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REPORT No. 16/17
PETITION 101-03
REPORT ON ADMISSIBILITY

EVA CRISTINA ALLAN RAMOS
ECUADOR

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I. SUMMARY

1. On January 31, 2003, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition alleging the international responsibility of the Republic of Ecuador (hereinafter “Ecuador” or “the State”) for the purported violation of rights to the detriment of Eva Cristina Allan Ramos (hereinafter “the petitioner,” “the alleged victim” or “Mrs. Allan”).

2. The petitioner alleges that on October 23, 1984 she was arrested, isolated and taken to a provisional detention center on the charge of participating in embezzlement against the Ministry of Social Welfare of Ecuador. She alleges that her right to the presumption of innocence was violated inasmuch as she was deprived of liberty for 22 months without any proof of her guilt. She declares that the criminal proceedings against her extended for 16 years due to reasons attributable to the State, and that she was dismissed from her job at the Ministry of Social Welfare through administrative law proceedings concerning which she was not notified of or given the opportunity to defend herself. She says alleges a smear campaign against her that affected the courts’ decisions. In turn, the State says that the alleged victim did not exhaust domestic remedies before resorting to the IACHR, as she did not file a *habeas corpus* when she was deprived of liberty. Likewise, it declares that according to the petitioner’s statements, there were no serious procedural shortcomings affecting the alleged victim’s rights, and that this petition is intended to get the IACHR’s intervention as a “fourth instance.”

3. Without prejudging the merits of the complaint, after analyzing the position of the parties and in accordance with the requirements established in Articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31 to 34 of the IACHR’s Rules of Procedure (hereinafter “the Rules”), the Commission decides to declare this petition admissible to assess the facts concerning the alleged violation of the rights enshrined in Articles 7 (Right to Personal Liberty), 8 (Right to A Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in accordance with Article 1.1 of said treaty. The Commission moreover decides to notify the parties of its decision, to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on January 31, 2003 and, at the initial study stage, it requested additional information to the petitioner on December 10, 2003; June 2, 2004; June 5, 2005 and January 29, 2007; these were replied on January 20 and June 12, 2004; August 18, 2005 and October 24, 2010, respectively.

5. On January 24, 2011, the IACHR transmitted to the State a copy of the relevant parts of the petition and of the additional information received at the initial study stage, and granted it a two-month deadline to submit observations, under Article 30.3 of the Rules then in force. On July 3, 2014, the IACHR received the State’s response, which was transmitted to the petitioning party on September 17, 2014. The petitioner submitted additional observations on June 29, 2015, which were transmitted to the State.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner declares that on May 18, 1981 she was appointed to the office of “Payer No. 4” at the Social Welfare Ministry of the Republic of Ecuador, with the responsibility to verify “the legality, exactness and truth of supporting documents, and the payment information” concerning the checks to be paid at said institution. She alleges that on October 23, 1984 she was arrested by state officers and taken to a Provisional Detention Center, but was not shown any constitutional arrest warrant for the charge of participating in embezzlement against the Ministry of Social Welfare. She argues that the criminal proceedings began on October 26, 1984 and eight days later, she was taken to the Women’s Prison, where she was deprived of liberty for 22 months while the proceedings against her took place. On July 30, 1986, thanks to a provisional stay of the proceedings, she was released and the Financial Manager of the Ministry of Social Welfare was the only one accused of fraud. She alleges the violation of the rights to the presumption of innocence and to personal liberty inasmuch as she was deprived of liberty and in solitary confinement for six days without an arrest warrant and then deprived of liberty for 22 months without any proof of her guilt.

7. She declares that on February 13, 1989 she was notified of the confirmation of the provisional stay order issued by the First Chamber of the Superior Court of Justice of Quito. On December 9, 1996, the final stay of the criminal proceedings was issued by the Ninth Criminal Judge of Pichincha, which had to be confirmed by the Superior Court. She alleges that the Ninth Criminal Judge of Pichincha retained the petitioner’s case file until she lodged several requests through the Ombudsman so that said judge sent it to the Superior Court; this situation lasted for four years. She declares that on November 11, 2002, the final stay was confirmed.

