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REPORT No. 234/19

PETITION 60-08

REPORT ON ADMISSIBILITY

FRANCISCO JAVIER TENA ESTRADA AND FAMILY
MEXICO

Electronically approved by the Commission on December 31, 2019.

Cite as: IACHR, Report No. 234/19, Petition 60-08. Admissibility. Francisco Javier Tena Estrada. Mexico. December 31, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Francisco Javier Tena Estrada
Alleged victim:	Francisco Javier Tena Estrada and others ¹
Respondent State:	Mexico ²
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), 21 (property), and 25 (judicial protection) in connection with Article 1.1 of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	January 13, 2008
Additional information received at the stage of initial review:	February 24, 2009; October 24, 2011; October 4, November 7 and 13, 2012
Notification of the petition to the State:	April 20, 2016
State's first response:	August 22, 2016
Additional observations from the petitioner:	January 31, 2017 and January 17, 2019
Additional observations from the State:	December 30, 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 instrument of ratification 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	Article 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 21 (property), and 25 (judicial protection) in connection with Article 1.1 of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VII
Timeliness of the petition:	Yes, under the terms of Section VII

V. ALLEGED FACTS

1. Francisco Javier Tena Estrada (hereinafter "the petitioner" or "the alleged victim"), ex ministerial police officer in Chihuahua state, alleges the lack of reparation for his wrongful and arbitrary

¹ Carmen Patricia Chavira Cruz and Perla Tena Ponce, the alleged victim's spouse and daughter, respectively.

² Pursuant to the provision of 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 voting on this matter.

³ Hereinafter "American Convention" or "Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

detention for over 10 months in a criminal proceeding mistakenly filed against him. He alleges acts of abuse of power by the prosecutor general of Chihuahua state, as she purportedly fabricated a criminal complaint against him in reprisal for his having arrested a relative of hers—this had been a publicly known detention. He also claims acts of harassment and violence, which were never investigated despite his complaints. In addition, he indicates having been coerced into resigning his job as a ministerial police officer and accepting a severance package below the statutory pay.

2. The alleged victim indicates having been aware that an arrest warrant had been issued against him under criminal case number 183/06, filed against him and other police officers for the aggravated kidnap of Omar Portillo Díaz. As a result, on June 29, 2006, he traveled to Chihuahua city to gather information and file an action for the protection of fundamental rights (*amparo*) against his arrest warrant—lodged with the Eighth District Court of Chihuahua state on June 30, 2006. This court admitted the *amparo* action and ordered the temporary stay of the appealed warrant to spare the alleged victim from his deprivation of liberty. Despite the provisional ruling from the Court of Amparo, on August 3, 2006, the alleged victim was arrested in the street, without a warrant from a competent judge or this being a case of *flagrante delicto*. He asserts that following his detention, he was taken to the Pretrial Investigation Bureau, where a physician examined him, and then to the offices of Chihuahua state prosecutor general, where he was questioned about facts unknown to him. The alleged victim submits that, next, the prosecutor general's private escort officers brought him to his house and that he spent seven days under house arrest with 24 hours' surveillance, no permission to leave or seek legal assistance, and limited access to visitors. He indicates that this situation caused fear in his family and neighbors.

3. The alleged victim submits that on August 14, 2006, he was taken to the offices of the Pretrial Investigation Bureau for another medical examination and then to the Aquiles Serdan state prison. He contends that he was isolated for several days more and confined for 10 months in total, charged—along with other eight officers—with aggravated kidnap. He contends that the day he was taken to the state prison, his family came to the said facility to inquire about his situation but was told that there was no information about him—later the prison records stated that he had been officially admitted on August 16 that year. He alleges that during his detention, his wife was extorted money in exchange for his liberty. He asserts that from his house arrest until his official detention, he was deprived of legal assistance despite the repeated interrogations, as well as of information on the grounds for his detention.

4. On August 16, 2006, for the first time, the alleged victim was brought before a judge for his pretrial statement. Two days later, the Second Criminal Court for Morelos Judicial District issued a pretrial detention warrant against him for the aggravated kidnap of Omar Portillo Díaz—the alleged victim indicates not knowing this person. On November 27, 2006, he appealed by filing an *amparo* action against the officials issuing the detention warrant against him—the appeal was ruled admissible on November 29, 2006, under number 901/2006. On April 2, 2007, Chihuahua state Eighth District Court granted the *amparo* lawsuit on considering that the evidence submitted was insufficient to award the alleged victim's criminal prosecution. The Office of the Prosecutor General challenged the judgment on the *amparo* lawsuit; yet, on June 1, 2007, the Second Division for the Seventeenth Circuit of the Collegiate Court upheld that judgment by acquitting the alleged victim of all the charges and ordering his release from prison, which became effective on that same day. The final judgment on the *amparo* proceeding was met on June 18, 2007; thus, he was acquitted of all the charges. The petitioner indicates not having been redressed for his wrongful detention or having claimed damages either, because state agents threatened and harassed him, and he feared reprisals against him and his family.

