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REPORT No. 53/18
PETITION P-1348-08
REPORT ON ADMISSIBILITY

ANTONIO LÓPEZ CANTÚ
MEXICO

Approved by the Commission at its session No. 2127 held on May 5, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 53/18, Petition 1348-08. Admissibility. Antonio López Cantú.
Mexico. May 5, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Antonio Lopez Cantu
Alleged victim:	Antonio Lopez Cantu
Respondent State:	Mexico ¹
Rights invoked:	No specific rules of the inter-American system are invoked

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	November 20, 2008
Additional information received at the stage of initial review:	July 2, 2009; September 14, 2010; July 20, 2011 and September 18, 2012
Notification of the petition to the State:	December 12, 2015
State's first response:	March 11, 2016
Additional observations from the petitioner:	October 6, 2016 and August 8, 2017

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 ³ (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 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
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception established in Article 46.2.c of the American Convention is applicable
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the debate or the decision on this matter.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter "the Convention" or "the American Convention."

V. ALLEGED FACTS

1. Mr. Antonio Lopez Cantu (hereinafter “the petitioner,” “the alleged victim” or “Mr. Lopez Cantu”), currently deprived of liberty at the CEFERESO No. 2 West “*Puente Grande*” prison, in Jalisco, claims that he was violently and wrongfully arrested and subjected to acts of torture and isolation as well as to criminal proceedings that have extended for an excessive period.

2. The petitioner indicates that on May 22, 2007 he was arrested by police officers from the city of Hermosillo, State of Sonora, when he was with a girlfriend walking around in a store of that city. He alleges that he was arrested without a warrant and that he was not caught in *flagrante delicto*. Later, he was allegedly taken to the premises of the state police department, where he was subjected to physical and psychological torture, for instance, through suffocations that several times caused him to faint and by keeping him blindfolded, his hands and feet shackled, and his head covered with a hood, deprived of even making a phone call for 14 days. These measures were intended to have him confess that he had participated in certain criminal offenses.

3. Later, on June 16 he was taken to *Hotel Sol del Pitic* hotel, in the same city of Hermosillo, under an injunction order issued by a judge at the request of the Prosecutor’s Office, and was held there for 25 days. Then, on July 13, 2007 he was taken to a maximum-security federal prison, where, again, he was kept blindfolded with his hands and feet shackled for 52 days.

4. Likewise, he claims that the healthcare staff of the federal penitentiary where he was held did not register the marks left on his body by the acts of torture he suffered, because by that time it had been almost 50 days since these physical injuries had been inflicted. However, what the healthcare staff did find in the initial health examination done when he was placed in federal prison was the psychological damage caused by the acts of torture. Thus, Mr. Lopez Cantu was treated by the psychiatric staff of that federal center, with the administration of antidepressants.

5. Apart from the alleged mistreatment, the petitioner indicates that other irregularities occurred in the proceedings against him. For example, the fact that he did not meet his public defense counsel in person during the preliminary investigation, thus being left in a state of defenselessness during the investigations undertaken by the Prosecutor’s Office; that his statement before the police and the extension of this statement were fabricated on May 23 and June 7, 2007 respectively, the latter bearing no signature or fingerprints; that the file of his case did not include the results of the three expert studies made by the Jalisco Institute of Forensic Studies in Guadalajara, precluding the identification of the signatures and fingerprints appearing on the above statements used to incriminate him; and that there is an unwarranted delay in the proceedings.

