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REPORT No. 134/19
PETITION 468-09
REPORT ON ADMISSIBILITY

CARLOS CASTILLO ESPINO
MEXICO

Approved electronically by the Commission on August 14, 2019.

Cite as: IACHR, Report No. 134/17, Petition468-09. Admissibility. Carlos Castillo Espino.
Mexico. August 14, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Castillo Espino
Alleged victim:	Carlos Castillo Espino
Respondent State:	Mexico ¹
Rights invoked:	Articles 8 (right to a fair trial) and 29 (restrictions regarding interpretation) of the American Convention on Human Rights ² ; Article XVIII of the American Declaration of the Rights and Duties of Man ³ ; and other international instruments ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	April 16, 2009
Additional information received at the stage of initial review:	May 6, 2009; May 14, 2012; March 20, 2015
Notification of the petition to the State:	November 17, 2015
State's first response:	May 26, 2016
Additional observations from the petitioner:	June 7, 2017
Additional observations from the State:	January 17, 2018

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 instrument made 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 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the same instrument
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

V. FACTS ALLEGED

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Joel Hernández García, of Mexican nationality, did not participate in either the discussions or the decision in the present case.

² Hereinafter "the American Convention" or "the Convention".

³ Hereinafter "the American Declaration".

⁴ Article 8 of the Universal Declaration of Human Rights and Article 5 of the International Covenant on Civil and Political Rights.

⁵ The observations submitted by each party were duly transmitted to the opposing party.

1. The petitioner alleges violations of his human rights because he could not adequately exercise his right to a defense in the context of criminal proceedings brought against him, because the State failed to appoint defense counsel to file extraordinary appeals and because, in addition, the police tortured him at a later stage.

2. In this regard, he indicates that on April 26, 2001, when he was on his way to work in the United States of America, he asked for a ride at the roadside and, a few kilometers after getting into a vehicle, the police stopped it. He argues that he was arrested together with the driver by police officers and taken to the police station where they tried to take pictures of him with 77 packages of concealed marijuana found in the vehicle, and wanted him to sign a statement prepared by the police acknowledging his liability for the crime against health by way of transporting narcotics.

3. He indicates that on May 1, 2001, he was placed in preventive detention. He indicates that in April 2003 he was initially sentenced at first instance to approximately 11 years of imprisonment, and that in May 2003, the ruling was upheld on appeal. However, he argues that, after an *amparo* appeal filed in 2005, in this same year the sentence was annulled and the proceedings resumed at first instance in order for several procedural steps to take place that had not been carried out previously. He argues that he was convicted once again at first instance in July 2007 and, after this decision was upheld on appeal, he filed an *amparo* motion and subsequently an appeal for review. He adds that both appeals were dismissed and the Supreme Court notified him that his appeal for review had been rejected on October 31, 2008. He adds that as a result of his filing an indirect *amparo* motion he was granted "early release" at the beginning of 2008.

4. He argues that throughout the proceedings the judicial authorities failed to admit evidence he tried to file in his favor; failed to acknowledge exculpatory evidence in his favor; and ignored the requests for copies of the case file that he had submitted. Additionally, he had no option but to challenge the second instance judgment issued in 2007 without having access to its merits. In light of the last point, he maintains that he was unable to adduce substantive arguments in his appeal for review, which led to the court resolving the appeal without being able to rule on the merits of the case.

5. He adds that at the beginning of 2003, when he was in detention and without the financial means to hire a private lawyer, he was forced to take charge of his own defense, because Mexican law did not allow him to have an appointed defense attorney to file the extraordinary remedies necessary, such as the *amparo* motion and appeal for review, which violated his right to judicial protection.

6. Additionally, he indicates that in February 2003, while he was being transferred for court proceedings with other inmates, one of them escaped. He points out that proceedings for absconding were filed against him and the police officers accused him of helping the fugitive and, as a result, he was tortured to plead guilty. He argues that he filed a criminal complaint due to this torture and a complaint with the State Commission for Human Rights.

7. For its part, the State also notes that the petitioner was detained on April 26, 2001; that on May 1, 2001; a preventive detention order was issued; that in 2007 he was convicted of the offense against health, and that in December 2008 was granted early release based on his filing an indirect *amparo* motion. In respect to the alleged violations of his right of defense committed during these proceedings, it alleges that the petitioner failed to complain about the alleged lack of access to the case file and that, contrary to his allegations, there is evidence from the proceedings to show he had access to his case file in order to prepare his appeals.

8. In this regard, the State indicates that: i) in the direct criminal *amparo* 380/05 had a copy of the proceedings on February 15 and August 31, 2006; ii) in the direct criminal *amparo* 55/08 he had a copy of the proceedings on January 28 and June 6, 2008; iii) in the criminal appeal *amparo* 495/06, he had a copy of the proceedings on December 15, 2006; iv) in the criminal appeal *amparo* 208/08 he had a copy of proceedings on May 29, 2008.

9. In addition, it argues that the *Amparo* Law then in force did not set out the obligation to provide officially appointed counsel for the filing of extraordinary appeals because, according to this law, the judge was obligated to rectify any deficiency that could be the subject of an *amparo* motion - particularly in criminal matters - and this rectification operated even in the absence of a violation or complaints of the accused.

