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REPORT No. 70/21
PETITION 1120-10
REPORT ON INADMISSIBILITY

RUBEN AUGUSTO ANDINO JIMENEZ
ECUADOR

Approved electronically by the Commission on March 15, 2021.

Cite as: IACHR, Report No. 70/21, Petition 1120-10. Inadmissibility. Ruben Augusto Andino Jimenez. Ecuador. March 15, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner	Ruben Augusto Andino Jimenez
Alleged victim	Ruben Augusto Andino Jimenez
Respondent State	Ecuador
Rights invoked	Articles 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	August 4, 2010
Notification of the petition	July 25, 2017
State's first response	November 24, 27, 2017
Additional observations from the petitioner	April 6, 2018
Additional observations from the State	December 20, 2017

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of ratification instrument on December 28, 1977)

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	N/A

V. SUMMARY OF ALLEGED FACTS

1. This petition deals with allegations of failure of due process during criminal proceedings arising out of a vehicular accident.

2. The petitioner alleges that the State is responsible for violating his right to due process and judicial protection, arising out of a motor vehicle accident that took place in July 2002. According to the petitioner: (a) he was the driver of a vehicle which was involved in collision with another vehicle in the Province of Esmeraldas; (b) the driver of the other vehicle died as a result of the accident, while the petitioner; (c) the petitioner maintains that the accident was the fault of the other driver. According to the petitioner, he was subsequently placed in preventive detention³ in January 2003 on the application of the *Fiscalía de Esmeraldas* (Public Prosecutor of Esmeraldas), with a view to prosecuting him for the accident. By *recurso de amparo*, the petitioner successfully challenged the order of preventive detention before the *Corte Superior de Esmeraldas* (Superior Court of Esmeraldas), which ordered his release on July 14, 2003.

3. Subsequently, the petitioner alleges that on August 4, 2003, he was acquitted of all charges arising from the vehicular accident⁴. However in subsequent judicial proceedings, his acquittal was reversed,

¹ Hereinafter the "American Convention" or "the Convention".

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

³ By El Juez Primero De Transito de Esmeraldas (The principal traffic judge of Esmeraldas).

⁴ According to the petitioner, he was acquitted by *El Juez del Juzgado Primero de Transito de Esmeraldas* (The judge of the principal traffic court of Esmeraldas).

and he was sentenced to four years imprisonment⁵, which was subsequently increased to five years imprisonment⁶. Ultimately, the petitioner asserts that he successfully appealed to the Corte Constitucional, which, in October 2009, set aside his convictions/prison sentences and restored the original ruling of acquittal. Following the decision of the *Corte Constitucional*, the petitioner initiated a legal action in March 2010 for reparation⁷ before the *Tribunal de lo Contencioso Administrativo* (Contentious Administrative Court), but was subsequently dismissed in May 2010 on the ground that the *Tribunal de lo Contencioso Administrativo* lacked jurisdiction to entertain the claim. The petitioner contends that this decision represented the exhaustion of all available domestic remedies.

4. The State contends that the petition is inadmissible for failure (a) to exhaust domestic remedies and (b) to characterize violations of the American Convention. With respect to exhaustion of domestic remedies, the State contends that the petitioner failed to invoke or exhaust the available domestic remedies to obtain reparation for the alleged violation of his rights. The State acknowledges that, pursuant to the Constitution and other laws, it is responsible for redressing violations that have taken place as a result of judicial error, denial or delay in justice, among other grounds. In regard to the proceedings before the *Tribunal de lo Contencioso Administrativo*, the State argues that this court had no jurisdiction⁸ to consider the petitioner's claim, and therefore, the petitioner's claim was dismissed for lack of jurisdiction. According to the State, the petitioner should have presented his claim before civil courts ("*las jurisdicciones competentes*") but failed to do so.

5. With respect to the issue of characterization, the State submits that the *Corte Constitucional* ultimately set aside the convictions and the terms of imprisonment imposed on the petitioner, and restored the original acquittal. In the circumstances, the State argues that the alleged violations claimed by the petitioner have been remedied by means of due process, and that the State has complied with all of its international obligations in protecting the rights of the petitioner. Accordingly, the State concludes that the petition fails to identify any colorable violations of the American Convention that would warrant the intervention of the IACHR.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The parties are at variance on the issue of exhaustion of domestic remedies. The petitioner contends that the unsuccessful claim for reparation before the *Tribunal de lo Contencioso Administrativo* represents exhaustion of domestic remedies, whereas the State argues that the petitioner's claim ought to have been litigated before civil courts that did have jurisdiction to entertain the claim for reparation. According to the State, to the extent that the petitioner failed to do so denotes a failure to exhaust domestic remedies. The Commission notes that the State has cited (a) the decision of the *Tribunal de lo Contencioso Administrativo* rejecting the petitioner's claim for reparation (for lack of competence); and (b) the relevant domestic legal provisions governing the judicial claims for reparation, and the courts that are competent to address such claims. Having regard for these factors, the Commission considers that the petitioner has failed to exhaust domestic remedies, and that his petition is, accordingly, inadmissible.

VII. COLORABLE CLAIM

7. In view of the considerations mentioned in Section VI, the Commission will not rule on whether alleged facts constitute a colorable claim.

⁵ According to the petitioner, the father of the deceased driver appealed the acquittal to the *Corte Superior de Esmeraldas*, which revoked the acquittal and imposed a prison sentence of four years.

⁶ According to petitioner, he appealed the decision of the *Corte Superior de Esmeraldas* to the *Corte Suprema del Ecuador* – which increased his sentence to five years imprisonment.

⁷ The petitioner contends that the law of Ecuador (particularly *El Código Organico de la Funcion Judicial* and *El Código de Procedimiento Penal*) provides for reparation to be awarded to litigants who have suffered damage, injury, or prejudice as a result of judicial error, delay, inadequate administration of justice, among other grounds.

⁸ The State cited Article 217 .9 of *El Código Organico de la Funcion Judicial* and *La Cuarta Disposicion Transitoria* (of the same *Código Organico*) in support of its claims. The State also submits the decision of the *Tribunal de lo Contencioso Administrativo* (of May 2010) that ruled that it had no jurisdiction to entertain the petitioner's claim.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; 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 15th day of the month of March, 2021. (Signed:) Antonia Urrejola, President; Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.