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REPORT No. 143/18
PETITION 940-08
REPORT ON ADMISSIBILITY

LUIS AMÉRICO AYALA GONZÁLES
PERU

Electronically approved by the Commission on December 4, 2018.

Cite as: IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala González. Peru. December 4, 2018.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | José Antonio Ayala Gonzáles |
| Alleged victim: | Luis Américo Ayala Gonzáles |
| Respondent State: | Peru ¹ |
| Rights invoked: | Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, ² in relation to Article 1.1 thereof (Obligation to Respect Rights) |

II. PROCEDURE BEFORE THE IACHR³

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| Filing of the petition: | August 11, 2008 |
| Additional information received at the stage of initial review: | September 23, 2008 |
| Notification of the petition to the State: | September 17, 2012 |
| State's first response: | November 19, 2012 |
| Additional observations from the petitioner: | April 30, 2013 |
| Additional observations from the State: | October 7, 2013 |
| Notification of the possible archiving of the petition: | May 26, 2017 |
| Petitioner's response to the notification regarding the possible archiving of the petition: | August 1, 2017 |

III. COMPETENCE

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| Competence <i>Ratione personae</i>: | Yes |
| Competence <i>Ratione loci</i>: | Yes |
| Competence <i>Ratione temporis</i>: | Yes |
| Competence <i>Ratione materiae</i>: | Yes, American Convention (deposit of ratification instrument on July 28, 1978) |

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

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible | Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 thereof |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes, July 24, 2008 |
| Timeliness of the petition: | Yes, August 11, 2008 |

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not partake in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

³ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner explains that on June 25, 2003 Mr. Jorge Alonso Oviedo (“Mr. Oviedo”) was kidnapped and that, as part of the investigations, the anti-kidnap police of Lima searched a property in that city on July 16 that year, as a result of which Mr. Oviedo was freed and several individuals involved in the offense were arrested. A few days later, on July 22 Miguel Ángel Huamán Córdova (“Mr. Huamán”), one of the offenders, allegedly mentioned Mr. Luis Américo Ayala Gonzáles (“Mr. Ayala” or “the alleged victim”) at the preliminary inquiry. The petitioner alleges that, consequently, on September 8, 2003, at night, police officers arrested Mr. Ayala when he was in the Juan Pablo II Hospital receiving routine treatment for his tuberculosis.

2. Following the applicable investigation procedures, on April 22, 2005 the First Criminal Chamber of the Superior Court of Justice of the Northern Cone sentenced Mr. Ayala for kidnap, among others, to 13 years in prison. Against this decision, the alleged victim filed an appeal for annulment. Said remedy was resolved on August 24, 2008 by the Provisional Chamber of the Supreme Court of Justice, which upheld the lower court’s decision to convict him and raised the punishment to 14 years in prison. In 2007 Ms. Mirian Ofelia Jara Calderón, Mr. Ayala’s sister-in-law, presented a habeas corpus petition before the Superior Court of Lima, alleging violation of due process on the grounds that the alleged victim’s conviction had been decided based on the statement by a confessed criminal who allegedly had never mentioned Mr. Ayala as being one of the persons involved in the kidnap. However, the Constitutional Court dismissed the habeas corpus petition on considering that it was intended to obtain a reassessment of evidence already examined by the criminal courts, establishing that such reassessment is not among the functions of the constitutional jurisdiction. The alleged victim was notified of that judgment on July 24, 2008.

