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**REPORT No. 74/20**  
**PETITION 151-11**  
ADMISSIBILITY REPORT

ALIH AHMMED IBRAHIM VEGA  
ECUADOR

Electronically approved by the Commission on March 20, 2020.

**Cite as:** IACHR, Report No. 74/20, Petition 151-11. Admissibility. Alih Ahmmed Ibrahim Vega. Ecuador. March 20, 2020.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Comité Permanente por la Defensa de los Derechos Humanos
<b>Alleged victim:</b>	Alih Ahmmed Ibrahim Vega
<b>Respondent State:</b>	Ecuador
<b>Rights invoked:</b>	Articles 5 (personal integrity), 7 (personal freedom), 8 (fair trial), 10 (compensation), 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> in accordance with Articles 1 (respect of rights) and 2 (domestic legal effects) of the same instrument.

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	February 8, 2011
<b>Additional information received at the stage of initial review:</b>	October 11 and 15, 2013; December 4 and 20, 2013
<b>Notification of the petition to the State:</b>	October 20, 2014
<b>State's first response:</b>	February 23, 2015
<b>Additional observations from the petitioner:</b>	June 3 and November 3, 2015; July 25, 2016; March 24, 2017 and July 13, 2017
<b>Additional observations from the State:</b>	December 1, 2015 and September 5, 2017

**III. COMPETENCE**

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

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	5 (personal integrity) of the American Convention on Human Rights in relation Articles to 1 (respect of rights), 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of section IV
<b>Timeliness of the petition:</b>	Yes, under the terms of section IV

<sup>1</sup> Hereinafter "the American Convention" or "the Convention".

<sup>2</sup> The observations of each party were duly transmitted to the other party.

## V. SUMMARY OF THE ALLEGED FACTS

1. The petition alleges that the human rights of Alih Ahmmed Ibrahim Vega (hereinafter also “the alleged victim”) were violated within the framework of a preventive detention that took place in October 2006; the petitioner alleges that the Mr. Ibrahim was deprived of his freedom for a year, and that during the time of his detention he was victim of physical aggressions by custodial staff and that before his detention he suffered from a degenerative disease that aggravated due to the continuous aggressions that finally caused him cerebral hemorrhage in 2007.

2. The petitioner also maintains that by order of the Fifth Criminal Judge of Guayas, the alleged victim was arrested for the crime of possession of weapons on October 14, 2006. During the criminal process, the petitioner states that the Prosecutor of the case issued a formal accusation against him, and based on this, the judge proceeded to trial. In addition, the petitioner states that he filed an appeal, which was analyzed by the Second Criminal Chamber on November 8, 2007; and this court determined that although there were elements of conviction that allowed to presume the existence of the crime, there was also lack of evidence regarding the responsibility of the detainee for the crime that commenced the trial. As a consequence of this, the Second Criminal Chamber of the Province of Guayas decided to revoke the appeal for trial and issued a provisional dismissal of the process in favor of Mr. Ibrahim. The alleged victim conveys suffering from a congenital degenerative catastrophic disease that has caused brain hemorrhages, and that these injuries were aggravated due to the ill-treatment received by the personnel in the detention center which would constantly beat the victim in the inferior extremities and face breaking his nasal septum leaving a scar in his face, causing another cerebral hemorrhage during the period he was detained in 2007. The alleged victim points out that staff in charge of the penitentiary did not allow his transfer to a hospital to be assisted by a medical team.

3. On August 1 2007, the alleged victim presented an appeal which was resolved by the Second Criminal Chamber of Guayas on November 8, 2007 ordering to revoke the trial and the immediate release of Mr. Ibrahim. On February 9, 2009, after having regained his freedom, Mr. Ibrahim filed a lawsuit for moral damages before a civil judge, as a result of the ill-treatment suffered during the undue deprivation of his liberty, but by order dated March 6, 2009, said office ordered to refrain from processing the claim because it did not meet the legal requirements established for submission. Subsequently, the alleged victim again filed a claim for moral damages on April 22, 2009 before the Civil Judge, but by means of a decision issued on September 2, 2009, the judge refrained from hearing the compensation claim due to an alleged lack of competence. Finally, Mr. Ibrahim decided to initiate a reparation process for the alleged damages resulted from the deprivation of his liberty, presenting in October 2009 a claim for compensation before the District Court No. 2 of the Administrative Litigation of Guayaquil; on that occasion Mr. Ibrahim said he did not have the financial resources necessary to pay for a surgery in the United States, and that this surgery could prevent future bleeding episodes, improving his life quality. During the process, the Court ruled that the Organic Code of the Judicial Power, which was published in March 2009, contemplated that the Judicial Council would create the Administrative Contentious Chambers of the Provincial Courts and that they were going to be competent to hear cases involving judicial mistakes; thus inhibiting itself from entertaining in the process and ordering the transferring of the files to the newly constituted Chambers.

