

OEA/Ser.L/V/II.162

Doc. 88

25 May 2017

Original: Spanish

REPORT No. 56/17

PETITION 955-07

REPORT ON ADMISSIBILITY

CARLÍN OLIVIO AJÓN AVILÉS

ECUADOR

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

Cite as: IACHR, Report No. 56/17. Petition 955-07. Admissibility. Carlín Olivio Ajón Avilés.
Ecuador. May 25, 2017.



REPORT No. 56/17
PETITION 955-07
 REPORT ON ADMISSIBILITY
 CARLÍN OLIVIO AJÓN AVILÉS
 ECUADOR
 MAY 25, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Carlin Olivio Ajon Aviles and Jose Antonio Toasa Escobar
Alleged victim:	Carlin Olivio Ajon Aviles
State denounced:	Ecuador
Rights invoked:	Articles 1 (Obligation to Respect Rights), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Date on which the petition was received:	July 25, 2007
Additional information received at the initial study stage:	October 7, 2011
Date on which the petition was transmitted to the State:	February 1, 2012
Date of the State's first response:	August 1, 2012
Additional observations from the petitioning party:	September 6, 2012 and September 9, 2013
Additional observations from the State:	July 10, 2013 and December 2, 2015
Date on which the petitioner was notified of the possible archiving of the petition:	October 3, 2016
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	October 25, 2016

III. COMPETENCE

Competence Ratione personae:	Yes
Competence Ratione loci:	Yes
Yes	Yes
Competence Ratione materiae:	Yes

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and international res judicata:	No
--	----

¹ Hereinafter "the Convention" or "the American Convention."

² The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible:	Articles 5 (Right to Humane Treatment), 7 (Right to Personal Freedom), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention, in relation with Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; January 29, 2007
Timeliness of the petition:	Yes; July 25, 2007

V. ALLEGED FACTS

1. The petitioner and alleged victim (hereinafter "Mr. Carlin Ajon" or "the alleged victim") was detained in the framework of the counter-narcotics operation called "Tsunami," on November 7, 2006. At that time he worked in a stud farm at Carchipulla country state. The alleged victim claims that he was 17 years of age when he was detained but that given that he did not have a document to prove his age, he was detained with adult men at the offices of the Intervention and Rescue team of Guayaquil. He claims that he was not fed during the two first days nor given a mattress or blankets, and that he was kept incommunicado until November 12, 2006. The following day he was transferred to a counter-narcotics cell at the judicial police station of Guayas Province. There, for the first time, he contacted an attorney, who informed him that the prosecution had opened an investigation against him on November 10, 2006. He asserts that his attorney filed a certified copy of the alleged victim's birth certificate but that the judge in charge of the case ordered a medical evaluation through an ossification test to determine his age. Once his minority was proved, he was taken to the temporary shelter of Guayaquil (Minors' detention center); by then, he had spent fourteen days in a cell with adults.

2. The alleged victim claims that at the temporary shelter of Guayaquil, cells were packed to three times their capacity and that he had to sleep on the ground; that prosecuted inmates were not separated from convicted inmates; that the food was not enough for all the inmates; and that he was continually harassed by the "mafias inside the institution," which even made a serious cut in one of his hands, causing a permanent scar. He claims that he initially reported this situation to the guards of the institution, who beat him in the belief that he lied. He asserts that later, as it was clear that he was attacked by inmates and guards, the head of the institution decided to protect him by isolating him in the kitchen, where he had to continue sleeping on the ground. Subsequently he was transferred to the Temporary Shelter of Machala, another detention center for minors, where living conditions were considerably better.

3. The alleged victim denounces that he was held in pre-trial custody for two months and three weeks, staying in six different detention centers for minors where no difference was made between prosecuted and convicted inmates. He submits that he was finally released on January 29, 2007, when the Prosecutor's Office for Minor Offenders of El Oro issued an advisory opinion in favor of Mr. Carlin Ajon claiming that there was no sufficient proof to establish the alleged victim's criminal liability and that indeed he had been held in preventive custody more than forty five days, which is the maximum period set forth by the Childhood and Adolescence Code.

4. Mr. Carlin Ajon indicates that he filed an appeal at the Seventh Criminal Court of El Oro to challenge the judgement ruling his preventive custody. The appeal was dismissed on January 17, 2007, as the judge considered that a minor must be represented by his parents or a member of his family. However, not having any close family member, the alleged victim was represented by an attorney. The alleged victim moreover claims that he did not file a *habeas corpus* remedy or a writ of liberty, nor a claim for damages against the intervening prosecutors or judges because he could not afford it.

5. Mr. Carlin Ajon believes that Ecuador did not respect his fundamental rights during the criminal proceedings against him, considering the purported excessively long period of his preventive custody and the living conditions in which he was held as a minor. In this regard, he requests the IACHR to

proceed to the analysis of the merits of this claim, to declare Ecuador's international responsibility, and to issue measures of non-repetition as applicable.