5. The alleged victim submits that on June 4, 2007, he resorted to the Government Palace to seek his reinstatement as in June 2006 he had been terminated given a four-day unexcused absence from work duty. He also demanded the payment of the salaries and benefits he lost due to the events stated above. He submits that, to afford the legal expenses derived from his wrongful prosecution, he had to sell part of his assets. He says that Chihuahua state minister of government received him and, after listening to the alleged victim's account, assured him that his petition would be processed and that a meeting with the prosecutor general would be arranged to finalize the details. The petitioner asserts that, on that occasion, he was told of his being entitled to redress for moral and financial damage. On June 7 that year he met with the prosecutor

general, who claimed to have the power to reinstate him to his job and redress the damage with an amount they verbally agreed upon.

6. The petitioner indicates that on July 13, 2007, he was called to the offices of the state Ministry of Finance and Management to receive the severance pay promised. He claims that, however, the officials only gave him a cheque for the value of about a quarter of the pay for lost salaries and told him that once a termination agreement was signed, they would pay him the rest. The alleged victim submits that the agreement established that the parties agreed to terminate the employment relationship and that he would receive an amount of money consisting of lost salaries for the period from June 1, 2006 to July 15, 2007, a three months' salary for constitutional severance pay, vacation bonus, vacation time, and a 12 days' salary per year worked. The agreement also stated that both parties signed it without reservations. Nevertheless, the petitioner claims to have been coerced into signing it and that it was entered in secret and without his lawyer's signature or the presence of witnesses. He claims to have signed it under pressure, as he was threatened that unless he signed and accepted all the terms of the agreement, he and his family would probably face severe reprisals. Further, he submits that on November 22, reading the *El Herald* newspaper from Chihuahua, he learned that the prosecutor general had said that the alleged victim had lost his job because of the termination of his labor contract and breach of trust. He indicates that this situation brought him financial damage, for he was unemployed and had no means to support his family and afford his children's education, as well as harmed his professional image.

7. On November 27, 2007, the alleged victim lodged a complaint to the State Human Rights Commission, about the irregularities in his detention and his family's being extorted money in exchange for his liberty. Following an investigation, the State Human Rights Commission ("the State Commission") found inconsistencies and contradictions regarding the origin of the alleged victim's criminal prosecution and detention and concluded that his case was a legally unfounded deprivation of liberty, which caused him damage and upset. The State Commission recommended the Prosecutor-General's Office to investigate promptly into the responsibility of the state officials involved in his case and impose sanctions where applicable. Likewise, it recommended the said body to analyze and decide on the labor benefits applicable to the alleged victim, clarify his administrative situation, and report, within 15 days, on the compliance with these recommendations. The alleged victim contends that the recommendations were unsuccessful; thus, he did not receive the expected redress.

8. Moreover, the alleged victim submits that in January and February 2009, he was subjected to death threats and acts of harassment. He reports that hooded, armed people came to his house and demanded out loud that he withdrew his complaint, warning that otherwise, they would kill him. Given these threats, he and his wife left their house and sought refuge in a store she owns. He indicates that the attackers heard of the alleged victim's new place of residence; and that on January 26, 2009, when his wife was in the store, two hooded, armed individuals broke in, tied up one of the employees, broke the shop windows, and stole some computers. The alleged victim claims that in the attack, the criminals warned that they would kill him. On January 28, the alleged victim's wife, Carmen Patricia Chavira Cruz, reported the attack in her store to the Unit for Crimes with Unknown Perpetrators of the Prosecutor-General's Office of Chihuahua state. Moreover, the alleged victim submits that on April 14, 2009, in the framework of a precautionary measures request to the IACHR, registered under number 43/09, he resorted to Chihuahua state Prosecutor-General's Office to file a formal complaint, but that it was not taken. He indicates that apparently this investigation was closed without his being notified or his having made such request. Furthermore, he submits that on February 14, 2009, two unknown armed individuals stopped her daughter when she arrived at her house and warned her that they intended to kill the alleged victim—given these threats, he and his wife had to flee the country. In addition, he contends that in the context of the abovementioned request for precautionary measures, he filed another complaint to the Prosecutor-General's Office of Chihuahua state on March 9, 2010, claiming that on February 27, 2010, two armed people stopped him and threatened him seemingly on account of his having detained a relative of the prosecutor general of Chihuahua state. Also, on April 28, 2010, the car transporting him was shot, but he was not hurt. He contends that after this attack, in 2010, he filed two reports on the grounds of threats, to the Prosecutor-General's Office and a request for precautionary measures. He indicates that his formal complaints were shelved and that he was not given any protection; that, therefore, he was compelled to temporarily move to El Paso, Texas, to protect his life and physical integrity.

9. For its part, the State argues that the petition must be declared inadmissible since the alleged facts do not establish human rights violations. As for the criminal case, the State alleges that by pursuing legal remedies, the petitioner succeeded at having the competent court accept his claims and order his release from prison given the lack of evidence necessary to prosecute him.

