

Carranza Alarcón v. Ecuador

ABSTRACT*

This case is about excessively long preventive, pre-trial, detention and protracted judicial proceedings. The Court found the State in violation of Article 7 of the American Convention.

I. FACTS

A. Chronology of Events

August 16, 1993: Mr. Segundo Mariño Gamboa files a complaint with the National Police Station against Mr. Ramón Rosendo Carranza Alarcón for the alleged murder of his brother, Mr. Samuel Evaristo Mariño Gamboa.¹ Mr. Mariño Gamboa claims several eyewitnesses saw Mr. Carranza Alarcón and Mr. Alfredo Vargas Recalde get into a fight with his brother.² Then, Mr. Carranza Alarcón shot and killed him before fleeing the scene.³

August 17, 1993: The Commissioner of the National Police orders an investigation and the Rural Police to arrest and detain Mr. Carranza Alarcón.⁴ Further, the Commissioner orders the preventive detention of Mr. Carranza Alarcón in accordance with Article 177 of the Code of Criminal Procedure, which allows for preventative detention when evidence presumes the existence of a punishable crime and that the defendant perpetrated the crime.⁵

*Alexandra Reyna, Author; Kaylie O'Connor, Editor; Gabrielle Szlachta-McGinn, Chief IACHR Editor; Cesare Romano, Faculty Advisor

1. Ramón Rosendo Carranza Alarcón v. Ecuador, Report on Merits, Report No. 40/17, Inter-Am. Comm'n H.R., Case No. 12.197, ¶ 13 (May 23, 2017).

2. *Id.*

3. *Id.*

4. *Id.* ¶ 14; Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 399, ¶ 36 (Feb. 3, 2020).

5. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 36.

October 28, 1993: The Criminal Court of Guayas confirms the arrest warrant and the order for preventive detention against Mr. Carranza Alarcón.⁶

November 1994: The Ecuadorian Rural Police arrest and detain Mr. Carranza Alarcón.⁷ After refusing to show him the arrest warrant or confirm the reasons for his arrest, police officers interrogate Mr. Carranza Alarcón, isolate him for over twenty-four hours and refuse to provide him with an opportunity to consult an attorney.⁸

December 6, 1994: Mr. Carranza Alarcón files a brief before the Criminal Court, which identifies his defense counsel and also denies his alleged involvement in the murder of Mr. Samuel Mariño Gamboa.⁹

September 11, 1995: After having been detained in prison for ten months, Mr. Carranza Alarcón files another request for release from detention before the Criminal Court.¹⁰ Mr. Carranza Alarcón maintains his innocence.¹¹ However, the Criminal Court does not reply.¹²

September 30, 1996: The Criminal Court closes Mr. Carranza Alarcón's case and submits the proceedings to the Seventh Transit Prosecutor of Guayas for review.¹³

March 4, 1997: The Prosecutor indicts Mr. Carranza Alarcón for his alleged involvement in the murder of Mr. Samuel Mariño Gamboa.¹⁴

April 14, 1997: The Criminal Court accepts the Prosecutor's indictment and opens trial proceedings against Mr. Carranza Alarcón.¹⁵ In the meantime, Mr. Vargas Recalde, the other person who brawled with Mr. Samuel Evaristo Mariño Gamboa, is acquitted.¹⁶

6. Ramón Rosendo Carranza Alarcón v. Ecuador, Report on Merits, ¶ 15.

7. Ramón Rosendo Carranza Alarcón v. Ecuador, Admissibility Report, Report No. 154/11, Inter-Am Comm'n H.R., Pet. No. 12.197, ¶ 7 (Nov. 2, 2011).

8. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 39.

9. *Id.* ¶ 40.

10. *Id.* ¶ 44.

11. *Id.*

12. *Id.*

13. *Id.* ¶ 46.

14. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 47.

15. Ramón Rosendo Carranza Alarcón v. Ecuador, Report on Merits, ¶ 24.

16. *Id.*

December 1, 1998: After having postponed Mr. Carranza Alarcón's hearing several times, the Criminal Court finally holds a hearing where Mr. Carranza Alarcón admits to killing Mr. Samuel Mariño Gamboa.¹⁷ However, he denies that he had the requisite criminal intent and asks to be released from prison.¹⁸

December 15, 1998: The Criminal Court finds Mr. Carranza Alarcón guilty and sentences him to six years of imprisonment at Guayaquil Prison.¹⁹ The Criminal Court deducts the time Mr. Carranza Alarcón already spent in preventive detention from his sentence pursuant to Article 54 of the Sentences and Social Rehabilitation Code.²⁰ Mr. Carranza Alarcón does not challenge the Criminal Court's judgment or file an appeal.²¹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

