

OEA/Ser.L/V/II.162
Doc. 67
25 May 2017
Original: Spanish

REPORT No. 55/17
PETITION 438-07
REPORT ON ADMISSIBILITY

VÍCTOR NOEL LARREA BOURNE
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. 55/17. Petition 438-07. Admissibility. Víctor Noel Larrea Bourne.
Ecuador. May 25, 2017.

REPORT No. 55/17
PETITION P-438-07
 REPORT ON ADMISSIBILITY
 VÍCTOR NOEL LARREA BOURNE
 ECUADOR
 MAY 25, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Djalma Blum Rodríguez
Alleged victim:	Victor Noel Larrea Bourne
State denounced:	Ecuador
Rights invoked:	Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws), 10 (Right to Compensation), 21 (Right to Property) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	April 11, 2007
Date on which the petition was transmitted to the State:	June 27, 2011
Date of the State's first response:	November 6, 2015
Additional observations from the petitioning party:	December 20, 2010 and June 3, 2016
Additional observations from the State:	November 17, 2016 and March 3, 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 (deposit of instrument of ratification made on December 28, 1997)

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 <i>res judicata</i>:	No
Rights declared admissible	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, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof

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

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

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; June 15, 2015
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner claims that on May 12, 2006, as a result of counter-narcotics operation called “*Tormenta del Pacífico*,” Mr. Víctor Noel Larrea Bourne (hereinafter “the alleged victim” or “Mr. Larrea Bourne”) was detained by two counter-narcotics officers in plain clothes. She adds that they took him in an unofficial vehicle to the barracks of the National Police Intervention and Rescue Team, an unofficial detention center where he was allegedly held in isolation for more than ten days. The petitioner claims that when Mr. Larrea Bourne was detained, he was not caught in flagrante delicto nor did the officers produce an arrest warrant against him. She claims that the alleged victim was subjected to pre-trial detention for one-and-a-half years and to three criminal investigations for drug-related criminal offenses.

2. She asserts that on May 14, 2006 the Fourth Counter-narcotics Prosecutor of Guayas ordered the criminal investigation No. 289-2006, as a result of which the alleged victim and other detainees were accused of organizing, directing or financing criminal acts, and ordered to remain in custody pending trial. This investigation led to the first criminal proceedings against the alleged victim. The petitioner also claims that on May 22, the alleged victim was taken to the Men’s Social Rehabilitation Center in Guayaquil along with other twenty-nine detainees in a vehicle with room for only eight people. She asserts that on February 15, 2007 the Second Criminal Judge of Guayas ordered the pre-trial detention of the alleged victim and other detainees on the belief that they were alleged accomplices in relation to the offense defined in Article 81 of the Law on Narcotic and Psychotropic Substances. The petitioner indicates that on May 16, 2007 she requested the prescription of the pre-trial detention inasmuch as the one-year term established in Article 169 of the Code of Criminal Procedure had allegedly elapsed. She asserts that on July 27, 2007 the Second Criminal Judge of Guayas processed the request for release from jail, setting Mr. Larrea Bourne free. The petitioner indicates, however, that the ruling was not executed due to the pre-trial detention ordered during the second proceedings described below. She asserts that later, on May 26, 2009, the co-judges of the Third Criminal Chamber of Guayas dismissed the first proceedings, in favor of the alleged victim.

3. She indicates that on May 20, 2007 the Fourth Counter-narcotics Prosecutor ordered another criminal investigation against the alleged victim and other detainees, for asset laundering. She claims that on May 21, 2007 the Sixth Criminal Judge of Guayas initiated the criminal investigation No. 374-2007-A, which led to the second proceedings against the alleged victim, and ordered the pre-trial detention of Mr. Larrea Bourne and other persons accused. The petitioner asserts that on May 24, 2007 she appealed against the pretrial detention order of May 21, 2007; however she indicates that the Third Criminal Chamber of the Higher Court of Justice of Guayaquil rejected the appeal on August 28, 2007. She asserts that the following month, on September 7, 2007, she appealed against said ruling, and that on October 2, 2007, the Third Criminal Chamber of the Higher Court of Justice of Guayaquil declared the appeal admissible, overruling the pre-trial detention ordered against the alleged victim.

4. According to the petitioner, on February 20, 2008, in the framework of the second proceedings (374-2007-A), the Fourteenth Criminal Judge of Guayas, standing in for the Sixth Criminal Judge, ruled to summon Mr. Larrea Bourne and hold him in pre-trial custody. She claims that said Judge also ruled to suspend the proceedings on the belief that the alleged victim had run away. The petitioner alleges that in the summons it was not specified which of the circumstances set forth by the law concerning asset laundering were attributed to Mr. Larrea Bourne, and that he was never at large. The petitioner appealed this summons but on June 3, 2008 the Third Criminal Chamber of the Higher Court of Justice of Guayaquil affirmed it, without determining the punishable conduct. In her communication of June 3, 2016, the petitioner asserts that on July 11, 2015 –eight years after these proceedings began– the First Court of Criminal Guarantees of Guayas ratified the alleged victim’s legal standing of innocence, hence terminating all the precautionary and real measures ruled against him.

