

REPORT No. 8/11
PETITION 302-03
ADMISSIBILITY
ANIBAL ALONSO AGUAS ACOSTA AND FAMILY
ECUADOR
March 22, 2011

I. SUMMARY

1. On April 23, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition lodged by the Ecumenical Commission on Human Rights [Comisión Ecuménica de Derechos Humanos- CEDHU] (hereinafter "the petitioners"), in which it alleges that agents of the Republic of Ecuador (hereinafter "the State" or "the Ecuadorian State") are responsible for the torture and death of Anibal Alonso Aguas Acosta (hereinafter "the alleged victim"), presumably perpetrated by State agents on March 1, 1993 in the city of Machala, and for failure to ensure a fair trial and judicial protection in the investigation, prosecution, and punishment of the responsible parties.

2. The petitioners allege that the State is responsible for violation of the rights to life, humane treatment, a fair trial, and judicial protection, established in Articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention"), all considered in relation to the general obligation to respect and guarantee the rights contained in its Article 1(1). They argue that the petition is admissible by virtue of the exception to exhaustion of domestic remedies stipulated in Article 46.2(b) and (c) of the American Convention, based on the fact that the criminal proceedings were in the police jurisdiction and on the unjustified delay in the proceedings and in executing the judgment of conviction issued by the National Police Court.

3. The State, for its part, alleges that the petition is inadmissible on the grounds that the facts do not establish possible violations of the American Convention, in accordance with its Article 47(b), since the national courts issued a judgment and reparations for the alleged violation were provided by the domestic courts. It further contends that the Commission cannot act as a fourth instance.

4. After examining the position of the parties in light of the admissibility requirements stipulated in Articles 46 and 47 of the American Convention, the Commission concludes that it is competent to examine the complaint, and that the petition is admissible insofar as it alleges the violation of rights established in Articles 4 and 5 of the American Convention, considered in relation to its Article 1.1, to the detriment of Anibal Aguas Acosta, and in Articles 8 and 25 to the detriment of his family members. Moreover, by virtue of the principle of *iura novit curia*, the Commission considers it admissible with regard to a possible violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and of Article 5 of the American Convention, to the detriment of the family members of the alleged victim. Consequently, it will notify the parties of the report, order its publication, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The IACHR registered the petition as number 302-03, and after a preliminary analysis it proceeded to forward it to the Ecuadorian State, granting the State two months to submit information.

6. On February 24, 2005, the State presented its response, which was forwarded to the petitioners on November 14, 2005, for its observations. Since the State's communication arrived incomplete, on April 4, 2006, it was sent to the petitioners once again for their observations. The petitioners responded on May 12, 2006, and this response was transmitted to the State for its comments. On July 25, 2006, the State requested an extension of the deadline for submitting observations, and this was granted by the IACHR. On August 3, 2007, the IACHR reiterated its request to the State.

7. On October 26, 2009, the petitioners sent additional information, which was forwarded to the State for its observations on January 6, 2010, the date on which the IACHR reiterated its request to the State for information. On January 29, 2010, the State asked for an extension, which was granted by the IACHR. On March 4, 2010, the State presented its response, and it was forwarded to the petitioners for observations.

8. On May 10, 2010, the petitioners submitted their response, and it was transferred to the State for its comments. On July 19, 2010, the State submitted its response, which was forwarded to the petitioners for their information. On November 9, 2010, the petitioners submitted additional information, which was forwarded to the State for its information.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. The petitioners allege that in the afternoon of March 1, 1997, Aníbal Alonso Aguas Acosta, in an inebriated state, went into a shop in which he broke several things, causing the owner to call the police. They report that agents arrived in a few minutes and despite the resistance of the alleged victim and the pleas of his wife, they arrested him and took him to the detention unit at the police station. They allege that when the police tried to get the victim out of the patrol car, they realized that he was not moving, and so they threw a bucket of water on him. When he did not react, they ordered his transfer to a hospital. In the hospital, they declared him dead and immediately transferred him to the morgue.

