

REPORT No. 6/15
PETITION 518-03
REPORT ON ADMISSIBILITY
JORGE VILLARROEL AND OTHERS
ECUADOR
JANUARY 29, 2015

I. SUMMARY

1. On July 15, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition¹ on behalf of several officers of the National Police of Ecuador — Jorge Villarroel Merino, Mario Rommel Cevallos Moreno, Jorge Coloma Gaybor, Fernando López Ortiz, Amílcar Ascazubi Albán, and Patricio Vinuesa Pánchez — (hereinafter “the alleged victims”), alleging the responsibility of the Republic of Ecuador (hereinafter “the State” or “Ecuador”) for the alleged violation of the rights enshrined in Articles 1.1 (obligation to respect rights), 7 (personal liberty), 8 (right to a fair trial), 9 (principle of legality and freedom from *ex post facto* laws), 10 (compensation), 11 (privacy), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and in Articles I (life, liberty, and personal security), II (equality before the law), XVIII (fair trial), XXV (protection against arbitrary arrest), and XXVI (due process of law) of the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration”) in criminal proceedings for the offense of embezzlement brought against the alleged victims.

2. In turn, the State contends that the claim is inadmissible because domestic remedies were not exhausted, in that the petition was lodged prior to the conclusion of the work of the domestic courts. It further contends that the petition does not describe facts tending to establish violations of the rights enshrined in the Convention and that the judicial remedies brought during the criminal trial were effective, in that they concluded with the alleged victims’ acquittal.

3. After analyzing the positions of the parties and in accordance with the requirements set forth in Articles 46 and 47 of the Convention, the IACHR decides to admit the claims related to the alleged violation of Articles 7, 8, 9, and 25 of the Convention, in conjunction with Article 1.1 thereof. Similarly, it rules the petition inadmissible as regards Articles 10, 11, 21, and 24 of the Convention and Articles I, II, XVIII, XXV, and XXVI of the Declaration. Finally, the IACHR resolves to notify the parties of this report and to order its publication in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

4. The Commission received the petition on July 15, 2003, and additional information on the following July 21. As part of its preliminary analysis, it asked the petitioner for information on May 18, 2004. The petitioner submitted additional information on May 21 and 24, June 7, and November 12, 2004, and on March 10, 2005. The IACHR forwarded the relevant parts of the petition to the State on July 29, 2005.

5. The petitioner submitted additional information on November 9 and 21, 2005, which was conveyed to the State on December 19, 2005. On January 9, 2006, Ecuador submitted comments. The petitioner sent additional information on January 8, February 28, and March 14, 2007, which was conveyed to the State for its comments on March 29 of that year. Given the lack of any response, the request for the State to comment was made again on November 15, 2007. On October 7, 2008, the petitioner submitted additional information; this was conveyed to the State on October 29, 2008, along with a fresh request for it to present the comments pending since March 29, 2007.

¹ The petition was presented by Ms. María Paula Romo, who was later replaced by Mr. Marcelo Dueñas. See para. 7 *infra*, Processing by the IACHR.

6. On November 13, 2012, the alleged victims appointed a new representative, Mr. Marcelo Dueñas Veloz. That information was conveyed to the State on November 19, with a request for its comments and a reiteration of the request for the comments still pending. On February 5, 2013, the petitioner submitted information. On February 22, 2013, the IACHR forwarded that information to the State and asked it for its comments. On March 4, 2013, the State asked for a copy of the case file and an extension of the deadline for responding to the request. On March 11, 2013, the IACHR sent a copy of the case file to the State, with a deadline of one additional month in which to respond. The petitioner submitted information on April 29 and on July 24 and 26, 2013. On August 8, 2013, the State presented its comments, which were forwarded to the petitioner on August 19. On August 15, 2013, the IACHR sent the petitioner's communications to the State.

7. The petitioner submitted comments on September 17 and 26, 2013, which were conveyed to the State on September 27, 2013. Also on September 27, the IACHR sent the petitioner the State's reply of January 9, 2006, since the record failed to indicate that it had been forwarded at that time. The State sent additional information on October 21, 2013, which was forwarded to the petitioner on October 23 and to which the petitioner replied on November 1, 2013. That communication was forwarded to the State on November 14. On February 28, 2014, the petitioner asked the IACHR to rule on the merits of the matter and, on March 18, 2014, the State presented comments, which were forwarded to petitioner on May 2, 2014. The petitioners presented additional information on December 11, 2014.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

8. The petitioner claims that Ecuador incurred in responsibility through criminal proceedings brought against the alleged victims before the police courts without due guarantees, during which a custodial order was issued by means of the retroactive enforcement of a provision of criminal law; and through the subsequent failure to provide compensation for their criminal trial and firm arrest, the lack of independence and impartiality on the part of the courts, and the failure to conclude the criminal trial for perversion of the course of justice brought against the former President of the National Court of Police Justice, who initiated the criminal proceedings.

