

OEA/Ser.L/V/II.
Doc. 109
6 June 2019
Original: Spanish

REPORT No. 100/19
PETITION 287-09
REPORT ON ADMISSIBILITY

RODRIGO PLATA GUZMÁN
MÉXICO

Approved electronically by the Commission on June 6, 2019.

Cite as: IACHR, Report No. 100/19, Petition 287-09. Admissibility. Rodrigo Plata Guzmán.
México. June 6, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Reyna Erika Trujillo Puebla ¹ , Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh)
Alleged victim:	Rodrigo Plata Guzmán
Respondent State:	México ²
Rights invoked:	None specifically invoked

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	March 16, 2009
Additional information received at the stage of initial review:	March 17, 2011, January 8, 2013, May 9, 2013
Notification of the petition to the State:	May 13, 2013
State's first response:	January 24, 2014
Additional observations from the petitioner:	January 17, 2015
Additional observations from the State:	April 2, 2019

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 on Human Rights ⁴ (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) 11(privacy, honor, dignity), and 25 (judicial protection) of the American Convention, in relation to its Article 1.1; 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, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Reyna Erika Trujillo Puebla was the original petitioner but was subsequently replaced in 2013 by Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh).

² Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commission member Joel Hernández García, a Mexican national, did not take part in the discussion or the decision-making process on the instant matter.

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

⁴ Hereinafter "Convention" or "American Convention."

V. ALLEGED FACTS

1. Mr. Rodolfo Plata Guzmán (hereinafter referred to as “the alleged victim” or “Mr. Plata Guzmán” claims that in March 2005, he was arrested by the police without a warrant and subsequently tortured and maltreated by the police while in their custody. Mr. Plata Guzman also claims that other persons who were arrested with him at the same time were tortured into giving confessions that implicated him in various crimes including kidnapping and murder. According to the petition, the alleged victim has been incarcerated since his arrest, without being tried or convicted of any crime.

2. According to the petition, the alleged victim was arrested on March 22, 2005 in the municipality of Nezahualcóyotl, in the State of Mexico. The petition further states that the alleged victim was arrested together with other persons who were in his company at the time. According to the petition, the alleged victim (together with his co-detainees) was then transported to the offices of the Sub-Attorney General of Justice of the State of Mexico (*La Sub-Procuraduría General de Justicia del Estado de Mexico*) where a senior police officer demanded a bribe of 200,000 to 300,000 pesos in exchange for freeing the alleged victim (which the alleged victim refused to do). Subsequently, the alleged victim claims that he was subjected to various forms of torture and that this included beatings, placing plastic bags over his head, electric shocks, threats of genital mutilation and threats to harm the Mr. Plata Guzmán's family. The alleged victim also states that he witnessed other co-detainees being tortured – including a woman who was forced to disrobe, with a view to raping her in front of her husband (who was also a detainee).

3. The alleged victim states that on the following day (March 23), he was transported to the office of the Sub-Director of the Ministerial Police of the Attorney General of Justice of the State of Mexico (*Subdirector De La Policía Ministerial de La Procuraduría General De Justicia del Estado de Mexico*) where he continued to be subjected to torture including placing plastic bags over his head until he lost consciousness. The petition further states that the Attorney General subsequently orchestrated the dissemination images of the alleged victim in the media, in which he was depicted as a criminal without first having the benefit of a trial.

4. From the record, it appears that on March 24, 2005, the alleged victim was taken before the Second Criminal Court of First Instance of Nezahualcoyotl (*El Juzgado Segundo Penal de Primera Instancia de Nezahualcoyotl*) when he was remanded in custody on charges of bribery, kidnapping, and organized crime. According to the petition, the court relied on confessions that were coerced from the co-detainees of the alleged victim to justify Mr. Plata Guzmán's detention.