10. They further allege that the Judge of the Fifth Criminal Court of El Oro went to the morgue, authorized the removal of the body, and ordered the legal autopsy. Subsequently, since said judge did not record any data on the certificate of removal of the corpse, family members requested that the Judge of the Third Criminal Court intervene, and that judge indicated that death was caused by a "bulbous protuberancial and cerebral hemorrhage plus *tuxuación* [meaning unknown] of the occipital altoid articulation resulting from trauma (encephalic cranial trauma)."

11. They allege that in view of these findings, the police reported at a press round that the detainee "hit himself" inside the patrol car and that when they arrived at the police detention unit, he fell on the sidewalk, and after that, the body was banged up when it was taken to the morgue, and that this is the explanation for the injuries present on the body.

12. They contend that on March 10, 1997, the Judge of the Fifth Criminal Court of El Oro issued an order to open a criminal proceeding to investigate the death and punish the responsible parties, and initiated a series of procedures. They report that on April 2, 1997, the judge noted that the five policemen accused on the day of the events were still on the job, and so he withdrew from the case and transferred jurisdiction to the police courts.

13. They indicate that the petitioners filed a motion for appeal and subsequently another motion of complaint for refusal to allow the appeal [*recurso de hecho*]. They report that the latter was also denied by the same judge, in violation of the law that establishes that such a motion must be reviewed by a higher court judge. They allege that after that decision was handed down, they filed a constitutional *amparo* motion with the Contentious Administrative Court of Guayaquil, which was denied on March 11, 1998. They report that said decision was appealed to the Constitutional Court, which took over six months of deliberation before confirming the lower court decision on September 28, 1998.

14. They maintain that the proceedings were transferred to the Second Court of the Fourth District of the National Police in Guayaquil, which, after completing the required formalities and the preliminary and intermediate stages of the proceedings, issued a substantiated ruling convicting two members of the police and acquitting the other three accused, on the grounds that they did not participate in any way in the crime.

15. They report that after the oral argument stage on September 7, 2000, the criminal court sentenced them to a three-year prison term. They indicate that said ruling was appealed to the Second District Court of Guayaquil, which after hearing the appeal in June 2001, upheld the conviction judgment and amended the sentence to eight years in prison for preterintentional homicide [manslaughter]. They indicate that said judgment was challenged in the National Police Court of Justice, which upheld the prior judgment of December 4, 2001. They report that on May 14, 2002, orders were issued for the arrest and imprisonment of the convicted persons, and their transfer to the prison in Guayaquil. They allege that the convicted police officers subsequently filed an appeal for review with the same Court.

16. The petitioners indicate that, according to the document issued by the Personnel Department of the National Police on March 31, 2003, the prisoners remain at large, and the appeal for review is still pending decision with the National Police Court of Justice; thus, the accused are in a transitional situation. They contend that the State did not capture the responsible parties, in other words it did not comply with the judgment rendered by the domestic legal system, and that the crime remains unpunished. Therefore, they consider that the State is in violation of Article 25 of the American Convention.

17. As regards exhaustion of domestic remedies, the petitioners allege that the police criminal jurisdiction is not the appropriate forum for investigating, prosecuting, and punishing human rights violations, and so they are not required to exhaust the remedies of that jurisdiction. Moreover, they believe that the refusal of the agents to arrest the responsible parties constitutes a denial of justice, and that there was an unwarranted delay of six years before the final judgment was handed down in the police proceeding; hence, the exceptions to exhaustion of domestic remedies apply.

18. The petitioners allege that the State violated the right to humane treatment of Aníbal Aguas Acosta, as established in Article 5 of the American Convention, and that this violation is based on the various injuries present on the head, legs, and arms, as well as on the genitals of the victim, indicating that the agents subjected him to torture. They further argue that during the proceedings conducted, the responsibility of State agents for the death of Aníbal Aguas Acosta was proven; hence, the State is responsible for violation of Article 4 of the Convention.

19. The petitioners contend that the police courts are not an impartial jurisdiction, since they are made up of police on active duty subject to a line of authority. Consequently, the State has violated Article 8 of the American Convention.

B. Position of the State

20. In response to the petitioners' complaint, the State claims that it is inadmissible, since it does not state facts that establish a violation of the Convention, since the facts set forth in the petition were the subject of proceedings conducted diligently in the police criminal courts, and the IACHR is not a court of fourth instance.

