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REPORT No. 191/19
PETITION 1656-09
REPORT ON ADMISSIBILITY

JOSÉ RAFAEL RAMÍREZ CÓRDOVA
VENEZUELA

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

Citar como: IACHR, Report No. 191/19. Petition 1656-09. Admissibility. José Rafael Ramírez Córdova. Venezuela. December 5, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Ramírez López y Robert Alexander Alvarado López ¹
Alleged victim:	José Rafael Ramírez Córdova
Respondent State:	Venezuela
Rights invoked:	Not specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	December 21, 2009
Additional information received at the stage of initial review:	July 1, 2010
Notification of the petition to the State:	July 6, 2012
State's first response:	October 15, 2012
Additional observations from the petitioner:	December 12, 2012, July 2, 2013, May 25, 2017
Additional observations from the State:	May 3 and July 3, 2013

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes, American Convention on Human Rights ³ (August 9, 1977, date of instrument deposit)
Competence <i>Ratione materiae</i>:	Yes

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

IV. Duplication of procedures and International res judicata:	No
Rights declared admissible:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (protection of honor and dignity), 13 (freedom of thought and expression), 25 (right to judicial protection) and 26 (economic, social and cultural rights) of the American Convention, en relation to Article 1.1 (obligation to respect rights) of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of section VI
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

1. The petition alleges the illegal detention of José Rafael Ramírez Córdova (hereinafter also "the alleged victim") for an alleged fabricated flagrante delicto, as well as lacking grounds for keeping him in pretrial detention and violations of judicial guarantees in the framework of a criminal proceeding for the crimes of resistance to authority, extortion, and conspiracy to commit a crime. It argues that the criminal proceeding is still pending resolution, that he was neither charged nor given an oral proceeding and that the alleged victim has not been allowed to face the prosecution, litigate evidence, and submit allegations. It

¹ Mr. Robert Alexander Alvarado López joined as co-petitioner on January 19, 2017.

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

³ Hereinafter "the American Convention" or "the Convention".

claims that another unsubstantiated complaint was filed against him for defamation of the Judicial Branch and a business owner, which was added to the criminal proceeding for extortion, despite conflicting procedures.

2. To provide context, the alleged victim indicates that he is a Venezuelan journalist with extensive professional experience that has worked in investigative journalism and that in recent years wrote a daily column of critical opinion. He argues that, due to his job, a harassment campaign was launched against him emanating from the highest authorities - the Supreme Court, Ministry of the Interior and Justice, National Assembly - as well as in State-controlled media outlets, to impede him from practicing his profession and to silence his complaints.

3. It claims that, at the time of the events, the newspaper for which he worked published a statement that was not authored by him, which alleged that a Venezuelan businessman used his influence within the government to commit fraud involving oil shipments. As a result of this publication, and based on the recording from a hidden camera - planned and executed by a private person with the acquiescence of state officials - on June 12, 2007 the alleged victim was detained by officials from Criminal, Penal, and Scientific Investigations (CICPC) without the intervention of the Public Prosecutor's Office. He claims, that to justify his detainment, allegedly in flagrante delicto, the above-mentioned recording was adulterated, even adding subtitles. It is argued that, on this basis, a crime was fabricated, evidence was falsified, and he was prevented from defending himself.

4. It claims that his detention and prosecution had a political twist being that, following his detention, the Minister of the Interior and Justice held a press conference, accusing the alleged victim of being a "delinquent journalist" and that congressman Luis Tascón convened a public session in parliament, broadcasted on radio and television, in which he called upon the businessman previously mentioned to present his case against the alleged victim. The petition sustains that the foregoing violated his presumption of innocence, honor and reputation, as well as affecting subsequent actions of prosecutors and judges that heard the case.

5. The presumed victim alleges that after his arrest, he was brought before the 52nd Supervisory Court of Caracas and in the preliminary hearing held on June 14, 2007, he was prevented from exercising his right to defense. He alleges that after the hearing, he was taken directly to "La Planta" prison where he stayed for three years and one month in preventive detention without court proceedings.

