

OEA/Ser.L/V/II.
Doc. 129
17 June 2019
Original: English

REPORT No. 120/19
PETITION 326-08
REPORT ON INADMISSIBILITY

GUSTAVO ENRIQUE QUIROS MONTOYA
BOLIVARIAN REPUBLIC OF VENEZUELA

Approved electronically by the Commission on June 17, 2019.

Cite as: IACHR, Report No. 120/19, Petition 326-09. Inadmissibility. Gustavo Enrique Quiros Montoya. Bolivarian Republic of Venezuela. June 17, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	German Eduardo Gómez Remolina ¹
Alleged victim	Gustavo Enrique Quiros Montoya ²
Respondent State	Bolivarian Republic of Venezuela ³
Rights invoked	Articles 4 (right to life), 8 (right to a fair trial), 9 (freedom from ex post facto laws), 11 (right to privacy), 21 (right to property), and 24 (right to equal protection) of the American Convention on Human Rights ⁴ in connection with Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition	March 20, 2008
Notification of the petition	May 13, 2008
State's first response	October 8, 2008
Additional observations from the petitioner	November 11, 2008; March 1 and December 1, 2010; September 13, 2012; July 5 and 24, 2013; and July 5, 2017
Additional observations from the State	February 3, 2009

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (from August 9, 1977, when the instrument of ratification was deposited, until September 10, 2013, when the denunciation went into effect)

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

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	None
Exhaustion or exception to the exhaustion of remedies	No
Timeliness of the petition	No

V. SUMMARY OF ALLEGED FACTS

1. The petitioner indicates that Gustavo Enrique Quiros Montoya (hereinafter "the alleged victim" or "Mr. Quiros"), of Colombian nationality, arrived in Venezuela in 1994. The alleged victim reportedly acquired land and went to work raising cattle to produce meat and milk. In a little more than 10 years, Mr. Quiros received awards for the quality of his products, and his land was of interest to researchers at universities because of the upkeep of the soil.

2. The alleged victim is said to have been linked, through indirect testimony, to a criminal case that began on March 10, 2005, as the consequence of an investigation related to drug trafficking. The petitioner indicates that a court order was issued on September 15, 2005, establishing specified and unspecified measures regarding personal property and real estate in the hands of individuals or corporations mentioned in the investigation, including four farming and ranching properties belonging to Mr. Quiros

¹ The petition was originally lodged by Alfonso Daza González, who on July 24, 2013, withdrew the power of attorney granted by the alleged victim and was replaced by the current petitioner.

² During the processing of the case, the petitioner reported that Mr. Quiros Montoya had died on June 3, 2013, and identified his next of kin as: María Consuelo and Gustavo Adolfo Quiros Sánchez.

³ Hereinafter "Venezuela."

⁴ Hereinafter "the American Convention" or "the Convention."

⁵ The observations submitted by each party were duly transmitted to the opposing party.

through his companies. The petitioner states that a determination made the next day barred him from transferring or encumbering those assets, and a National Guard general was put in charge of occupying the properties and appointing a controller to act as trustee and legal administrator. The petitioner alleges that on one of the farms, the authorities seized 102 sacks weighing 50 kilos each of urea, an agricultural compound also used in the production of cocaine hydrochloride. Consequently, the Public Prosecutor's Office sought the immediate arrest of various individuals, including Mr. Quiros, for the crimes of concealment of chemical products susceptible to being diverted for the production of narcotics and money laundering.⁶

3. On January 25, 2006, the defense attorneys of Mr. Santiago Alfonso Villegas⁷ (hereinafter "Mr. Villegas"), who was a codefendant in the same criminal case, filed a request for cognizance (*recurso de avocamiento*) with the Criminal Cassation Chamber of the Supreme Court, alleging irregularities in the case and in the arrest warrant on grounds that it was arbitrary, abusive, and disproportionate, and alleging violations of the right of defense and due process because of the secrecy of the proceedings sought by the Public Prosecutor's Office. The petitioner alleges that on May 11, 2006, attorneys representing Mr. Quiros's properties filed a brief with the Supreme Court in which they joined in the request for cognizance that had been lodged. On that same date, they also filed a complaint with the Supreme Court related to the property damage that occurred while criminal proceedings against Mr. Quiros were underway. On July 25, 2006, the Supreme Court declared the request for cognizance filed by Mr. Villegas's defense counsel to be admissible, declared the introductory and preliminary hearings to be null and void, and ordered that the case be reinstated back to the date of indictment. However, it kept in place the arrest warrants issued against the other defendants.

