

OEA/Ser.L/V/II.
Doc. 41
24 April 2019
Original: Spanish

REPORT No. 41/19
PETITION 1482-09
REPORT ON ADMISSIBILITY

ELADIO BLANCO FERNÁNDEZ
PANAMA

Approved electronically by the Commission on April 24, 2019.

Cite as: IACHR, Report No. 41/19, Petition 1482-19. Admissibility. Eladio Blanco Fernández.
Panamá. April 24, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Eladio Blanco Fernández
Alleged victim:	Eladio Blanco Fernández
Respondent State:	Panama ¹
Rights invoked:	Alleged articles not specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 18, 2009
Additional information received at the stage of initial review:	June 1, 2011; April 24, 2012; January 14, 2013
Notification of the petition to the State:	September 28, 2016
State's first response:	January 6, 2017
Additional observations from the petitioner:	October 31, 2016; May 8, 2017; August 28, 2018
Additional observations from the State:	May 19 and October 27, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention on Human Rights ³ (deposit of instrument made on June 22, 1978); Inter-American Convention to Prevent and Punish Torture ⁴ (deposit of instrument made on August 28, 1991)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in conjunction with Article 1.1 of the same instrument; Articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Esmeralda Arosemena de Troitiño, of Panamanian nationality, did not participate in either the discussion or the decision in the present case.

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

³ Hereinafter "the Convention" or "the American Convention".

⁴ Hereinafter "the IACPPT". Entry into force for the State of Panama in accordance with Article 22 of the IACPPT.

V. FACTS ALLEGED

1. Mr. Eladio Blanco Fernández (hereinafter "the alleged victim"), a Dominican national, alleges that he was imprisoned from the time of his arrest on April 3, 1997, until his release on February 28, 2012, at the RENACER Penitentiary Center (La Joyita) of Panama City. The alleged victim was sentenced to 17 years for the crime of homicide against Mr. Marcelino de León Ortiz, although he maintains that he was merely an eyewitness to the events and accuses another individual as being the real murderer.

2. The alleged victim states that on March 20, 1997, he witnessed the murder of Mr. Marcelino de León Ortiz (hereinafter "Mr. León Ortiz"), and that on April 3, 1997, he was detained by the Judicial Technical Police (hereinafter: "the PTJ"). He argues that, in spite of being only a witness to the death, he was treated as a suspect and tortured so as to confess to being the perpetrator of the crime. In that sense, he points out that after being detained, he was transferred to the PTJ's facilities and placed in a totally sealed and air-conditioned cell, handcuffed hand and foot behind his back all night, and deprived of food or drink. He adds that the following morning he was physically assaulted by an official inspector nicknamed "the jackal" in order to state what they wanted. He alleges that as a result of the torture, he suffered a permanent injury and signed a confession without legal representation.

3. He argues that on April 5, 1997, again in the absence of legal representation and without being informed of his right to contact his consulate, he was taken to the prosecutor's office, where he denied any participation in the crime and identified the individuals responsible for Mr. León Ortiz's death. Without taking into account his collaboration and the information provided, the prosecutor ordered his preventive detention.

4. The alleged victim indicates that the criminal proceedings brought against him lacked judicial guarantees and resulted in his being sentenced to 17 years in prison for the crime of homicide. In respect to the lack of judicial guarantees, he points out that: i) between 1997 and 2001, he lacked legal representation; ii) the first public defender also represented the individual he had designated as one of those responsible for the crime and had to be replaced; iii) the second public defender failed to present an adequate defense during the oral proceedings, because he failed to challenge manifestly false statements made against him, including the statement that he was a Colombian national and had been in the country for a few days; iv) during the proceedings, evidence that another person was responsible for the crime was suppressed, such as the weapon used to commit the offense, carrying the fingerprints of one of the individuals identified by the alleged victim as the perpetrator of the crime; v) expert witnesses presented highly contradictory versions: one testified that Mr. León Ortiz's death had been the result of a gunshot, while another expert indicated that there were no bullet holes in deceased's body; and vi) his conviction was based on a confession obtained under torture.

5. On July 4, 2002, the alleged victim filed an appeal that was dismissed on January 28, 2003, by the Supreme Court of Justice (hereinafter "the Supreme Court"). Subsequently, he requested a review of his sentence, which was dismissed in August 2003. In 2004, he was notified that all appeals had been exhausted. He adds that in his appeal he argued that the confession was false and had been obtained under torture, but there was no investigation into these claims.

6. He points out that he was imprisoned in the Renacer Penitentiary Center (La Joyita) until February 17, 2012, exceeding the length of his sentence, as he should have been released on January 17, 2012. He adds that after February 17, 2012, he was kept in the custody of the guards for about another week, and then placed at the disposal of the Immigration authorities until his deportation on February 28, 2012.

7. The petitioner describes the prison conditions as extremely precarious, such as the lack of a bed, yard or water, as well as the abundance of bed bugs. He indicates that he contracted diseases due to malnutrition and excess smoke inside the prison. Likewise, the alleged victim states that while deprived of his liberty, he made multiple requests to the prison doctor to refer him to the orthopedist regarding his left forearm, which had been injured by the torture he suffered. He did not receive the medical attention required. Finally, he argues that during the trial the authorities impounded his vehicle and never returned it.

