violation of the rights to personal liberty, judicial guarantees, and judicial protection established in articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") as related to Article 1(1) of the Convention. For its part, the State argued that the claims of the petitioner were inadmissible as they seek for the Commission to act as a fourth instance due to their disagreement with the judicial rulings handed down domestically.

3. After analyzing the positions of the parties and compliance with the requirements set forth in articles 46 and 47 of the American Convention, the Commission decided to declare the claims of the alleged violation of articles 7, 8, and 25 in connection with Article 1(1) of the American Convention admissible, and it decided to declare inadmissible Article 5 in conjunction with Article 1(1) of the American Convention, to notify the parties, and to order the report published in its Annual Report to the General Assembly.

II. PROCEEDING BEFORE THE COMMISSION

4. The Commission registered the petition under number 12.197 and on August 10, 1999, moved to forward a copy of the pertinent parts to the State, granting a period of 90 days for the presentation of information, pursuant to the Rules of Procedure in force. On October 18, 1999, the State remitted its response, which was forwarded to the petitioner. The petitioner was granted 40 days to present his comments. On October 2, 2010, and on May 24, 2001, the Commission received briefs from the petitioner containing additional information. Those briefs were forwarded to the State for its comments.

5. On September 25, 2001, the IACHR received the observations of the State. Those observations were forwarded to the petitioner for his comments. On April 16, 2009, the Commission asked the petitioner to provide updated information on the matter in question. That information was received on August 5, 2009. On August 28, 2009, the Commission requested updated information from the State on the matter in question. On September 23, 2009, the State requested a deadline extension. The extension was granted by the Commission, though it has not received a response to the request for information.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petitioner alleges that the alleged victim was accused of the murder of Samuel Evaristo Mariño Gamboa, which took place on August 15, 1993. He indicates that on August 17, 1993, the Yagua canton Transit and National Police Precinct, in Guayas province, issued the court order for the investigation, ordered the detention of the alleged victim, and asked the Rural Police to carry out the arrest, as he was a fugitive.

7. He indicates that on October 28, 1993, Guayas Criminal Judge 11 began its hearing of the case and confirmed the order of preventive detention against the alleged victim. He holds that without having been surprised during the commission of any crime, Ramón Rosendo Alarcón was in November of 1994 illegally detained by members of the Ecuadorian police who did not show any warrants or inform him of the reasons for his detention. He alleges that following the detention, the alleged victim was interrogated under psychological pressure, remained in isolation for more than 24 hours, and was not allowed to see an attorney. He indicates that on September 11, 1995, the alleged victim asked Guayas Criminal Judge 11 to be released after having remained in prison for 10 months. The petitioner does not indicate having received a response to that request.

8. He holds that on April 21, 1997, the Seventh Assistant Transit District Attorney of Guayas issued a final district attorney report finding that the behavior of the alleged victim was indicative of the perpetration of murder. He indicates that on December 1, 1998, the public hearing was held in the trial, and on December 15, 1998, the Fourth Criminal Tribunal of Guayas issued a judgment convicting the alleged victim as the perpetrator of the crime of homicide and sentencing him to six years of short-term imprisonment.

9. He alleges that on May 17, 1996, articles 33 and 34 of the Code of Sentence Execution and Rehabilitation were reformed to establish automatic sentence reductions in 180 days per year for those inmates who have been sentenced and those who have not been convicted who show good behavior. He holds that under that reform, the alleged victim should have served only three years in prison. However, he alleges that after being sentenced to six years after already serving five in preventive detention, the State did not immediately grant the reductions established by law.

10. The petitioner alleges that during the detention, the alleged victim became ill with tuberculosis, for which reason he had to be transferred to the Ecuadorian Antituberculosis League where he remained for a period of time.

11. In light of all this, the petitioner alleges that keeping the alleged victim in prison for more than four years between his detention and his sentencing on December 15, 1998; subjecting him to a regime of isolation and psychological pressure; as well as the State's delay in processing the criminal proceeding beyond the time period established in domestic legislation constitute violations of his rights to humane treatment, personal liberty, judicial guarantees, and judicial protection as protected in articles 5, 7, 8, and 25 of the American Convention.

