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REPORT No. 20/16
PETITION 12.208
REPORT ON ADMISSIBILITY

ROBERT ANGELO VERA GOMEZ
ECUADOR

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157th Regular Period of Sessions.

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Ecuador. April 15, 2016.



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I. SUMMARY

1. On August 10, 1998, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a petition filed by Robert Angelo Vera Gomez (hereinafter, the "petitioner" or "alleged victim") against the Ecuadorian State (hereinafter "Ecuador" or "the State"). Mr. Vera Gomez claims to have been the victim of arbitrary detention by the police, torture and excessively long pretrial detention in the context of a criminal proceeding. Consequently, he argues that the State bears international responsibility for violation of rights recognized in Articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter the "American Convention" or "Convention") to his detriment.

2. The petitioner says that he was detained by the police without an order issued by a competent authority, held incommunicado and subjected to different forms of mistreatment for over 15 days. He also claims that he was threatened with physical torture so that he might incriminate himself and confess his supposed involvement in a drug trafficking ring. He also charges that during the criminal proceeding followed against him, a variety of legal time limits were exceeded and that he was held in custody pending trial for an excessively long time, in spite of the fact that in the course of the proceeding the prosecutor had decided not to bring a criminal indictment against him. Finally, he said that he had received no redress for any of the harm caused to him and his family.

3. The State, for its part, held that the petitioner had not exhausted domestic remedies, given that a decision was pending on an application for habeas corpus; that he could have lodged a motion for recusal in light of the delay; and that he still had available to him the appeals for cassation and/or review in the event of a conviction. The State also says that the proceeding was conducted within a reasonable time, considering the unique and specific circumstances of the case; that the petitioner had access to all necessary legal means to mount a defense; and that he was guaranteed a fair and impartial trial.

4. Having examined the positions of the parties and compliance with the requirements set forth in Articles 46 and 47 of the American Convention on Human Rights, without prejudging the merits of the complaint, the Commission has decided to declare the petition admissible for the purposes of examination of alleged violations of rights recognized in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, taken in conjunction with Articles 1(1) and 2 of said treaty. The Commission has further decided to notify the parties of this decision, to publish it, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

5. The IACHR received the petition on August 10, 1998, and forwarded a copy of the pertinent parts to the State on November 8, 1999, giving it 90 days in which to submit observations, in accordance with Article 34 of its Rules of Procedure, as then in force. The IACHR received the response of the State on June 17, 2000, and forwarded it to the petitioner on August 14, 2000.

6. The petitioner submitted additional information on: September 14, 2000; May 24, 2001; August 5, 2009; August 19, 2011; April 7, 2014; and June 30, 2014. The State, for its part, submitted additional observations on August 21, 2001, and November 11, 2015.

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner alleges that at approximately 8:30 a.m. on February 21, 1995, he was on his way to work in the city of Guayaquil when he was intercepted by a group of heavily armed police officers, who, using physical aggression and offensive language, unlawfully and arbitrarily detained him without showing him the requisite "constitutionally mandated arrest warrant" (*boleta constitucional de detención*) signed by a competent authority. (He alleges that the order was issued after he was apprehended.) He was then held incommunicado for over 15 days, despite the maximum time allowed under domestic law being 24 hours. The petitioner's capture purportedly occurred in the context of a police anti-narcotics operation named "White Storm" (*Tormenta Blanca*).

8. He accounts that during those days he was held at a Police Precinct in a cell measuring three meters by five meters without a place to sleep, where he was subjected to psychological torture, consisting of music played very loud and bright lights. He was also allegedly threatened with physical torture unless he confessed to belonging to a criminal organization involved in drug trafficking. He says that during that period he was made to provide a statement without a lawyer present.

9. He also claims that based on a judicial decision that lacked grounds and sufficient evidence, he was remanded in custody pending trial for a period of 43 months in all. (By the time the petition was lodged before the IACHR 40 months had elapsed.) He stresses that his pretrial detention lasted all that time, in spite of the fact that the Prosecutor of the Fourth Criminal Court of Guayas decided not to indict him because she could find no evidence against him. He argues that a second prosecutorial opinion to that effect issued on August 15, 1997, was validated by the Fourth Criminal Court of Guayas by means of a dismissal without prejudice ordered on November 20, 1997. However, that decision, though favorable to the petitioner, did not entail his release because, under the Law on Narcotic and Psychotropic Substances (Articles 121 and 122), it had necessarily to be referred for consultation to the Sixth Division of the Superior Court of Justice of Guayaquil.