6. It is reported that, by decision of the Court of Appeals, the supervisory judge that initially heard his case was removed, due to serious suspicions of partiality. However, in November of 2007, the Court that was reassigned the case admitted the charge brought by the Public Prosecutor's Office and continued the pretrial detention issued by the colluding judge. On that occasion, the order to commence proceedings was issued which, until the present day, have not yet concluded. The petitioner party states that he requested an alternative measure to his deprivation of liberty on grounds of health deterioration that became so serious that, on one occasion, he was taken to a military hospital, handcuffed to a gurney and escorted by heavily armed police officers.

7. It is reported that, due to the ailments that he suffered, on January 22, 2008, the 17th Trial Court authorized house arrest as an alternative for deprivation of liberty. They required that he report regularly before the court and prohibited him from leaving the city and expressing his opinion in public forums regarding the case, issuing a release order, which the warden refused to comply. He points out that the provisional judge who issued the alternative measure was removed at 11 o'clock on that same day for having ordered the measure in his favor. He reports that said judge was replaced by another, who assumed the bench the next day.

8. He sustains that he filed a motion to recuse the provisional judge to prevent her from reversing the release order issued. However, the judge kept the challenge, which, by law, prevented her from continuing to hear and rule on the case and from ordering the annulment of the release previously issued. The petitioner claims that criminal charges for the crime of defamation were filed against him by people

affiliated with the case's alleged aggrieved party, requesting that it be merged with the extortion case, which was granted. He claims that the merger was carried out despite the incompatibility of the proceedings - one prosecutable *ex officio* and the other filed by the interested party - which led to confusion and delays in the proceeding's progress, to the detriment of the alleged victim.

9. On May 20, 2009, the Public Prosecutor's Office and the private plaintiff requested that the pretrial detention of the alleged victim be extended for two additional years and that, on February 8, 2010, the court granted an extension of one year, beginning on June 12, 2009. He claims that the court stated that the duration set for pretrial detention (the first two years plus the additional one year extension) was proportional to the minimum sentence for the crime of extortion (four years). This decision was not contested, thereby becoming final, corresponding to the release of the alleged victim set for June 12, 2010.

10. On April 6, 2010, an alternative measure for deprivation of liberty was issued in favor of the alleged victim, due to the expiration of the deadline and pursuant to Article 244 of the Organic Code of Criminal Procedure in force at the time. However, on the 4th of June of the same year, the 20th Criminal Court of First Instance convened an *ex officio* hearing to determine whether the alleged victim's detention order should be maintained. They state that the petitioner requested the annulment of the decision due to an error. Immediately after his request, another judge requested extensions for the measure involving deprivation of liberty, the precautionary measure and on June 9, 2010 an order was issued dismissing the reversal appeal filed by the petitioner.

11. It is reported that on June 15, a new hearing was held to discuss the requested extension, which was granted for one additional year. The petitioner argues that the extension request was not duly substantiated. On June 29, 2010, the petitioner filed for a constitutional amparo motion against the decisions handed down on the 4th and 9th of June (above, para.10). A request for the lifting of the measure depriving the alleged victim of his liberty was made via this motion, so that he could be released for the remainder of the proceedings. The amparo motion alleges violations of due process regarding the presumption of innocence, the right to defense and the right to effective protection, impartial, transparent, equitable and expeditious justice, to the detriment of the alleged victim. However, this remained unresolved. Subsequently, the alleged victim went on a hunger strike and, due to his precarious health conditions, he was granted a substitute measure for deprivation of liberty, which went into force in July of 2010 and required him to appear before the supervisory court every two weeks and prohibited him from leaving the country.