B. Position of the State

12. The State argues that this petition has not complied with the requirement of prior exhaustion of domestic remedies. Regarding this, the State confirms that there is a judgment of the Fourth Criminal Tribunal of Guayas convicting the alleged victim. This judgment was handed down in keeping with the law, independent of whether it was favorable or unfavorable to the claims of the alleged victim. Specifically, the State indicates that the alleged victim could have requested a writ of appeal, cassation, or review, which could have been sought at any moment following the judgment's have become final.

13. Likewise, it holds that the alleged victim had at his disposal the writ of *habeas corpus*, a writ which permits individuals who believe they are being subjected to illegal deprivation of liberty to bring their cases before the Mayor under whose jurisdiction they are being held in order for the Mayor to rule on whether the detention was illegal due to errors of fact or law.

14. Likewise, the State holds that the right to be brought to trial within a reasonable period of time was respected, for which reason a violation of Article 8(1) of the American Convention did not take place. It argues that the proceeding took place in accordance with due process laws and that the alleged victim had free access to the courts, and that at no time was he prevented from exercising his right to a hearing under equal conditions before the competent bodies. In addition, the right to defense was respected at all times. In sum, it requests that the Commission declare the petition inadmissible.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Competence

15. The petitioner is authorized, in principle, by Article 44 of the American Convention to submit petitions before the Commission. The petition indicates as the alleged victim an individual with respect to whom the Ecuadorian State committed to respect and guarantee the rights enshrined in the American Convention. As concerns the State, the Commission indicates that Ecuador has been a State Party to the American Convention since December 28, 1977, the date on which it deposited its ratification instrument. As a consequence, the Commission has *ratione personae* jurisdiction to examine the petition.

16. The Commission is also competent *ratione loci* to hear the petition in that it alleges violations of rights protected in the American Convention that would have occurred within the territory of Ecuador, a State Party to that instrument. 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 when the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae* because the petition reports possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

17. Article 46(1)(a) of the American Convention requires the prior exhaustion of the remedies available in domestic jurisdiction - in keeping with the generally recognized principles of international law - as a requirement for the admission of claims of the alleged violation of the American Convention.

18. Article 46(2) of the Convention establishes that the requirements of prior exhaustion of domestic remedies is not applicable when:

- a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

According to the provisions of the Rules of Procedure of the Commission and to what has been expressed by the Inter-American Court, whenever a State alleges a lack of exhaustion of domestic remedies by the petitioners, it has the burden of identifying which remedies have yet to be exhausted and demonstrating that the remedies that have not been exhausted are "adequate" for rectifying the violation

alleged - namely, that the function of these remedies within the domestic legal system is sufficient for protecting the juridical situation infringed upon.¹

19. In this case, the State argues that the petitioner's claim does not satisfy the requirement of prior exhaustion of domestic remedies set forth in Article 46(1) of the American Convention giving that the remedies of appeal, cassation, and/or review were available to him. For his part, the petitioner indicates that the alleged victim requested release from Guayas Criminal Judge 11 after having remained in prison for 10 months - that is, he questioned his preventive detention. The petitioner does not indicate having received a response to that request. Neither did the State provide information on this.

20. First of all, it should be clarified which domestic remedies must be exhausted in this case. According to the pleadings of the parties, on August 17, 1993, a proceeding was launched that culminated in a guilty verdict on December 15, 1998. In that sense, the Commission observes that the alleged victim had remained in preventive detention for more than four years before he was convicted in December of 1998.

21. Regarding this, the Commission notes that on September 11, 1995, the alleged victim presented a request for freedom before the Judge. However, he has not received a response to his claim. The Commission understands that the request for freedom brought before the Judge would have constituted a suitable remedy. However, the petitioner indicates that the alleged victim has not received a response. Therefore, given the characteristics of this case and the period of time that has passed since the request for the remedy, the Commission finds that the exception set forth in Article 46(2)(c) of the American Convention regarding the delay in a domestic criminal proceeding is applicable, for which reason the requirement of exhaustion of domestic remedies does not apply.

