

OEA/Ser.L/V/II.157
Doc. 22
15 April 2016
Original: Spanish

REPORT No. 18/16
PETITION 1208-07
REPORT ON ADMISSIBILITY

CARLOS MANUEL CAMACHO COLOMA AND FAMILY
ECUADOR

Approved by the Commission at its session No. 2065 held on April 15, 2016
157th Regular Period of Sessions.

Cite as: IACHR, Report No. 18/16, Petition 1208-07, Admissibility, Carlos Manuel Camacho
Coloma, Ecuador, April 15, 2016.

REPORT No. 18/16
PETITION 1208-07
REPORT ON ADMISSIBILITY
CARLOS MANUEL CAMACHO COLOMA AND FAMILY
ECUADOR
APRIL 15, 2016

I. SUMMARY

1. On September 19, 2007, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by attorney Jorge Sosa Meza (hereinafter “the petitioner”) acting on behalf of Mr. Carlos Manuel Camacho Coloma (hereinafter “the alleged victim” or “Mr. Camacho”) against the Republic of Ecuador (hereinafter “Ecuador,” “the State,” or “the Ecuadorean State”). The petition alleges Ecuador’s international responsibility for the irreparable physical harm suffered by the alleged victim in the course of a police operation that involved the disproportionate use of lethal force and through the failure to investigate, prosecute, and punish the perpetrators of those acts.

2. The petitioner claims that as a result of the gunshot wounds Mr. Camacho received during a police operation, he is permanently paralyzed in his lower limbs. He further contends that he was illegally detained in the course of those events and prosecuted in criminal proceedings that violated judicial guarantees, the right to the presumption of innocence, and the right to personal liberty. In addition, he claims that the judicial authorities failed to investigate the facts that caused the alleged victim to acquire a permanent physical disability and in which, additionally, another individual lost his life, even though the incident was publicly actionable. He also contends that the unwarranted delay exception is applicable to the exhaustion of domestic remedies in this case.

3. In turn, the State maintains that the National Police officers made legitimate use of force during the actions that led to Mr. Camacho’s arrest and that those actions were triggered by a complaint made to the police by two private citizens. It further holds that the criminal proceedings brought against the alleged victim were conducted within a reasonable time and in strict compliance with due process. The State also claims that Mr. Camacho failed to exhaust several of the judicial remedies available under national law for the domestic remedying of the facts he has now placed before the IACHR and that the petition was lodged with the Inter-American Commission after the six-month deadline set by the Convention.

4. Without prejudging the merits of the case, after analyzing the positions of the parties, and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), the IACHR decides to find the petition admissible in order to examine the claims related to the alleged violation of the rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1 (obligation to respect rights) thereof. In addition, the Commission decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

5. The IACHR received the petition on September 17, 2007, and it forwarded a copy of the relevant parts to the State on June 8, 2011, giving it a deadline of two months to present its comments, in line with Article 30.3 of the Rules of Procedure as then in force. On August 16, 2011, the State requested an extension; by means of a note dated August 19, 2011, an extension until September 8, 2011 was granted. On February 9, 2012, the Commission again asked the State for its comments. On April 12, 2012, the State’s reply was received, which was forwarded to the petitioner on April 16, 2012.

6. On June 14, 2012, the petitioner's comments were received, which were forwarded to the State on June 22, 2012, along with a request for it to return its comments within the space of one month. The IACHR reiterated this request in notes dated July 3, 2013, and August 19, 2014. Ecuador sent its reply on November 21, 2014, which was forwarded to the petitioner on December 9, 2014.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

7. The petitioner states that on March 12, 1999, Mr. Camacho, a 27-year-old agricultural engineer, was driving his vehicle through a rural area of Los Ríos province as part of his work activities. He stopped in the settlement of San Juan, where a stranger asked him to take him to Vinces canton, which is where Mr. Camacho was headed. On the way, upon arriving in that canton, Mr. Camacho attempted to avoid another vehicle that almost collided with his and, immediately after, he heard several gunshots; he stopped on the side of the road to try and understand what was happening. At that moment, suddenly and for no apparent reason, he felt the impact of a burst of gunfire from behind that left him seriously injured and killed the other passenger who was traveling in his vehicle. He was then arrested by police officers who took him to the San José Clinic in Vinces canton, where he received first aid.