4. For its part, the State alleges that the petition does not comply with the requirements of Article 46 of the Convention. On the one hand, it alleges that the alleged victim had all the guarantees of due process and expedited access to judicial remedies established in the domestic legal framework. In that regard, it indicates that, although the judge decided to start criminal proceedings against Mr. Ibrahim, the alleged victim made use of the remedies of the domestic jurisdiction and filed an appeal for annulment. Due to the filing of the appeal, it was possible to order the immediate release of the alleged victim, which for the State demonstrates that said process was carried out within the framework of the due guarantees of law, there being no reason to assume the violation of human rights. On the other hand, the State alleges the lack of exhaustion of domestic resources within the action for reparation for damages. The State indicates that Mr. Ibrahim had to denounce the alleged aggressions against him before the competent internal court, and that said complaint was never made. Finally, the State indicates that the petitioner's intention is for the Commission to analyze the criminal legal actions and, in turn, determine the economic reparations of the case, without analyzing that this would go against the structure and operation of the Inter-American system.

5. The State affirms that Mr. Ibrahim did not make use of protection mechanisms to claim for his rights. Establishing that the Habeas Corpus or the “Amparo de Libertad” are effective guarantees to safeguard the constitutional rights of a person illegally deprived of liberty, further indicates that such mechanisms should not necessarily be presented when the fact is verified, but that it is sufficient that the person has the perception that their detention did not comply with the legal parameters established in the law.

6. In the same manner, the State argues that the alleged victim commenced three proceedings for damages worth ten million dollars before the ordinary courts. The first of these was the process dated February 9, 2009, entertained by the Seventh Judge of Civil Matters of Pichincha, and which was not processed because, according to the presentation made by the State, the petitioner did not correct the claim within the established time. Additionally, the State assures that subsequently, Mr. Ibrahim filed a new civil lawsuit for moral damages before the Sixth Civil Court of Guayaquil on April 22, 2009, but that this claim was also not corrected by the alleged victim. Finally, the State argues that on October 2, 2009, the alleged victim filed a new lawsuit but this time before the District Court of Administrative Litigation of Guayaquil, but that process culminated with a declaration of abandonment on January 13, 2015.

7. Finally, the State acknowledges having informed this Commission in the month of February 2015 that the process for reparation of damages pending before the District Court of Administrative Litigation was still open, since there was no definitive resolution regarding the petitions filed by the alleged victim. On September 5, 2017, the State of Ecuador presented additional material to this Commission in which it argued that on January 13, 2015, the Court had issued an order declaring the abandonment of the process because the alleged victim apparently had stopped presenting information for more than two years. In addition, the State assures that the procedural responsibility in that case fell on the alleged victim, and that his negligence generated a legal consequence that must be assumed by him.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

8. Regarding the exhaustion of domestic remedies, the alleged victim alleges that the Ecuadorian State, even recognizing the occurrence of a judicial error, refuses to repair the moral damages caused to him as a result of an erroneous criminal proceeding. In the first place, the IACHR observes that following the prosecutor's request to send the case to trial, on July 30, 2007, the judge issued that order based on the evidence presented by the prosecutor. The Commission also evidences that Mr. Ibrahim filed an appeal for annulment and a separate appeal on August 1 of the same year. The appeal for annulment was declared inadmissible by the Specialized Criminal Chamber, while the other appeal was sent to the superior for its respective analysis, and the final dismissal of the process was ordered by the Criminal Chamber of the Superior Court of Guayaquil, and ordering the immediate release of the alleged victim. On the other hand, the State alleges a lack of exhaustion of domestic remedies; however, this Commission has established that the requirement of exhaustion of remedies in the domestic jurisdiction does not mean that the alleged victims necessarily have the obligation to exhaust all the resources that are available to them. Hence, if the alleged victim raised the issue by any of the valid and appropriate alternatives according to the domestic legal order, and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international norm has been fulfilled.<sup>3</sup> Based on the previous reasoning, this Commission can determine that through the filing of the appeal for annulment and of a separate appeal, the exhaustion of domestic remedies in the accusatory process has been fulfilled within the framework established in Article 46 (1) (a).

