

OEA/Ser.L/V/II.157
Doc. 27
15 April 2016
Original: Spanish

REPORT No. 23/16
PETITION 873-04
REPORT ON ADMISSIBILITY

JOSÉ ALEJANDRO RESÉNDIZ OLVERA
MEXICO

Approved by the Commission at its session No. 2065 held on April 15, 2016.
157th Regular Period of Sessions

Cite as: IACHR, Report No. 23/16. Petition 873-04. Admissibility. José Alejandro Reséndiz Olvera. Mexico. April 15, 2016.

REPORT No. 23/16¹
PETITION P-873-04
ADMISSIBILITY REPORT
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I. SUMMARY

1. On September 13, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by José Alejandro Reséndiz Olvera on his own behalf (hereinafter “the petitioners” or “the alleged victim”) alleging the international responsibility of the United States of Mexico (hereinafter “the State,” “the Mexican State,” or “Mexico”) for the illegal detention, torture, mistreatment, and violation of judicial guarantees to his detriment.

2. The petitioner argues that he was illegally deprived of liberty; tortured to make him confess his participation in his wife’s homicide; prosecuted without proper judicial guarantees; and subjected to arbitrary limitations at the prison where he is an inmate. The State, for its part, notes that the petition should be found inadmissible as it fails to state facts that tend to establish violations of the petitioner’s human rights; and that he is asking the Commission to review the proceedings of the domestic judicial organs, thereby positioning itself as a court of fourth instance.

3. Without prejudging on the merits of the complaint, after analyzing the parties’ positions and pursuant to the requirements set out at Articles 46 and 47 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), the Commission decides to find the petition admissible for the purposes of examining the arguments related to the alleged violation of the rights enshrined in Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), and Article 25 (right to judicial protection) of the American Convention, all in conjunction with Article 1(1) of that treaty; and also in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission also decides to notify the parties of this decision, publish it, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE IACHR

4. The IACHR received the petition on September 13, 2004, and transmitted a copy of the pertinent parts to the State on December 28, 2012, giving it two months to submit its observations, based on Article 30(3) of the Rules of Procedure then in force (hereinafter “the Rules of Procedure”). On March 25, 2013, the response was received from the State; it was forwarded to the petitioner on July 25, 2013.

5. Additional information was received from the petitioner on September 30, 2014 and December 11, 2014, and from the State on June 11, 2015. These communications were each forwarded to the other party.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petitioner states that on May 20, 2000, upon arriving at his residence in the city of Querétaro, he found the door ajar and noted that his home had been ransacked. He states that he found his daughter unharmed in her bedroom. He then entered another room and found his wife’s corpse, upon which he

¹ In keeping with Article 17(2)(a) of the Rules of Procedure of the Commission, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, did not participate in the debate or the decision on this petition.

immediately notified the authorities by telephone. Minutes later members of several police units arrived at the residence where they carried out several inquiries and notified the petitioner to appear at the Public Ministry offices known as “El Trébol” to identify the corpse and provide a statement.

7. The petitioner states that during the investigation carried out by the Public Ministry he was harassed by members of the investigative police. This harassment consisted of following his movements and even questioning persons close to his social circle without going through the legal formalities. These acts occurred over approximately six months. He indicates that on October 21, 2000, he was intercepted by a private vehicle, whereupon he attempted to flee out of fear, but was violently detained and transported to the Public Ministry facility known as “El Pueblito.” He said that there he was stripped, tortured, and forced to state that he was a co-participant in his wife’s murder.

8. The petitioner states that after several hours he was transferred to a safe house where he was once again tortured while his statement was being taken. According to the petitioner, during his initial statement to the Public Ministry he was advised by a supposed attorney who at the time did not have a professional license issued by the State Bureau of Professions, even though he received his law degree on July 1, 1994. As such, the petitioner claims that he did not have an adequate defense. The next day he was moved to the Public Ministry facility known as “El Trébol,” where he was held incommunicado.

9. The petitioner states that he was then transferred to the San José del Alto prison in Querétaro and that the Seventh Court of First Instance was assigned to hear the case (criminal case 133/2000). He indicates that he informed the judge during his preliminary statement that he was subjected to torture when he made his initial statement to the Public Ministry. In this regard, he indicates that no judicial investigation was opened given that he was detained and tortured by the Public Ministry, the entity tasked with carrying out such an investigation. This happened in spite of the fact that an evaluation based on the Istanbul Protocol carried out by an investigator (*visitante*) from the Querétaro State Commission on Human Rights determined that the petitioner suffered from symptoms typical of victims of torture or cruel and inhumane treatment.