8. On March 13, 1999, a criminal investigation was launched against the alleged victim (case file No. 58-99, the main parts of which may be seen in the annexes to the petition). According to the police report, the local police had received a complaint alleging that five heavily armed hitmen were circulating in the vicinity of the La Floresta estate in a certain vehicle. In addition, according to that same report, the agents of the state security forces had found weapons and drugs in Mr. Camacho's vehicle; in his statements, however, he emphatically denied those allegations and contended that the police had included false information in their report with the sole purpose of justifying the illegality of their actions.

9. According to the documents presented, on March 16, 1999, the Second Criminal Court of Los Ríos ordered Mr. Camacho to stand trial for illegal possession of drugs and weapons and placed him in preventive custody. According to the reports, on the date in question he was in a hospital under police custody. On April 15 of that year, through the corresponding procedural formalities, the judge placed a ban on Mr. Camacho's selling his property and ordered the freezing of his bank accounts and transactions. On June 29, 1999, the Sixth Criminal Prosecutor of Los Ríos, in a grounded resolution, decided to refrain from bringing charges against Mr. Camacho. In his ruling, the representative of the Public Prosecution Service found that there was no evidence to support the police claims that an exchange of fire occurred during the alleged victim's arrest or that five heavily armed men were traveling in his vehicle. On the contrary, the ruling found that Mr. Camacho was an honest citizen with no ties to any criminal groups, that he had no connections to drug trafficking or use, and that he was not in the habit of bearing arms.

10. On July 8, 1999, the Second Criminal Judge of Los Ríos issued a provisional dismissal on behalf of the alleged victim, which in accordance with the law was referred for consultation to the Superior Court of Justice in Babahoyo. The provisional dismissal resolution ordered the immediate release of the alleged victim, who at the time was under police guard at the hospital of the Ecuadorian Social Security Institute in the city of Babahoyo. On September 20, 1999, the Superior Court upheld the provisional dismissal ordered by the first-instance judge. Later, on February 21, 2005, the Second Judge of Los Ríos issued an order stating the definitive dismissal of the proceedings and the accused.

11. The petitioner essentially claims that the alleged victim suffered a grave violation of his right to humane treatment, arising from the irreparable harm suffered as a result of the indiscriminate attack perpetrated by officers of the National Police. He states that in the incident of March 12, 1999, Mr. Camacho suffered a serious injury to his spinal cord that prevented him from ever walking again and that, in addition, he permanently lost control of his anal and urethral sphincters. He also suffered from a depressive disorder that had to be treated pharmaceutically. On these points, the petitioner submitted documents describing and explaining the physical and psychological harm suffered. In addition to all these damages are the economic

losses inflicted, arising from the costs of the court proceedings brought against him, the medical care required, and the deterioration of his ability to work and support his family economically.

12. The petitioner contends that Ecuador is internationally responsible for the illegitimate and disproportionate use of lethal force made by the police officers during the alleged victim's arrest. He emphasizes that the public prosecutor in the case found, in his ruling, that Mr. Camacho was carrying no large-caliber weapons in his vehicle, that he was not traveling with a group of armed men, that there was no exchange of gunfire with the police, and that he in no way resisted arrest. For those reasons, there was no justification for the agents of the state security forces to have used lethal force as the first form of action against the alleged victim. He further contends that although the described facts were publicly actionable and the evidence was aired during the criminal proceedings, the judicial authorities did not initiate an *ex officio* investigation to establish the criminal responsibilities arising from the police officers' actions. The petitioner additionally claims that the officers involved in the incident were fully identified from the start of the prosecutor's investigations and he underscores the fact that another individual lost his life in the operation.