9. On the other hand, the Commission observes that the alleged victim filed compensation for damages in October 2009 before District Court No. 2 of the Administrative Litigation of Guayaquil in relation to the mistreatments suffered by the security personnel of the Penitentiary Establishment during the time in which he was detained. The Commission will study at the merits stage the petitioner's assertion regarding the cerebral hemorrhage caused by the physical aggressions to which he was subjected, and the lack of diligence of the Penitentiary Officials who did not carry out the pertinent procedure to refer to Mr Ibrahim to a hospital. The Commission also observes that the State argues that the alleged victim did not inform the local authorities of the acts of physical aggression of which he claims to have been victim of. However, this Commission has

<sup>3</sup> IACHR, Report No. 16/98, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, par. 12.

recognized that when State agents are involved in the alleged facts, the State has the obligation to investigate them. This burden must be assumed by the State as its own legal duty, and not as a management of interests of individuals or dependent on their initiative or the provision of evidence by them.<sup>4</sup>

10. The Commission also considers that although the Ecuadorian State proceeded with the archiving of the process due to the alleged inactivity of the petitioner, this Commission also verifies that in the first response of the Ecuadorian State dated February 24, 2015, one of the arguments used was that, by means of a resolution of December 29, 2009, the magistrates of the District Court No. 2 of Guayaquil had rejected entertaining on the case, given that competence fell on the Specialized Chambers of the Provincial Courts of Justice that, until that moment, had not been created, and therefore, the process was suspended until they were constituted. The foregoing is not consistent with the final argument of the state where it makes the alleged victim responsible for the archiving of the process as he did not promote the process in two years.

11. Finally, this Commission does not find evidence that allows it to infer that the State informed the alleged victim about the availability of additional resources that he could have make use of within the domestic jurisdiction, so that the claim for damages continued its process, even without the creation of the Specialized Rooms. In that vein, the Commission concludes that, *prima facie*, it seems that there was not due process or adequate recourse to protect the alleged rights violated reason why based on the foregoing, this Commission clarified that the absence of a procedural figure within the exception to the exhaustion of local remedies established in Article 46.2.a of the American Convention.

12. The Commission concludes then that the petition has been submitted within a reasonable period of time based on Article 32.2 of its Regulations. Given that although the events have taken place since October 14, 2006 and the petition was received on February 8, 2011, some of its effects, such as the lack of access to Ecuadorian justice, extended to the present. Therefore, in view of the context and the characteristics of the facts included in this report, the Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the submission deadline must be satisfied.

## VII. COLORABLE CLAIM

13. The Commission observes that the present petition includes allegations related to the failure to grant an adequate reparation for the damages caused to Mr. Ibrahim Vega during the time he was deprived if his liberty due to a judicial mistake. Moreover, there are also allegations related to the physical integrity of Mr. Ibrahim Vega as he assures being physically assaulted by the personnel guarding the penitentiary establishment where he was held causing a cerebral hemorrhage without having been sent to a medical care facility.

14. Based on the aforementioned considerations and after examining the factual and legal allegations of the parties, the Commission considers that the allegations presented by the petitioner is not manifestly unfounded and requires a study on the merits because, if corroborated as true, the facts could amount to violations Articles 5 (personal integrity) of the American Convention in accordance with Articles 1 (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law) of this same instrument.

15. Once again, the commission clarifies that the reparation due to judicial error proceeds in cases where a definitive decision has been issued and bearing in mind that the measure of deprivation of liberty of the allege victim was revoked it can be determined the existence of a lack of characterization. Therefore, the Commission does not consider that exists, *prima facie*, a violation to Articles 7 (personal freedom), 8 (fair trial), 10 (reparations) and 25 (judicial protection) of the American Convention.

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<sup>4</sup> IACHR, Report N. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, par. 14.

**VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 5 of the American convention on Human Rights in accordance with Articles 1 and 2 of the same instrument; and

2. To find the instant petition inadmissible in relation to Articles 7, 8, 10 and 25 of the American Convention; and

3. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 20<sup>th</sup> day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Edgar Stuardo Ralón Orellana, Commissioners.