10. On October 15, 2008, the Seventh Court of First Instance issued a guilty verdict against Mr. Reséndiz Olvera, sentencing him to 50 years in prison and a fine of 25,833 pesos (equivalent to US\$3,306.62 at the time of the facts). That judgment was appealed by the petitioner. The Second Criminal Chamber of the Superior Court of Justice of Querétaro, which heard this appeal (criminal court docket 1321/2008/BBS) without ruling on the alleged human rights violations, reduced the sentence to 38 years in prison. Following this decision, the petitioner pursued an *amparo* remedy.

11. The First Collegial Court of the 22nd Circuit heard the *amparo* proceeding (number 43/2011) and upheld the conviction. Subsequently, the petitioner filed a motion for review before the Supreme Court of Justice of the Nation, which on February 7, 2014, upheld the ruling handed down by the First Collegial Court of the 22nd Circuit, stating that the petitioner’s co-participation in his wife’s homicide was proven by statements made by the other persons who were the co-accused. Accordingly, the petitioner argues that he exhausted all available domestic remedies and underscores that in none of the judgments or rulings was any reference made to the allegations of torture.

12. The petitioner adduces that the treatment he has received at the prison where he is an inmate has been inadequate, as he has been subjected to mistreatment and arbitrary limitations. He mentions, for example, that he is given 30 minutes a day to leave his cell; that his work activities are restricted for no reason; that he can only make one telephone call weekly; that the food served at the prison is not fit for human consumption; that medical services are deficient; and that the prison is overpopulated. The petitioner considers that said situation violates his right to humane treatment. He notes that he has denounced the facts in six complaints submitted to the Querétaro State Commission on Human Rights without any concrete results.

13. In short, the petitioner alleges that he was unlawfully detained; tortured to make him confess his co-participation in his wife’s homicide; denied basic judicial guarantees, as he did not have an adequate defense when providing his initial statements; and subjected to arbitrary treatment in the prison where he is held. Based on the foregoing considerations, the petitioner alleges that the Mexican State violated

the rights enshrined in Articles 1, 2, 3, 4, 5, 7, 8, 9, 24, 25, 41, 43, 44, 45, 46, 48, and 50 of the American Convention, as well as the rights enshrined in Articles 1, 2, 3, 5, 6, 8, 9, 10, and 11 of the American Declaration of the Rights and Duties of Man, to his detriment.

B. Position of the State

14. The State argues that the intention of the petitioner is that the Commission sit as a court of fourth instance, given that he is calling for review of domestic judicial actions that were duly carried out. It indicates that, as stated in the record of the criminal proceeding against him, the trial judge at all times weighed the evidence provided by the prosecutorial authorities and the defense. It states that while the petitioner argues that his initial statement was obtained by means of torture, and that it was important in determining the outcome of the case, it was not the only evidence used to prove the petitioner's liability. Therefore, the State indicates that the judicial authorities proceeded lawfully, even benefitting him on appeal with a reduction of his sentence from 50 to 38 years in prison. Accordingly, Mexico denies that the rights protected by the American Convention were violated to the detriment of the petitioner.

15. The State underscores that in the face of acts by public authorities that could affect the rights of persons, national protection is to be found in the *amparo* remedy and that the inter-American system can only be subsidiary once the *amparo* remedy and the appeals by which the finality of *amparo* judgments have been exhausted. Accordingly, it argues that the suitable remedy was available to the petitioner, but the fact it was not resolved in his favor does not constitute a violation of his human rights.

16. With regard to the allegations of torture, the State notes that while the petitioner argues that he was the victim of torture and mistreatment during his detention, at no time did he or his representatives formally report said acts, which would have led to the opening of a criminal proceeding to investigate the facts and, as the case may be, punish those responsible. It adduces that the allegations of torture made by the petitioner were only submitted during the criminal trial in order to invalidate his statement.