13. Regarding the criminal trial, the petitioner essentially contends that: (a) Mr. Camacho's arrest was illegal because it was neither backed by a warrant issued by competent authority nor did it involve the commission of a crime *in flagrante*, and (b) his rights to the presumption of innocence and to personal liberty were violated, because a preventive custody order was issued without enough grounds to justify it.

14. Based on the foregoing, the petitioner claims that the State did violate, with respect to Mr. Carlos Manuel Camacho Coloma, the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1 thereof.

B. Position of the State

15. The State maintains that the actions of the National Police of March 12, 1999, were based on a complaint made by two private citizens who claimed that in the vicinity of the La Floresta estate, in Vinces canton, a specific vehicle was carrying five heavily armed occupants. Thus, the operation executed by the police was intended to protect the safety of the community. The State contends that at the time of the incident, the police officers had unsuccessfully attempted to stop the vehicle in which the alleged victim was traveling, that there was an exchange of gunfire, and that information existed indicating that the vehicle's occupants were heavily armed. On the basis of those considerations, Ecuador holds that the use of force during the operation was legitimate, using the police report of the incident to support that position.

16. Ecuador also contends that the criminal proceedings brought against Mr. Camacho were pursued in a nimble and effective fashion, and that judicial remedies were available for the petitioner to invoke at the national level. The State claims that the criminal case was processed within a reasonable time, in that it began on March 13, 1999, and the provisional dismissal was issued six months later. It also states that almost six years after the provisional dismissal was issued, Mr. Camacho lodged, on February 4, 2005, an application for a definitive dismissal of the proceedings with the Second Criminal Judge of Los Ríos and that seventeen days later, on February 21, 2005, the court issued the definitive dismissal order. That order was confirmed by the Superior Court of Justice of Babahoyo in a resolution dated May 31, 2005. Consequently, according to the State, the applicable rules governing the deadlines for dismissals were observed.

17. The State notes that the petitioner lodged the complaint with the IACHR on September 17, 2007, while the final decision issued in the criminal proceedings brought against Mr. Camacho — the order confirming the definitive dismissal — was notified to him on June 14, 2005. Hence, the petition was not presented in a timely fashion, after the expiration of the six-month deadline established by Article 46.1.b of the American Convention.

18. The State further contends that Mr. Camacho did not avail himself of all the remedies available to him under domestic law, namely: (a) a remedy for annulment, which he could have filed against the judgment issued by the Superior Court of Justice in Babahoyo on September 20, 1999; (b) administrative contentious proceedings against the State: in which the petitioner could have filed suit to establish the State's

objective responsibility arising from the police actions and thereby to demand compensation in the form of damages; (c) proceedings for damages against the judges who processed the criminal case brought against Mr. Camacho; because according to the petitioner's claims, the justice operators failed in their duty of opening, on an *ex officio* basis, the corresponding legal actions against the police officers who caused Mr. Camacho irreparable harm; and (d) a civil suit for pain and suffering against the private citizens who filed a report with the Vinces police regarding the presence of a vehicle carrying armed men in the vicinity of the La Floresta estate.

19. In conclusion, the State requests that the IACHR declare the petition inadmissible on the grounds that the petitioner has not exhausted the available domestic judicial remedies, and because the petition was lodged after the filing deadline.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

20. The petitioner is entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names, as its alleged victim, an individual person with respect to whom the Ecuadorian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Ecuador has been a party to the American Convention since December 28, 1977, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the petition. The Commission has also competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of Ecuador, which is a state party to that treaty.

21. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* since the petition describes possible violations of human rights that are protected by the American Convention.

22. Irrespective of the foregoing, in analyzing the possible violations of the American Convention during the merits stage of the processing of this petition, the IACHR may take into consideration other instruments that form a part of the *corpus juris* governing the rights of persons with disabilities to the extent that it deems relevant.

