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REPORT No. 79/18
PETITION P-1019-08
REPORT ON ADMISSIBILITY

ARMANDO MARTÍNEZ SALGADO AND FAMILY
MEXICO

Approved electronically by the Commission on June 29, 2018.

Cite as: IACHR, Report No. 79/18. Petition 1019-08. Admissibility. Armando Martínez Salgado and Family. Mexico. June 29, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Margarita Benítez Ortiz
Alleged victim:	Armando Martínez Salgado and family
State denounced:	Mexico ¹
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	August 27, 2008
Additional information received at the stage of initial review:	February 9 and July 13, 2011; April 17, June 4, July 11, November 7 and December 7, 2012; June 18 and December 17, 2013; February 25, 2014
Notification of the petition to the State:	September 4, 2014
State's first response:	February 20, 2015
Additional observations from the petitioner:	April 2, 2013; February 3 and April 18, 2016; January 24 and 30; July 11 and 18, 2017; April 24, 2018
Additional observations from the State:	September 14, 2016

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 ratification instrument on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (deposit of ratification instrument on June 22, 1987)

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	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
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 Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

³ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. Mrs. Margarita Benítez Ortiz (hereinafter “the petitioner”) claims that on January 28, 1998 her spouse, Armando Martínez Salgado Palacios (hereinafter “the alleged victim” or “Mr. Martínez), who worked then as the Operational Commander of the Anti-Kidnapping Unit of the Judicial Police of Morelos, was arrested by officers of the Federal Railroad Police on the Cuernavaca-Iguala freeway, State of Guerrero, while he was transporting the dead body of a person with signs of torture that apparently died after being interrogated by him and his team at the office of the Attorney General of the State of Morelos. She asserts that the alleged victim carried the dead body by the attorney general’s order, who allegedly told him to leave it in a town in the State of Guerrero.

2. She indicates that on his arrest Mr. Martínez was brought before the Special Unit on Organized Crime (hereinafter “UEDO”, by the Spanish acronym) of the Federal Attorney General’s Office, the staff of which he had a bitter feud with. She alleges that he was cruelly beaten and, without a judicial warrant, taken to military base No. 24 and afterward taken by helicopter to a restriction of preventive custody (*arraigo*) detention facility in *Jardines del Pedregal*, where he was held in incommunicado detention for 19 days during which he was continuously tortured. She denounces that every night he was undressed, that they put a cloth on his face and threw him water, and that if he fainted, they would throw him cold water; that they did this to make him confess that he belonged to a kidnap gang made up of the Prosecutor and the Governor of the State of Morelos. Based on the documents submitted to the IACHR, the alleged victim reported this situation at his preliminary examination before the District Second Judge of Federal Proceedings.

3. The petitioner claims that on February 18, 1998, in the framework of preliminary investigation 61/98, UEDO brought Mr. Martinez before the judge of the District Second Judge of Federal Proceedings, who ordered his detention at the CEFERESO No. 1 federal prison, under criminal case 22/98. She explains that after a conflict of jurisdiction, the proceeding for murder was assigned to the District Second Judge of the State of Morelos under case 35/99, which was fraught with several irregularities and violations of due process. She indicates that the testimonial evidence was gathered through letters rogatory that encouraged the fabrication of witness statements, and that the forensic reports were contradictory and distorted. In particular, she asserts that the victim did not die from the acts of torture attributed to Mr. Martínez but from suffocation, which the forensic report demonstrated in the first expert opinion; and that many of the injuries on the victim were inflicted at the moment of the victim’s arrest, in which the alleged victim did not participate. She alleges that he was condemned twice for the same crime because he was sentenced for aggravated murder and murder through torture.

4. Moreover, she claims that at the same time and throughout the years several legal proceedings were filed against the alleged victim, such as case 98/98, brought for the kidnap of a person that Mr. Martínez had investigated and arrested in 1997. She submits that in view of that case he had been sentenced to 27 years in prison, but that eventually his innocence was proven in an *amparo* appeal proceeding resolved on December 5, 2013 by the First Collegiate Court of the Eighteenth Circuit.