4. The petitioner states that on October 16, 2006, the attorney representing the companies of which the alleged victim is one of the owners filed a brief in first instance opposing the physical seizure of assets, alleging that this precautionary measure was arbitrary and vague and was ordered without prior notification of defense counsel. In the same document, the attorney requested a detailed inventory of the assets. On November 16, 2006, the attorney for the companies sought an injunction on constitutional grounds (*amparo constitucional*) to try to resolve the objections to the precautionary measures that he had made on October 16, 2006, arguing that the assets were continuing to deteriorate. On January 25, 2007, the Oversight Court of Barquisimeto denied that petition and kept the precautionary measures in place, based on the Organic Law on Criminal Proceedings and the Organic Law against the Illicit Trafficking and Use of Narcotic and Psychotropic Substances. The petitioner indicates that the Supreme Court denied the *amparo* appeal on January 29, 2007, on grounds that as of that date there was already a ruling by the Oversight Court of Barquisimeto. That decision was appealed on February 1, 2007. In May 2007, the companies' attorneys again requested an inventory of all the assets.⁸

5. For its part, the State indicates that a pretrial detention order was issued on September 22, 2005, against the alleged victim, as a partner in the companies that owned the farm where the sacks of urea were found, for allegedly committing the crimes of money laundering and concealment of chemical products susceptible of being diverted for the production of drugs. However, the State emphasizes that the alleged victim was never arrested.

6. The State maintains that the alleged victim's defense counsel did not seek to join Mr. Villegas's request for cognizance and that his attorneys sought to join that request only on behalf of the companies. The State indicates that out of respect for the principle of not being tried in absentia, the alleged victim was never detained or criminally prosecuted and therefore no right was denied.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

1. The petitioner states that the cases are still underway but there is still no final decision. Without specifying a reason, he proposes that the exception to the exhaustion of domestic remedies

⁶ The petitioner does not make reference to whether he was arrested at that time.

⁷ IACHR. Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017.

⁸ No information is available as to potential appeals filed by the alleged victim's defense counsel.

established in Article 46(2)(c) of the Convention should apply. The petitioner also claims that no effective recourse exists to remedy the violations to the alleged victim's right to a fair trial and to property. The State, for its part, argues that domestic remedies were never exhausted, as established in Article 46(1)(a) of the Convention. It also maintains that Venezuelan law ensures the protection of the rights of individuals involved in criminal proceedings and that the alleged victim acted in such a way as to obstruct the case against him.

2. Based on the documents and information provided, the Commission does not believe it is possible to identify the remedies the alleged victim eventually pursued to exhaust domestic remedies. In this regard, the Commission reaffirms that the examination of the rule requiring exhaustion of domestic remedies must be done on a case-by-case basis, taking into account the characteristics of each case and the relationship between the situation raised with the Commission and the manner in which the domestic remedies were invoked—in other words, for whom and in relation to what facts and which rights.⁹ In the case at hand, the Commission verifies that the alleged victim did not exhaust domestic remedies and therefore the requirement established in Article 46(1)(a) of the American Convention has not been met.

VII. COLORABLE CLAIM

3. The Commission finds that based on the documents and information provided by the parties in this petition, it is not possible to identify potential violations of the American Convention.

VIII. DECISION

1. To declare this petition inadmissible.

2. To notify the parties of this decision; publish the decision; and include it in the Commission's Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 17th day of the month of June, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.

⁹ IACHR. Report No. 39/09, Petition 717-00. Inadmissibility. Tomás Eduardo Jiménez Villada, Argentina, March 27 2009, para. 59.