10. In relation to the alleged acts of torture and the proceedings for absconding, it argues that in 2004 the petitioner was acquitted of the offense charged, and in 2006, an investigation into the complaint of acts of torture was initiated; and in 2012 the perpetrator was sentenced to 3 years imprisonment for torture.

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

11. Both parties agree that in July 2007 the alleged victim was convicted at first instance for the offense against health. The petitioner adds that in August 2007 this decision was upheld and that, after filing an *amparo* motion and an appeal for review, domestic remedies were exhausted on October 31, 2008, when the Supreme Court dismissed his appeal for review and that within a period of six months, the petition was filed with the IACHR.

12. On the other hand, without referring to the date of exhaustion of the remedies in this proceeding and the deadline for submitting the petition, the State acknowledges that after the July 2007 ruling, the petitioner continued to file appeals, including an appeal for revision. The State also indicates that the petitioner did not challenge the alleged inactivity of the authorities that allegedly prevented him from obtaining a copy of his file.

13. On this last point, the IACHR does not consider it necessary for the alleged victim to challenge every act allegedly in violation of due process through independent remedies to satisfy the requirement of Article 46.1.a. In this regard, the IACHR observes that the alleged victim does not seek an analysis of specific issues in respect of which he has filed domestic remedies in the context of the criminal proceedings, but rather an analysis of alleged deficiencies that, taken as a whole, allegedly affected his right to a defense. Therefore, in the present case, in order to determine the exhaustion of domestic remedies, the IACHR considers it sufficient that criminal proceedings have been concluded. Given the foregoing and based on the available information and the lack of allegations to the contrary, the IACHR considers that criminal proceedings were exhausted on October 31, 2008. Taking into account the date when the petition was filed, the IACHR considers that it satisfies the requirements of Articles 46.1.a. and 46.1.b of the American Convention.

14. On the other hand, in relation to the alleged acts of torture, the State indicates that perpetrator of this offense was convicted in 2012 and that, therefore, domestic remedies had not yet been exhausted in this regard when the petition was filed with the IACHR in 2009. The State argues that this claim should be declared inadmissible due to a failure to exhaust domestic remedies. The Inter-American Commission recalls that the situation that must be taken into account to establish whether domestic remedies have been exhausted is that existing at the moment of deciding on admissibility. Therefore, given that the exhaustion of remedies occurred in 2012 with the conviction of the perpetrator, this aspect of the petition also satisfies the requirements of Articles 46.1.a. and 46.1.b of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

15. The alleged victim argues that the State is responsible for violating his right to a defense, his presumption of innocence and his physical integrity. In turn, the State argues that the allegations fail to characterize violations of human rights, given that the alleged victim intends for the IACHR to act as a fourth instance, with respect to the evaluation of the evidence in the criminal proceedings. It adds that the criminal proceedings for the offense against health was carried out by a competent judge and that the alleged victim had access to an adequate defense; the opportunity to file effective remedies - such as the appeal and the *amparo* motion; and even some phases of the proceedings were reopened in order for him to present more

evidence. It also argues that through his *amparo* the petitioner obtained his early release four years before the end of his sentence. Additionally, it indicates that the State has been responsive to the claims of petitioner regarding the acts of torture.

16. Regarding the State's allegations on the fourth-instance formula, the IACHR acknowledges that it is not competent to review the judgments issued by national courts acting within their sphere of competence pursuant to due process and judicial guarantees. However, it reiterates that, within the scope of its mandate, it is competent to declare a petition admissible and to rule on the merits when it refers to domestic proceedings that may be in violation of the rights guaranteed by the American Convention. In this case, the IACHR considers that the alleged violations to the right to a defense, the presumption of innocence and to the alleged victim's physical integrity, if proven, could characterize breaches of Articles 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention in relation to Article 1.1 (obligation to respect rights) of the same instrument.

17. In addition, the IACHR notes the petitioner's allegations on a legal impediment preventing his access to a public defender to assist him in filing extraordinary appeals, violated his right to a defense and to judicial protection. In view of this, the State indicates that the *Amparo* Law then in force did not contemplate the obligation to provide a public defender for the filing of extraordinary remedies. According to this law, the judge had the legal obligation to rectify any deficiency in the *amparo* motion, particularly in criminal matters, and this rectification operated even in the absence of a violation or complaints of the accused. The IACHR considers it pertinent to analyze these allegations at the merits stage to determine whether the lack of access to public defender in the filing of an extraordinary appeal in the case of a detainee without resources to hire a private attorney, if proven, could constitute a violation of the rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the same instrument.

18. On the other hand, the Inter-American Commission has previously established that, once the American Convention enters into force in relation to a State, the latter, and not the Declaration, becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and is not a situation of continuous violation.

19. In addition, the IACHR lacks competence *ratione materiae* to consider violations of rights enshrined in treaties outside the Inter-American System such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, without prejudice to the possibility of recourse to standards established in other treaties in order to interpret the norms of the Convention under Article 29 thereof.⁶

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, and 25 of the American Convention in relation to Articles 1.1 and 2 of the same instrument; 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 14th day of the month of August, 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.

⁶ IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and family. Colombia. March 18, 2017, para. 9.