8. For its part, the State provides another version of the events. First, it indicates that after the alleged victim's arrest on April 5, 1997, he gave a statement before the prosecutor's office in the presence of his own attorney, who represented him from April 5, 1997, until the beginning of 1998. It adds that during the proceedings, in the presence of his defense counsel, the alleged victim was confronted with two other individuals identified by him as the perpetrators of the offense in order to answer the discrepancies in the corresponding statements. Subsequently, again in the presence of his defense counsel, on June 16, 1997, the alleged victim amplified his indictment statement and confessed to the crime charged, stating that he did so in exchange for money offered by one of the individuals he had identified as being a perpetrator.

9. The State adds that in January 1998, the alleged victim failed to participate in the police lineup as he did not have a lawyer, and in March 1998, the judicial authorities appointed a public defender for him. The State argues that this defense attorney conducted the alleged victim's defense until March 21, 2001, when he requested an impediment in continuing with the alleged victim's defense due to constant insults and objections regarding his activities at trial. It maintains that on April 4, 2001, a decision was made to appoint a new public defender for the alleged victim and he was notified of this decision on May 7, 2001. The oral trial took place on June 29, 2001, and a jury found the alleged victim guilty along with another individual who had paid him for the murder. The State argues that the public defender continued to represent the alleged victim until February 6, 2002, when he requested to be withdrawn from the defense due to the alleged victim's displeasure and dissatisfaction with his professional performance and with the lack of trust in his handling of the oral defense. On February 20, 2002, the alleged victim engaged the services of two private defense attorneys who supported his appeal.

10. With respect to the allegations of torture, the State points out that the alleged victim failed to present evidence that such conduct had been reported in the judicial proceedings. With respect to the alleged victim's release, the State alleged full compliance with the sentence should have been reached on February 17, 2012, the date of his release and transfer to the Immigration Department to await his deportation.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. With respect to the alleged acts of torture, the State argues that there was no exhaustion of domestic remedies since the procedural evidence submitted by the petitioner fails to show that this conduct had been duly reported. However, the IACHR observes that the alleged victim claims to have reported before the Supreme Court the nullity of his confession and the alleged acts of torture. He also claimed to have reported it before the medical personnel of the detention center when requesting specialized medical treatment for a permanent injury sustained as a result of the alleged acts of torture. In these circumstances, the IACHR considers that there are enough elements to conclude that the authorities were aware of the alleged victim's situation and that the petitioner exhausted the available remedies in practical terms. The IACHR reminds that in cases when a purported offense subject to prosecution *ex officio* is committed the domestic remedy to be pursued and exhausted is the criminal investigation, which must be undertaken and furthered by the State.⁵ Given that from the information available it is not clear that an investigation to clarify these allegations and prosecute the perpetrators was carried out, the IACHR concludes that the exception to the exhaustion requirement provided for in Article 46.2.c. of the Convention applies. Regarding the timeliness requirement, although these events occurred in April 1997 and the petition dates from November 2009, the alleged victim claims to have reported the conduct before the judicial authorities and with the medical personnel of the detention center, even after his conviction. In turn, the effects of the alleged torture as well as the lack of its clarification are ongoing. In view of the foregoing, the IACHR considers that the petition was filed within a reasonable period of time in accordance with the requirement of Article 32.2 of the IACHR's Rules of Procedure.

12. Concerning the due process violations alleged by the victim, including the evaluation of the evidence, the concealment of evidence, the lack of adequate legal representation and the failure to provide

⁵ IACHR, Report No. 144/17. Petition 49-12. Ernestina Ascencio Rosario et al.. Mexico. October 26, 2017, para.6.

information on the right to consular advice, the Commission considers that these are part of the criminal proceedings and that, therefore, domestic remedies were exhausted at the time of their conclusion. However, according to the alleged victim, in 2004, he was notified of the exhaustion of these remedies. Given that the petition was filed with the IACHR in 2009, the petition fails to satisfy the provisions of Article 46.1.b of the Convention in that regard.

13. Regarding the impounded vehicle, the conditions of detention and the alleged overtime served by the alleged victim in prison, there is no indication that the alleged victim filed the corresponding claims at the domestic level, and therefore the petition fails to satisfy the requirements of Article 46.1.a of the Convention in this regard.

VII. ANALYSIS OF COLORABLE CLAIM

14. The Commission considers that the alleged acts of torture and their lack of investigation, the conviction of the alleged victim based on evidence obtained through torture and the impact on the alleged victim's personal liberty, if proven, could constitute a violation of the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention in accordance with Article 1.1 of the same instrument. In addition, the alleged facts could, if proven, constitute violations of the rights enshrined in Articles 1, 6, 8 and 10 of the IACPPT.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25 of the American Convention in conjunction with Article 1.1 of the same instrument;
2. To find the instant petition admissible in relation to Articles 1, 6, 8 and 10 of the IACPPT; and
3. To notify the parties of this decision; to continue with the analysis on the merits; and 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 on the 24th day of the month of April, 2019. (Signed): Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.