6. The State, in turn, indicates that Mr. Carlin Ajon was detained in the framework of an investigation for the crime of drug manufacturing, trafficking and transportation. It admits to the fact that, in view of the impossibility to prove the alleged victim's age, his adolescence should have been presumed. Concerning the petition's admissibility, it asserts that the petitioner did not exhaust the domestic remedies, and that the Commission cannot work as a fourth instance. In this regard, it claims that the alleged victim did not file the *habeas corpus* remedy, which could have been filed by him or by a third party and is free of charge; and that had it been dismissed, it would have been reviewed by a Court of Constitutional Review. It also indicates that he could have filed a writ of liberty, and administrative proceedings for the violation of individual rights of the child before the Cantonal Protection Council.

7. The State asserts that the alleged victim could have filed a claim for damages through the domestic remedies available inasmuch as public institutions are bound to compensate individuals for damages caused by state officers or by the malfunction of public services. It also claims that the legislation allows the filing of civil proceedings against state officers that may have committed arbitrary detentions. Moreover, the State claims that poverty is not a reason for the exception to the requirement of exhaustion of domestic remedies since the remedies provided by the State are free of charge. In this regard, it claims that Mr. Carlin Ajon could have had a public counsel if he had so wished, but he preferred to hire a private counsel.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The Inter-American Commission notes that there is controversy about the domestic remedies that should have been exhausted concerning the alleged victim's deprivation of liberty ruled by the precautionary measure of pre-trial detention. In this regard, the IACHR recalls that "[i]n the framework of pre-trial, the presentation of a request for release from jail followed by the denial thereof suffices to substantiate the exhaustion of remedies."³ The petitioner met this requirement by filing the appeal against the ruling of preventive custody before the Seventh Criminal Court of El Oro, which was dismissed by the court order of January 17, 2007.

9. At the same time, the Inter-American Commission has consistently established that at the time of the facts described in this petition and before the constitutional reform of 2008, the *habeas corpus* remedy was an inadequate means to monitor the legality of detentions under the terms of the American Convention.⁴ Likewise, the IACHR recalls that the requirement of exhaustion of domestic remedies does not mean that the alleged victims have to exhaust all the domestic remedies available. In this regard, the Commission notes that the alleged victim exhausted the appeal remedy which, like all the remedies suggested by the State, was aimed at requesting release from jail. Therefore, the Commission believes that this petition meets the requirement of exhaustion of domestic remedies set forth in Article 46.1(a) of the Convention.

10. Moreover, the Commission notes that on January 29, 2007 the criminal proceedings against the alleged victim were closed, and that the IACHR received this petition on July 25, 2007. As a result, the petition was filed within the six-month period established in Article 46.1(b) of the American Convention.

³ IACHR, Report No. 55/15, Admissibility, Case 12.236, Fausto René Sisa Páez, Ecuador, October 17, 2015; par. 23; IACHR, Report on the Use of Pre-trial Detention in the Americas, OEA/Ser.L/V/II Doc 46/13, adopted on December 30, 2013; par. 201; IACHR Report No. 12/96, Merits, Case 11.245, Argentina, Jorge A. Giménez, March 1, 1996, par. 57.

⁴ In this regard, see for instance, IACHR, Report No. 55/15, Admissibility, Case 12.236, Fausto René Sisa Páez, Ecuador, October 17, 2015; par. 27; IACHR, Report No. 91/13, Admissibility, Petition 910-07, Daría Olinda Puertocarrero Hurtada, Ecuador, November 4, 2013, par. 28; IACHR, Report No. 66/01, Case 11.992, Merits, Dayra María Levoyer Jiménez, Ecuador, June 14, 2001; paras. 78-81.

VII. COLORABLE CLAIM

11. In view of these considerations, the information in the case file, and its precedents, the IACHR believes that the alleged facts,⁵ if proved, may establish a violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 7 (Right to Personal Freedom), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention, in relation with Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof to the detriment of Carlín Ajon Aviles.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 7, 8, 19 and 25 of the American Convention, in accordance with Articles 1.1 and 2 thereof in relation with the alleged victim;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.

⁵ Both the Commission and the Inter-American Court have studied the legal framework in force (Law No. 108 of September 17, 1990 "Law on Narcotic Drugs and Psychotropic Substances"), and the measures adopted by Ecuador in the framework of its policy against drug trafficking at the time of the facts described in this petition. In this regard, see for instance IACHR, Report No. 20/16, Petition 12.208, Robert Angelo Vera Gómez, Ecuador, April 15, 2016; Report No. 18/16; Petition 1208-07, Carlos Manuel Camacho Coloma and Family, Ecuador, April 15, 2016; Report No. 55/15. Petition 12.236, Fausto René Sisa Páez, Ecuador, October 17, 2015; Report No. 91/13, Petition 910-07, Daría Olinda Puertocarrero Hurtada, Ecuador, November 4, 2013; Report No. 15/12. Petition 786-02, Ester Avigail Fajardo Garcés and Claudio Alfonso Naser Leal, Ecuador, March 20, 2012; 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, Ecuador, March 15, 2010; IACHR, Report No. 66/01, Case 11.992, Merits, Dayra María 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 H.R. Case Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170; I/A Court H.R. Case Tibi v. Ecuador. Judgment of September 7, 2004. Series C No. 114. I/A Court H.R. Case Suárez Rosero v. Ecuador. Judgment of November 12, 1997 Series C No. 35.