

REPORT No. 72/13
DECISION TO ARCHIVE
PETITION 742-02
ECUADOR
JULY 16, 2013

ALLEGED VICTIMS: María Mercedes Burga Velásquez

PETITIONER: María Mercedes Burga Velásquez, Edwin Mauricio Vásquez Ipiales

ALLEGED VIOLATIONS: Violation on the part of the Ecuadorean State of her rights to personal liberty and due process of law when arbitrarily detained.

DATE PROCESSING BEGAN: June 27, 2002

I. POSITION OF THE PETITIONER

1. The Petitioner stated that on August 5, 2001, Mr. Luis Fabián Cotacachi Guevara was detained at the Quito International Airport for carrying capsules of cocaine inside his body and that he was subsequently taken to the Pablo Arturo Suárez Hospital for X-rays. When evidence showed that he had foreign objects in his body, he was driven to the Anti-drug Headquarters (*Jefatura Antinarcóticos*) of Pichincha to begin the corresponding investigation. Under custody of police agents, the detained was said to have expelled a total of 52 capsules of cocaine weighing approximately 612 grams. Subsequently, because of statements provided by Mr. Cotacachi, arrest warrants were issued for Mr. Segundo Rafael Caranqui Andrango, for several other people who were allegedly involved, and for Mrs. María Mercedes Burga Velásquez, for allegedly aiding and abetting a drug trafficking group.

2. The Petitioner stated that she was detained on August 9, 2001 though she had not committed any crime. She maintains that she was detained because of false statements made by Mr. Cotacachi who had confused her with an accomplice of one of the people implicated (her cousin Vilma Yolanda Anguaya Anrango) in the commission of the drug trafficking crime.

3. The Petitioner also argued that she presented the following domestic remedies: first, on October 26, 2001 a *Habeas Corpus* petition, which was rejected; then, an appeal for freedom (*Amparo de Libertad*) before the Presidency of the Superior Court of Justice, which was also rejected. Finally, on December 27, 2001 the Fourteenth Judge of the Pichincha Criminal Court dismissed the case, revoked the order of pre-trial detention and ordered that the Petitioner be immediately released.

II. POSITION OF THE STATE

4. The Ecuadorean State argued that the petition should be declared inadmissible because internal remedies were not exhausted. First, an Appeal for Freedom remedy permitted under the Criminal Procedural Code could have been filed, and Mrs. Burga had the opportunity to present such an appeal if she believed that she had been illegally detained or abused by some authority. Second, she could have appealed the Mayor's resolution denying the *Habeas Corpus* petition, as provided for in Article 31 of the Constitutional Oversight Law (*Ley de Control Constitucional*).

5. The State maintained that both of these remedies were appropriate and effective tools that could have been used if the alleged violations of the petitioner's personal liberty had been committed, and that they could have resulted in an order for her immediate release.

6. The State said that the petitioner claimed that her right to judicial guarantees had been violated because the final judgment and decision ordering her release had not occurred within a reasonable period of time. In that regard, it argued that jurisprudence (European Court of Human Rights) has not fixed a precise *quantum* for the length of procedures, but has instead established and determined criteria to be taken into account in specific cases.

7. Finally, the State maintained that the Petitioner at all times had the right to a fair defense, a fair trial and free access to the judicial authorities; and, that at no time, was she deprived of or kept from exercising her right to be heard in equal conditions before all of the competent authorities.

III. PROCESSING BY THE IACHR

8. The IACHR received the petition on June 27, 2002 and recorded it as number 742-02, after a request for additional information to the Petitioner, that she responded on July 14, 2003, the IACHR transmitted a copy of the complaint to the State on July 26, 2004, which was given a period of two (2) months to present its response in accordance with the IACHR Rules of Procedure in effect at the time. The State presented its observations on March 9, 2009.

9. On May 12, 2009 the IACHR sent the Petitioner the observations provided by the State so that the Petitioner could present her own observations within a period of one (1) month. On June 15, 2010, the IACHR reiterated to the Petitioner its May 12, 2009 request for information; and finally, on February 24, 2012 the IACHR requested updated information to determine whether or not the reasons for the Petition persisted. In this communication she was informed that if the IACHR did not receive information from her within a period of one (1) month, the petition could be archived according to the provisions of Article 48.1.b of the American Convention on Human Rights and Article 42 of the IACHR Rules of Procedure.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

10. Both Article 48.1.b. of the American Convention on Human Rights and Article 42 of the IACHR Rules of Procedure establish that in processing a petition, after the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the file to be closed.

11. In this case, almost 10 years have gone by since the Petitioner's last communication, and in spite of requests for updated information sent on June 15, 2010 and February 24, 2012, the IACHR has not to date received the information necessary for completing the analysis and processing this petition.

12. As a result, the Commission does not have the necessary elements to determine whether the motives behind the original complaint continue to exist or to come to a final decision about the alleged human rights violations. Therefore, in accordance with the aforementioned Rules of Procedure, it has decided to archive this Petition.

13. In these circumstances, and in view of the fact that the information available is not sufficient for reaching a decision about the admissibility or inadmissibility of the Petition, the IACHR has decided to archive it according to Articles 48.1.b of the American Convention and 42.1 of its Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 16 day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Rose-Marie Antoine, Commissioners.