10. The petitioner argues that under domestic law, the criminal proceeding should not have lasted more than six months; therefore, it was clear that his right to be tried within a reasonable time had been violated.

11. The alleged victim also says that at the time the complaint was lodged before the IACHR, decisions were still pending on the applications for habeas corpus presented to the Mayor of Guayaquil on June 18, 1998, and to the Constitutional Court on July 31, 1998, by which his allegations of arbitrary detention, police mistreatment, unwarranted prolongation of pretrial detention, inhumane conditions of detention, and various injuries caused to him and his family were brought to the attention of different public authorities.

12. He argues that the consultation procedure envisaged in the Law on Narcotic and Psychotropic Substances (Articles 121 and 122) violated Article 2 of the American Convention on Human Rights and that, in spite of the fact that that law set a time limit of 30 days for the Superior Courts of Justice to dispose of the consultation, at the time the petition was lodged before the IACHR six months had elapsed yet the consultation on his release had still not been settled. The petitioner says that his release only came about as a result of the effect of provisions contained in the new Constitution adopted by the National Constituent Assembly on June 5, 1998, which determined that all those whose cases had been dismissed were to be released immediately without need of consultation.

13. The petitioner claims that his unjust and prolonged pretrial detention caused serious harm to his family life and irreparable damage to his own life plan and career prospects. In that connection, he says that, in spite of the judicial remedies invoked, he has not received redress for the time that he was deprived of liberty despite his innocence, or for the conditions of detention in which he was held, or for the harm caused to his reputation, family, and professional career.

B. The State

14. According to the State, the petitioner has not exhausted domestic remedies under the terms of Article 46(a) of the American Convention, given that at the time of the State's first response on May 17, 2000, a decision was pending on the application for habeas corpus that the petitioner had filed before the Constitutional Court on July 31, 1998. It states that Mr. Vera Gomez was released on September 1, 1998, after the Sixth Division of the Superior Court of Justice of Guayas ordered, *ex officio*, the release of all detainees whose cases were dismissed with or without prejudice by the decision issued on November 20, 1997. The foregoing was done pursuant to provisions contained in the new Constitution adopted on June 5, 1998, which went into force on August 10 that year.

15. The State says that in light of the Guayas Superior Court's delay in disposing of the consultation on the dismissal, the petitioner could have filed a motion for recusal against the judges of that court's Sixth Division in order to have them disqualified from hearing the case. It also argues that, had a conviction been issued, the alleged victim could have lodged appeals for review and cassation.

16. As regards to its institutional responsibility for the alleged harm that the petitioner claims to have sustained, the State argues that domestic remedies have not been exhausted, given that the alleged victim had the possibility of filing a suit before the administrative jurisdiction against the State for the alleged harm caused by public officials.

17. As regards the right to be tried within a reasonable time, Ecuador asserts that the proceeding was conducted in accordance with the unique and specific circumstances of the case; and that the time it took to dispose of was consistent with the type of judicial proceeding in question, bearing in mind the possibilities that the State had at its avail.

18. The State also holds that the petitioner's right to mount a defense and fair trial guarantees were not violated, since the courts had guaranteed a fair and impartial proceeding and the petitioner had had at his disposal all the remedies envisaged under domestic law for challenging the supposed violations that he alleged. In that regard, Ecuador alleges that the petitioner invoked remedies that the law afforded but that they had not been decided and, therefore, exhausted. It further contends that the petitioner had free access to the courts and that at no time was he impeded from exercising his right to a hearing on equal terms before the competent bodies.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

19. The petitioner has standing under Article 44 of the American Convention to lodge petitions before the Commission. The petition names as the alleged victim an individual on whose behalf the State of Ecuador undertook to observe and ensure the rights enshrined in the American Convention, to which it has been a party since December 28, 1977, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The IACHR is also competent *ratione loci* to examine the petition because it alleges violations of rights protected in the American Convention that are purported to have occurred within the territory of Ecuador, a state party to said treaty.