5. She alleges that as a result of case 35/99, on March 2, 2007 the District Second Judge of the State of Morelos sentenced Mr. Martínez to 50 years in prison for the perpetration of torture, aggravated murder and participation in organized crime. On January 14, 2008, the Tenth Court upheld the judgment because it ruled that the evidence was appraised in an appropriate and objective manner and that, consequently, the three criminal offenses and the defendant’s participation were proven. She indicates that she appealed against said resolution by presenting a direct *amparo* appeal alleging the violation of the principles governing the proof of facts, which was dismissed on August 26, 2010 by the Second Collegiate Court of the Eighteenth District.

6. Based on the foregoing, the petitioner indicates that the alleged victim was subjected to serious human rights violations. She asserts that Mr. Martínez was wrongfully accused, that his detention and imprisonment were arbitrary, that he was subjected to torture and mistreatment, that the judge was neither impartial nor objective, that the remedies were decided in an excessive period of time as a result of which he

was subjected to an excessive time in pretrial detention and finally condemned without solid proof of facts. Likewise, she claims that he was a victim of political persecution aimed at removing state authorities. Finally, she submits that on August 28, 2015 the alleged victim was arbitrarily transferred to the CEFERESO No. 14 prison, where he was far from his family and deprived of the health care he needed in view of his hypertension, diabetes and old age, which caused him additional psychological and physical damage while he served his punishment. In her latest communication, the petitioner sent a death certificate indicating that on April 15, 2018 the alleged victim died a natural death.

7. For its part, the State indicates that the alleged victim was arrested in flagrancy while he was trying to get rid of the dead body of someone with signs of torture, which was proof sufficient to open an investigation against him. It asserts that never were the alleged acts of torture reported, neither in the criminal proceedings nor in any of the remedies pursued by the defendant or his counsel, and that at his admission to prison, Mr. Martínez was examined by the health-care staff, who indicated that he had no signs of injuries. In this regard, it claims that the domestic remedies were not exhausted; therefore, it requests that the petition be declared inadmissible.

8. It also submits that Mr. Martínez was tried by a competent and independent judge who based the punishment on a body of evidence, that the victim was able to access all the means of appeal legally established and had the opportunity to have the impugned decisions reviewed by courts different than the judge hearing the case. In this regard, it asserts that Mr. Martínez seeks to have the IACHR work as a court of fourth instance. Lastly, it claims that the prison where the alleged victim was held was due to the seriousness of the offense for which he was punished. It also submits that his health was frequently checked at the prison health-care department, where he received geriatric treatment. The State concludes by asserting that the alleged victim's human rights were not violated, in accordance with Article 47 of the Convention.

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

9. In this petition, three sets of claims are presented: purported wrongful arrest in a pretrial detention facility where he was allegedly held incommunicado and subjected to continuous acts of torture from January 28 to February 18, 1998, when he was brought before the District Second Judge of Federal Proceedings; purported violations of criminal due process; and purported lack appropriate health-care assistance at the prison where the alleged victim served punishment.

10. In regard to the first, based on the available information, particularly the resolution of unconstitutionality of February 25, 1998, it can be seen that following his detention, the alleged victim was held in a restriction of preventive custody (*arraigo*) facility until February 18, 1998. That information also indicates that he explicitly denounced this situation before the District Second Judge, by submitting that he had not been arraigned before a pretrial detention judge or been assisted by a defense counsel, and that during his wrongful detention he was "continuously pressed at night by military officers in civilian clothes." In connection with this claim, the State asserts that the alleged victim was arrested in flagrancy, which justified his detention, and that in the domestic venue he did not file any claims regarding torture.

