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REPORT No. 47/22
PETITION 69-13
REPORT ON ADMISSIBILITY

GEORGE KHOURY LAYÓN
MEXICO

Approved electronically by the Commission on March 9, 2022.

Cite as: IACHR, Report No. 47/22. Petition 69-13. Admissibility. George Khoury Layón. Mexico. March 9, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner	Humberto Isaac Cano Peralta, Claudia Selene Tamales Carrillo and Omar Apolo Garcia Mejía
Alleged victim	George Khoury Layón
Respondent State	México 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:	January 18 and 24, 2013
Additional information received at the stage of initial review:	February 25, 2016
Notification of the petition to the State:	February 29, 2016
State's first response:	August 18, 2016
Additional observations by the petitioner:	September 25, 2017 and August 2, 2019

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of the instrument of ratification made on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (deposit of the instrument of ratification made 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 res judicata:	No
Rights declared admissible:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention; 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.

V. FACTS ALLEGED

1. The petitioner claims that Mr. George Khoury Layón was defamed as part of a systematic persecution by the government, which allegedly involved several arbitrary deprivations of his liberty without due process; he was also allegedly tortured by agents of the Federal Police. Although these facts were denounced, the State did not comply with its duty to investigate and punish these crimes.

¹ Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, participated neither in the discussion nor in the decision of the present matter.

² Hereinafter "the American Convention".

³ The observations of each party were duly transmitted to the other party.

2. By way of context, the petitioner reports that the alleged victim has been unjustly prosecuted in three cases at the federal level and one at the local level. The details of each of these cases are narrated below:

First federal criminal proceeding 47/2006

3. On January 30, 2006, within the investigation PGR/SIEDO/UEIDCS/13/2006, the Public Ministry accused the alleged victim of being a drug distributor and of belonging to the cartel of the Beltrán Leyva brothers, who at that time operated for the Sinaloa Cartel, and Edgar Valdez Villarreal, alias "The Barbie".

4. On April 21, 2006, the Second District Judge of Criminal Proceedings of the Federal District issued a formal imprisonment order against Mr. Khoury Layón, for the alleged responsibility in the crime against health with possession of narcotics for commercial purposes. Due to this, the alleged victim filed an appeal before said Court, which by means of a resolution dated October 27, 2006 confirmed said decision. It was not until September 26, 2007, while Mr. Khoury Layón was in the North Men's Preventive Detention Center in Mexico City, that the Second District Judge of Criminal Proceedings issued a judgment of acquittal in favor of the alleged victim, due to the lack of evidentiary material which would incriminate him, and therefore ordered his release one year and almost eight months after his arrest. Although the Public Prosecutor's Office appealed this decision on February 7, 2008, the sentence was confirmed.

Second federal criminal proceeding 05/2009

5. The petitioner explains that on September 2, 2009, around two o'clock in the afternoon when Mr. Khoury Layon was leaving a gymnasium, Federal Police officers detained him, took him to an unknown location and proceeded to torture him with fire. This torture was confirmed by the physical integrity report of September 3, 2009, issued by the General Directorate for the Coordination of Expert Services, which showed that he presented reddish ecchymosis on his right thorax at the level of the tenth costal arch. He adds that the alleged victim at the time of the arrest was able to press a button on his mp3 player and recorded how he was tortured, and that this evidence was later consigned in case 05/2009. However, the judicial authorities did not take into account this evidentiary material.

6. In addition, the petitioners claim that the agents who tortured the alleged victim demanded a sum of money to release him, but upon his refusal, after more than thirty-six hours in custody, he was taken to the Public Prosecutor's Office, where he was accused of possessing narcotics and firearms of exclusive use of the Army. Likewise, they argue that a protected witness manipulated by the Public Prosecutor's Office accused him of being the head of a plaza in Mexico City and in the State of Morelos, and of belonging to the Beltrán Leyva brothers' cartel. In this regard, the petitioner emphasizes that despite the fact that the Specialized Investigation Unit for Organized Crime (hereinafter "SEIDO"), by means of an official letter dated September 28, 2009, verified that no protected witness knew the alleged victim, a few days later a protected witness appeared and accused him and his sister of the aforementioned crimes.

7. Based on these accusations, the second federal criminal proceeding 05/2009 was initiated, in which, on November 10, 2009, the Public Ministry, within the preliminary investigation PGR/SIEDO/UEIDCS/112/2009, charged Mr. Khoury Layón with crimes against health and possession of narcotics for commercial purposes. Thus, on November 26, 2009, the First District Court of Federal Criminal Proceedings of Matamoros, Tamaulipas ordered the formal imprisonment of the alleged victim. In response to this decision, Mr. Khoury Layón's defense filed an appeal that was denied by said court; he then filed an indirect amparo proceeding before the Second District Court of Amparo in Criminal Matters in the State of Nayarit, which on February 14, 2012 issued a judgment of acquittal in favor of the alleged victim, as it did not find any probative evidence to indict him. However, the petitioners argue that Mr. Khoury Layón was not released, since he was still being held in preventive custody for the third federal criminal proceeding against him.

