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REPORT No. 185/19
PETITION 2327-12
REPORT ON ADMISSIBILITY

JORGE LUIZ ZABALA MEDRANO
PANAMA

Approved electronically by the Commission on December 5, 2019.

Cite as: IACHR, Report No. 185/19, Petition 2327-12. Admissibility. Jorge Luiz Zabala Medrano. Panama. December 5, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jorge Luiz Zabala Medrano
Alleged victim:	Jorge Luiz Zabala Medrano
Respondent State:	Panama ¹
Rights invoked:	Articles 7 (personal liberty) and 8 (fair trial) of the American Convention on Human Rights ² and other international instruments ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	December 21, 2012
Notification of the petition to the State:	February 23, 2016
State's first response:	May 20, 2016
Additional observations from the petitioner:	October 16, 2017; December 20, 2018
Additional observations from the State:	July 16, 2018

III. COMPETENCE

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 instrument on June 22, 1978)

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	Article 7 (personal liberty) of the American Convention in conjunction with Article 1.1 of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Esmeralda Arosemena de Troitiño, of Panamanian nationality, did not participate in either the discussions or the decision in the present case.

² Hereinafter "the American Convention" or "the Convention".

³ Articles 7, 9 and 14 of the International Covenant on Civil and Political Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petition alleges that in September 2009, a British vessel raided an allegedly Panamanian vessel in Colombian territorial waters, found bags of drugs and detained a Colombian national, Jorge Luiz Zabala Medrano (hereinafter “the alleged victim”). He was handed over to the Panamanian authorities, taken to Panama against his will, where he remained in preventive detention until September 2014.

2. The petition also argues that criminal proceedings have been carried out against the alleged victim and that his prosecution was not in accordance with judicial guarantees and due process of law. In this regard, it indicates that: i) the State failed to notify the alleged victim’s detention to his country’s consular office; ii) during proceedings, several motions were filed with the authorities without any response; iii) in 2014, the court of first instance declared null and void the proceedings on the grounds that the prosecution sought to try the alleged victim for the offence of unlawful conspiracy without having informed him that this was the purpose or object of the investigation; iv) Panamanian judicial authorities agreed to review the appeal filed by the prosecutor in an extemporaneous manner; v) in 2017, a second instance court upheld the annulment and ordered a retrial without setting the alleged victim at liberty; and vi) there has still not been a first instance ruling.

3. Additionally, it indicates that due to the deprivation of liberty and the ongoing criminal proceedings, the alleged victim has been prevented from returning to his country and from obtaining legal migratory status that would allow him to work. It also indicates that the deprivation liberty has caused damage to the alleged victim’s health and physical integrity, has violated his right to family life and has damaged the reputation of his relatives.

4. For its part, the State argues that on September 22, 2009, the prosecution ordered preventive detention against Jorge Luiz Zabala Medrano, but points out that he was released on September 1, 2014. In addition, it indicates that he was not subjected to mistreatment during his detention and even signed a “certificate of non-abuse” in June 2014.

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

5. The petitioner indicates that the criminal proceedings are still pending and that during the trial the alleged victims filed several motions before the judicial authorities that went unanswered, including requests to substitute pretrial detention with another precautionary measure, and motions to accelerate the proceedings. For its part, in its communication to the IACHR of July 2018, the State indicated that once the proceedings were restated, the preliminary hearing was set for November 1, 2018.

6. The documents attached to the petition indicates that: i) the counsel for the defense alerted the authorities regarding the allegedly illegal capture of the alleged victim in Colombian maritime waters; ii) the defense had requested the release of the alleged victim and/or the application of an alternative precautionary measure to pretrial detention; and iii) that criminal proceedings had not yet been completed.