8. The petitioner states that after her release, she claimed her job to the Ministry of Social Welfare; however, the authorities of the Ministry told her that her employment file had gone missing. Subsequently, the petitioner accessed a copy of employment action No. 1771 of December 17, 1984, under which her office was declared temporarily vacant inasmuch as she was allegedly guilty of an offense; and of employment action No. 007 of January 7, 1985, under which she was completely dismissed of her office as “Payer No. 4.” She argues that the procedures of vacancy and dismissal were made in her absence and that she was never notified of any such actions.

9. She says that on May 22, 1989 she requested her reinstatement to the President of the Claims Board, which was rejected on September 25, 1990 inasmuch as it was filed out of the time established by the Law of Civil Service and Administrative Career to assert her rights. The petitioner alleges that the Ministry of Social Welfare purposefully lost her “employment file” to damage her and not reinstate her, since in that file were all the petitions to the Ministry of Social Welfare and the alleged victim’s employment history that proved that she had worked at said institution. She alleges that the State declared that the petitioner never worked at the Ministry of Social Welfare on the grounds that there is no employment file to prove the contrary.

10. Moreover, the petitioner declares that the State “distorted her reputation” and made “public statements to the media” that led to a partial judgment by the President of the Claims Board, violating the rights to due process and to the protection of honor and dignity; however, she submits no additional information on this. The Claims Board’s decision was appealed to the Administrative Law Court, which confirmed the previous sentence on April 10, 1992 “based on the same grounds and without assessing other aspects.”

11. Concerning the State’s argument about the non-exhaustion of *habeas corpus* in relation to her deprivation of liberty, the petitioner alleges that it was not necessary to file said remedy inasmuch as, under the existing legal framework, it had to be lodged with the Mayor of the city of Quito and results were often negative in cases where the deprivation of liberty had been ordered by a competent judge or in cases connected with the charge of wrongful use of public funds.

12. The petitioner also says that the delay in lodging the petition with the Commission is due to the many procedures that she had to file to the judicial authorities in Ecuador in order to get certified copies of the documents needed to support the petition; therefore, she believes that the petition must be considered timely.

13. Based on the foregoing, the petitioner alleges that the State violated, to her detriment, the rights protected by Articles 1.1 (Obligation to Respect Rights), 7 (Right to Personal Liberty), 8 (Right to A Fair Trial) and 11 (Right to Privacy) of the American Convention; Articles II (Right to Equality before Law), V (Right to Protection of Honor, Personal Reputation, and Private and Family Life), XVIII (Right to A Fair Trial), XXV (Right of Protection from Arbitrary Arrest) and XXVI (Right to Due Process of Law) of the American Declaration of Rights and Duties of Man; Articles 9, 14, 17 and 26 of the International Covenant on Civil and Political Rights; and Articles 2, 7, 10, 11 and 12 of the Universal Declaration of Human Rights.

B. Position of the State

14. According to the State, Mrs. Allan worked as a career public officer in the position of “Payer No. 4” at the Financial Manager’s Office of the Ministry of Social Welfare. In 1984 she was accused of alleged participation in the wrongful use of public funds. It says that on December 17, 1984 the petitioner’s office was declared temporarily vacant given that she faced criminal proceedings at that time. On July 30, 1986 a provisional stay of said proceedings was issued, which was confirmed on February 13, 1989. The final stay of the proceedings was issued on December 9, 1996 and ratified on November 11, 2002.

15. It alleges that in order to be reinstated, Mrs. Allan filed a complaint to the Claims Board on May 22, 1989, which was rejected on September 25, 1990. It declares that the petitioner appealed said resolution to the Administrative Law Court, which notified the confirmation of the previous sentence on April 23, 1992.

16. It argues that the petitioner did not exhaust domestic remedies in relation to criminal case No. 135-85 filed against her. It says that while she was deprived of liberty, she did not file any remedy to challenge the legitimacy of her detention, even though at the time of the events there were remedies available in the domestic venue to protect the legal validity of her deprivation of liberty. It holds that under Article 19 of Ecuador’s Constitution then in force, it was possible to avail oneself of *habeas corpus*. It argues that given the subsidiarity principle of the Inter-American System, the petition is inadmissible inasmuch as the lack of exhaustion of said remedy did not allow the State to remedy the violation of fundamental rights. It alleges that *habeas corpus* was the adequate and effective means to solve the petitioner’s situation. It also declares that more than six months passed from the date that the final stay was confirmed to January 30, 2004, when the petition was filed to the Commission,

17. It declares that although the petitioner challenged the administrative law proceedings consisting in employment action No. 1171 of December 17, 1984, under which her position was declared temporarily vacant, the final judgment of said appeal was issued by the Administrative Law Court on April 23, 1992. The time that passed from the latter date to the date that this petition was filed to the Commission exceeds the deadline set forth in Article 46.1 (b) of the American Convention.