Third federal criminal proceeding 83/2011

8. On July 29, 2011, the Public Ministry filed a preliminary investigation against the alleged victim and two other individuals for the alleged commission of the crimes of organized crime and kidnapping.

On July 30, 2011, an arrest warrant was issued; and on August 19, 2011, the Second Unitary Court of the Second Circuit issued a formal arrest warrant, while Mr. Khoury Layón was detained due to the criminal proceedings described in the preceding paragraphs. The alleged victim appealed the formal order of imprisonment and on February 26, 2012 the Second Unitary Court of the Second Circuit revoked such decision and issued a release order due to lack of evidence to prosecute him.

Ordinary criminal proceeding 80/2012

9. However, the petitioners argue that on the day the last decision of the previous proceeding was handed down, police officers arrested Mr. Khoury Layón as he was about to leave the Eastern Male Prison of the Federal District due to a new criminal complaint filed against him by the Public Ministry, in which he was accused along with two other individuals of having committed the crime of aggravated homicide in Mexico City in 2004. In this regard, the petitioners claim, one of the aforementioned co-defendants accused Mr. Khoury Layón of such acts by means of a confession under torture, despite the fact that there was no other evidence against him, and they maintain that the Deputy Attorney General's Office began an investigation by fabricating files to frame him, thus initiating a new persecution against him.

10. Thus, on March 30, 2012, the Judge of the Twenty-fifth Criminal Court of the Federal District issued an arrest warrant against Mr. Khoury Layón; and on April 10, 2012, she issued an order of formal preventive detention, initiating ordinary proceeding 80/2012. Subsequently, Mr. Khoury Layón filed an appeal before the Fifth Criminal Chamber of the Superior Court of Justice of the Federal District, which on June 26, 2012 confirmed said order. Consequently, the alleged victim filed an indirect amparo appeal 810/12 against the actions of the Fifth Criminal Chamber of the Superior Court of Justice of the Federal District and other authorities before the Ninth District Court of Amparo in Criminal Matters of the Federal District, contesting his pre-trial detention. After a series of decisions in different directions, on June 21, 2012, the Second Circuit Court in Criminal Matters definitively confirmed the amparo in favor of the alleged victim, holding that the preventive detention decision had not been properly motivated. Then, on July 23, 2013, the Ninth District Court of Amparo in Criminal Matters in the Federal District, by means of a ruling, considered the amparo and protection decision granted to the alleged victim as met.

11. However, the petitioner holds -without providing further details- that since the main criminal proceeding would have continued, the alleged victim filed a non-conformity remedy before the Court of Justice of the Nation so that he would no longer be prosecuted, but this instance dismissed said action as inadmissible. Along these lines, according to the information provided in the file of this petition, the alleged victim also denounced the repetition of the challenged act in the framework of amparo lawsuit 810/2012, since he continued to be criminally prosecuted. However, on September 4, 2013, the Ninth District Court of Amparo in Criminal Matters in the Federal District declared said complaint unfounded. Due to this, Mr. Khoury Layón filed an action of nonconformity before the Second Collegiate Court in Criminal Matters of the First Circuit, which declared such remedy unfounded on December 10, 2013 - there is no copy in the casefile regarding said decisions-.

12. The petitioners claim that then, despite the fact that the alleged victim was accused on the basis of a testimonial evidence of one of the implicated persons obtained through torture, on September 19, 2014, the Twenty-fifth Criminal Court of the Federal District convicted him, stating that he was guilty as a co-perpetrator of aggravated homicide, and sentenced him to twenty years in prison. On September 19, 2014, Mr. Khoury Layón filed an appeal questioning that a testimony obtained by a co-defendant through torture practices was used as the main basis for the judgment. However, on February 12, 2015, the Fifth Criminal Chamber of the High Court of Justice upheld the conviction of the alleged victim. Against said decision, on May 22, 2015, Mr. Khoury Layón filed a request for amparo and protection before the Sixth Collegiate Court in Criminal Matters of the First Circuit, which was denied by decision of March 3, 2016. In the petitioner's opinion, with this decision the conviction became final and enforceable.

Allegations of the alleged victim

13. In light of these considerations, the petitioner claims that the acts of torture committed against the alleged victim have gone unpunished. The petitioner holds that despite the fact that the Public Ministry opened a preliminary investigation into these events, the authorities have not thoroughly investigated what happened, for which reason a final decision is still pending to date. The petitioner party also claims that Mr. Khoury Layón has been unjustly deprived of his freedom for ten years, although judicial authorities in all the previous federal proceedings determined his innocence and ordered his immediate release.