9. The petitioner further notes that the alleged victims are officers of the National Police of Ecuador (hereinafter "PN"). Criminal proceedings were brought against them before the police courts following the publication, by the State's Comptroller General's Office, of the "Partial Report on Indications of Criminal Liability in the Special Examination of the National Police General Command's Administrative and Financial Operations. Commercial Enterprises: TECMADIESEL GRUP, COTRANSA, and DIJORMING" (hereinafter "the report").²

10. According to the petitioner, the report from the Comptroller's Office concluded that there were grounds for opening a criminal investigation for embezzlement³ and named the alleged victims as participants; however, it contained no clear identification of their individual responsibilities and the alleged victims were unable to defend themselves. The petitioner states that the alleged victims were informed of the Comptroller's report by means of a story in the press dated December 22, 2001.

11. He claims that the report was conveyed by the Comptroller's Office to the District Prosecutor on December 19, 2001, and that the prosecution service launched an investigation and summoned the individuals involved to give a statement. In addition, the President of the National Court of Police Justice (hereinafter "CNJP") requested a copy of the report, which was sent to him on January 28, 2002, thereby "transferring the proceedings to the police courts."

² The purpose of the report was to examine the procurement and financial operations of the General Command of the National Police over the period January 1, 1998, to June 30, 2000.

³ Offense criminalized in Articles 257.3 and Article 340 of the (common) Criminal Code.

12. The petitioner states that the report spoke of the possible commission of the crime of minor embezzlement, which is punishable by a prison term of between 1 and 5 years; under the PN's Criminal Code, however, that crime is punishable by special minor-level prison for a period of between 3 and 6 years: thus, within the police justice system, the possible punishment faced by the alleged victims was harsher. On March 19, 2002, the petitioner reports, the President of the CNJP issued the trial commencement deed and, on the following November 26, concluded that preliminary stage of the proceedings. On January 19, 2003, the Police Prosecutor requested that the preliminary stage be reopened; that request was denied and the Police Prosecutor issued his ruling on April 9, 2003. In that ruling, the prosecutor refrained from formalizing any charges, with the exception of two individuals, one of whom was Mr. Patricio Vinueza.

13. The petitioner adds that there was a change in the CNJP's composition and, on May 26, 2003, the new President issued a "grounded deed" ordering the "firm arrest" and seizure of the assets of eight accused individuals, including the alleged victims. He claims that the President based this decision on a mix of articles from police codes and common criminal codes.

14. The petitioner states that, following the arrest of the alleged victims,⁴ an *amparo* remedy for their release was filed, claiming that the mechanism of "firm arrest" did not exist under police law and stating that the President of the CNJP had applied an article that came into force following the commencement of the proceedings.⁵ He adds that on July 3, 2003, the release *amparo* was denied and that the alleged victims were kept under arrest in spite of a resolution of the Supreme Court of Justice, dated January 23, 2004, ruling that "firm arrest" was not applicable to people whose trials had begun before the new code came into force.

15. The petitioner contends that on January 27, 2004, the President of the CNJP took over the proceedings and overruled the "firm arrest." In addition, he states that alongside the relief *amparo*, the alleged victims filed a remedy for annulment and an appeal remedy⁶ with the CNJP on June 13, 2003. Both were dismissed: the remedy for annulment on July 31, 2003, and the appeal remedy on November 11 of that year.

16. He reports that once the trial commencement deed was confirmed, they requested the recusal of the President of the CNJP. That motion was rejected on the grounds that his recusal was impossible. An application for revocation and a demand for the President of the CNJP to decline competence were also dismissed. In addition, on January 7, 2004, they filed a request for the Interior Ministry to oversee the proceedings, invoking the alleged violations committed against them.

17. At the same time, the petitioner reports that on July 3, 2003, he filed suit against the President of the CNJP for perverting the course of justice. He states that the prosecutorial inquiry was opened, the proceedings were referred to the President of the Quito Court Superior, a trial was begun, and the preventive custody of the former President of the CNJP was ordered; however, he had fled to await the triggering of statutory limitations in the proceedings brought against him.

