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REPORT No. 14/18
PETITION 1057-07
REPORT ON ADMISSIBILITY

THELMO REYES PALACIOS
MEXICO

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 14/18. Admissibility. Thelmo Reyes Palacio. Mexico.
February 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Melisa Otero Reyes, Enrique Otero Reyes and Nixon Reyes Palacios
Alleged victim:	Thelmo Reyes Palacios
State denounced:	Mexico ¹
Rights invoked:	Articles 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 12, 2007
Additional information received at the stage of initial review:	October 3 and 16 and December 21, 2007; March 6 and May 21, 2008; December 16, 2011
Notification of the petition to the State:	May 10, 2013
State's first response:	July 17, 2013
Additional observations from the petitioner:	July 3 and September 6, 2013; May 11, 2015
Additional observations from the State:	November 20, 2013; September 1, 2015

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)

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 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with its Articles 1.1 and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, September 12, 2011
Timeliness of the petition:	Yes, under 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 "the Convention" or "the American Convention."

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

V. ALLEGED FACTS

1. The petitioners claim that on April 5, 2005, in the city of Nogales, Mr. Thelmo Reyes Palacios (“the alleged victim”), a Peruvian national, was arrested without a warrant by judicial police officers of the State of Sonora, who unlawfully held him in incommunicado detention for three days. They assert that later he was taken in a private car to a police station in the city of Hermosillo, where he was held incommunicado for another three days and without legal or consular assistance. They also affirm that he had his hair and his moustache cut and was made up so his appearance would match the identikit picture of a homicide suspect. They indicate that later, under a restriction of preventive custody (*arraigo*), he was taken into a private building (PITIC Hotel), where he was held handcuffed and incommunicado for 20 days.

2. They submit that once his detention was made official, Mr. Reyes was taken to prison (CERESO No. 1-Hermosillo), and his lawyer was notified that the alleged victim was accused of homicide, and that on April 19, 2005, the alleged victim was brought before the Third Judge of the Criminal Court of First Instance of Hermosillo. They indicate that a criminal proceeding was filed and that it had several shortcomings, particularly the lack of assessment of the exculpatory evidence, such as the absence of the alleged victim’s fingerprints at the crime scene or the witness statements indicating his being out of the city on the date the homicide occurred, as well as the existence of unlawfully collected untrue and contradictory evidence. They assert that the police investigation lodged against the alleged victim was based on an anonymous telephone call that was impossible to controvert in the trial, as it had not been certified. And in general terms, without providing any details on the circumstances or those responsible, they claim that the alleged victim was publicly depicted as the perpetrator of the homicide of Manuel Armando Garcia even before his conviction.

3. The petitioners indicate that on July 13, 2007 the Third Judge convicted Mr. Reyes to 25 years’ confinement and, after an appeal was filed, the First Civil and Criminal Chamber of the Superior Court of Justice raised the punishment to 28 years in prison. The Court decided that the evidence was duly and impartially assessed. They assert that to challenge the trial and appeal courts’ resolutions, they lodged direct amparo proceedings, but these were dismissed. Finally, they filed an appeal for the review of the amparo proceeding, but on September 12, 2011 it was rejected. They submit that on November 2, 2012 the Head Office of the Social Rehabilitation Center released the alleged victim based on his having served his conviction. To conclude, they indicate that the threats to the alleged victim’s liberty persist and that this is evidenced by the State representatives’ strategy of informing the IACHR that the alleged victim escaped, which they controvert by submitting information referred to as the official documents of his release.

4. For its part, the State indicates that Mr. Reyes was assisted by his private legal representatives all throughout the criminal proceeding, that he was never held in incommunicado detention and that his right to due process was always respected. It also claims that the alleged victim was able to resort to any remedy to appeal against decisions, and that his claims were timely heard by courts other than the judge presiding his case. It asserts that Mr. Reyes intends to have the Commission work as a fourth-instance body because of the unfavorable judgments issued by the Mexican courts.

5. Likewise, it claims that Mr. Reyes was imprisoned on April 18, 2005 and sentenced to 28 years, 1 month and 15 days in prison, charged with the perpetration of homicide. In addition, it claims that on November 2, 2012 the alleged victim “escaped from prison by presenting false documents,” as he served only 7 years, 6 months and 14 of his term; therefore, now he is a fugitive. Moreover, it indicates that the alleged victim’s allegation that the State’s report about his being on the loose establishes a violation of his right to liberty is manifestly groundless. It submits that Mr. Reyes seeks to benefit from the unlawful act of evading justice. In this regard, it indicates that he did not exhaust domestic remedies.