21. It alleges that criminal proceedings were conducted by the Second Police Judge of the Fourth District strictly according to normal procedures, in compliance with the applicable procedural rules under Ecuadorian law. It argues that evidence of this is that the Second Chamber of the District Court of the National Police "upheld the ordinary court judgment of conviction to 8 years of prison" against two police agents for the homicide of the alleged victim. It further alleges that subsequently, the convicted parties filed an appeal for review with the National Police Court of Justice, which was denied on January 22, 2003, upholding the conviction of the police agents.

22. It contends that although a violation of the right to life was committed in this case, the State undertook a serious and effective investigation within a reasonable period of time that "resulted in the criminal punishment of the elements in the National Police at fault, as they were found guilty of the simple homicide of Mr. Aguas Acosta." The State maintains that the proceedings occurred within the limits of a reasonable period of time as determined by the Court and the Commission, and so it was not in violation of Article 8 of the American Convention.

23. The State further maintains that administrative sanctions were applied to the convicted parties. It indicates that the fact of being in a "transitional situation" means that the convicted parties are in the stage prior to their dismissal from the Police Force. Later the State indicated that "the persons involved were punished administratively by the National Police, since they were dismissed." It further argues that "it has made every effort to determine the whereabouts of the implicated parties" and that it reserves the possibility of submitting additional information on the action taken by Ecuador to capture the responsible parties.

24. It alleges that the petitioners never expressed their discontent or availed themselves of legal remedies against the judgment of the police courts. As regards the right to defense, the State claims that the petitioners had all the remedies offered under Ecuadorian law for such violations available to them. In fact, the Ecuadorian courts accepted all of the motions filed by the parties, and processed the many challenges and objections filed by the victim's wife.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione materiae, ratione personae, ratione temporis y ratione loci*

25. In principle, petitioners are authorized to lodge petitions with the Commission under Article 44 of the American Convention. The petition indicates that the alleged victims are individuals in respect of whom the Ecuadorian State pledged to respect and guarantee the rights established in the American Convention. With regard to the State, the Commission points out that Ecuador has been a state party to the American Convention since December 8, 1977, and that it has been a party to the Inter-American Convention to Prevent and Punish Torture since November 9 1999, the dates on which it deposited its instruments of ratification. Consequently, the Commission has personal jurisdiction to examine the petition. It also has territorial jurisdiction to examine the petition, since it contains allegations of the violation of rights protected by the American Convention that took place within the territory of Ecuador, a state party to that instrument.

26. The Commission has temporal jurisdiction, since the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date that the acts alleged in the petition occurred. Finally, the Commission has subject matter jurisdiction, because the petition refers to possible violations of human rights protected by the American Convention.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

27. In order for a petition alleging a violation of the provisions of the American Convention to be admissible, it must comply with the requirements established in Article 46.1(a) of that international instrument pertaining to prior exhaustion of remedies under domestic law. For its part, Article 46(2) of the Convention establishes that the requirement of prior exhaustion of domestic remedies shall not be applicable when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

28. In the first place, the domestic remedies that must be exhausted in the present case need to be clarified. The Inter-American Court has stated that only the adequate remedies to redress the violations allegedly committed must be exhausted. Adequate remedies refer to

the fact that these remedies in the domestic legal system are adequate to protect the violated legal situation. In all domestic legal systems, there are various remedies, but not all of them are applicable in all circumstances. If, in a specific case, the remedy is not adequate, it is obvious that it does not need to be exhausted. This is indicated by the principle that the legal provision is designed to produce an effect and it cannot be interpreted that it does not produce any effect or that it is manifestly groundless or obviously out of order.¹

29. In the present petition, the State argues that the facts described in the petition gave rise to proceedings conducted diligently in the police criminal jurisdiction. The petitioners on the other hand, argue that the exception stipulated in Article 46.2(b) and (c) of the American Convention applies, since the proceedings were conducted in the police criminal courts, and there was an unwarranted delay in the proceedings and noncompliance with the judicial decision.

30. The Commission notes that in view of the fact that the present complaint involves the alleged responsibility of State agents in the detention, torture, and death of a civilian, the adequate remedy to clarify the facts is a criminal investigation in the ordinary courts, in order to establish the criminal responsibility of the State agents involved and to open the door to possible reparations for the damages incurred.