18. According to the petitioner, with the confirmation of the grounded deed, the charges against Mr. Cevallos were temporarily suspended and Mr. Villarroel's status in the proceedings was amended from perpetrator to suspected accomplice. Later, on September 6, 2004, the CNJP requested that Police Prosecutor present his final ruling, to which the Prosecutor replied on October 8 indicating that there was insufficient evidence for charges to be brought.

19. The petitioner contends that even so, a conviction was handed down on January 10, 2005. Messrs. Vinueza, Coloma, and Villarroel were convicted of the crime set out in Article 222, sections 1, 3, 4, and

⁴ The grounded deed ordered the firm arrest, as "perpetrators," of Messrs. Villarroel, Cevallos Moreno, Coloma Gaibor, Trujillo Soto, and Vinueza Panchez; and, as "accomplices," of Messrs. López Ortiz, Azcásubi Albán, and Estrella Borja.

⁵ The petitioner reports that the first transitory article of the common Code of Criminal Procedure, as amended, states that proceedings commenced prior to the date of its date of entry into force shall continue under the previous rules, except when an individual would benefit from the new provisions.

⁶ In the appeal remedy presented by the petitioner, the CNJP was also asked to enforce Article 160 of the National Police Code of Criminal Procedure, which orders the definitive dismissal of proceedings when the prosecutor issues a final ruling for nonindictment.

10, of the Police Criminal Code, while Mr. Amílcar Ascazubi Albán was acquitted. An appeal against the judgment was lodged with the CNJP. On May 4, 2005, the Court conveyed the appeal to the Police Prosecutor for his response, which was given on May 6, reiterating his ruling that there should be no indictments.

20. He adds that before the appeal could be resolved, new judges were appointed to the CNJP. On appeal, heard by the new bench, the CNJP found that there was no full evidence of the convicted defendants' guilt and ordered the definitive dismissal of the charges against Messrs. Villarroel and Coloma and the acquittal of Mr. Vinueza in September 2005.

21. The petitioner adds that following his definitive dismissal, Mr. Villarroel sought redress for his "firm arrest" and prosecution. Thus, he filed a suit for compensation with the President of the CNJP on March 24, 2006, which was rejected on April 5 on the grounds that the matter should be dealt with by the regular civil courts. He reports that he thereupon filed an application with the President of the Republic, which was also dismissed on the grounds of incompetence. Later, he filed a suit with the civil judge of Pichincha and, subsequently, with the Supreme Court of Justice, both of which were dismissed. The petitioner offers no information on any similar remedies lodged by the other alleged victims.

22. The petitioner further claims that the judgment acquitting the alleged victims represents "irrefutable proof of the systematic violation of constitutional and legal rights" and that they were acquitted because there was a new bench of judges at the CNJP. He argues that the proceedings were brought against the alleged victims because of "personal revenge" against General Villarroel, involving President Lucio Gutiérrez, members of the CNJP, and other senior police authorities. He alleges that the former President of the CNJP assumed functions for which he did not have competence: for example, on the date the grounded deed was issued, he had not taken possession of his position as the court's president.

23. In addition, the petitioner points to the application of a criminal offense deemed more serious under the police justice system and, in addition, to a precedent set by the former Supreme Court of Justice holding that the crime of embezzlement was not a police crime and should therefore be prosecuted by the regular courts. Finally, he claims a lack of impartiality and independence on the part of the CNJP in that, under the rules that applied, there were no other venues or chambers for hearing and ruling on the remedies lodged. Thus, he argues that all the remedies filed during the alleged victims' criminal prosecution were resolved by the same CNJP judges. Finally, the petitioner adds that the new Constitution of the Republic of Ecuador came into force on October 20, 2008, which repealed the provisions of military and police criminal law and transferred all such matters to the regular courts.

24. The petitioner claims violations of Articles 1.1 (obligation to respect rights), 7 (personal liberty), 8 (right to a fair trial), 9 (principle of legality and freedom from *ex post facto* laws), 10 (compensation), 11 (privacy), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), and of Articles I (life, liberty, and personal security), II (equality before the law), XVIII (fair trial), XXV (protection against arbitrary arrest), and XXVI (due process of law) of the American Declaration of the Rights and Duties of Man.

B. Position of the State

25. The State maintains that the facts set out in the petition do not tend to establish violations of rights enshrined in the Convention and that the petitioner has not exhausted the resources available under domestic law. In addition, it holds that in accordance with the fourth instance formula, any claim that seeks to question decisions adopted by domestic venues in compliance with the terms of the Convention, as is the case with the instant petition, must be ruled groundless.