17. The State underscores that the Querétaro State Commission on Human Rights received six complaints related to the conditions of the petitioner's detention, and that after gathering the necessary information, no clear and convincing evidence was found upholding what the petitioner said. It notes that therefore, these complaints regarding conditions of detention were addressed and resolved abiding strictly by the law. It also states that disciplinary sanctions constitute a mechanism for preserving the organization and coexistence in the prison, but that in this case they were not used as a correctional measure.

18. In conclusion, the State holds that the Commission is not competent to rule on matters that have been abiding strictly by the law and that the petition is inadmissible, and it asks that the IACHR so finds.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

19. The petitioner is authorized, in principle, by Article 44 of the American Convention, in accordance with Article 23 of the Rules of Procedure, to file petitions with the Commission. The petition alleges violations of rights enshrined in the American Convention and the Inter-American Convention to Prevent and Punish Torture to the detriment of an individual person with respect to whom the Mexican State undertook to respect and guarantee these rights as of March 24, 1981, and June 22, 1987, respectively, the dates it deposited its instruments of ratification of the aforementioned treaties. Based on the foregoing, and mindful that the alleged violations are said to have occurred in the territory of a state party to said treaties after the deposit of the respective instruments of ratification, the IACHR concludes that it is competent *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* to examine the petition.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

20. Article 46(1)(a) of the American Convention requires the prior exhaustion of domestic remedies in keeping with generally recognized principles of international law as a requirement for the admission of claims regarding the alleged violation of the rights enshrined in the American Convention. The purpose of this requirement is to afford the national authorities an opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is taken up by an international mechanism. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when the domestic legislation of the state in question does not afford due process of law for the protection of the right or rights alleged to have been violated; when the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or when there has been unwarranted delay in rendering a final judgment under said remedies.

21. With regard to criminal due process, the Commission observes that the petitioner appealed the guilty verdict handed down by the Seventh Court on October 15, 2008. The Second Criminal Chamber of the Superior Court of Justice of Querétaro denied that appeal on May 29, 2009, in response to which the petitioner then filed an *amparo* before the First Collegial Court of the 22nd Circuit, which was denied on August 30, 2012. The petitioner filed a motion for review against that judgment with the Supreme Court of Justice of the Nation, which was denied on February 7, 2014. The State, for its part, does not allege failure to exhaust domestic remedies with regard to the criminal proceeding against the petitioner.

22. In view of the foregoing, the Commission considers, with regard to the criminal proceeding, that the petitioner exhausted available domestic remedies in the terms of Article 46(1)(a) of the American Convention.

23. With regard to the allegations of torture, the State adduces that vis-à-vis any act of an authority, the mechanism for national protection is the *amparo* and that, instead of filing a formal complaint, the petitioner made allegations of torture only within the context of the criminal trial.

24. In this regard, the Commission observes that on October 25, 2000, during his preliminary statement, the petitioner told the trial judge that he had been a victim of torture and that said action did not result in any investigation. In this sense, the Commission has consistently established that “the obligation to investigate acts of torture must be carried out *sua sponte* by the corresponding authorities, and having been having been informed of such acts by the alleged victim, the victim cannot be required to exhaust another series of procedures or remedies...”² Accordingly, the IACHR concludes that the exception to the prior exhaustion requirement set forth at Article 46(2)(c) of the Convention applies to this part of the petition.

25. The Inter-American Commission observes that the conditions of detention were reported to the Querétaro State Commission on Human Rights on the following dates: December 21, 2010; January 27, 2011; May 26, 2011; August, 29, 2011; September 2, 2011; and September 23, 2011. In addition, the IACHR notes that the State has expressed that it had knowledge of these allegations.

26. Based on these considerations and the information in the record, the Inter-American Commission considers that the requirement to exhaust domestic remedies, established in Article 46(1)(a) of the American Convention on Human Rights, has been satisfied.

² See, among others, IACHR, Report No. 18/15 (Admissibility), Petitions 929-04, 1082-07, and 1187-07, José Antonio Arrona Salazar and Family, Luz Claudia Irozaqui Félix, Joel Gutiérrez Esquivel, Mexico, March 24, 2015, para. 33; IACHR, Report No. 7/15, (Admissibility), Petition 547/04, José Antonio Bolaños Juárez, Mexico, January 29, 2015, para. 22; IACHR, Report No. 14/08, (Admissibility), Case 652-04, Hugo Humberto Ruiz Fuentes, Guatemala, March 5, 2008, para. 64.

