

OEA/Ser.L/V/II.
Doc. 158
27 November 2018
Original: Spanish

REPORT No. 140/18
PETITION 1607-07
REPORT ON ADMISSIBILITY

CARLOS JULIO RODRÍGUEZ LASSO
ECUADOR

Electronically approved by the Commission on November 27, 2018.

Cite as: IACHR, Report No. 140/18, Petition 1607-07. Admissibility. Carlos Julio Rodríguez Lasso. Ecuador. November 27, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Julio Rodríguez Lasso, Luz María Pico Díaz and Isabel Segarra Ibarra
Alleged victim:	Carlos Julio Rodríguez Lasso
Respondent State:	Ecuador
Rights invoked:	Articles 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights, ¹ in relation to Article 1.1 thereof (Obligation to Respect Rights)

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	December 19, 2007
Additional information received at the stage of initial review:	February 3, 2009; February 10, 2010; February 28, 2012; June 21 and October 24, 2012
Notification of the petition to the State:	December 19, 2012
State's first response:	January 5, 2015
Additional observations from the petitioner:	January 4, 2018
Additional observations from the State:	March 8, 2018

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 (deposit of ratification instrument on December 28, 1977)

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 Convention, in relation to Article 1.1 (Obligation to Respect Rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, December 3, 2008
Timeliness of the petition:	Yes, December 19, 2007

¹ Hereinafter "American Convention" or "Convention."

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

V. ALLEGED FACTS

1. The petitioners claim that the State of Ecuador violated the human rights of Mr. Carlos Julio Rodríguez Lasso (hereinafter “Mr. Rodríguez Lasso” or “the alleged victim”) in view of the damage caused by his illegal and arbitrary deprivation of liberty for 25 days in the framework of a criminal proceeding filed against him by error as he was mistaken for someone with a name similar to his.

2. The petitioners indicate that on April 17, 2007 Mr. Rodríguez Lasso was fulfilling an administrative procedure for vehicle registration when police officers violently arrested him claiming that they were executing a pretrial detention order issued against someone called Carlos Gabriel Rodríguez Lasso. The petitioners allege that Mr. Rodríguez Lasso objected and demanded the police officers to verify his ID number in the system and the fact that his second name was Julio and not Gabriel. However, officers allegedly proceeded to arrest him by beating and threatening him.

3. They submit that Mr. Rodríguez Lasso was taken to a judicial police station and then to the Police Detention Center of Santo Domingo de los Colorados. They affirm that the alleged victim unsuccessfully requested access to the detention warrant; and that, however, later he was shown an official letter faxed by the Third Criminal Court of El Guayas ordering the pretrial arrest of “Carlos Rodríguez Lasso.” They claim that that day he was made to sign a detention report to legitimize his arbitrary detention. They indicate that on the following day his next of kin sent the police a certificate from the Prosecutor’s Office establishing that the arrest warrant concerned someone else, that is, someone with a different ID number and a different second name, despite of which the police kept him in prison.

4. In view of his detention, on April 19, 26 and 30, 2007 the alleged victim filed written complaints to the Third Criminal Judge of El Guayas in order to demand his immediate release. On April 23 said judge requested the Head of El Guayas Civil Register to resend a certificate of the ID cards of the alleged victim and the accused, in order to clarify the purported case of homonymy while keeping the alleged victim in prison until the matter was fully settled. Therefore, on April 30, Mr. Rodríguez Lasso presented a writ of liberty before the Superior Court of Justice of Guayaquil, which ruled his immediate release by a judgment of May 10, 2007 given that the Civil Register of El Guayas had confirmed that it was a case of homonymy. They submit that only on August 23, 2007 did the judge of the case rule that the alleged victim was to be dismissed from the proceedings, issuing official letters on this to all the public institutions concerned.

5. As a result of these events, on September 21, 2007 Mr. Rodríguez Lasso filed a criminal complaint against the two officers that arrested him, before the General Inspector’s Office of the National Police. Said criminal complaint was resolved by the National Police First District Third Court on August 5, 2008, which ruled to temporarily dismiss the case against both police officers on considering that their actions followed the Police Rules of Procedure and that the causal link between the facts and the damage was not established. Later, in view of an appeal, the District First Court of Police Justice, by a judgment of November 17, 2008, ruled to uphold the temporary stay of proceedings. Finally, on December 3, 2008 the Third Court executed the stay of proceedings. During the proceeding, it was established that the detention report contained the first and the last names of the accused but not their ID number prepared in view of an official document from the Third Criminal Court of El Guayas dated September 15, 2006. The petitioners allege that, given that the criminal complaint was rejected, the Ecuadorian justice does not allow the alleged victim to file a claim for damages.

6. In short, the petitioner claims that the State is internationally responsible for the acts of the police and the judicial system that led to his arbitrary and wrongful detention for 25 days in police cells (11 days in Santo Domingo de los Colorados and 14 in Guayaquil), where conditions were inhumane.

