

OEA/Ser.L/V/II.156
Doc. 7
17 October 2014
Original: Spanish

REPORT No. 55/15
CASE 12.236
REPORT ON ADMISSIBILITY

FAUSTO RENE SISA PAEZ
ECUADOR

Approved by the Commission at its session No. 2046 held on October 17, 2015
157th Regular Period of Session.

Cite as: IACHR, Report No. 55/15, Case 12.236. Admissibility. Fausto Rene Sisa Paez. Ecuador.
October 17, 2015.

REPORT No. 55/15
PETITION 12.236
ADMISSIBILITY REPORT
FAUSTO RENÉ SISA PÁEZ
ECUADOR
OCTOBER 17, 2015

I. SUMMARY

1. On August 10, 1998, the Inter-American Commission on Human Rights (hereinafter also, “the Commission” or “the IACHR”) received a complaint filed by Fausto René Sisa Páez (hereinafter also, “the petitioner” or “the alleged victim”) wherein he alleged the international responsibility of the State of Ecuador (hereinafter also, “the State” or “Ecuador”) for violations of his human rights as enshrined in Articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter also, “the Convention” or “the American Convention”), in conjunction with Articles 1(1) and 2 thereof. The alleged violations include his arbitrary arrest by the police, reported acts of torture, and the extremely protracted time he was held in pretrial detention in the context of a criminal case in which his lack of ties to the facts underpinning the charges against him had reportedly been clearly established.

2. The petitioner claimed that the police arrested him without a warrant from a competent authority, held incommunicado for two weeks, and threatened with torture in an attempt to get him to incriminate himself and confess to his alleged involvement in a drug-trafficking organization that, according to the authorities, was headed by his brother. In this context, he was reportedly forced to make a statement without having access to a defense attorney. He further stated that the criminal prosecution against him exceeded the time limit set by law manyfold and that he was held in pretrial detention in inhumane conditions for an excessively long period despite the fact that during the proceedings the prosecutor in the case had decided against charging him with a crime. Lastly, he noted he has never received any reparations whatsoever for any of the harm caused to him at both a personal and a family level.

3. The State, for its part, held that the petitioner had not exhausted domestic remedies, as there was a habeas corpus appeal still pending a ruling; it further stated that the petitioner still reportedly had the option to file a last instance appeal or a request for judicial review. In addition, the State maintained that the large number of defendants as well as other complexities inherent to the criminal case in question made the prolonging thereof reasonable. It also stated that the petitioner had always had access to legal means of defense.

4. After examining the parties’ positions in light of the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the IACHR decided to declare the petition admissible for purposes of examining the alleged violation of the rights contained in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention, in connection with Articles 1(1) and 2 thereof. The Commission further decided to give notice of this report to the parties and make it public.

II. PROCESSING BY THE COMMISSION

5. On August 10, 1998, the IACHR received the petition and assigned it number 12.236. The Inter-American Commission forwarded the relevant portions of the petition to the State via a communication on December 3, 1999 and requested that it provide a response within two months, pursuant to the provisions of Article 30(3) of the IACHR’s Rules of Procedure. On April 4, 2000, Ecuador forwarded its observations to the Commission.

6. The Commission subsequently received additional information from the State on July 11, 2000, September 10, 2001, and September 24, 2014. It also received supplementary information from the

petitioner on the following dates: October 2, 2000, May 24, 2001, May 13, 2013, and June 30, 2014. All communications were duly forwarded to the other party. While processing this petition, the Inter-American Commission, in accordance to article 42.2 of its Rules of Procedures, asked the petitioner, via a note dated February 15, 2013, to provide up-to-date information, indicating that should such information not be forthcoming, it might proceed to archive the petition pursuant to Article 48(1)(b) of the Convention and 42 of the Commission's Rules of Procedure. As already noted, the petitioner responded to such request via communication on May 13, 2013.

III. POSITION OF THE PARTIES

A. Position of the Petitioner

7. The petitioner reports that on February 21, 1995, he was illegally and violently arrested at his home in the city of Imbabura by a group of heavily armed police who reportedly searched his house without a warrant from a competent authority. He was later taken to the city of Guayaquil, where he was allegedly held incommunicado for 15 days, during which time he claims to have been interrogated under threat of physical torture if he did not confess to being involved in the criminal organization to which his brother allegedly belonged (according to the petitioner, his brother reportedly confessed to drug trafficking charges). The petitioner claims that during that time, he was forced to give a statement without an attorney present and that he had to wait 40 days from the time of his arrest to appear before the trial judge.