20. The IACHR is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention had already entered into force for the State as of the date that the facts alleged in the petition are said to have occurred. Finally, the IACHR is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

21. Article 46(1)(a) of the American Convention requires prior exhaustion of remedies available under domestic law in accordance with generally recognized principles of international law, as a prerequisite for admitting claims regarding alleged violation of the American Convention on Human Rights. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve the situation before it is taken up in an international proceeding. For its part, Article 46(2) provides that the requirement of prior exhaustion of domestic remedies is not applicable when: (a) domestic law 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; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

22. In the instant case, the Commission notes that the petitioner filed an application for habeas corpus before the Mayor of Guayaquil on June 18, 1998, in which he set out the allegations contained in his petition to the IACHR. Furthermore, on July 31 of that year, he filed an action for habeas corpus before the Constitutional Court, for which no information has been provided regarding its final decision. By means of those applications, the alleged victim brought his allegations of arbitrary detention, psychological torture, unwarranted prolongation of pretrial detention, inhumane conditions of detention, and various injuries caused to him and his family to the attention of different public authorities.

23. The petitioner argues that the habeas corpus remedies were presented to the competent authorities and that they failed to render a decision on them within the time limits prescribed under domestic law. In addition, with regard to the aforementioned appeals for cassation and review, he says that since he was found innocent and his case was dismissed, those remedies were not applicable.

24. For its part, the State contended in its reply of May 17, 2000, that domestic remedies have not been exhausted since a decision was still pending on the application for habeas corpus that the petitioner had filed before the Constitutional Court on July 31, 1998. Regarding the applications for habeas corpus filed before the Mayor of Guayaquil, the State only mentioned that the decisions on them were unfavorable to the petitioner. With regard to the delay in the consultation pending on the dismissal of his case, Ecuador said that the petitioner could have filed a motion for recusal against the judges of Sixth Division of the Superior Court of Justice of Guayas.

25. In that connection, although it has been established by the Inter-American human rights system that in Ecuador at the time of the alleged facts the application for habeas corpus lodged before the mayor was not a suitable remedy as envisaged by the American Convention, the Commission notes that it was the remedy available at the time of the alleged facts and that it was indeed exhausted by the petitioner. As to the application for habeas corpus lodged before the Constitutional Court on July 31, 1998, the Commission notes that, as the State mentioned in its communication of May 17, 2000, it had apparently yet to be decided two years after its filing. During subsequent processing of this petition, neither of the parties has provided any information about a final decision on that application.

26. The Inter-American Commission observes that, as both parties indicate, the petitioner was released on September 1, 1998, after being held in pretrial detention for three years and six months, due to an order issued ex officio by the Sixth Division of the Superior Court of Justice of Guayas, as a consequence of the constitutional reform carried out by the National Constituent Assembly on June 5, 1998. That reform provided for the immediate release of all detainees whose cases had been ordered dismissed or who had been ordered acquitted, regardless of any pending decision under other remedies or consultation before the Superior Court of Justice of Guayaquil.

27. Therefore, irrespective of any assessment that the Inter-American Commission may make in the stage on merits regarding the effectiveness of domestic remedies, the available information indicates that:

(a) the petitioner invoked and exhausted the domestic remedies pertaining to the criminal proceeding against him; and (b), regarding the alleged excessively long pretrial detention, there was an unwarranted delay in the decision on the application for habeas corpus filed before the Constitutional Court. This Court took more than two years in rendering a decision on the said habeas corpus. By the time the petitioner was released it has still not delivered such decision.

28. On the other hand, the State has not demonstrated how the appeals for review and cassation could constitute effective remedies for the alleged violations of the petitioner's rights, given that his criminal trial did not result in a conviction. Furthermore, according to the information received by the Commission, those appeals would seem to be inapplicable given that their purpose is not to question the alleged improper and excessively long pretrial detention.

29. In relation to the submissions by the State that the petitioner should have filed a suit before the administrative jurisdiction against the public officials who participated in the alleged acts; and that he should have presented a motion to recuse the judges of the Sixth Division of the Superior Court of Guayas, the Commission reiterates its opinion that the requirement to exhaust domestic remedies does not mean that the alleged victims should have to exhaust all the remedies that exist. In that sense, the Commission notes that in this case the petitioner exhausted the remedies that were pertinent to the main violations alleged in his petition.