7. For its part, Ecuador alleges that the petitioner did not exhaust available remedies thus the State has not had the opportunity to adequately examine in first instance the alleged violation of human rights before a procedure was filed before the inter-American system of human rights, violating the subsidiary nature of the system; that, as a result, the State has not been able to adopt the necessary corrective measures or to redress the victim. It claims that domestic remedies are as follows: (i) a habeas corpus

petition, a constitutional remedy that any Mayor can resolve within 24 hours and which allows ruling the alleged victim's immediate release provided that an arbitrary detention has been proved; (ii) a legal claim for moral damage, which can be filed in regard to different forms of damage, particularly in relation to arbitrary or illegal detention or arrest or unwarranted proceeding, in order to obtain full redress; (iii) a claim for damages, a suitable remedy for repairing through compensation material loss for illegal actions; and (iv) an administrative complaint against the Third Criminal Judge of El Guayas if it is considered that the judge's actions led to a miscarriage of justice.

8. Likewise, it remarks that the facts alleged in the instant petition do not establish the violation of any of the rights recognized in the American Convention. It indicates that, therefore, Mr. Rodríguez Lasso did not question the lack remedies or access to them. In view of this, the State considers that the Commission must declare the instant petition inadmissible because no connection has been found between these events and the violation of a right protected by the Convention.

9. Furthermore, as for the alleged violation of the right to humane treatment to the detriment of Mr. Rodríguez Lasso, the State indicates that the petitioners do not establish in what ways such right was violated in the framework of the alleged victim's detention for 25 days in Ecuadorian cells; for no complaints have been lodged against any state agent on such charges.

10. With respect to the petitioner's claims regarding compensation, the State indicates that Mr. Rodríguez Lasso had the opportunity to present such allegations in the domestic system, within three years following the wrongdoings, through a claim for financial liability against the State in order to obtain pecuniary compensation from administrative authorities. It submits that, in the case of rejection, he could have filed an administrative proceeding.

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

11. In the instant case, the Commission observes that the matter of the petition concerns the alleged arbitrary detention of the alleged victim for 25 days as a result his being mistaken for someone with a name similar to his; the way in which police officers treated him during his arrest; and the conditions of the cells where he was held. Moreover, and in view of the instant analysis for admissibility, the Commission notes that the alleged victim's deprivation of liberty was based on the execution of a pretrial detention order.

12. In this regard, the Commission reiterates that, in cases of pretrial detentions that involve the violation of human rights, proof of a request for release from jail and its denial is enough for fulfilling the requirement of prior exhaustion of domestic remedies. Likewise, it has established that at the time the events of the instant case happened, and until the constitutional reform of 2008, a habeas corpus petition, as a mechanism to oversee the lawfulness of a detention, was not an adequate remedy under the American Convention.³ The IACHR also reiterates that the requirement of prior exhaustion of domestic remedies does not mean that alleged victim must exhaust all the available remedies.

13. In view of the foregoing and considering the information from the case file, the Commission observes that the alleged victim lodged two written complaints to request his immediate release from jail (dated April 19 and 23, 2007) before the Third Criminal Judge of El Guayas; and a writ of liberty, on April 30, before the Superior Court of Justice of Guayaquil, the court which on May 10, 2007 ruled his immediate release. Also, and as a direct effect of the events presented in his petition, Mr. Rodríguez Lasso filed a criminal complaint for civil liability on the part of the police officers that committed his arbitrary arrest. Said proceeding was settled by the Third Court of the First District of the National Police Justice on December 3, 2008, the petitioner being notified of the judgment on that same day. The Commission observes that the alleged maltreatment by police officers during the arrest were denounced in said criminal proceeding. Therefore, the Commission concludes that this petition meets the requirement of prior exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention.

³ For instance, see, IACHR, Report No. 16/17. Admissibility. Eva Cristina Allan Ramos. Ecuador. January 27, 2017, par. 25.

14. Likewise, since the alleged victim presented his petition to the IACHR on December 19, 2007, the Commission deems that it does fulfill the requirement established in Article 46.1.b of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

15. In view of the elements of fact and law presented by the parties, and the nature of the matter brought of its attention, the Commission considers that the alleged victim's purported arbitrary detention for 25 days as a result of a pretrial detention order issued against someone with a similar name, and the alleged acts of violence from the police during his arrest and the conditions of the cells where he was held all could *prima facie* establish violations of the rights set forth in Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, in relation to Article 1.1 (Obligation to Respect Rights) thereof, to the detriment of Mr. Rodríguez Lasso. In the merits stage, the Commission will analyze the purported actions of the police and judicial authorities leading to Mr. Rodríguez Lasso's deprivation of liberty for 25 days given the error of arresting the wrong person.

16. As for the claim on the alleged violation of Article 24 (Equal Protection) of the American Convention, the Commission observes that the petitioners have not submitted allegations or enough evidence for the Commission to *prima facie* consider such violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25 of the American Convention, in connection with Article 1.1 thereof (Obligation to Respect Rights);

2. To find the instant petition inadmissible in relation to Article 24 of the American Convention; and To notify the parties of this decision; to continue with the analysis on the merits; and

3. 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 27th day of the month of November, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.