

OEA/Ser.L/V/II.167
Doc. 15
24 February 2018
Original: Spanish

REPORT No. 11/18
PETITION 134-07
REPORT ON ADMISSIBILITY

NICOLÁS TAMEZ RAMÍREZ
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. 11/18. Admissibility. Nicolás Tamez Ramírez. Mexico.
February 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nicolás Tamez Ramírez and Regina Salazar
Alleged victim:	Nicolás Tamez Ramírez
State denounced:	Mexico 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:	February 7, 2007
Additional information received at the stage of initial review:	July 17, 2007; March 12 and May 21, 2008; July 18 and August 28, 2012; January 22 and June 16, 2014; March 13, 2015
Notification of the petition to the State:	November 12, 2015
State's first response:	August 22, 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 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) 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 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 "Convention" or "American Convention."

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

V. ALLEGED FACTS

1. Mr. Nicolás Tamez Ramírez (the “petitioner” or the “alleged victim”) claims that the State of Mexico must be held to account internationally due to various infringements of his rights to liberty, humane treatment and due process in the framework of two criminal proceedings brought against him. He asserts that from his detention on November 7, 1986 until his preliminary examination statement, he was held incommunicado and tortured in the prison of Topo Chico. He indicates that after being arrested, he was hanged from his right ankle and had his chest and right arm burnt, which he reported to the authorities at his preliminary examination statement before the First District Fifth Criminal Judge; however, no investigation ensued. He submits that he did not have a defense counsel and the investigation works against him should have been joined together as should have been the punishments imposed on him. He complains that before being released on parole he faced several obstacles, even in disregard for a court resolution issued in his favor.

2. He affirms that, as a result of his detention, an investigation was filed against him and on December 31, 1986, in the framework of criminal case No. 375/1986, the First District Fifth Criminal Judge convicted him to 25 years in prison on the charges of felonious murder, robbery with violence and conspiracy. On May 22, 1987, the Sixth Chamber of the Superior Court of Justice of the State of Nuevo León rejected the appeal lodged by the petitioner. He also asserts that on March 20, 1987, in the framework of case No. 288/1986, the Second District First Criminal Court sentenced him to 19 years and 6 months in prison on the charges of felonious murder, robbery with violence and conspiracy.

3. He submits that on October 28, 2004 he challenged the denial to the appeal regarding case 375/1986, by filing direct amparo proceeding No. 389/2004 before the First Collegiate Criminal Court of the State of Nuevo León. In this legal action, he alleged the double assessment of the factors of determination of his penalty, the non-appraisal of mitigating circumstances like his being coerced by his co-defendants into perpetrating the offense, the disproportionate nature of the punishment and the non-compliance with the penalties’ purpose. On February 16, 2005, the amparo proceeding was settled in his favor. The petitioner complains that although on May 10, 2005 the judge of the Sixth Chamber of the Superior Court of Justice ordered his release on parole in view of the substitute resolution, the prison authorities refused to enforce said decision, infringing his right to liberty.

4. Moreover he submits that in 2001, while serving punishment in the Social Rehabilitation Center of Nuevo León, he filed the first of many administrative proceedings in which he applied for parole, which were dismissed because the prison’s Interdisciplinary Technical Committee reported that his personality tests produced negative results. He claims that, subsequent to his punishment, he was subjected to criminal enforcement laws, and deprived of his right to be released on parole despite the fact that, by then, he had served more than 80 per cent of his 25-year conviction. Lastly, he alleges the arbitrary denial to his being transferred to a municipal prison nearer to his home and the lack of the healthcare he needed in view of his age (over 60 years) and his various chronic diseases, such as prostate cancer and diabetes. He asserts that he reported this situation to the competent authorities several times, which caused him extra psychological and physical suffering during his conviction.

5. The State, for its part, indicates that the Collegiate Court’s decision in the amparo proceeding was limited to rectifying procedural issues so as to guarantee the legal certainty of the petitioner’s punishment. It submits that the aspects concerning the grounds of the decision were rectified by the Court granting the amparo. It submits that, contrary to the petitioner’s claim, this amparo proceeding did not result in his being released on parole, since in his amparo complaint the petitioner did not request such benefit. It also asserts that on November 8, 2011 the alleged victim finished serving his first conviction, regarding case 288/86. It indicates that on February 18, 2015, while serving his second punishment, regarding case 375/86, the authorities of the Prison Management Office released him on parole due to his health condition and his old age. Therefore, the State claims that the instant petition must not be admitted, for the granting of parole means that the matter is moot; thus, it considers it must be declared inadmissible in accordance with Article 47.c of the Convention.