5. According to the petition, the alleged victims made complaints (about the torture) to various authorities including the National Commission of Human Rights (August 2 & 15 2005, September 14, 2005, October 20, 2005 and October 10, 2007) and the Attorney General (*Procuraduría General*) (November 2008) but to date, he claims that no investigation has been conducted by the State into his allegations. In this regard, the alleged victim asserts that the courts have dismissed all judicial proceedings initiated by him to remedy his complaints. The alleged victim mentions judicial proceedings (*amparo*) in 2008 before the Judge of the Second Criminal Court of First Instance of Nezahualcoyotl (*El Juez Segundo Penal de Primera Instancia de Nezahualcoyotl*) and the Collegiate Court of the Second Circuit (*El Tribunal Colegiado del Segundo Circuito*), both of which were dismissed on April 29, 2008 and Sept 25, 2008, respectively. Ultimately, the petitioner contends that there has been an undue delay on the part of the State providing access to justice to the alleged victim, most particularly as it relates to the investigation of Mr. Plata Guzmán's complaints of torture.

6. The State contends that (a) the petition fails to disclose any facts that might characterize violations of the American Convention; and (b) the alleged victim failed to exhaust domestic remedies. The State asserts that Mr. Plata Guzmán's arrest took place after he and others were caught by the police carrying unlicensed firearms. The State submits that one of Mr. Plata Guzman's companions/co-detainees admitted that (a) the carrying of the firearms was part of plan to carry out a kidnapping; and (b) Mr. Plata Guzmán had previously participated in the kidnapping of minor in February 2005. According to the State, Mr. Plata Guzmán was also under investigation for other crimes including bribery, murder and organized crime, as a result of which he was ultimately remanded in custody by the Second Criminal Court of First Instance of Nezahualcoyotl. The State dismisses the allegations of the alleged victim as untrue. In this respect, the State

alleges that the alleged victim was medically examined by doctors (commissioned by the State) in 2005 and 2014 and that these examinations found no evidence of torture. Given the foregoing, the State contends that there are no facts presented that could characterize violations of the American Convention.

7. In respect of exhaustion of domestic remedies, the State contends that the criminal proceedings against the alleged victim are still pending, and that this is evidence of lack of exhaustion of domestic remedies. The State also contends that between January 2012 and December 2013, the alleged victim has initiated various legal proceedings (including proceedings for Amparo) all of which have been dismissed or discontinued without any evidence that Mr. Plata Guzmán's due process rights have been violated.

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

8. The petitioner contends that despite multiple complaints to State authorities, including the judiciary, there has been no investigation of his allegations of torture, and that he has remained in custody for over 10 years without being tried or convicted of any crime. The State, on the other hand, contends that the alleged victim has failed to exhaust domestic remedies, while at the same time affirming that the alleged victim initiated a series of domestic remedies up to 2013. The State also asserts that the criminal proceedings against the alleged victim are still pending, and that this is indicative of a lack of exhaustion of domestic remedies. Finally, the State repudiates the allegations of torture as untrue.

9. The Commission has long established that under international standards applicable to cases like this one, where serious human rights violations such as torture are alleged, the appropriate and effective remedy is precisely the undertaking of an effective criminal investigation aimed at clarifying the facts and, if necessary, individualize and prosecute the persons responsible. The Commission notes the State's claim that the medical examinations of the alleged victim did not reveal any evidence of torture. However, in the Commission's view, medical examinations alone are not tantamount to a comprehensive and effective criminal investigation into the allegations of torture. Based on the information supplied by both parties, it appears no such investigation has been undertaken by the State despite the passage of more than ten years since the alleged acts of torture took place. The Commission believes that such a period constitutes an unwarranted delay for the purpose of admissibility; and that accordingly, 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.

VII. ANALYSIS OF COLORABLE CLAIM

10. 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 acts alleged in the complaint—regarding the acts of torture, the lack of investigation, and the excessive period in pre-trial detention—could establish possible violations of the rights protected by Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 11 (Privacy, Honor, Dignity), and 25 (Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Plata Guzmán.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 11, and 25, in relation to Articles 1.1 and 2, of the American Convention; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; 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.

Approved by the Inter-American Commission on Human Rights on the 6th day of the month of June, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.