April 5, 1998: Mr. José Leonardo Obando Laaz presents a petition on behalf of Mr. Carranza Alarcón to the Inter-American Commission on Human Rights.²²

November 2, 2011: The Commission issues Admissibility Report No. 154/11, which declares the petition admissible.²³

The State argues the petition inadmissible based on failure to exhaust domestic remedies, Mr. Carranza Alarcón's failure to file a writ of habeas corpus, and the State acted in compliance with Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention.²⁴

17. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 51; Ramón Rosendo Carranza Alarcón v. Ecuador, Report on Merits, ¶¶ 25-27.

18. Ramón Rosendo Carranza Alarcón v. Ecuador, Report on Merits, ¶ 25-27.

19. *Id.* ¶¶ 28-29.

20. *Id.* ¶ 29.

21. *Id.* ¶ 30.

22. Ramón Rosendo Carranza Alarcón v. Ecuador, Admissibility Report, ¶ 1.

23. *Id.* ¶ 3.

24. *Id.* ¶¶ 12-14.

May 23, 2017: The Commission issues Merits Report No. 40/17.²⁵ The Commission finds the State violated Articles 7(1)(Right to Personal Liberty and Security), 7(3)(Prohibition of Arbitrary Arrest or Imprisonment), 7(5)(Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), 8(1)(Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 8(2)(Right to Be Presumed Innocent), in relation to Articles 1(1)(Obligations of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.²⁶

In light of the foregoing violations, the Commission recommends the State: (1) provide reasonable compensation for the human rights violations; and (2) adopt measures to adjust the domestic regulatory framework of preventive detention to be accordance with the Inter-American standards.²⁷

B. Before the Court

March 29, 2018: The Commission submits the case to the Court after the State failed to adopt the Commission's recommendations.²⁸

November 28, 2018: The State raises two preliminary objections.²⁹ The State's preliminary objections argue that: (1) domestic remedies have not been exhausted; and (2) the Commission's reports were procedurally defective.³⁰

1. Violations Alleged by Commission³¹

To the detriment of Mr. Carranza Alarcón:

Article 7(1) (Right to Personal Liberty and Security)

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)

Article 7(5) (Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)

25. Ramón Rosendo Carranza Alarcón v. Ecuador, Report on Merits, ¶ 3.

26. *Id.* ¶ 52.

27. *Id.* ¶¶ 62(1)-(2).

28. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 1, 2(d).

29. *Id.* ¶ 12.

30. *Id.*

31. *Id.* ¶ 57.

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 8(2) (Right to Be Presumed Innocent)

all in relation to:

Article (1)(1) (Obligations of Non-Discrimination) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention

2. Violations Alleged by Representative of the Victim³²

Same Violations Alleged by Commission.

III. MERITS

A. *Composition of the Court*³³

Elizabeth Odio Benito, President

Eduardo Vio Grossi, Judge

Humberto Antonio Sierra Porto, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge

Eugenio Raúl Zaffaroni, Judge

Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

B. *Decision on the Merits*

February 3, 2020: The Court issues its Judgment on Merits, Reparations, and Costs.³⁴

The Court found unanimously:

To dismiss both of Ecuador's preliminary objections,³⁵ because:

*First, the State argued not all domestic remedies had been exhausted.*³⁶

The Court rejected this argument because the State did not meet the

32. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 58.

33. Judge L. Patricio Pazmiño Freire, of Ecuadorian nationality, did not participate in the processing, deliberation, or signing of the Judgment. *See generally id.* p.1.

34. *Id.*

35. *Id.* ¶ 119.

36. *Id.* ¶ 13.

*standards necessary to argue lack of exhaustion of domestic remedies, which include stating the remedies to be exhausted or in progress, and why those remedies are effective.*³⁷ *The Court considered that the State provided for habeas corpus to challenge deprivation of liberty to the Mayor.*³⁸ *However, the Court concluded that a mayor is not an appropriate authority to meet standards of Article 7(6), which requires “control of the deprivation of liberty must be judicial.”*³⁹

*Second, the State argued the Commission’s reports violated its due process rights because the Commission failed to analyze the habeas corpus remedy and the Commission did not grant the State adequate time to administer the Commission’s recommendations.*⁴⁰ *The Court rejected the first argument on the ground that it will only review the Commission’s actions for clear demonstration of prejudice and, here, there was only a mere discrepancy between the State and the Commission’s views.*⁴¹ *The Court rejected the second argument holding that it is within the Commission’s complete discretion to assess compliance with its recommendations absent serious error, which did not exist here.*⁴²

The Court found unanimously that Ecuador had violated:

Article 7(1) (Right to Personal Liberty and Security), Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and Article 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of Mr. Carranza Alarcón⁴³ because:

*Article 7 (Right to Personal Liberty and Security) protects a person’s freedom against arbitrary or illegal State interference.*⁴⁴ *The Court considers three factors to determine the arbitrariness of detention:*

37. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 15, 22.