3. The petitioner alleges that the Judiciary imposed an arbitrary and wrongful sentence on the alleged victim because of the following reasons: (a) According to the corresponding certificates, from May 1, 2003 to the day of his arrest (two months after the kidnap), Mr. Ayala was at his workplace (at the municipality of Magdalena del Mar) from 7.30 a.m. to 6:00 p.m., from Monday to Saturday. (b) According to the documents issued by the Juan Pablo II Hospital, the night of June 25, 2003 Mr. Ayala was there. (c) Except for Mr. Huamán, none of the members of the kidnap gang mentioned Mr. Ayala as being part of the group, although they did mention other persons. (d) It was not until the third extension of his statement at the preliminary inquiry—now before the Judiciary—that, allegedly under pressure, Mr. Huamán mentioned for the first time the name of Mr. Ayala as being one of the members of the gang, which he did only because the police had found in his wallet a piece of paper with the alleged victim’s name on it. (e) Mr. Rodolfo Rodríguez Gorbeña (“Mr. Rodríguez”), a purported self-confessed criminal with a protagonist role in the kidnap who revealed the names of other accomplices, did not mention Mr. Ayala as being one of the perpetrators and, to the question by the police if he knew Mr. Ayala, he replied that he did because in the past both had been held at the same criminal prison for other offenses. (f) Mr. Oviedo himself, the victim of the kidnap, did not mention Mr. Ayala as being one of the kidnapers. (g) During the proceeding, on June 30, 2005, the First Supreme Prosecutor’s Office in Criminal Matters requested the alleged victim’s release on considering that the trial court had made a mistake in the assessment of the statements of Mr. Rodríguez, who allegedly had not mention Mr. Ayala.

4. The petitioner alleges that Mr. Ayala was convicted mainly on the basis of Mr. Rodríguez Gorbeña declaration that the former had participated in the kidnap, which the petitioner controverts by claiming that Mr. Rodríguez never made such statement. In this regard, the petitioner alleges the violation of the alleged victim’s right to a well-founded judgment and a decision consistent with the facts developed in the proceeding, for the latter was purportedly convicted due to an accusation that was never made. The petitioner submits that he does not intend to have the IACHR work as a “court of fourth instance,” as alleged by the State, but that his complaint concerns specific violations of rights recognized in the American Convention, like the right to due process, particularly the right to a reasoned judgment; the right to the presumption of innocence, and the right to liberty, regarding which the IACHR is competent.

5. The petitioner moreover indicates that Mr. Ayala sustained psychological and physical maltreatment when he was held at the prison Piedras Gordas, where he was purportedly subjected to a very strict maximum security regime that was contrary to humane treatment. In his last communication, dated

August 1, 2017, the alleged victim indicates that he was released on December 10, 2016 on having served his sentence.

6. For its part, the State of Peru claims that in the criminal suit against the alleged victim it was proved that both the Public Prosecutor's Office and the Judiciary complied with international human rights standards despite the fact that the proceeding led to a conviction contrary to the petitioner's interests. In that regard, it indicates that such resolution is not subject to review by a supranational body like the IACHR, a subsidiary and complementary body in relation to state bodies.

7. The State argues that the alleged victim was arrested based on a well-founded judicial warrant issued by a competent authority, under the applicable constitutional guarantees; and that, in any case, the alleged victim's pretrial detention conformed to such guarantees. Likewise, it submits that the alleged victim's conviction is consistent with the judge's logical reasoning about the facts in that other defendants purportedly mentioned Mr. Ayala as being involved in the kidnap. It also claims that in the proceeding, the competent courts undertook an adequate assessment of the evidentiary material, which guaranteed the reasonability of their decisions.

8. In that regard, the State alleges that the trial court's judgment was challenged through an appeal that the Provisional Criminal Chamber of the Supreme Court of Justice reasonably settled on August 24, 2005, the principle of double criminal hearing being fulfilled. Moreover, it emphasizes that both resolutions were duly founded and that the courts examined all the relevant evidence in order to determine the alleged victim's connection with the investigated offense. Additionally, it asserts that the courts guaranteed the alleged victim's right of defense because he was represented by the attorney that he chose and the courts even provided him with a public defense counsel "when he asked for it." Finally, it indicates that he was allowed to access the case file and to participate in all the proceedings of the case.

9. The State concludes by affirming that there are no factual or legal grounds that prove the alleged violations of the alleged victim's right to due process and personal liberty. Therefore, it considers that the facts presented in the instant petition do not establish violations of the rights recognized in the American Convention in accordance with its Article 47.