26. In response to the petitioner's initial claim regarding the initiation of the criminal trial before the police courts without due guarantees, Ecuador first argues that when the petitioner lodged the petition with the IACHR, the domestic remedies had not yet been exhausted. Secondly, the State holds that the appeal brought by the alleged victims against the conviction "was effective, served the purpose of double confirmation, was carried out in a reasonable time, and even secured the result sought by the petitioners." The remedies were

effective for resolving the alleged victims' legal situation, for which reason there was no violation of the American Convention. In addition, the State notes that the IACHR is not a court of appeal for the review of domestic proceedings.

27. The State adds that following the rejection of the remedy for annulment and the appeal presented by the petitioner in connection with the release *amparo*, they filed requests for expansion and clarification, both of which were dismissed. The expansion remedy was denied on the grounds that, according to the court, the rejection of the remedy for annulment was not unclear. Similarly, the clarification remedy was denied because it was deemed inadmissible.

28. The State contends that the alleged victims were judged by the appropriate venue and, if they had any disagreement with former President Pinto, the Law of the Judicial Function of the National Police was available to them for challenging his position as president. Ecuador states that there is no evidence of the petitioner having filed an administrative action with the competent authority in connection with that matter. Similarly, regarding the failure of the Minister of the Interior and Police to intervene, it notes that the minister had no jurisdiction to participate directly in the alleged victims' criminal trial and, had he done so, he would have assumed functions that did not correspond to his office, thereby incurring in a violation of Article 8 of the Convention. In addition, Ecuador maintains that the judges acted with full independence and impartiality in the legal proceedings and at all times due process was upheld.

29. At the same time, as regards the compensation suit, it claims that the petitioner did not bring that matter before the civil courts, which would have been the appropriate venue. It also claims that after conducting a search in the judicial archive of cases lodged with the Supreme Court of Justice, it was unable to locate a case dealing with the alleged victims. As a result, on this point the domestic remedies were not exhausted. The State indicates three ways in which the alleged victims could have brought a suit for damages:

- a) Against former President Pinto before the police courts, pursuant to Articles 20, 21, and 22 of the Constitution. In such proceedings, according to the State, the petitioner could have invoked Articles 2232, 2233, and 2234 of the Codification of the Civil Code, dealing with the civil courts, in his case against former President Pinto in pursuit of redress for pain and suffering, regarding which the police courts were not competent.
- b) Proceedings against former President Pinto before what is now the former Supreme Court of Justice, under Article 979 of the Code of Civil Procedure. Upon receiving the suit, the Supreme Court would have asked the CNJP's judges for a report. If the harm was established, the judgment would provide for financial reparations.
- c) Against former President Pinto before the civil courts, on the basis of Article 22 of the Constitution.

30. In addition, the State contends the petitioner incurs in inconsistency and "bad faith" by arguing that the case was judged by a flawed inquisitorial system, considering that in August 2007 Mr. Villarroel assumed the presidency of the CNJP. Finally, the State asks the Commission to rule the petition inadmissible for not meeting the requirements set in Articles 46 and 47 of the Convention and for not establishing deficient actions on the part of the agencies of justice.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

V. CONCLUSIONS

49. The Commission concludes that it is competent to examine the claims presented by the petitioner regarding the alleged violation of Articles 7, 8, 9, and 25 of the American Convention, in conjunction with Article 1.1 thereof, in accordance with the requirements established by Articles 46 and 47 of that same instrument.

50. The Commission also decides to declare this petition inadmissible as regards Articles 10, 11, 21, and 24 of the American Convention on Human Rights and Articles I, II, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man.

51. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To rule this petition admissible as regards Articles 7, 8, 9, and 25 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to Messrs. Jorge Villarroel Merino, Mario Rommel Cevallos Moreno, Jorge Coloma Gaybor, Fernando López Ortiz, Amílcar Ascazubi Albán, and Patricio Vinuesa Pánchez.

2. To rule this petition inadmissible as regards Articles 10, 11, 21, and 24 of the American Convention on Human Rights and Articles I, II, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man.

3. To give notice of this decision to the Ecuadorian State and to the petitioner.

4. To continue with its analysis of the merits of the complaint.

5. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 29th day of the month of January, 2015. (Signed): Tracy Robinson, President; Felipe Gonzalez, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.