31. The Commission observes that the death of Aníbal Alonso Aguas Acosta was the subject of an ordinary criminal investigation that was transferred by the judge's decision to the jurisdiction of the police courts. The decision was appealed by the petitioners, who also presented a motion of complaint for refusal to allow the appeal [*recurso de hecho*]. They were both denied. Against this decision they filed a constitutional *amparo* motion with the Contentious Administrative Court of Guayaquil, which was also denied. Said decision was appealed before the Constitutional Court, which confirmed the lower court decision. Proceedings before the police courts culminated

¹ Inter-American Court, *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, para. 63.

in the judgment rendered in the third instance by the National Police Court of Justice against two police agents for simple homicide, sentencing them to eight years in prison, but that said judgment was not executed, and the convicted parties remain at large. According to the information it received, the Commission notes that the State did not provide information on the action taken by the authorities to capture the perpetrators, other than issuance of the arrest warrant.

32. In this regard, the Commission has repeatedly found that special jurisdictions, such as military or police courts, do not constitute an adequate forum and consequently do not provide an adequate remedy to investigate, prosecute and punish possible violations of the human rights—such as the right to life—enshrined in the American Convention, that are committed by members of the police.² It also has found that the Ecuadorian Police Courts do not provide an adequate remedy for these cases³. Article 165 of the 1979 Ecuadorian Political Constitution, in force at the time the events occurred, established that: “[t]he members of the police force have a special jurisdiction. They may not be prosecuted or deprived of their ranking, honors, or pension except for the reasons and in the way determined by the law, with the exception of common violations, which shall be decided in the ordinary courts.”⁴ The military and police courts comprised this special jurisdiction.

33. The Commission has previously stated that cases related to alleged violations of civil rights require a criminal investigation to establish the facts and the corresponding responsibility.⁵ In this petition, the judge in the ordinary criminal court withdrew from the criminal proceeding opened on the death of Aníbal Alonso Aguas Acosta, in favor of the police criminal jurisdiction, and this decision was upheld when it was challenged by the petitioners in their motion of appeal and subsequent motion of complaint, which were denied. Moreover, when the petitioners’ motions were denied, they filed a constitutional amparo motion which was also rejected, and their appeal to the Constitutional Tribunal resulted in confirmation of the previous decision.

34. In view of the foregoing, the petition falls within the scope of the exception to exhaustion of domestic remedies stipulated in Article 46.2(b) of the American Convention, which establishes that said exception applies when: “... the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.” Consequently, prior exhaustion of domestic remedies is not required.

35. Article 46.1(a), by its nature and purpose, is a legal norm whose content is independent of the substantive rules of the Convention. Therefore, exhaustion of the domestic remedies applicable to the case in question must be determined in advance and separately from the analysis into the merits of the case, since it relies on a standard of evaluation different from the one used to determine a possible violation of Articles 8 and 25 of the American Convention. It is important to clarify that the causes and the effects of exhaustion of judicial remedies referred to in this case will be analyzed in the report on the merits of the case adopted by the Commission, when it will determine whether they consist of violations of the American Convention.

² IACHR Report No. 64/01, Petition 11712, Leonel de Jesús Isaza Echeverry et al, Colombia, 6 April 2001, para. 22. Also see: Inter-American Court, *Case of Durand y Ugarte*, Judgment of 16 August 2000, Series C No. 68, para. 117; *Case of Cesti Hurtado*, Judgment of 29 September 1999, Series C No. 65, para. 151. Also see IACHR, *Report on the Human Rights Situation in Chile*, 27 September 1985, pp. 199, 200. OEA/Ser.LN/III.66 doc. 17; IACHR, 1996 Annual Report, 14 March 1997, p. 688; IACHR, *Report on the Human Rights Situation in Ecuador*, 24 April 1997, p. 36; IACHR, *Report on the Human Rights Situation in Brazil*, 29 September 1997, p. 50.

³ IACHR, Report No. 11/02, Petition 12394, Joaquín Hernández Alvarado et al, Ecuador, 27 February 2002, para. 18 and Report No. 74/09, Petition 386-02, Mickey Alexis Mendoza Sánchez and family, Ecuador, 5 August 2009, para. 19.

⁴ 1979 Constitution of Ecuador, amended in 1996.