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

10. In the instant matter, the Inter-American Commission observes that the alleged victim was arrested on September 8, 2003 and sentenced by a trial court on April 22, 2005 and that said ruling was upheld by the court of appeals on August 24, 2005. Later, in 2007 the alleged victim filed a habeas corpus petition that the Constitutional Court resolved through a decision contrary to his interests, notified on July 24, 2008. In this regard, the Commission moreover observes that the parties agree that these decisions were issued and that the domestic proceeding was settled by means of the abovementioned resolution from the highest constitutional court of Peru. Similarly, the IACHR takes into account that the State does not controvert the exhaustion of domestic remedies or the timeliness of the presentation of the instant petition. Consequently, in view of these considerations and the fact that the petition was lodged on August 11, 2008, the Inter-American Commission finds that it meets the requirements established in Article 46, paragraphs 1 (a) and (b), of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

11. In the instant case, the petitioner alleges that Mr. Ayala was criminally convicted for kidnap on the sole basis of the accusation by a codefendant, though the petitioner claims that such accusation never existed. The petitioner also claims that proof was submitted that Mr. Ayala did not partake in the kidnap nor was at the place where the offense was committed. In this regard, he emphasizes that the Supreme Criminal Prosecutor requested the alleged victim's release on considering that the trial court made a mistake in the assessment of the codefendant's statements. For its part, the State alleges that the IACHR is not competent to work as a court additional to the domestic courts competent to reassess evidence already examined by the

latter or to declare the alleged victim's innocence. The State submits that the guilty judgment was duly grounded on the accusatory statements of other codefendants and that these are consistent with a legal logic based on the material truth of the alleged events.

12. In this regard, the Commission reiterates that, for the purpose of admissibility, it must determine whether the alleged facts may establish a violation of rights under the provision of Article 47 subparagraph (b) of the American Convention, or if the instant petition is "manifestly groundless" or "obviously out of order," under subparagraph (c) of the same article. The assessment criterion of those requirements differs from that used for determining the merits of a petition. Likewise, under its mandate, the IACHR is competent to declare a petition admissible when it concerns domestic proceedings that may infringe any of the rights guaranteed by the American Convention. That is, based on said conventional rules, pursuant to Article 34 of the IACHR Rules of Procedure, the analysis for the purpose of admissibility focuses on the verification of said requirements, which refer to the existence of elements that, if proven, could *prima facie* lead to determine violations of the American Convention. Therefore, that the alleged victim claims innocence or requests the IACHR to review the evidence presented in the domestic proceeding does not mean in itself that the instant petition is inadmissible or that the Commission lacks competence to rule on this case. This is so, because the analysis undertaken by the Commission is about whether, in the framework of the criminal proceeding, the guarantees of due process and judicial protection were respected in accordance with the American Convention or other applicable instruments. That is, this is an objective analysis undertaken in the light of applicable standards and rules of human rights international law, and as such it also concerns the performance of all public authorities, including justice operators.

13. In view of the foregoing and the information submitted by both parties during the procedure of the instant petition, and considering the inter-American standards in relation to criminal due process, particularly in relation to the principle of the presumption of innocence, the burden of proof, the duty to adopt reasoned judicial resolutions, and the statements by the codefendants,⁴ the Inter-American Commission concludes that the alleged facts could tend to establish violations of the rights established in Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in accordance with its Article 1.1, to the detriment of Mr. Luis Américo Ayala Gonzáles.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25 of the American Convention, in connection with Article 1.1 thereof; and

2. To notify the parties of this decision; to continue with the analysis on 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 4th day of the month of December, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁴ IACHR, Report No. 9/14. Case 12700. Merits. Agustín Bladimiro Zegarra Marín. Peru. April 2, 2014, pars. 64-70; I/A Court H.R. Case Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331, par. 127 and onward.