8. The petitioner further states that via a judicial decision that lacked sufficient evidence and grounds, he was ordered into pretrial detention, which lasted a total of 43 months (when this petition was filed with the IACHR, 42 months had already elapsed). He points out that his pretrial detention lasted that entire time despite the fact that on October 16, 1996 —20 months after pretrial detention had been ordered— the prosecutor for the case had decided against charging him as there was no evidence against him. Following a second prosecutorial ruling along the same lines, which was issued on August 15, 1997, this decision was reportedly upheld by the judge handling the case. The judge in question —Fourth Judge of the Guayas Criminal Court— issued a temporary stay on December 1, 1997. However, her ruling reportedly did not result in the release of the petitioner since, in keeping with the Law on Narcotic and Psychotropic Substances (Articles 121 and 122), it had to be elevated to the Sixth Chamber of the Honorable High Court of Justice of Guayaquil for consultation.

9. The petitioner points out that in accordance with domestic law, the criminal case should not have lasted more than six months, and thus his right to a speedy trial had clearly been violated.

10. He further notes that despite the aforementioned pronouncements by both the prosecutor and the judge, no decision had yet been rendered on the habeas corpus appeals filed with the Mayor of Guayaquil on June 12 and 18, 1998, and with the Constitutional Court on July 31, 1998.

11. The petitioner claims the alleged unjust and prolonged deprivation of liberty caused him serious harm in terms of his family as well as irreversible damage to his personal and professional life and plans. He further alleges that while detained, he was held in cruel, inhuman, and degrading conditions in which his life was in constant jeopardy.

12. In his most recent communications —from 2013 and 2014— the petitioner states that despite all of his legal appeals and claims, he has reportedly not been compensated for the time he was deprived of his freedom while innocent, or for the conditions in which he was held, or for the harm allegedly caused to his honor, his family, and his professional career.

B. Position of the State

13. Ecuador stated that on September 1, 1998, the Sixth Chamber of the High Court of Justice of Guayaquil definitively dismissed the case against the alleged victim and other co-defendants, and that such decision was executed on September 4, 1998, the date on which the petitioner was reportedly released.

14. With respect to the alleged delay in the processing of the case, the State noted that a large number of individuals suspected of having been involved in international drug trafficking and related activities such as document counterfeiting, conversion of property, money laundering, and illicit enrichment were investigated as part of it. In the end, this process allegedly resulted in a legal case file of more than 23 volumes or “bodies.” Thus, numerous steps reportedly had to be taken and related criminal cases run simultaneously, all of which resulted in a reasonable prolongation of the main case. Consequently, according to the State, no violation of the Convention occurred in this regard.

15. In the information it sent on June 6, 2000, Ecuador maintained that the petitioner had not exhausted domestic remedies under the terms provided for in Article 46(a) of the American Convention, inasmuch as a decision on the habeas corpus appeal filed by the petitioner with the Constitutional Court on July 31, 1998 remained pending. The State likewise claimed that the alleged victim still had the option of filing a last instance appeal and a request for judicial review if the criminal case against him ended in a conviction.

16. The State further held that neither the right to a defense, nor the right to a fair trial established under Article 8 of the Convention were violated since it believes the petitioner had at his disposal all the remedies provided for under Ecuadorian law to combat the alleged violations. In this respect, the State indicated that the petitioner himself had filed all the appeals permitted by law. These appeals are still pending to be decided; therefore, not yet exhausted. It also claimed that the petitioner had free access to the legal system, and that at no time was he prevented from exercising his right to be heard under equal conditions before the competent bodies.

17. In addition, the State requested that the fact that it had not been notified or informed about any procedural action or progress in the processing of the petition between July 2001 and August 2014 be taken into account and that the petition therefore be archived.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Preliminary Question Regarding the Admissibility of the Petition

18. Regarding the request to archive made by the State, the Commission observes that Article 48(1)(b) of the American Convention provides that after information has been received from the parties, 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.” This provision is consistent with Article 42(2) of the Rules of Procedure of the IACHR that were in force in 2013, which provided, as the current Rules of Procedure do, that before considering the archiving of a petition, “[the Commission] shall request that the petitioners submit the necessary information and notify the possibility of a decision to archive. Once the time limit specified for that purpose has expired, the Commission shall proceed to adopt the corresponding decision.”