B. Admissibility requirements

1. Exhaustion of domestic remedies

23. Article 46.1.a of the American Convention requires the prior exhaustion of the remedies available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of rights contained therein. This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is placed before an international venue. In turn, Article 46.2 of the Convention states that the prior exhaustion of domestic remedies shall not be required when: (i) 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, (ii) 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 (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

24. In the case at hand, both parties agree that the criminal proceedings brought against the alleged victim concluded with their definitive dismissal, that is, with the resolution issued by the Superior Court of Justice of Babahoyo on May 31, 2005. The claim that Mr. Camacho could have filed for the annulment

of the provisional dismissal ruling is groundless, given that dismissal was favorable to him and was issued in accordance with law. Accordingly, the Commission believes that the instant petition meets the exhaustion of domestic remedies requirement as regards to those claims related to human rights violations allegedly committed during the criminal trial.

25. As regards to the violations alleged by the petitioner arising from the harm purportedly caused by the National Police officers during the operation of March 12, 1999, the State contends that the alleged victim had available a series of legal remedies that he failed to pursue. Thus, for example, it maintains that Mr. Camacho could have filed a contentious administrative suit against the State, or that he could have brought civil action against the judges who failed to open the corresponding *ex officio* proceedings against the police officers, or that he could even have begun legal action against the citizens who reported the alleged presence of armed individuals in the canton to the police. However, in cases such as the one at hand, in which the alleged violations could constitute publicly actionable offenses, the Commission has consistently maintained that the State has the obligation of initiating and pursuing an investigation and a criminal trial, and that in such cases this is the ideal way to cast light on the facts, to prosecute the guilty, to impose the relevant criminal sanctions, and to establish other forms of monetary redress. Thus, such a process, pursued by the State, is what should be considered in determining the admissibility of the claim.¹ In addition, the IACHR has stated that “the decisions of administrative review courts are exclusively mechanisms for supervision of the administrative operations of the State designed to obtain compensation for damages caused by abuse of authority;”² accordingly, they are not suitable for comprehensively addressing allegations of serious violations.

26. In the case at hand, the Commission notes that on March 12, 1999, a police operation was carried out in which lethal force was used, resulting in irreparable harm to the alleged victim’s physical integrity and in the death of another individual. Similarly, it notes that during the criminal proceedings brought after the alleged victim’s arrest, the police version of events was dismissed by the competent judicial authorities. Thus, in the Court’s order of September 20, 1999, whereby Mr. Camacho’s provisional dismissal from the case was confirmed, the First Chamber of the Superior Court of Justice of Babahoyo concluded: “[...] what has really been shown is the unjustified violence of the police action, as indicated by the fact that nine bullets impacted the vehicle [...] in which the accused [Mr. Camacho] was traveling and none hit the car in which the complainants and the police were, even though the vehicles’ paths crossed, which totally refutes the alleged clash with the police.”³ In consideration whereof, the Commission concludes that the State was obligated to begin an *ex officio* criminal investigation into the facts alleged by the petitioner.

27. According to the available information, there is no indication that the competent authorities took the relevant steps toward initiating the corresponding investigations. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies rule is applicable as regards this aspect of the petition, in compliance with the provisions of Article 46.2.c. of the Convention.

2. Timeliness of the petition

28. Article 46.1.b of the American Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment.

29. Regarding the allegations involving due process, in this report the Commission has established that the alleged victim was notified of the final judicial decision adopted in the criminal

¹ IACHR, Report No. 34/15, Petition 191-07 et al., Admissibility, Álvaro Enrique Rodríguez and Others, Colombia, July 22, 2015, para. 244; IACHR, Report No. 105/13, Petition 514-00, Admissibility, Oscar Alfonso Morales Díaz and Family, Colombia, November 5, 2013, paras. 35 and 36; IACHR, Report No. 85/08, Petition 162-06, Admissibility, Melba del Carmen Suárez Peralta, Ecuador, October 30, 2008, para. 40.

² IACHR, Report No. 73/05, Petition 4534/02, Admissibility, Oscar Iván Tabares Toro, Colombia, October 13, 2005, para. 26; IACHR, Report No. 15/95, Annual Report of the IACHR 1995, para. 71; Report No. 61/99, Annual Report of the IACHR 1999, para. 51.