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

6. In the instant petition two allegations are presented. On the one hand, the alleged victim's purported unlawful detention, incommunicado detention without judicial supervision and access to counsel; on the other hand, the alleged violations of criminal due process.

7. As to the first set of allegations, that is to say, the alleged victim's purported unlawful detention and incommunicado detention, allegedly taking place from April 5 to April 18, 2005, when the Third Judge of the Criminal Court of First Instance notified the arrest warrant against him. Based on the available information, the police officers transferred the alleged victim from Nogales to Hermosillo on April 9, 2005, although there is no information about the date or the circumstances of the arrest in Nogales. According to the alleged victim's statement before the Prosecutor's Office on April 9, 2005, a provisional injunction order was issued for his arrest at PITIC Hotel, where he was placed in custody until he was notified of the arrest warrant against him. In view of said order, he was taken to the State's Social Rehabilitation Center on April 18, 2005, and appeared in court for his preliminary examination statement on April 19, 2005. Concerning this aspect, the State did not submit any allegations about the exhaustion of domestic remedies.

8. In view of the foregoing and for the purpose of admissibility, the Commission *prima facie* believes that the authorities were aware of the events reported by the alleged victim from the time of his detention on April 5, 2005, allegedly without a judicial warrant, after which he was held in custody until April 18, 2005. Therefore, the Commission deems appropriate to apply the exception set forth in Article 46.2.b of the Convention. The substantive analysis of the factors allegedly impeding the exhaustion of domestic remedies is to be undertaken in the merits stage. Given the context and the characteristics of the allegations concerning the initial stage of the alleged victim's detention, the Commission believes that the petition was lodged within a reasonable time.

9. As to the complaints about purported infringements taking place in the criminal legal action, the information submitted indicates that the alleged victim was convicted on July 13, 2007 to 25 years in prison, which the court of appeals raised to 28 years. Both resolutions were challenged through direct amparo complaints filed before the Second Collegiate Court for Administrative and Criminal Matters of the Fifth Circuit; however, these were ruled out of order on July 7, 2008 and May 18, 2011, respectively. Finally, an appeal for the review of the amparo proceeding was lodged; but on September 12, 2011, the Second Collegiate Court rejected it. As a result, concerning the alleged violations occurring in the criminal proceeding, the Commission concludes that the domestic remedies were exhausted by the decision of September 12, 2007, in accordance with Article 46.1.a of the Convention. Since the petition was filed on August 12, 2007, the Commission rules that it also meets the requirement established in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

10. With respect to the first set of claims, in view of 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 proved, the alleged victim's purported unlawful and arbitrary detention by state officers, his being held in incommunicado detention and in police custody without judicial control until the arrest warrant was issued and notified, along with the possible impact on the criminal legal action, all may establish violations of the rights enshrined in Articles 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2.

11. With regard to the criminal proceedings, the petitioners claim that the alleged victim is innocent, that the judicial authorities failed to consider the exculpatory evidence and that untrue and contradictory incriminating evidence was unlawfully collected. In this regard, the available information indicates that the different courts that heard the criminal proceeding and dismissed the amparo complaints filed by the alleged victim ruled that the evidence and the forensic expert reports were duly assessed, and that, as a result, the elements of aggravated homicide with malice and aforethought as well as Thelmo Reyes Palacios' participation as the perpetrator of the crime all are proven. With respect to this, the Commission

notes that the allegations submitted by the petitioners are not specific; for instance, there is no reference as to why the incriminating evidence against the alleged victim is said to have been unlawfully collected. Consequently, the IACHR does not *prima facie* identify any violation of the American Convention.

12. The Commission notes that, as to those allegations, the petitioning party intends to have the Commission work as a fourth-instance body and override the domestic courts' assessment of the evidence concerning aspects already 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 that work within their jurisdiction and enforce the due legal safeguards, unless a violation of any of the rights protected by the American Convention is found. Therefore, based on the foregoing, the Commission concludes that the aspects of the petition regarding the trial and the following stages do not meet the requirement established in Article 47.b of the American Convention, for no alleged facts likely to establish violations of the rights invoked by the alleged victim are *prima facie* found.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 7, 8 and 25 of the American Convention, in relation to its Articles 1.1 and 2; and

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.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 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.