19. As has already been noted, in the instant case the IACHR sent the petitioner the aforementioned request for information on February 15, 2013, and he responded, expressing his desire to continue moving forward with the petition. The petitioner provided additional information on May 13, 2013. The precepts cited above were thus met. The Commission further recalls that in the processing of individual cases, there is no concept of expiry of jurisdiction as an *ipso jure* measure merely because of the passage of time.¹

B. Competence

20. The petitioner is entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition names as alleged victim an individual on whose behalf the State of Ecuador

¹ IACHR, Report No. 33/98, Case 10.545. Admissibility. Clemente Ayala Torres Et. Al., Mexico, May 15, 1998, paragraph 22.

undertook to respect and ensure the rights enshrined in the American Convention. Regarding the State, Ecuador has been party to the American Convention since December 28, 1977, when it deposited the respective instrument of ratification. The Commission, therefore, has *ratione personae* to examine the petition. The Commission likewise has *ratione loci* to examine the petition inasmuch as it alleges violations of rights protected under the American Convention that are said to have taken place within the territory of Ecuador, a state party to said treaty.

21. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in force for the State when the facts alleged in the petition are said to have occurred. Lastly, the Commission 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

22. Article 46(1)(a) of the American Convention states that for a petition presented to the IACHR to be admitted, the remedies offered by domestic jurisdiction must have been pursued and exhausted in accordance with generally recognized principles of international law. The requirement of prior exhaustion has as its aim to give the national authorities an opportunity to examine the alleged violation of a protected Convention right and, where appropriate, to remedy the situation before it is examined by an international body.

23. Whenever a State alleges that the petitioner has failed to exhaust domestic remedies, it has the burden of proving that the remedies that have not been exhausted are “adequate” for remedying the alleged violation, which means that the function of such remedies under the domestic legal system is suitable for protecting the legal right that has been infringed.² Additionally, in the case of petitions that allege the improper use or excessive length of pretrial detention, the Commission has determined that such claims “in the context of Article 46(1)(a) of the Convention, have their own dynamics for the exhaustion of domestic remedies that are independent from those that apply to the criminal proceeding as a whole,” and that “the presentation of the request for conditional release followed by the denial thereof suffices to substantiate the exhaustion of remedies.”³

24. In the instant case, the Commission observes that the petitioner filed habeas corpus actions with the Mayor of Guayaquil on June 12 and 18, 1998, in which he presented the facts contained in the petition he filed with the IACHR. In addition, on July 31 of that same year, he filed a habeas corpus appeal with the Constitutional Court of Ecuador. It was via these remedies that the alleged victim informed the State of Ecuador’s various public authorities about the supposed arbitrary detention and police abuse, the alleged unjustified protracted time in pretrial detention, purported inhumane conditions in detention, as well as other harm he claims was visited upon him and his family.

25. The petitioner further holds that 16 years after filing those actions, the State has still reportedly not conducted the necessary investigations to identify and punish those responsible for both the police actions and the poor prison conditions being alleged, or on the arbitrary judicial actions that allegedly unjustly deprived him of his liberty.

26. For its part, the State alleges in its June 6, 2000 response that domestic remedies had not been exhausted inasmuch as no decision had yet been issued with respect to the habeas corpus action filed by the petitioner on July 31, 1998 with the Constitutional Court. Regarding the habeas corpus appeals filed with the Mayor of Guayaquil, the State limited itself to indicating that the rulings thereon had gone against the

² Article 31(3) of the Rules of Procedure of the IACHR. See also, Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paragraph 64.

³ IACHR, Report on the Use of Pretrial Detention in the Americas, adopted on December 30, 2013, paragraph 201.

petitioner. It likewise maintained that the petitioner had the option to file a last instance appeal or a request for judicial review of any potential conviction.

27. In this respect, although the organs of the Inter-American System have established that in Ecuador, at the time these events occurred, the habeas corpus action filed with the Mayor did not conform to the American Convention,⁴ the Commission observes that it was the remedy available at the time and that it was, indeed, exhausted by the petitioner. Regarding the habeas corpus appeal filed with the Constitutional Court on July 31, 1998, the Commission notes that, according to what the State itself indicated in its July 11, 2000 communication, no decision had yet been rendered two years after that appeal was filed. Subsequently, in the processing of this petition, neither of the parties has furnished information as to whether a ruling on this action was ever issued.

28. In light of the foregoing, and aside from the different habeas corpus actions filed by the petitioner, the Inter-American Commission observes that the petitioner was released after being held in pretrial detention for three years and seven months following a decision to dismiss [the case against him] was issued and upheld in the regular course of the criminal proceedings. This occurred in September 1998 while the habeas corpus action filed in June of that same year with the Constitutional Court was still pending decision.