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

6. As to the purported acts of torture, the Commission notes that, based on the information in the attachments, the alleged victim filed a complaint before the judicial authorities reporting his having been subjected to different acts of torture in the period between 7 and 12 November 1986; and his defense counsel filed an explicit request in order to certificate the obvious and multiple injuries the petitioner had when the petitioner made his preliminary examination statement and ratified his confession, . Likewise, the information available at the IACHR indicates that both in his amparo complaint and his complaint of March 6, 2006, the petitioner stated the circumstances of the acts of torture; however, said information does not indicate that the authorities have investigated those allegations or ruled on them. The State, for its part, did not submit any observation regarding this aspect of the complaint. Given the circumstances, the IACHR believes that a period longer than 20 years represents an unwarranted delay for the purpose of admissibility; consequently, an exception to the requirement of exhaustion of domestic remedies is applicable, in accordance with Article 46.2.c of the Convention. Likewise, the Commission believes that the petition was lodged within a reasonable time and that the requirement set forth in Article 32.2 of the IACHR Rules of Procedure is met.

7. With respect to the conviction in case 375/86, the petitioner submits that, in view of the denial of the appeal, he filed a direct amparo proceeding before the Collegiate Criminal Court and, based on the case file at the IACHR, it was settled on February 16, 2005 in his favor. On May 10, 2005, the Sixth Chamber of the Superior Court of Justice of the State of Nuevo León issued a substitute resolution sentencing the petitioner to 25 years' confinement. On August 17, 2005, the Collegiate Criminal Court declared the amparo action's enforcement fulfilled, a ruling which the petitioner challenged by a complaint. However, this remedy was dismissed by the Supreme Court of Justice by a resolution notified on August 30, 2006. Concerning case 288/86, based on the information available, on December 5, 2007, the Fourth Chamber of the Superior Court reduced the penalty to 8 years, 7 months and 15 days in prison. The State did not submit any observation on the exhaustion of domestic remedies.

8. In view of the foregoing, the Commission believes that all the judicial remedies available in the domestic legal framework were exhausted by the Supreme Court's resolution notified on August 30, 2006, regarding case 375/86; and by the Superior Court's Fourth Chamber's decision of December 5, 2007, regarding case 288/86. As a result, the Commission concludes that the instant petition meets the requirement established in Article 46.1.a of the Convention. Likewise, it notes that the petition was filed within the six-month period following the issuance of the final judgments by which domestic remedies were exhausted; thus, the petition meets the requirement set forth in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

9. In this petition, the Commission identifies three main allegations presented by the petitioner: alleged torture, inhumane and degrading treatment; alleged violations of the right to personal liberty in view of the prison authorities' denial to comply with a judgment granting him parole; and the alleged violation of criminal due process in view of the proportionality of the sentence.

10. As to the claims of purported torture, inhumane and degrading treatment, their likely impact on the criminal proceeding and on the rights to due process and judicial protection, as well as the alleged lack of healthcare in prison, the Commission believes that, in view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, these claims, if proved, may establish possible violations of the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1; and the rights set forth in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim.

11. With respect to the second allegation, the petitioner claims that in May 2005 the judge of the Sixth Chamber of the Superior Court of Justice ordered his release on parole, which the prison authorities

refused to comply with. Based on its review, the Commission does not *prima facie* find elements of fact or law that justify the issuance of the order or its non-compliance; therefore, it declares this aspect inadmissible. Then, as to the third allegation, the Commission believes that the claims regarding his punishment's alleged disproportionality and non-compliance, along with the disregard for the mitigating factors or the double assessment of the incriminating factors leading to his conviction all were heard by the local intervening judicial and administrative authorities; and it does not *prima facie* identify elements of fact or law that may establish possible violations of the American Convention; thus, it declares these allegations inadmissible.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25 of the American Convention, in connection with its Article 1.1; 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.

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.