5. Furthermore, the petitioner submits that on June 12, 2008 the Fourth Counter-narcotics Prosecutor of Guayas filed another criminal investigation (424-2008) against the alleged victim and other detainees, for unjust enrichment. The petitioner asserts that this hearing, which was heard by the Twenty-Fourth Criminal Court of Guayas, was based on the same evidence and information used in the two previous proceedings (proceedings No. 289-2006 and No. 374-2007-A) and gave rise to the third proceedings against the alleged victim. She submits that, nevertheless, by the judgment of May 6, 2009, the Seventh Criminal Judge of Guayas annulled these proceedings on the grounds that they were contrary to due process of law and the right to a fair trial to the detriment of the alleged victim and the other persons accused. She indicates that the Second Criminal Chamber of the Court of Justice of Guayaquil rejected an appeal lodged by the Fourth Counter-narcotics Prosecutor through its judgment of August 3, 2009, affirming the order to completely annul the third proceedings against Mr. Larrea Bourne.

6. To conclude, the petitioner claims that the alleged victim was subjected to unlawful and arbitrary detention as he was not caught in flagrante delicto, no arrest warrant had been issued against him nor was he a target of the police investigation that led to the "*Tormenta del Pacífico*" operation. She also claims that Mr. Larrea Bourne was held in isolation for ten days in an unofficial detention center, and that he was mistreated by police officers on the way to the Men's Social Rehabilitation Center of Guayaquil. Moreover, she claims that the alleged victim was subjected to an excessive pre-trial detention, since at the time that the term of the first proceedings prescribed, another order of preventive detention was issued in the framework of the second proceedings filed by the prosecution. Likewise, she claims that the investigations that led to the three proceedings against the alleged victim were based on the same facts and the same evidence.

7. In turn, the State claims that the petition is inadmissible given that the appropriate domestic remedies had allegedly not been exhausted by the time it was filed, and that it was lodged before the issuance of a final decision concerning the appeal that the petitioner filed against the order of pre-trial detention in the framework of the first proceedings (289-2006). The State also claims that the alleged victim did not exhaust the habeas corpus remedy, which protects the right to personal liberty. The State moreover asserts that he did not file a constitutional writ of personal liberty (*amparo de libertad*), through which he would have been granted a review of the alleged abuse of authority on the part of the officials ruling his pre-trial detention.

8. Furthermore, the State claims that the alleged victim was not prosecuted twice. It asserts that Mr. Larrea Bourne was summoned only twice, and that the investigation No. 289-2006 did not lead to proceedings inasmuch as a final stay was ruled in his favor. It also submits that although the criminal investigation No. 425-2007 did lead to judicial proceedings, these were annulled by the ratification of the alleged victim's innocence.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. Concerning the criminal proceedings against the alleged victim, based on the information available, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") notes that on May 26, 2009 a final stay was issued in relation to the proceedings No. 289-2006. In addition, the proceedings No. 374-2007-A had a final settlement in favor of the alleged victim through the First Court of Criminal Guarantees of Guayas' resolution of July 11, 2015. Finally, it is understood that the proceedings No. 424-2008 ended on August 3, 2009 as the Second Criminal Chamber of the Court of Justice of Guayaquil rejected the appeal lodged by the Fourth Counter-narcotics Prosecutor, and confirmed the order to annul the proceedings against Mr. Larrea Bourne. As to the pre-trial detention measures ruled against the alleged victim, the Commission notes that during the first proceedings (No. 289-2006), Mr. Larrea Bourne's defense counsel requested his release from jail on May 16, 2007 and was granted a favorable decision on July 27, 2007. Likewise, during the second proceedings (No. 374-2007), the petitioner appealed the pre-trial detention order ruled against Mr. Larrea Bourne, and eventually got a favorable decision on October 2, 2007.

10. The Inter-American Commission has consistently established that during the time the abovementioned facts occurred, and before the constitutional reform of 2008, the habeas corpus remedy was

not an appropriate mechanism to monitor the legality of detentions under the terms of the American Convention.³ 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 concludes that this petition meets the requirement of exhaustion of domestic remedies set forth in Article 46.1(a) of the Convention.

11. The Commission notes, apart from the petitioner's original pleadings concerning Mr. Larrea Bourne's arbitrary detention, that both the remedies whereby the criminal proceedings against Mr. Larrea Bourne were annulled as well as those particularly aimed at reversing his preventive custody were filed and exhausted after April 11, 2007, which is the date this petition was received by the IACHR. Therefore, in view that the analysis of the exhaustion of domestic remedies is based on the time of deciding on the admissibility of a petition and not on the date the petition was lodged, the Commission believes that this petition meets the requirement established in Article 46.1(b) of the American Convention.

VII. COLORABLE CLAIM

12. Based on the foregoing information available from the case file, on its jurisprudence,⁴ and on the fact that the State did not question the colorable claim (although it denied the duplication of proceedings for the same facts), the IACHR believes that the facts denounced, if proved, could establish violations of the rights protected by Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of Víctor Noel Larrea Bourne.

13. Concerning the complaint about the purported violation of Articles 9 (Freedom from Ex Post Facto Laws), 10 (Right to Compensation) and 21 (Right to Property), the Commission notes that the petitioner has not presented arguments or grounds sufficient to *prima facie* consider their possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25, in connection with Articles 1.1 and 2 thereof;

2. To find the instant petition inadmissible in relation to the alleged violation of Articles 9, 10 and 21 of the American Convention;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and

³ 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.

⁴ 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 herein. For instance, see: 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 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 of 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 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.

5. 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; Margarete 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.