

OEA/Ser.L/V/II.167
Doc. 12
24 February 2018
Original: Spanish

REPORT No. 8/18
PETITION 799-07
REPORT ON ADMISSIBILITY

SERVIO FELICIANO PEÑA JIMÉNEZ, RAMÓN ADALBERTO
ZAMORA ZAMORA AND FAMILY
ECUADOR

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report 8/18. Admissibility. Servio Feliciano Peña Jiménez and Ramón Adalberto Zamora Zamora. Ecuador. February 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Ecuador's Ecumenical Commission for Human Rights (CEDHU)
Alleged victims:	Servio Feliciano Peña Jiménez, Ramón Adalberto Zamora Zamora and family members
State denounced:	Ecuador
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	June 14, 2007
Additional information received at the stage of initial review:	March 17 and December 20, 2010
Notification of the petition to the State:	October 6, 2011
State's first response:	February 1, 2012
Additional observations from the petitioner:	March 21, 2012; May 25, 2015; June 15, 2017
Additional observations from the State:	March 24, 2015; September 20, 2016; August 21, 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 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 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception to Article 46.2.b of the Convention applies
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Hereinafter "Convention" or "American Convention."² The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners submit that on September 13, 2005 Servio Feliciano Peña Jiménez and Ramón Adalberto Zamora Zamora were driving a truck in Sucumbío province when a group of men (some in civil clothes, others in their military uniforms) who refused to identify themselves unexpectedly stopped them. They indicate that as the alleged victims believed that it was a robbery, they accelerated the truck and were immediately shot; losing control of the vehicle, which eventually plunged off a precipice. As a result of the bullet wounds, Mr. Servio Peña Jiménez died, whereas Mr. Ramón Adalberto Zamora Zamora was seriously injured and came to the road to ask for help, being rescued by a National Police car. The police report on the facts confirmed that some of the military staff were in their uniforms and refused to identify themselves and that one of the officers had alcohol breathe. Later, the body was removed and Mr. Ramón Adalberto Zamora Zamora was taken to the hospital.

2. They assert that the alleged victims' family members filed complaints before the Public Prosecutor's Office in the same evening that the facts took place. Thus, on September 14, 2005 an investigation order was issued against the involved military officers on the charges of murder and injuries. On September 15, 2005, the First Criminal Judge of Sucumbíos ruled pre-trial detention against the accused; however, these appealed the decision, and on September 20, 2005 the case was forwarded to the Superior Court of Nueva Loja.

3. They indicate that on September 23, 2005 the First Military Criminal Court of the Fourth Military Zone requested the First Criminal Court of Sucumbíos to refrain from hearing the case and to forward the proceedings to the military jurisdiction, for the defendants were active officers of the Army and were thus to be tried in the military jurisdiction. On the same date, a similar request was made to the prosecutor leading the investigation. Later, on October 4, 2005, the Chamber of the Superior Court of Justice of Nueva Loja ruled that the accused were exclusively subject to the military code of law, and that a decision on the appeal against the pre-trial detention order would be wrongful. They assert that, in view of this decision, the First Criminal Court of Sucumbíos decided not to continue hearing the case and to forward the case file to the First Military Criminal Court of the Fourth Military Zone on October 12, 2005.

4. The petitioners claim that it was of no use lodging an appeal or any other remedy against the order by which the judge dismissed the case for lack of jurisdiction, because such an appeal would be heard by the Chamber of the Superior Court of Justice of Nueva Loja, which had already issued a judgment in favor of the case's being forwarded to the military criminal court.

5. They indicate that on October 31, 2005 the military judge ordered the release of the accused on the grounds that the offenses attributed to them entailed a maximum punishment of 5 year's imprisonment, and that he also ordered the extension of proceedings against the two other officers involved in the facts. Moreover, on January 11, 2006, the First Military Criminal Court of the Fourth Military Zone deprived the alleged victims' family members of the opportunity of proceeding with the complaint filed before the ordinary jurisdiction. Subsequently, on January 31, 2006, this resolution was upheld by the same issuing military authority.