10. Concerning the severance pay and his claim for reinstatement, the State alleges that under an agreement entered on July 13, 2007, before the Arbitration Tribunal for State Employees (or "Arbitration Tribunal"), between the State of Chihuahua and the alleged victim, the parties agreed to terminate the employment relationship without reservations. It contends that the parties also agreed that this agreement would have the character of an agreed and fulfilled arbitration award. Regarding the severance package, the State argues that, in the agreement, the Arbitration Tribunal validated the calculation of the severance package listing the benefits included. To conclude, the State asserts that, in signing the agreement, the alleged victim waived his right to filing complaints based on his employment relationship with the State of Chihuahua and that his severance package was calculated based on the provisions of the labor legislation approved by the Arbitration Tribunal. Therefore, the State of Mexico claims the inadmissibility of this petition given the lack of acts or omissions on its part that may be considered a violation of the alleged victim's human rights.

11. As for the complaints about the threats against his life and physical integrity, the State indicates that, in the context of his request to the IACHR for precautionary measures⁵, nothing indicates that state agents have harassed the petitioner and his family as a result of his work as a ministerial police officer and that such request was based on his labor claim. It submits that the petitioner's attempt to relate various isolated events to his claim reveals the absence of a pattern of violence against him. Regarding the robbery of his wife's store, it indicates that an investigation is underway; that, however, she has not reported any threats against her or her husband. In relation to the other reported acts of violence, it informs that the ministerial authorities continue with the applicable investigation and that the Prosecutor-General's Office Special Unit for Crimes against Peace, National Security, and Official Attestation Authority filed an investigation based on the complaint alleging the threats from two armed individuals, but closed it on April 15, 2010, given the lack of evidence. As for the purported attack against his life on April 28, 2010, the State claims to be unaware that the petitioner has reported such events to the competent authorities and that the information submitted in the context of the request for precautionary measures is incomplete; that, therefore, it is impossible to undertake the applicable investigation.

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

12. Concerning the allegations related to the alleged victim's arbitrary detention, both parties indicate that on June 1, 2007, the Second Division for the Seventeenth Circuit of the Collegiate Court acquitted him of all the charges and ordered his release. The final judgment on the amparo proceeding was met on June 18, 2007, of which he was notified. As for the lawsuits filed to seek a full redress for his arbitrary detention and the complaints about the threats and harassment against the alleged victim and his family, the petitioner submits that he was unable to exhaust the domestic remedies, as his life and physical integrity were at risk given the threats from the very state agents he resorted to. For its part, the State does not refer to the exhaustion of the domestic remedies seeking redress for the alleged victim's arbitrary detention nor to the legal actions that should have been furthered ex officio in relation to the reported threats and acts of violence. The State has not submitted allegations on the purported threats that prevented the alleged victim from exhausting domestic remedies either. The Commission reiterates that when a matter involves complaints about illegal detention and allegations of a violation of the right to physical integrity, a lawsuit in the civil jurisdiction to claim compensation is not a determining factor in the analysis of the exhaustion of domestic remedies. Therefore, the Commission believes that regarding these aspects, the exception to the requirement of exhaustion of domestic remedies established in Article 46.2.b of the Convention applies.

⁵ By means of a communication sent to the parties on December 3, 2019, the IACHR informed that *considering the connection of the matter of petition P-60-08 with the process carried out in the request for precautionary measure 43-09, the Commission has decided to take into account in the analysis of the matter the documents provided by the parties in the processing of the request for precautionary measure.*

13. Regarding the petitioner's actions filed to obtain his reinstatement and the pay for lost salaries, the petitioner indicates having been coerced into waiving his right to filing additional complaints through threats against his and his family's life and physical integrity. For its part, the State asserts that the alleged victim signed the agreement on a voluntary basis and that the parties signed it on July 13, 2007. The Commission considers that the issue of the legality of the agreement and its effects must be analyzed in the merits stage.

14. Given the application of the exception to the exhaustion of domestic remedies foreseen in Article 46.2.b of the Convention and the context and characteristics of the instant matter, the Commission considers that this petition was filed in a reasonable time and that, thus, the admissibility requirement of timeliness must be declared met.

VII. ANALYSIS OF COLORABLE CLAIM

15. In view of the factual and legal elements submitted by the parties and the nature of the matter brought to its attention, the Commission deems that the allegations are not manifestly groundless and may establish possible violations of the rights recognized in Articles 7 (personal liberty), 8 (fair trial), 11 (privacy), 21 (property), and 25 (judicial protection) of the American Convention to the detriment of Francisco Javier Tena Estrada. Likewise, given the nature of the facts alleged in the petition, these may constitute violations of Article 5.1 (humane treatment) of the American Convention, in relation to the alleged victim and his family. The Commission will analyze the possible violation of all these provisions in the light of the general obligations enshrined in Article 1.1 of the Convention.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5, 7, 8, 11, 21, and 25 of the American Convention in accordance with its Article 1.1; 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 24th day of the month of October, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.