18. The State alleges that the petitioner seeks to have the Inter-American Commission operate as a court that will review the merits of the criminal and administrative proceedings, and hence as a fourth instance. Furthermore, it argues that according to the documents submitted by the petitioner, there are no serious procedural shortcomings that affect the petitioner’s right to due process of law; therefore, it concludes that the petitioner’s complaint is based on her dissatisfaction with the overturn of her petitions by the Ecuadorian courts.

19. To conclude, the State argues that the petition is inadmissible and requests the IACHR to so declare on the grounds that: not all domestic remedies were exhausted, more than six months passed from the date that remedies were effectively exhausted to the date that the petition was filed to the Commission,

and the petitioner intends to have the Commission operate as a court of fourth instance and review the merits of the criminal and administrative proceedings.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

20. Under Article 44 of the Convention and Article 23 of the Rules, the petitioner is entitled to lodge complaints with the Commission. In the petition, the alleged victim is an individual person whose rights are protected by the American Convention on Human Rights, which the State of Ecuador is bound to abide by. As to the State, the Commission declares that Ecuador is a State Party to the Convention since December 28, 1977, the date it deposited its instrument of ratification of said treaty. Therefore, the Commission is competent *ratione personae* to assess the petition. The Commission is also competent *ratione loci* to hear the petition, inasmuch as it alleges violations that apparently occurred within the Ecuador's territory.

21. The Commission is competent *ratione temporis*, since the obligation to respect and safeguard the rights protected by the Convention was already in force for the State by the time that the alleged events occurred. Lastly, the Commission is competent *ratione materiae* regarding the alleged violations of human rights protected by the Convention.

22. Concerning the arguments on violations of the American Declaration, based on the provisions of Articles 23 and 51 of its Rules, the IACHR is in principle competent *ratione materiae* to assess violations of rights enshrined in the Declaration. However, the IACHR has previously established that once that the American Convention comes into force for a State, it is said instrument –not the Declaration– that the IACHR will apply as the specific source of law provided that the petition alleges violations of substantially identical rights in both instruments and that an ongoing situation is not involved¹. Finally, the Commission is not competent to declare violations of rights enshrined in the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights that the petitioner alleges.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

23. Under Articles 46.1 (a) of the American Convention and 31.1 of the Rules, for a petition to be admissible, domestic remedies must have been previously exhausted, in accordance with generally recognized principles of international law. This requirement is aimed at enabling national authorities to hear the alleged violation of a protected right and, if applicable, remedy the situation before it is heard by an international body.

24. The petitioner states that she exhausted the domestic remedies of criminal proceedings on November 11, 2002 when the final stay was confirmed, and the domestic remedies of administrative proceedings for her reinstatement when the Administrative Law Court ruled on April 10, 1992. In turn, the State declares that the petitioner did not challenge the legitimacy of her deprivation of liberty through a *habeas corpus*. As to the administrative proceedings, the State does not contest its exhaustion.

25. As has been established in other cases concerning Ecuador, the remedy of constitutional *habeas corpus* mentioned by the State had to be lodged with the Mayor or the President of the Council². In this

¹ IACHR, Report No. 6/15, Petition 518/03. Admissibility. Jorge Villarroel and Others. Ecuador. January 29, 2015, par. 32.

² Article 19, number 17, subparagraph (j) of the Ecuadorian Constitution of 1979.

regard, both the Commission³ and the Inter-American Court have found that a petition of *habeas corpus* to an administrative authority is not an adequate remedy under the standards of the American Convention⁴. Therefore, the Commission believes that at the time of the events, the remedy of constitutional *habeas corpus* was not an adequate remedy; as a result, its exhaustion is not necessary.

26. Consequently, the Commission concludes that in relation to the criminal case filed against the alleged victim, domestic remedies were exhausted under Articles 46.1 (a) of the American Convention and 31.1 of the Rules, through the confirmation of the final stay. In addition, it concludes that in relation to the administrative case filed for the reinstatement of the alleged victim, domestic remedies were exhausted through the judgment issued by the Administrative Law Court on April 10, 1992 and notified on April 23, 1992.