6. They submit that after the investigation stage finished, on July 11, 2006 the Military Prosecutor issued a discontinuance order in favor of the defendants, noting that although the facts resulted in Mr. Servio Peña Jiménez's death and Mr. Ramón Adalberto Zamora Zamora's being injured, it was impossible to identify the person responsible of the shootings. Therefore, on July 31, 2006, the military judge hearing the case ruled to discontinue the case against the accused. On December 1, 2006, this decision was confirmed by the Military Court of Justice.

7. In addition, the petitioners assert that an appeal for legal protection was not the appropriate or effective remedy to lodge, for the Ecuadorian Constitution of 1998, in force at the time that the facts took place, established that resolutions adopted in proceedings were not liable to be challenged through appeals for legal protection. Furthermore, they indicate that it was judicially impossible to denounce the military

officers' arbitrary actions by filing constitutional proceedings because the offenses of murder and injuries committed against the alleged victims meant that the appropriate remedy was criminal legal action.

8. In turn, the State asserts that the petition is inadmissible because the petitioners failed to exhaust the remedies established in the domestic legal framework. With respect to this, it indicates that the alleged victims could have lodged a constitutional appeal seeking measures for reparations in view of the consequences of the military officers' actions. It also notes that the petitioners did not challenge the resolution by which the First Criminal Court of Sucumbíos found itself non-competent, as a result of which they accepted the military criminal court's competence. Finally, it submits that in case the appeal was rejected, the alleged victims could still have presented an ordinary remedy before the Superior Court.

9. Lastly, it affirms that the denounced facts do not constitute human rights violations inasmuch as the failure to appeal against judicial decisions results from the petitioning party's deficient procedural activity, which cannot be attributed to the State.

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

10. The petitioners hold that the facts are yet to be punished because these were investigated by the military criminal court, which on December 1, 2006, through the Military Court of Justice, decided to discontinue the proceedings against the accused military officers. However, the petitioners stress that the alleged victims' family members were not allowed to participate in the proceedings, and were thus deprived of their right to file appeals. For its part, the State alleges lack of exhaustion of domestic remedies because the petitioners could have appealed against the resolution by which Sucumbíos' First Criminal Court declared itself non-competent to hear this case.

11. The Commission has repeatedly established that the military venue is not the adequate legal remedy to investigate, prosecute or punish purported violations of human rights enshrined in the American Convention whenever these involve the alleged participation, collaboration or approval of members of the Security Forces.³ In this context, the IACHR notes that the Ecuadorian domestic rules establish that resolutions issued by a trial judge on lack of jurisdiction grounds can be challenged before the superior judicial authority. However, in this case, it was said superior authority, the Chamber of the Superior Court of Justice of Nueva Loja, which by a resolution dated October 4, 2005 refrained from hearing and settling the case, in view of the fact that the accused were subject to the military criminal jurisdiction; hence, it forwarded the proceedings to the trial court for the resulting decisions.

12. The Commission notes that, given the circumstances, an appeal was of no use in this particular case, for the First Criminal Judge of Sucumbíos adopted the resolution by which it found itself non-competent to hear the case which had been previously issued by the same Chamber of the Superior Court of Justice of Nueva Loja. Therefore, it believes that in light of the abovementioned judicial resolutions and the development of the investigation that the military criminal justice undertook into the facts, the exception set forth in Article 46.2.b of the Convention is applicable. Finally, the IACHR notes that the petition was filed within a reasonable time and that the admissibility requirement regarding the timeliness of the filing must be therefore declared met.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the State's responsibility for Mr. Servio Feliciano Peña Jiménez's death and Mr. Ramón Adalberto Zamora Zamora's injuries, as a result of the alleged arbitrariness on the part of military officers, and the subsequent lack of adequate judicial protection could

³ IACHR, Report 50/17, Petition P-464-10B. Admissibility. José Ruperto Agudelo Ciro and Family. Colombia. May 25, 2017, par. 9. IACHR, Report No. 84/12, Petition 677-04. Admissibility. Luis Fernando García García and Family. Ecuador. November 8, 2012, par. 37.

constitute possible violations of Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection with its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) to the detriment of the alleged victims and their family members.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8 and 25 of the American Convention, in relation to its Articles 1.1 and 2;

2. 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.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018. (Signed): Margarete 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.