30. Therefore, the Inter-American Commission concludes that the petitioner exhausted the remedies under domestic law within the terms of Article 46(1)(a) of the American Convention in respect of the criminal proceeding conducted against him, and that the State engaged in unwarranted delay with regard to the alleged excessively long pretrial detention, under the terms of Article 46(2)(c) of the same treaty.

2. Timeliness of the petition

31. Article 46.1.b. of the Convention establishes that a petition may be admitted if it is lodged within a period of six months from the date on which the interested party was notified of the final judgment that exhausted domestic jurisdiction. In the instant case, the petition was lodged on August 10, 1998, and the decision that brought an end to the proceeding and ordered his release was issued on September 1 of that year. The implementation of that decision effectively concluded the criminal proceeding that was being pursued against the alleged victim, in light of which, the Commission concludes that the petition meets the requirement set down in Article 46(1)(b) of the American Convention.

3 Duplication of proceedings and international *res judicata*

32. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by this or any other international organization. Therefore, the causes for inadmissibility set down in Articles 46(1)(c) and 47(d) of the Convention do not apply.

4. Colorable Claim

33. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged could characterize a violation of rights, or, pursuant to paragraph (c) of said article, whether the petition is "manifestly groundless" or "obviously out of order." The standard by which these requirements are assessed is different from the one needed to decide the merits of a petition. The Commission must perform a *prima facie* evaluation and determine whether the petition provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, although not whether the violation has in fact occurred. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits.

34. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petitioners identify the specific rights allegedly violated by the State in a matter submitted to the IACHR,

though the petitioners may do so. Rather, it is up to the IACHR, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant Inter-American instruments is applicable or could be deemed to have been violated, if the facts alleged are proven on the basis of sufficient evidence and legal arguments.

35. In the instant case, the Inter-American Commission notes that the allegations basically refer to purported acts of arbitrary detention and torture, violation of the right to due process during police investigations, excessively long pretrial detention, lack of effective judicial protection, and violation of the rights to be presumed innocent and to humane treatment. The State, for its part, argues that the right to a fair trial and the means for a proper legal defense not violated.

36. It is worth noting that in previous cases, in which similar submissions have been put forward, the IACHR has analyzed the legal framework in force and the actions carried out by the Ecuadorian State during the 1990s as part of its counter narcotics policy.¹ In that regard, the IACHR considers that, if proven, the alleged facts would characterize possible violations of rights guaranteed in Articles 5, 7, 8, and 25 of the American Convention, taken in conjunction with Articles 1(1) and 2 of that international instrument, to the detriment of Mr. Robert Angelo Vera Gomez.

V. CONCLUSIONS

37. Based on the arguments of fact and law set forth above, the Commission concludes that the present petition meets the admissibility requirements set down in Articles 46 and 47 of the American Convention and, without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in relation to Articles 5, 7, 8, and 25 of the American Convention, in conjunction with the obligations contained in Articles 1(1) and 2 of that instrument.
2. To notify the parties of this decision.
3. To proceed with its analysis of merits in the matter.
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 15th day of the month of April, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

¹ See in that connection, for example, IACHR, Report No. 55/15. Petition 12.236, Fausto René Sisa Páez, Ecuador, October 17, 2015; Report No. IACHR, Report No. 155/11, Petitions 12.087, Walter Ernesto Reyes Mantilla, 12.235, Vicente Hipólito Arce Ronquillo, 12.235, José Frank Serrano Barrera, Admissibility, Ecuador, November 2, 2011; IACHR, Report No. 3/10, Petition 12.088, Admissibility, Segundo Norberto Contreras Contreras, Ecuador, March 15, 2010; IACHR, Report No. 66/01, Case 11.992, Merits, Dayra Maria Levoyer Jiménez, Ecuador, June 14, 2001; IACHR, Report No. 64/99, Case 11.778, Merits, Ruth del Rosario Garcés Valladares, Ecuador, April 13, 1999; I/A Court HR *Case of Chaparro Álvarez and Lapo Ñíguez*. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170; I/A Court H.R. *Case of Tibi* v. Ecuador. Judgment of September 7, 2004. Series C No. 114; I/A Court H.R. *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35.