14. On this last point, petitioner argues that on June 4, 2018, the United Nations Working Group on Arbitrary Detention, by means of opinion 16/2018, considered that the aforementioned proceedings violated the rights of the alleged victim. In relation to the three proceedings at the federal level, said body considered the following:

[...] the Working Group finds it quite alarming that a single person is subject to so many successive and unsuccessful criminal prosecutions, while the accused is held in detention for several years. (...) As for the three federal cases, Mr. Khoury was held in detention for almost four years without these trials resulting in a conviction. Mandatory pretrial detention for certain offenses would not have allowed for a case-by-case determination of the necessity of such deprivation of liberty, in violation of international human rights standards. [...] The Working Group therefore concludes that Mr. Khoury's detention in these three cases was arbitrary. [...]

15. And with regard to the conviction in the ordinary proceeding, it held that:

[...] the torture committed against the other co-defendant was certified by the National Human Rights Commission. Moreover, it is clear from the casefile that the latter's testimony was changed and never approved by the co-defendant before the judge. This testimony has been the main evidence against Mr. Khoury and, therefore, supports his conviction. This argument has not been contested by the Government. In the circumstances of this case, the Working Group is of the opinion that the allegation is credible and shows a fundamental deviation from procedural equality.

16. Finally, the Working Group regarded as proven that the alleged victim was held incommunicado for fourteen hours. It also emphasized that although he had been tortured during his detention, it considered it surprising that the government had not yet completed the investigations into these events; and it held that this situation constituted an additional violation of access to justice. For the aforementioned reasons, the cited body requested the State, as part of its recommendations, the immediate release of the alleged victim, as well as the reparation of damages.

17. As a result, the alleged victim filed a remedy for recognition of innocence, attaching the expert opinion of the Federal Judiciary Council, which stated that the only evidence against him was the statement of one of the co-accused, a confession that had been obtained under torture, inhumane and degrading treatment. Furthermore, there was no physical or expert evidence linking him to the unlawful acts, for which reason a reasoned resolution was never issued. Likewise, Mr. Khoury Layón requested before the Twenty-fifth Criminal Court that the Fifth Criminal Chamber be excused from hearing the remedy for recognition of innocence, since it had previously violated his right to due process and had also failed to observe the recommendations of the United Nations Working Group on Arbitrary Detention. Despite this, the alleged victim claims that this court heard the merits of his claim and denied his release. Finally, he holds that on November 1, 2019, the Ministry of the Interior granted him the status of political prisoner in recognition of his innocence.

Allegations of the State

18. On its part, the Mexican State argues that the instant petition is inadmissible for failure to exhaust domestic remedies with regard to the ordinary criminal proceeding 80/2012, in which the alleged victim was finally convicted; and to the alleged acts of torture. In relation to this proceeding, the State argues that, at the time of submitting its first observations, the Sixth Collegiate Court in Criminal Matters of the First Circuit was still analyzing an appeal for review filed by the Public Ministry, which was aimed at revoking the amparo decision that ruled that the preventive detention to the detriment of the alleged victim had not been

properly motivated. Consequently, at the time of filing this petition, the alleged victim had not yet exhausted domestic remedies.

19. As for the alleged acts of torture, it should be noted that on June 5, 2010, the Specialized Unit for the Investigation of Crimes Committed by Public Servants and against the Administration of Justice initiated a preliminary investigation, which identified members of the Federal Police as the alleged perpetrators. In addition, on March 28, 2012, the alleged victim denounced the alleged irregularities committed against him by the judicial authorities and the officials in charge of the detention centers where he was deprived of his liberty. As a result, preliminary investigation 234/AP/DGDCSPI/12 was also initiated by the aforementioned Specialized Unit. It reports that the state authorities are currently dealing with the alleged victim's complaints, so that domestic remedies have not yet been exhausted. Mexico considers that even if in these investigations the authorities fail to comply with their obligation to investigate, the alleged victim could contest these determinations by means of an indirect amparo proceeding, which is suitable for claiming that his detention was conducted by means of acts of torture.

20. Finally, Mexico argues that the international claim is inadmissible, since the facts do not characterize human rights violations attributable to the State. It denies that the criminal proceedings were conducted as a form of persecution of the alleged victim by the State authorities. It stresses that, in each criminal proceeding, Mr. Khoury Layón was able to file all the remedies he considered pertinent and that his judicial guarantees were respected. Finally, it highlights that the decisions made by the judicial authorities were well founded, reasoned and in accordance with due process, and that three of the four criminal sentences have been favorable to the alleged victim.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS

21. With regard to the alleged arbitrary detention of the alleged victim and the acts of torture against him, the Commission recalls that, upon allegations of serious human rights violations which can be prosecuted ex officio, such as torture, the appropriate and effective remedy is an effective criminal investigation aimed at clarifying the facts and determining the corresponding responsibilities⁴.