7. Regarding the allegation on the excessive and unjustifiably prolonged use of pretrial detention, the Commission observes that the petitioner has indicated that while this measure was in force, the alleged victim had requested his release or the application of a different precautionary measure. This information that has not been rebutted by the State. In this regard, the Commission recalls that it has already determined that “claims related to possible human rights violations arising from the imposition of pretrial detention have, [in relation to article 46 (1) (a) of the Convention,] their own dynamics for the exhaustion of domestic remedies that are independent from those that apply to the criminal proceeding as a whole”,⁵ as well as that “[i]n the context of pre-trial detention, the presentation of the request for conditional release

⁵ IACHR, *Report on the Use of Pretrial Detention in the Americas*, 2013, para. 201.

followed by the denial thereof suffices to substantiate the exhaustion of remedies.”⁶ In addition, the Commission notes that the State has failed to argue on the basis of non-exhaustion of adequate domestic remedies in connection with the resolution of claims on preventive detention, at the domestic level. For these reasons, the Commission concludes that this aspect of the petition satisfies the requirements in Article 46.1(a) of the American Convention. Given that the petition was filed on December 21, 2012 and, as the State indicated, the preventive detention ceased on September 1, 2014, the Commission considers that this aspect of the petition meets the requirements of Article 46.2(b) of the American Convention.

8. Regarding the alleged violations of due process in the framework of the criminal proceedings against the alleged victim, the Commission observes that, according to the information on file, this process is still ongoing. Given that the petitioning party has not provided sufficient elements to allow the Commission to conclude that an unjustified delay imputable to the State that could justify the application of the exception to the exhaustion of domestic remedies rules provide for article 46.2(c) has occurred; and taking into account that the latest information in the file indicates that the alleged victim is not deprived of his liberty, the Commission considers that this aspect of the petition is inadmissible for non-compliance with the requirements of Article 46.1 (a) of The American Convention.

9. With respect to the allegations of the petitioner regarding an unjustified and excessively prolonged use of the prohibition to leave the country, the Commission observes that the petitioner has failed to provide information on the appeals or remedies filed in this regard at the domestic level. The Commission notes that the petitioner has failed to argue the lack of judicial avenues to file a claim in order to establish liability or to seek compensation for illegal, arbitrary or excessive use of the prohibition to leave the country or that the alleged victim has been prevented from exhausting domestic remedies. For these reasons, the Commission concludes that this aspect of the petition also fails to meet the requirements of Article 46.1 (a) of the American Convention and it is therefore inadmissible.

VII. ANALYSIS OF COLORABLE CLAIM

10. The petitioner argues that the State is responsible for the violation of the alleged victim's human rights because of the fact that he was subjected to preventive detention for an excessively prolonged period, because his due process rights were violated in the criminal proceedings taken against him, and because these proceedings were prolonged excessively leaving him *de facto* subject to a penalty of prohibition to return to his country and causing physical and moral damages to him and his family. In turn, the State has not presented arguments on the characterization of human rights violations.

11. The Commission considers that the petitioner's arguments that he was affected in his personal liberty by being placed for an unjustifiably prolonged time in preemptive detention are not manifestly groundless since, if proven, the alleged facts (concerning the alleged victim being unjustifiably subjected to preemptive detention for almost 5 years) could characterize violations to the rights established in article 7 (personal liberty) of the American Convention in conjunction with article 1.1. (obligation to respect rights) of the same instrument in detriment of the alleged victims. Additionally, at the merits stage, the IACHR will assess and eventually qualify any damages suffered by the alleged victim and his family as a result of the deprivation of liberty.

12. As to the alleged violations to article 8 (fair trial) of the American Convention, the Commission considers that the petitioning party had no presented, within the aspects of the petition that are admissible in accordance to Section VI of this report, elements or evidence sufficient for the it to consider, *prima facie*, the possibility of its violation.

13. Additionally, the Commission lacks competence to establish violations of the norms of the International Covenant on Civil and Political Rights, but may take them into account as part of its interpretative exercise of the norms of the American Convention.

⁶ IACHR. Report No. 12/96, Case 11.245, Merits, Jorge A. Giménez, Argentina, March 1, 1996, para. 57.

14. The Commission will not engage in an analysis of colorable claim in respect of the aspects of this petition that are not admissible in accordance to Section VI of this report.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7 of the American Convention in conjunction with Article 1.1 of the same instrument;

2. Find the instant petition inadmissible in relation to article 8 of the American Convention;
and

3. 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 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren(dissenting opinion), Luis Ernesto Vargas Silva(dissenting opinion), and Flávia Piovesan, Commissioners.