38. *Id.* ¶ 20.

39. *Id.* ¶ 21.

40. *Id.* ¶¶ 23, 29.

41. *Id.* ¶¶ 25, 27, 33.

42. *Id.* ¶¶ 32-33.

43. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, “declares” ¶ 3.

44. *Id.* ¶ 60.

*unreasonableness; unpredictability; and proportionality.*⁴⁵ Finally, the Court interprets arbitrariness broadly and includes elements such as impropriety, injustice and unpredictability.⁴⁶

*Preventive detention is the most extreme measure that a State can apply to persons accused of a crime and is limited by the presumption of innocence.*⁴⁷ Thus, applying such an extreme measure must be exceptional and limited by the principle of legality, the presumption of innocence, necessity and proportionality.⁴⁸ Judges must make objective decisions, evaluate circumstances on a case-by-case basis and demonstrate objectivity before rendering an accused ineligible for release under the presumption of innocence.⁴⁹ Further, judges must show the accused had an opportunity to be heard and receive assistance from an attorney.⁵⁰

*The Court explained the State is required to periodically assess the relevance of precautionary measures that it issues, and at all times, must have sufficient grounds to justify restricting a person's liberty beyond a reasonable amount of time.*⁵¹ If at any time State authorities find that preventive detention no longer satisfies the conditions justifying preventive detention, the State must release the accused.⁵²

*Here, the State failed to show why Mr. Carranza Alarcón's preventive detention was necessary, suitable and proportional to the purpose the State was pursuing.*⁵³ The State authorized Mr. Carranza Alarcón's pre-trial detention based on Article 177 of the Code of Criminal Procedure, which permits pretrial detention only when there is sufficient evidence of a crime punishable deprivation of liberty.⁵⁴ Further, the State failed to justify its reasons for restricting Mr. Carranza Alarcón's liberty.⁵⁵ The State improperly relied on its characterization of Mr. Carranza Alarcón

45. *Id.* ¶ 62.

46. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 62.

47. *Id.* ¶ 65.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* ¶ 83.

52. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 83.

53. *Id.* ¶ 81.

54. *Id.* ¶ 76.

55. *Id.* ¶ 81.

as a fugitive, and focused on its purpose for ordering his arrest.⁵⁶ However, it failed to provide evidence that without preventive detention, Mr. Carranza Alarcón would impede the efficient development of an investigation or threaten the delivery of justice.⁵⁷

Thus, the Court held the preventive detention of Mr. Carranza Alarcón was arbitrary and an unreasonable deprivation of his right to liberty.⁵⁸

Article 7(1) (Right to Personal Liberty and Security), Article 7(5) (Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and Article 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Carranza Alarcón⁵⁹ because:

When the State detains a person accused of a crime, it must bring the accused before a judge without delay to prevent arbitrary or illegal detention.⁶⁰ The State's failure to guarantee a detainee his right to trial within a reasonable time requires the State release him from detention even if proceedings continue.⁶¹ The purpose of the conditional release provision of Article 7(5)(Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) is to ensure the accused's appearance at the trial without the preventive deprivation of liberty.⁶² The Court held the State had violated Mr. Carranza Alarcón's rights because of: (1) the arbitrary nature of his preventive detention; (2) the unreasonable duration of the preventive detention; (3) the State's violation of Mr. Carranza Alarcón's presumption of innocence; and (4) the violation of judicial guarantees.⁶³ The Court noted the preventive deprivation of liberty of Mr. Carranza Alarcón lasted the same as the criminal proceeding against him, and during such time, Mr. Carranza Alarcón requested his release, however, the State failed to conduct periodic reviews

56. *Id.* ¶ 77.

57. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 78, 81, 83.

58. *Id.* ¶ 97.

59. *Id.* "declares" ¶ 4.

60. *Id.* ¶¶ 60, 64.

61. *Id.* ¶ 66.

62. *Id.* ¶ 64.

63. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 97.

and held Mr. Carranza Alarcón arbitrarily.⁶⁴ The Court also noted that preventatively depriving a person of liberty in an unjustified manner is equivalent to an anticipated sentence, which is contrary to the presumption of innocence.⁶⁵

In order to establish whether the State violated the guarantee of the reasonable period within the framework of the criminal proceedings against Mr. Carranza Alarcón, the Court analyzed the following four elements: (1) the complexity of the case; (2) all procedural activity of the interested party from the date of the first procedural act to the date a final judgment is issued; (3) any judicial authority's conduct; and (4) the impact on the legal situation of the alleged victim.⁶⁶ The Court dismissed the first two elements finding that the case was not complex and, because Mr. Carranza Alarcón was detained, he could not have affected the proceedings.⁶⁷ The Court, therefore, focused specifically on the third and fourth elements because during the nearly three-year long court process, Mr. Carranza Alarcón was preventatively deprived of his liberty, and found the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Mr. Carranza Alarcón.⁶⁸

The Court found unanimously that Ecuador had not violated:

Article 5 (Right to Humane Treatment) and Article 25 (Right to Judicial Protection) of the American Convention, to the detriment of Mr. Carranza Alarcón⁶⁹ because:

*The victim's representative failed to present more than a cursory review of the conditions of Mr. Carranza Alarcón's detention.*⁷⁰ The lack of sufficient evidence rendered it unnecessary for the Court to consider the

64. *Id.* ¶¶ 84-85.

65. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 89-90.

66. *Id.* ¶ 92.

67. *Id.* ¶ 94.

68. *Id.* ¶¶ 94, 96-97.

69. *Id.* "declares" ¶ 5.

70. *Id.* ¶ 56.

*violation of rights provided by Article 5 (Right to Humane Treatment) and Article 25 (Right to Judicial Protection).*⁷¹

C. Dissenting and Concurring Opinions

Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi examined the requirements of the State to raise a lack of exhaustion of domestic remedies argument.⁷² The State did not properly raise the lack of exhaustion of domestic remedies because it did not argue this in the first document submitted to the Commission as required by the Convention.⁷³ The majority, therefore, improperly considered the State's argument and incorrectly interpreted Article 46 of the Convention and Article 28(8) of the Regulation of the Commission.⁷⁴

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation

The Court noted that the Judgment itself is a form of reparation.⁷⁵

2. Publish the Judgment

The State must publish the Judgment within six months and publish the Official Summary of the Judgment in a newspaper of large national

71. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 56.

72. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 399, ¶ 1 (Feb. 3, 2020).

73. *Id.*

74. *Id.*

75. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, "and it does" ¶ 6.

circulation and in the Official Gazette.⁷⁶ The Court required the Judgment be published on an official State website for one year, and noted the State must immediately notify the Court once each publication is made available regardless of any time period restriction.⁷⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court awarded \$25,000 to Mr. Carranza Alarcón for the violations of his rights to the recognition of legal personality, life, personal integrity, and personal freedom.⁷⁸

3. Costs and Expenses

The Court awarded \$10,000 to Mr. Carranza Alarcón's representative for the work in the litigation of the case.⁷⁹

4. Total Compensation (Including Costs and Expenses Ordered)

\$35,000

C. Deadlines

The State must reimburse the costs and expenses within one year from the date of the Judgment.⁸⁰

76. *Id.* ¶ 102.

77. *Id.*

78. Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 109.

79. *Id.* ¶¶ 113-114.

80. *Id.* ¶ 115.

The State must also make the payment of non-pecuniary damages within one year from the date of the Judgment.⁸¹

The State must publish the Official Summary and the Judgment within six months from the date of the Judgment.⁸²

Within one year from the Judgment, the State must provide the Court with a report on the measures it took to comply with the Judgment.⁸³

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 399, (Feb. 3, 2020).

Carranza Alarcón v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 399, (Feb. 3, 2020).

3. Provisional Measures

81. *Id.* ¶ 116.

82. *Id.* ¶ 102.

83. *Id.* “And It Does” ¶ 9.

Carranza Alarcón v. Ecuador, Resolution of the President, Inter-Am. Ct. H.R., (July 23, 2019).

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Ramón Rosendo Carranza Alarcón v. Ecuador, Admissibility Report, Report No. 154/11, Inter-Am Comm'n H.R., Pet. No. 12.197 (Nov. 2, 2011).

3. Provisional Measures

[None]

4. Report on Merits

Ramón Rosendo Carranza Alarcón v. Ecuador, Report on Merits, Report No. 40/17, Inter-Am. Comm'n H.R., Pet. No. 12.197 (May 23, 2017).

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

[None]