22. In the instant case, the Commission observes that, according to the latest information provided by the parties, a criminal investigation has been ongoing since 2010 for the alleged acts of torture against the alleged victim. In this regard, the IACHR notes that despite the fact that the alleged acts of torture allegedly occurred in 2009, the parties have not provided information proving any progress in the investigation. For these reasons, taking into consideration that there has been a delay of nearly ten years in the investigations, the IACHR decides to apply to this part of the petition the exception to the exhaustion of domestic remedies provided for in Article 46.2(c) of the American Convention. Likewise, considering that the alleged acts of torture were committed in 2009, without the events having been diligently investigated to date, and that the present petition was presented in January 2013, the IACHR concludes that the petition was presented within a reasonable period of time in the terms of Article 32.2 of its Rules of Procedure.

23. With regard to the ordinary criminal proceeding 80/2012 for the claimed responsibility of the alleged victim in the crime of aggravated homicide and the preventive detention against him, the Commission reiterates its consistent position that the situation that must be taken into account to establish whether the remedies under domestic jurisdiction have been exhausted is the one that exists when deciding on admissibility. Along these lines, the IACHR observes that, according to the information in the casefile, the criminal investigation against Mr. Khoury Layón began in 2009 and on February 12, 2015, the Fifth Criminal Chamber of the Superior Court of Justice confirmed his conviction. Following this, the alleged victim filed an amparo remedy, but on March 3, 2016 the Sixth Collegiate Court in Criminal Matters of the First Circuit rejected said remedy. In this regard, the State has not provided information proving that there was any additional judicial remedy that should have been exhausted. Similarly, the IACHR notes that Mr. Khoury Layón used the relevant judicial means to challenge the preventive detention against him, despite this, none of these actions

⁴ IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 13.

managed, in practice, to effectively protect his right to personal liberty, since the Public Ministry consecutively initiated criminal proceedings against him and requested his preventive detention.

24. Consequently, the IACHR considers that the alleged victim employed the remedies available to him to contest the conviction against him, and therefore the instant petition complies with the requirement established in Article 46.1.a) of the Convention. Likewise, taking into account that the remedies were exhausted while the petition was under study, the IACHR concludes that the time period established in Article 46.1.b) of the American Convention has been met.

25. Finally, the Commission recalls that the rules governing the exceptions to the exhaustion of domestic remedies, by their nature and purpose, are provisions with autonomous content *vis à vis* the substantive clauses of the Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies provided for in said rule are applicable to the case in question must be conducted prior to and separately from the analysis of the merits of the case, since it depends on a standard of appreciation different from the one used to determine the violation of Articles 8 and 25 of the Convention. In this regard, it should be recalled that the causes and effects that have prevented the exhaustion of domestic remedies in the instant case will be analyzed, as pertinent, in the report that the Commission adopts on the merits of the dispute, in order to determine whether they effectively constitute violations of the Convention".

VII. COLORABLE CLAIM

26. The IACHR notes that, in the instant case, the petitioners claim that the alleged victim suffered acts of torture by State agents and that, in addition, the bodies of justice arbitrarily deprived him of his liberty, by convicting him through a sentence that only used as evidence the testimony of a co-defendant obtained through torture, and by constantly issuing different preventive detention orders to keep him deprived of his liberty.

27. On this last point, the Commission observes that the authorities imposed those precautionary measures to the detriment of the alleged victim, causing him to spend almost four years in detention, without those trials resulting in a conviction. Based on this, the IACHR considers that, although each of these preventive detention orders responded to different processes, it is appropriate to analyze these decisions as a pattern that caused the alleged victim to be constantly deprived of his liberty, despite the judicial decisions in his favor⁵.

28. Based on the abovementioned considerations, and in view of the elements of fact and law set forth by the parties and the nature of the matter brought before it, the Commission considers that the alleged facts are not manifestly unfounded and require a study of the merits, since the alleged facts, if corroborated as true, could characterize violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the Convention in relation to Article 1.1 of the Convention (obligation to respect rights); and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the alleged victim in the terms of this report.

VIII. DECISION

1. To declare the present petition admissible in relation to Articles 5, 7, 8, and 25 of the American Convention; as well as in relation to 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.

⁵ In a similar sense, see: IACHR, Report No. 49/18. Admissibility. Petition 1542-07. Juan Espinosa Romero, Ecuador. May 5, 2018.

Approved by the Inter-American Commission on Human Rights on the 9th day of the month of March, 2022. (Signed:) Julissa Mantilla Falcón, President; Stuardo Ralón Orellana, First Vice President; Margarete May Macaulay, Second Vice President; and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.