³ Initial petition, presented on September 19, 2007, Annex 1.

proceedings on June 14, 2005. Therefore, since the petition was received on September 19, 2007, the claims related to the alleged violations of due process are inadmissible under Article 46.1.b of the Convention.

30. Regarding the allegations related to the use of force and the consequences thereof for Mr. Camacho Coloma, the IACHR has already established the applicability of the exception to the exhaustion of domestic remedies rule provided for in Article 46.2.c of the American Convention. In this regard, Article 32.2 of the Commission's Rules of Procedure states that in cases in which the exceptions to the prior exhaustion of domestic remedies requirement are applicable, petitions must be presented within what the Commission considers a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

31. Thus, the instant petition was lodged with the Inter-American Commission on September 19, 2007; the facts alleged in the claim occurred on March 12, 1999; the criminal trial against the alleged victim took place from 1999 to 2005; and the effects of the violations alleged in the petition are still felt in the present. Consequently, considering the context and characteristics of this case, the Commission believes that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed met.

3. Duplication of proceedings and international *res judicata*

32. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Consequently, the grounds for inadmissibility established in Articles 46.1.c and 47.d of the Convention do not apply.

4. Colorable claim

33. For the purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a rights violation, as stipulated in Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as described in Article 47.c thereof. The standard of appreciation used to analyze admissibility differs from that used in examining the merits of a petition, given that the Commission conducts only a *prima facie* review to determine whether the petitioners have established an apparent or possible violation of a right guaranteed by the American Convention. This is a summary analysis that in no way implies a preliminary judgment or opinion on the merits of the matter.

34. Moreover, neither the American Convention or the IACHR's Rules of Procedure require the petitioners to identify the specific rights that they claim were violated by the State in a matter placed before the Commission, although the petitioners may do so. Instead, it falls to the Commission, based on the precedents set by the system, to determine in its admissibility reports what provisions of the relevant inter-American instruments are applicable, the violation of which could be established if the alleged facts are proven by means of adequate evidence.

35. The petitioner claims that the alleged victim suffered a serious violation of his right to humane treatment, arising from the unjustified and disproportionate use of force by officers of the National Police, that those facts have remained unpunished in spite of warranting an *ex officio* investigation by the competent authorities, and that those same facts have caused serious moral and economic harm for the alleged victim. In turn, the State maintains that the National Police officers made legitimate use of force, given the circumstances surrounding the case, and that the alleged victim's procedural inaction is the reason why the alleged facts before the IACHR were not scrutinized by the domestic judicial authorities.

36. Having seen the elements of fact and law presented by the parties and the nature of the matter brought before it, the IACHR finds that, if they are proven, the alleged facts could tend to establish possible violations of the rights protected by Articles 5, 8, and 25 of the American Convention, in conjunction

with Article 1.1 thereof. In addition, the Commission has ruled that violations of the right to life may be involved when a person was placed in a situation in which his or her life was at risk;⁴ accordingly, at the merits stage of this case, the Commission will analyze the possible application of Article 4 of the American Convention. The IACHR also believes that the alleged facts could also tend to establish a possible violation of Article 5 of the Convention through the alleged suffering of and impact on the members of Mr. Camacho Coloma's family, who will be identified at the merits stage of this case, based on the injuries that he suffered and the consequences thereof that are still felt today.

V. CONCLUSIONS

37. Based on the above legal and factual considerations, the Inter-American Commission concludes that the instant petition satisfies the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To rule the instant petition admissible as regards to Articles 4, 5, 8, and 25 of the American Convention, in conjunction with the obligations established in Article 1.1 thereof, with respect to Mr. Carlos Manuel Camacho Coloma;
2. To rule the petition inadmissible as regards Article 7 of the American Convention;
3. To notify the parties of this decision;
4. To continue with its analysis of the merits of the complaint; and
5. To publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 15th day of the month of April, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁴ IACHR, Report No. 49/14, Petition 1196-07, Admissibility, Juan Carlos Martínez Gil, Colombia, July 22, 2014, para. 40.