22. Likewise, the IACHR observes that the remedies of appeal, cassation, and review to which the State makes reference in its pleadings could not have been suitable for correcting the prolonged preventive detention to which the alleged victim is said to have been subjected.

23. The invocation of exceptions to the rule of exhaustion of domestic remedies set forth in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth in the Convention, such as the guarantee of access to justice. However, Article 46(2), by its nature and purpose, is a provision whose content is autonomous *vis-a-vis* the substantive provisions of the Convention. Therefore, the determination of whether exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be carried out prior to and apart from the analysis on the merits of the matter, as it depends on a standard of examination that is different from the one used to determine a possible violation of articles 8 and 25 of the Convention. It should be clarified that the causes and affects preventing the exhaustion of domestic remedies will be analyzed in the report adopted by the Commission on the merits of the dispute in order to establish whether violations of the American Convention have taken place.

2. Deadline for submitting the petition

24. The American Convention establishes that for petition to be admissible by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In the claim under analysis, the IACHR has established that exceptions to the exhaustion of domestic remedies apply, pursuant to Article 46(2)(c) of the American Convention. In this regard, Article 32 of the Rules of Procedure of the Commission establishes that in the cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

¹ Article 31(3) of the Rules of Procedure of the Commission. Also see Inter-American Court, *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, paragraph 64.

25. In this case, the petition was received on April 5, 1998, and the facts that are the subject of the claim took place principally between November of 1994 on the date on which the alleged victim was detained and December 15, 1998, when the guilty verdict was handed down against him and after the presentation of the petition. Therefore, in view of the context and the characteristics of this case, the Commission finds that the petition was presented within a reasonable period of time and that the admissibility requirement on the submission deadline is satisfied.

3. Duplication of proceedings and international *res judicata*

26. Article 46(1)(c) of the Convention holds that for a petition to be admitted by the Commission, there is a requirement "that the subject of the petition or communication is not pending in another international proceeding for settlement." Article 47(d) of the Convention holds that the Commission will declare any petition or communication inadmissible when "the petition or communication is substantially the same as one previously studied by the Commission or by another international organization." The case file does not indicate that the issue addressed in the petition is pending before any other international proceeding, nor that it repeats a petition that has already been heard by this or any other international body. Accordingly, the requirements established in article 46(1)(c) and 47(d) of the American Convention have been complied with.

4. Characterization of the alleged facts

27. In view of the elements of fact and law presented by the parties and the nature of the matter under consideration, the IACHR finds that the facts alleged by the petitioner regarding the extended preventive detention of Ramón Rosendo Alarcón could characterize possible violations to the rights to personal liberty, judicial guarantees, and judicial protection as protected by articles 7, 8, and 25, in connection with Article 1(1) of the American Convention.

28. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

29. As for the petitioners' claim of an alleged violation of Article 5 of the American Convention on Human Rights, the Commission observes that the petitioners did not offer specific or sufficient information regarding its alleged violation, thus that claim is not found admissible.

V. CONCLUSIONS

30. The Commission concludes that it has jurisdiction to examine the claims presented by the petitioner and the alleged violation of articles 7, 8, and 25 in connection with Article 1(1) of the American Convention and that these claims are admissible pursuant to the requirements established in articles 46 and 47 of the American Convention. It also concludes that the claim on the alleged violation of Article 5 of the American Convention is found inadmissible.

31. Based on the arguments of fact and law herein set forth, and without prejudging the merits of the issue,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**DECIDES:**

1. To declare this claim admissible with regard to articles 7, 8, and 25 in connection with Article 1.1 the American Convention.
2. To notify the Ecuadorian State and the petitioner of this decision.
3. To continue with the analysis of the merits of this matter.
4. To publish this ruling and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 2nd day of November 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President (in dissidence); Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.