6. For its part, the State of Mexico indicates that the Eighth District Criminal Judge issued an arrest warrant against Mr. Lopez Cantu on July 4, 2007, for his probable participation in the criminal offenses of organized crime, unlawful possession of firearms and cartridges for the exclusive use of the army; thus, an arrest warrant was issued on July 20, 2007. In view of this resolution, Mr. Lopez Cantu filed an appeal, but the Third Circuit Second Unitary Court dismissed it on March 18, 2009, and thus, confirmed the order. Subsequently, Mr. Lopez Cantu lodged an appeal for review, which was then settled by the Third Circuit First Collegiate Criminal Court through the annulment of the ruling dated March 18, 2009, as a result of which proceedings were restituted to the stage of preliminary investigation. Accordingly, on July 11, 2011 the Eighth District Criminal Judge (first instance) remanded him to custody. To challenge this decision, the petitioner filed an appeal for legal protection on January 31, 2012, as a result of which the District Fourth Criminal Judge revoked the above-mentioned imprisonment order. Finally, on December 12, 2012, the District Seventh Court for Federal Criminal Proceedings of the State of Jalisco issued a new imprisonment order.

7. Therefore, the State alleges that the petition is out of order because, in these proceedings, the domestic remedies are yet to be exhausted. The State claims that the petitioner exercised the right of defense by filing a series of remedies that has delayed—at least until the date of the State’s response, March

11, 2016— a first-instance resolution in the criminal proceedings. It asserts that even if this resolution was unfavorable, the petitioner can still submit an appeal, which is the appropriate remedy to challenge that decision. Consequently, the petitioner is far from meeting the admissibility requirement of exhaustion of domestic remedies.

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

8. In the instant case, the State claims that the petition does not meet the requirement of prior exhaustion of domestic remedies because to the date of its response, the criminal proceedings against the petitioner in the federal jurisdiction were still under way, pending a first-instance resolution. The petitioner, for his part, reports the unlawfulness of his detention and criminal prosecution, particularly concerning those fundamental initial stages of criminal proceedings, and he indicates that he has challenged the lawfulness of his deprivation of liberty through several judicial remedies.

9. Thus, after analyzing the information available from the file of the petition, the Commission observes that the criminal proceedings, as a whole, started on May 22, 2007 with the petitioner's detention; and that, later, he filed an appeal and then an appeal for review against the first imprisonment order issued against him on July 20, 2007; and an appeal for legal protection against the second imprisonment order dated July 11, 2011, which had a favorable outcome that was, in turn, followed by a third and last imprisonment order dated December 12, 2012. In this regard, the Commission observes that these facts clearly indicate that more than once the petitioner judicially controverted the lawfulness of his deprivation of liberty as a mechanism to incriminate him in the federal criminal proceedings against him. Without making considerations proper to an analysis on the merits of the complaint, the IACHR moreover notes that, as the State recognized in its reply of March 11, 2016, by that time, almost nine years had passed since the alleged victim's detention and that there was not yet a resolution by the trial court in the framework of the proceedings against him. The Commission considers that the information available in this stage *prima facie* suggests that Mr. Lopez Cantu reported the alleged acts of torture and mistreatment in the framework of the criminal proceedings, and that the State did not controvert that aspect.

10. As a result, in view of the foregoing, the Inter-American Commission believes that in this case, in deciding on the exhaustion of domestic remedies, the IACHR must apply the exception of unwarranted delay, established in Article 46.2.c of the American Convention.

11. Likewise, the Commission notes that the petition was received on November 20, 2008, and that the alleged facts subject-matter of this complaint began on May 22, 2007, and that their consequences persist to date, particularly the criminal proceedings against the petitioner and the purported lack of investigation and punishment of the alleged violations of the right to humane treatment. Therefore, the Commission concludes that the petition was filed within a reasonable time, in accordance with Article 46.2 of the American Convention and Article 32.2 of the IACHR Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law presented by the petitioner and the nature of the matter brought to its attention, the Commission believes that, if proved, the acts alleged in the complaint— regarding the unlawful detention (even under an injunction order), the acts of torture, the excessive period in pre-trial detention and the criminal proceedings as a whole—could establish possible violations of the rights protected through Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 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. Antonio Lopez Cantu.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 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 in the city of Santo Domingo, Dominican Republic, on the 5th day of the month of May, 2018. (Signed): Margarete 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.