2. Timeliness of the petition

27. Article 46(1)(b) of the American Convention establishes that for a petition to be admissible by the Commission it must be filed within six months of the date on which the alleged victim has been notified of the final decision.

28. In this case, the IACHR established that with regard to the criminal proceeding against the alleged victim, domestic remedies were exhausted with the judgment issued by the Supreme Court of Justice on February 7, 2014. With regard to the allegations related to conditions of detention, the authorities were made cognizant of them in 2011. Therefore, given that the petition regarding alleged violations of due process was filed with the IACHR on September 13, 2004, and that the IACHR evaluates compliance with requirements at the time that decisions on admissibility are made, the Commission considers that the petition complies with the time for filing a complaint with respect to this allegation.

29. Moreover, the IACHR has established that the exception to the rule requiring exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention applies with regard to the alleged failure to investigate the acts of torture. Article 32(2) of the Commission's Rules of Procedure establishes that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a time that the Commission considers reasonable. To that end, the Commission should consider the date on which the alleged violation of rights occurred and the circumstances of each case. The petition was received on September 13, 2004, and the alleged facts that are the subject matter of the complaint began on October 21, 2000; and their effects, reflected in the lack of an investigation into the alleged acts of torture, continue to this day. Accordingly, in light of the context and characteristics of the instant case, the Commission considers that the petition was filed within a reasonable period of time and, that the admissibility requirement with regard to the timeliness of the petition has been satisfied.

3. Duplication of procedures and international *res judicata*

30. It does not appear from the record that the subject matter of the petition is pending another procedure for international settlement, nor that it reproduces a petition already examined by this or any other international organization. Therefore, the grounds for inadmissibility established at Articles 46(1)(c) and 47(d) of the Convention do not apply.

4. Colorable claim

31. For the purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c). The test for analyzing admissibility differs from that used for analyzing the merits of the petition, given that the Commission performs only a *prima facie* analysis to determine whether the petitioners establish the apparent or possible violation of rights guaranteed by the American Convention. It is a summary analysis that does not imply prejudging or issuing a preliminary opinion on the merits.

32. In addition, neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights alleged to be violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and whose violation could be established if the facts alleged are proven by sufficient elements.

33. The petitioner makes claims that he was illegally detained and tortured to make him state that he was a co-participant in his wife's homicide, and that he did not have an adequate defense at the time of his statement. In turn, the State says that the petition should be declared inadmissible, as there are no facts that characterize human rights violations, and that the petitioner seeks to have the Commission sit as a court of fourth instance to review the actions of domestic judicial organs.

34. In this regard, the Commission has consistently indicated that it is not competent to review issues of domestic law that correspond to the sphere of competence of the domestic courts, whereas it is competent to declare a petition admissible and to rule on its foundation when it refers to a domestic judicial judgment that has been handed down without due process, or that allegedly violates any other right guaranteed by the Convention. Therefore, the Commission considers that in the instant case the analysis in the merits phase of the violations alleged by the petitioners does not constitute the Commission sitting as a court of fourth instance.

35. In view of the elements of fact and law presented by the parties and the nature of the matter put before it, the IACHR considers that the facts alleged, if proven, tend to establish possible violations of the rights enshrined in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in relation to Article 1(1) of the same instrument, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. José Alejandro Reséndiz Olvera.

36. With regard to the possible violation of Articles 2, 3, 4, 9, and 24 of the American Convention alleged by the petitioner, the Commission notes that the petitioner does not offer any allegations or information to support these claims. Accordingly, the IACHR considers that these claims are not admissible.

V. CONCLUSIONS

37. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that this petition satisfies the admissibility requirements set out in Articles 46 and 47 of the American convention, and, without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible in relation to Articles 5, 7, 8, and 25 of the American Convention, in relation to Article 1(1) of the same instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the petitioner.

2. To find this petition inadmissible in relation to Articles 2, 3, 4, 9, and 24 of the American Convention.

3. To notify the parties of this decision;

4. To continue analyzing the merits issues; and

5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 15th day of the month of April, 2016. (Signed): James L. Cavallaro, President; Francisco Eguiguren Praeli, First Vice-president; José de Jesús Orozco Henríquez, y Esmeralda Arosemena de Troitiño, Commissioners.