12. The State, in turn, rejects the petitioner's allegations, particularly, in reference to having organized a harassment campaign against the alleged victim, with the intention of silencing his complaints. The State also denies having fabricated evidence against the petitioner without due process. Regarding the statements made in the Assembly, the State maintains that the majority party found it necessary to clarify what happened to the journalist in detention, since the representatives from the opposition presented it as a political case and in violation of freedom of expression. The State argues that the alleged victim's detention was in accordance with the laws, given that he was detained in flagrante on June 12, 2007 in a proceeding by officials assigned to the CICPC (Chacao sub delegation). He was subsequently charged for the crimes of extortion and resistance to authority. Additionally, the State argued that prolonging detainment was not in violation of national legislation since, in at least two of the grounds for the crimes charged, the sentences could be more than 10 years. Also, the alleged victim's resistant behavior to procedure during his arrest made his intention to escape evident from the beginning.

13. The State claimed that the alleged victim has not exhausted domestic remedies and that an example of this was the provision of an amparo motion without any appeal having been lodged in the criminal proceedings. In addition to the foregoing, the State alleges that the delays in the proceedings is not attributable to the Public Prosecutor's Office, but are due to causes attributable to the alleged victim, given that he had used effects, or dilatory appeals, in the proceeding which have hindered the progression of the trial. The State attaches a communication from the Attorney General dated June 20, 2013, informing that the file relating to the criminal investigation was subject to an order relinquishing jurisdiction by the 12th Criminal Circuit Court of First Instance of the Metropolitan Area of Caracas, the 9th Trial Court of First Instance of the same jurisdiction was hearing the case on that date and proposing that trial start on July 10,

2013. The State argues that the petitioner's intention is for the IACHR to act as a fourth instance, thus violating the principle of complementarity of the Inter-American System, by alledging political persecution.

14. As for the allegations regarding humane treatment and having been handcuffed to a gurney in the military hospital, the Venezuelan State argues that they guaranteed his right to health, but adhering to necessary safety measures to prevent the alleged victim from escaping. For the foregoing reasons, The Venezuelan State requests that the petition to be declared inadmissible on the grounds of failure to exhaust domestic remedies and for being unfounded and frivolous.

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

15. Under Article 31.1 of the Rules and Article 46.1(a) of the American Convention demand prior exhaustion of available local and domestic remedies, pursuant to generally recognized principles, as a prerequisite for admissibility of the claims contained in the petition submitted. The purpose of this prerequisite is to allow for the national authorities to hear the alleged violation of a protected right and, if applicable, devise a solution for the situation prior to being submitted before an international body. Articles 31.2 of the Rules and 46.2 of the Convention establish that the requirement of prior exhaustion of domestic remedies does not apply when: a) the domestic legislation of the State in question does not afford due process of law to protect the right or rights that have allegedly been violated; b) the party alleging a 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 judgement under the aforementioned remedies.

16. The State argues that local and domestic remedies were not exhausted. The petitioner, in turn, asserts that it was not possible to exhaust local and domestic remedies as the proceeding against him is still pending, without a court order to determine his guilt or innocence, despite the 10 years elapsed since his arrest. In view of the unwarranted delay noted, the IACHR concludes that the exception to the exhaustion of domestic remedies set out in Article 46.2(c) of the Convention applies in the present case.

17. Although the events have occurred since 2007 and the petition was received on December 21, 2009, the IACHR notes that some of its consequences persist until the present day, such as a criminal proceeding that is still ongoing. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period has been satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

18. The Commission considers that, if proved, the allegations regarding the arbitrary detention resulting from fabricated evidence to silence journalist work, the series of irregularities in the pending criminal proceeding, in violation of due process guarantees, of the right to defense and receiving a substantiated decision for keeping him in pretrial detention, as well as the negative impact to his honor and reputation caused by condemnatory statements made by senior officials of the State, could *prima facie* establish possible violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (protection of honor and dignity), 13 (freedom of thought and expression), 25 (right to judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in accordance with Article 1.1 (obligation to respect rights) of the same instrument; to the detriment of Mr. José Rafael Ramírez Córdova.

19. Lastly, regarding the State's observation concerning a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to overstep the authority of domestic courts. In fact, the Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victim's right of access to justice under the terms of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible pursuant to Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (protection of honor and dignity), 13 (freedom of thought and expression), 25 (right to judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in accordance with Article 1.1 (obligation to respect rights) of the same instrument; and

2. To notify the parties of this decision; to continue with the analysis of the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.