11. Given the foregoing, for the purpose of admissibility, the Commission believes *prima facie* that the judicial authorities were aware of the wrongful detention, isolation and torture that the alleged victim claimed to have suffered from his detention, without a warrant, at the pretrial detention facility, following his arrest, and as a result of which he was allegedly held under military custody until February 18, 1998. Likewise, from the information available at the IACHR there is nothing to indicate that the authorities have investigated those claims or have ruled in that respect. In view of this, the IACHR believes that more than 20 years constitutes an unwarranted delay for the purpose admissibility; thus the petition meets the exception of the requirement of prior exhaustion of domestic remedies, in accordance with Article 46.2.c of

the Convention. Also, the Commission believes that the petition was filed within a reasonable time and that the requirement set forth in Article 32.2 of the IACHR Rules of Procedure has been met.⁴

12. In regard to the alleged violations of criminal due process, the information submitted indicates that the alleged victim was sentenced to 50 years in prison, a judgment confirmed on January 14, 2008 in the appeal proceeding and on August 26, 2010 by the Second Collegiate Court of the Eighteenth Circuit, which overturned the appeal. The State, in turn, asserts that the alleged victim pursued the appropriate remedies to defend his rights in the criminal proceedings. The Commission notes that the domestic remedies concerning the above criminal proceeding were exhausted by the judgment of the *amparo* proceeding; that, therefore, the petition meets the requirement established in Article 46.1.a of the Convention. With respect to the timeliness requirement, the petition was filed on August 27, 2008 and the final resolution was issued on August 26, 2010; therefore, the admissibility requirement of timeliness has been met.

13. Finally, as to the alleged lack of health-care facilities at the CEFERESO No. 14 federal prison where Mr. Martínez was allegedly arbitrarily transferred on August 28, 2015, the Commission notes that from the available information, there is nothing to indicate that the alleged victim has exhausted the domestic remedies. Therefore, the Commission notices that such violations were first reported to the IACHR, without the state authorities having previously heard the facts in the domestic jurisdiction. Consequently, the Commission concludes that, in this regard, the petition does not meet the requirement established in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

14. Regarding the first set of claims, considering the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that if proven, the alleged wrongful arrest of the alleged victim by state agents, his isolation, illegal detention and the continuous acts of torture suffered at a restriction of preventive custody (*arraigo*) facility until he was brought before a judge, as well as the alleged violations in the criminal proceeding all could establish possible violations of the rights protected through Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2, to the detriment of the alleged victim and his family members. Likewise, the alleged facts could establish possible violations of Articles 1, 6 and 8 of the American Convention to Prevent and Punish Torture in connection with the purported lack of investigation following the date of ratification and deposit of the ratification instrument of said treaty by the State of Mexico, in relation to Mr. Martínez.

15. In relation to the purported violations of criminal due process, the petitioner claims that all the testimonial evidence was gathered through judicial requests, which encouraged the fabrication of witness statements, and that the forensic reports were contradictory and distorted. The Commission notes that these claims refer to the establishment of the alleged victim's criminal responsibility and the assessment of the proof of facts because she alleges innocence on the part of Mr. Martínez. The copies of the remedies and of the judgments sent to the IACHR indicate that all these aspects were analyzed and resolved by the intervening domestic authorities.

16. As to these claims, the Commission notes that the petitioning party intends to have it work as a court of fourth instance and replace the domestic courts' assessment of the evidence concerning aspects that were analyzed and settled on the merits by the competent judicial authorities. In this regard, it is worth recalling that the Commission is not entitled to review judgments issued by domestic courts working within their jurisdiction and in compliance with the due legal safeguards unless a violation of any of the rights protected by the American Convention is found. In this particular case, there is nothing to indicate that such an exception exists. Therefore, based on the foregoing, the Commission concludes that the petition does not

⁴IACHR, Report No. 11/18. Admissibility. Nicolás Tamez Ramírez. Mexico. February 24, 2018, par. 6.

meet the requirement established in Article 47.b of the American Convention, because *prima facie* no facts have been found to establish violations of the rights invoked by the alleged victim.⁵

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25 of the American Convention, in connection with its Articles 1.1 and 2; and in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. 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 29th day of the month of June, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁵IACHR, Report No. 14/18. Admissibility. Thelmo Reyes Palacio. Mexico. February 24, 2018, par. 12.