29. Thus, and independently from the determination the Inter-American Commission ultimately makes during the merits stage of this case with respect to the effectiveness of domestic remedies, it is clear that: (a) with respect to the criminal investigation against the petitioner, the Commission deems that he exhausted the domestic remedies available to him by means of his legal defense in the context of the criminal case being pursued against him; and (b) regarding to the alleged undue extension of his time in pretrial detention, the Commission considers that there was an unwarranted delay in the decision pertaining the habeas corpus lodged before the Constitutional Court, which was still pending to decide by the time the criminal investigation ended and the petitioner was released.

30. The State has also failed to demonstrate how a last instance appeal and judicial review might constitute effective remedies for the violations being alleged by the petitioner. According to the information received, such remedies would not be appropriate given that they are not designed to challenge cases of alleged undue and excessively long pretrial detention.

31. The Inter-American Commission therefore concludes that the petitioner did exhaust domestic legal remedies in accordance with Article 46(1)(a) of the American Convention with regard to the criminal case brought against him; and the State incurred in unwarranted delay in rendering a final decision regarding his remedies against the pretrial detention, in accordance to Article 46(2)(c) of the American Convention.

2. Timeliness of the petition

32. Article 46(1)(a) of the American Convention states that for a petition presented to the IACHR to be admitted, the remedies offered by domestic jurisdiction must have been pursued and exhausted in accordance with generally recognized principles of international law. In the case at hand, the petition was filed on August 10, 1998, and the final ruling in the criminal case against the alleged victim was handed down by the Sixth Chamber of the High Court of Justice of Guayas on September 1, 1998 and executed on September 4 of that same year, after which the petitioner was released. Hence, the petition was submitted in accordance with Article 46 of the American Convention.

⁴In this respect, please see: IACHR, Report No. 66/01, Case 11.992, Merits, *Dayra María Levoyer Jiménez*, Ecuador, June 14, 2001, paragraphs 78-81; and Inter-American Court of Human Rights. *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, paragraphs 114-116.

3. Duplication of proceedings and international *res judicata*

33. For purposes of admissibility, Article 46(1)(c) of the American Convention establishes that the petition cannot be pending in any other international settlement proceeding, while Article 47(d) provides that it cannot be substantially the same as another petition already examined by this Commission or any other international body. In the instant case, the IACHR observes that the parties have not alleged the existence of any of these causes for inadmissibility, nor does the case file so indicate. The Commission therefore considers the requirements set forth in Articles 46(1) and 47(d) of the American Convention to have been met.

4. Colorable claim

34. For purposes of admissibility, the Commission must decide whether the alleged facts might constitute a violation of rights pursuant to the provisions of the Article 47(b) of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order,” pursuant to Article 47(c). The criteria for evaluating those requirements differ from the ones used to rule on the merits of a petition; the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the grounds for the possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. Such determination constitutes a preliminary analysis, but does not prejudice the merits of the case.

35. Neither the American Convention nor the IACHR’s Rules of Procedure require the petitioner to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although the petitioners may do so. It falls to the Commission, based on the system’s jurisprudence, to determine in its admissibility reports what provision of the relevant inter-American instruments applies and could establish a violation in the facts are proven sufficiently and using legal arguments.

36. In the case at hand, the Inter-American Commission observes that the facts alleged fundamentally refer to the illegal search of the alleged victim’s home, and to reported acts of arbitrary arrest, violation of the right to due process during the police investigations, excessive time in pretrial detention, lack of effective legal protection, and violation of the rights to presumption of innocence and humane treatment. The IACHR takes into account that in prior cases in which similar allegations were made, it has examined the legal framework in force and the actions taken by the State of Ecuador in the 1990s as part of its policy to combat drug trafficking.⁵ In this regard, the Commission believes that, if proven, the facts alleged might constitute violations of the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of the alleged victim.

V. CONCLUSIONS

37. The Commission concludes that it is competent to examine the claims put forth by the petitioner regarding the alleged violation of Articles 5, 7, 8, and 25 of the American Convention, in accordance with Articles 1(1) and 2 thereof, and that they are admissible pursuant to the requirements established under Articles 46 and 47 of the American Convention.

38. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

⁵ In this respect, please see: 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 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; Inter-American Court of Human Rights. *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170; Inter-American Court of Human Rights. *Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114. Inter-American Court of Human Rights. *Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with regard to Articles 5, 7, 8, and 25, in conjunction with Articles 1(1) and 2 of the American Convention;
2. To notify the State of Ecuador and the petitioner of this decision;
3. To continue with its analysis of the merits of the complaint; and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 28th day of the month of October, 2015. (Signed):
Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez,
Second Vice President; Felipe González, Rosa María Ortiz and Tracy Robinson Commissioners.