2. Timeliness of the petition

27. Under Articles 46.1 (b) of the American Convention and 32.1 of the Rules, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment.

28. According to this complaint, the Superior Court of Justice ratified the final stay of the criminal case against the petitioner on November 11, 2002. The petition to the Commission was filed on January 31, 2003. Therefore, the Commission concludes that the petition meets the requirement set forth in Articles 46.1 (b) of the Convention and 32.1 of the Rules regarding alleged violations stemming from the criminal case against Mrs. Allan. Concerning the untimeliness alleged by the State, the IACHR notes that the petition to it was filed on January 31, 2003, not on January 30, 2004.

29. Regarding the administrative proceedings, the Commission notes that the decision by the Administrative Law Court that confirmed the judgment by the Claims Board was notified on April 23, 1992; this is more than 10 years before this petition was filed. As a result, the Commission believes that said claims are untimely, as the requirement established in Articles 46.1 (b) of the Convention and 32.1 of the Rules is not met.

3. Duplication of proceedings and International *res judicata*

30. From the case file, nothing indicates that the subject matter of the petition is pending settlement before another international proceeding or that it duplicates a petition already examined by this or another international body. Therefore, inadmissibility requirements set forth in Articles 46.1 (c) and 47 (d) of the Convention and Articles 33.1 (a) and 33.1 (b) of the Rules do not apply.

4. Colorable claim

31. At the stage of admissibility, the Commission must decide if the facts alleged tend to establish a violation of rights, under Articles 47 (b) of the American Convention and 34 (a) of the Rules, or if the petition is “manifestly groundless” or “obviously out of order,” under Articles 47 (c) of the American Convention and 34 (b) of the Rules. The assessment criteria for admissibility differs from that used for the assessment of the merits of the petition, since the Commission only undertakes a *prima facie* assessment to determine whether the petitioners have established the apparent or possible violation of a right protected by the American Convention. It is a general analysis not involving a prejudgment or issuance of a preliminary opinion on the merits of the matter.

³IACHR, Report No. 91/13, Petition 910-07, Admissibility. Daría Olinda Puertocarrero Hurtado. Ecuador. November 4, 2013, par. 28; IACHR, Report No. 139/10, Petition 11.510. Admissibility. Luis Giraldo Ordóñez Peralta. Ecuador. November 1, 2010, par. 29.

⁴1/A Court H.R., *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, par. 128.

32. Moreover, the corresponding legal instruments do not require a petitioner to identify the specific rights allegedly violated by the State in a matter filed to the Commission, although petitioners may do so. According to the system's jurisprudence, it is for the Commission to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

33. The petitioner argues that her rights to personal liberty and to a fair trial were violated given the time that she was deprived of liberty in preventive detention without any proof of her guilt for an offense, and the irregularities that took place at the criminal case filed against her, such as the lack of a constitutional arrest warrant, her spending six days in isolation and the delay in the substantiation of the actions that extended the criminal proceedings for 16 years. Moreover, she alleges that the State "distorted her reputation," allegedly violating her right to due process and to the protection of honor and dignity. The State, in turn, declares that the local judicial authorities have settled Mrs. Allan's case in accordance with the law; therefore, the IACHR should not hear the case inasmuch as it would operate as a fourth instance.

34. In view of the elements of fact and law presented by the parties, along with the nature of the matter brought to its attention, the IACHR believes that, if proved, the facts alleged may tend to establish the purported violation of the rights protected by Articles 7, 8 and 25 of the American Convention, in relation to the obligations established in Article 1.1 of the same treaty, to the detriment of the alleged victim. Concerning the alleged violation of Article 11 (Right to Privacy) of the Convention, the Commission notes that the petitioner does not present specific arguments on said violation; therefore, said claim must be declared inadmissible.

V. CONCLUSIONS

35. Based on the above elements of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth in Articles 31 to 34 of the Rules and Articles 46 and 47 of the American Convention, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in relation to Articles 7, 8 and 25 of the American Convention on Human Rights, in accordance with Article 1.1 of the same treaty;
2. To declare the instant petition inadmissible in relation to Article 11 of the Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of San Francisco, California, on the 27 day of the month of February, 2017.
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.