⁵ IACHR, Report No. 74/09, Petition 386-02, Mickey Alexis Mendoza Sánchez and family, Ecuador, 5 August 2009, para. 20.

2. Deadline for filing a petition with the Commission

36. Article 46(b) of the American Convention establishes that in order for the Commission to find a petition to be admissible, it must be lodged within six months of the date on which the alleged victim was notified of the final decision. In the complaint in question, the IACHR has established that application of the exception to exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention applies. In this regard, Article 32 of the Commission's Rules of Procedure establishes that in cases in which the exceptions to prior exhaustion of domestic remedies are applicable, the petition must be lodged within a reasonable period of time, as determined by the Commission. For that purpose, the Commission will consider the date on which the alleged violation of rights occurred and the circumstances of each case.

37. In the present case, the petition was received on April 23, 2003 and the alleged facts that are the subject of the complaint occurred on March 1, 1997. It should be noted that fourteen years after the facts occurred, their effects -in terms of the alleged failure to administer justice and to impose an effective punishment to the ones responsible- have extended to this day⁶. Therefore, in view of the circumstances and the characteristics of this case, the Commission considers that the petition was lodged within a reasonable period of time and that the admissibility requirement referring to the deadline for filing has been satisfied.

3. Duplication of procedures and *res judicata*

38. The case records do not contain any information that would lead one to determine that this case is pending other international settlement procedures, or that it replicates a petition already examined by this Commission. Therefore, the IACHR concludes that the provisions of Articles 46.1(d) and 47(d) of the Convention are not applicable

4. Characterization of the alleged facts

39. The State alleges that this petition does not tend to establish a violation in view of the fact that there was a domestic criminal police proceeding which redressed the alleged violations. The petitioners, on the other hand, allege that the crime remains unpunished, due to defects in the police criminal proceeding, and to the fact that the State did not take steps to execute the judgment. In view of the information presented by the parties and the nature of the case under consideration, the IACHR finds that in the case in point, it is required to determine that the petitioners' allegations regarding the alleged violation of the rights to life and to humane treatment would characterize violations of the rights protected in Articles 4 and 5, considered in accordance with Article 1.1 of the American Convention, to the detriment of Aníbal Alonso Aguas Acosta.

40. Moreover, it must establish if the allegations of the petitioners could characterize a violation of the rights enshrined in Articles 8 and 25 of the American Convention, considered in relation to its Article 1.1, and if, according to the principle of *iura novit curia*, the facts would characterize violations of Article 5 of that instrument, to the detriment of the family members of the alleged victim⁷.

⁶ CIDH, Informe No. 86/07, Petición 680-05, Elías Lindt López Pita y Luis Alberto Shinín Laso, Ecuador, 17 de octubre de 2007, párr. 58.

⁷ Pursuant to Article 35.1 of the Rules of the Inter-American Court of Human Rights and its recent jurisprudence, the IACHR includes as victims the relatives of the alleged victims. See I/A Court H.R., *Case of Radilla Pacheco v Mexico*. Judgment of November 23, 2009. Series C No. 209, paras 161 and 162. *Cfr. Case of Castillo Páez v Peru*. Judgment of November 3, 1997.

41. Finally, the IACHR must consider, in application of the *iura novit curia* principle, whether the facts alleged in the petition regarding failure to investigate the presumed torture, if proven, could characterize violations of the State's obligation to conduct an investigation and a criminal proceeding, as established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in view of the fact that the alleged absence of an investigation occurred after the entry into force of that Convention. Since it is apparent that the petition is not manifestly groundless or obviously out of order, the Commission considers that the requirements established in Articles 47(b) and (c) of the American Convention are satisfied.

V. CONCLUSIONS

42. The Commission concludes that it is competent to examine the complaints presented by the petitioners regarding the alleged violation of Articles 4, 5, 8, and 25, considered in accordance with Article 1.1 of the American Convention, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and that they are admissible, pursuant to the requirements established in Articles 46 and 47 of the American Convention.

43. Based on the factual and legal arguments contained herein, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with regard to Articles 4, 5, 8, and 25, considered in relation to Article 1.1 of the American Convention on Human Rights and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.
2. To notify the parties of this decision.
3. To continue with an analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 22nd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.