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**REPORT No. 46/22**  
**PETITION 1009-13**  
REPORT ON ADMISSIBILITY

SILVESTRE GONZÁLEZ PEDROTTI  
MEXICO

Approved electronically by the Commission on March 9, 2022.

**Cite as:** IACHR, Report No. 46/22. Petition 1009-13. Admissibility. Silvestre González Pedrotti. Mexico. March 9, 2022.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Silvestre González Pedrotti and María Guadalupe González Correa
<b>Alleged victim:</b>	Silvestre González Pedrotti
<b>Respondent State:</b>	México <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 25 (judicial protection), and 29 (restrictions regarding interpretation) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	June 18, 2013
<b>Notification of the petition to the State:</b>	March 10, 2016
<b>State's first response:</b>	July 14, 2017
<b>Additional observations by the petitioner:</b>	August 13, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	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**

<b>Duplication of procedures and international res judicata:</b>	No
<b>Rights declared admissible:</b>	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
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

**V. FACTS ALLEGED**

1. Mr. Silvestre González Pedrotti, as the alleged victim and petitioner, claims that agents of the Judicial Police and the Public Prosecutor's Office of the State of Sonora (hereinafter "PGJE" or "Federal Public Ministry") detained, kidnapped, and subjected him to acts of torture so that he would incriminate himself in criminal acts that he did not commit.

<sup>1</sup> 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.

<sup>2</sup> Hereinafter "the American Convention".

<sup>3</sup> The observations of each party were duly transmitted to the other party.

2. The petitioner holds that on April 29, 2005, agents of the PGJE detained him without an arrest warrant while he was with his partner in the state of Sonora, and that he was subsequently taken to the basement of that institution, where he was kept incommunicado and missing from his family. That day, PGJE agents also illegally searched his home, without a warrant from a competent judge to do so.

3. While he was detained, his captors allegedly tortured him by beating and burning his body to make him admit his guilt and produce false confessions about crimes he did not commit. Finally, he signed the false charges against him, without the presence of legal assistance, since his torturers threatened to harm his partner, who was also illegally detained in the PGJE facilities. Thus, after four days in the basement of the PGJE, on May 17, 2005, the agents placed him at the disposal of the Sixth Criminal Judge of the First Judicial District of the state of Sonora, where a criminal proceeding was opened against him.

4. In view of these facts, on May 11, 2006, the petitioner filed a complaint for acts of torture before the Sonora State Human Rights Commission against the PGJE authorities. However, he claims that said commission, in a biased manner, rejected the opening of his complaint, arguing that it was out of time and lacked jurisdiction, since his case was being processed before the Sixth Criminal Court. In this regard, he explains that, although he filed such remedy one year and twelve days after his detention, the refusal to process his complaint violated Article 26 of the Law of the National Human Rights Commission<sup>4</sup>, since, in serious cases such as his, said body has the power to extend the term by means of a reasoned resolution.

5. He reports that he also questioned the alleged acts of torture before the Sixth Criminal Court, the National Human Rights Commission, and the State Attorney General's Office. Given the delay of these bodies in issuing a resolution on his case, in October 2006 he reported the acts of torture to the media<sup>5</sup>. However, he claims that neither a diligent investigation was initiated, or the case opened, despite the evidence presented.

6. Subsequently, on July 4, 2008, more than three years after his arrest and despite having stated that he had been beaten and tortured by agents of the PGJE to force him to sign the confession, the First Instance Criminal Judge of the Fifth Judicial District of Sonora issued a conviction against him for aggravated kidnapping, robbery with violence, and organized crime, sentencing him to imprisonment. –However, the petitioner does not provide information on the length of the sentence, nor does he provide a copy of this decision–.

7. Upon this result, he states that he filed an appeal before the Supreme Court of Justice of Sonora, which, through a judgment of September 19, 2009, modified the judgment of first instance about the punishment imposed, although he does not specify what the modification was. Subsequently, the petitioner allegedly filed a direct amparo remedy, but on August 19, 2013, said remedy was rejected. Finally, on June 6, 2016, he allegedly filed a motion for recognition of innocence. However, on June 6, 2016, said action was declared inadmissible. – Mr. González Pedrotti does not provide further details either on these latest judicial decisions –.

8. In view of the foregoing considerations, the alleged victim claims that the state authorities failed to provide due process guarantees, since: (a) there was no physical or expert evidence that would have linked him to the unlawful acts, for which reason a reasoned resolution was never issued; and (b) the relevant proceedings were not conducted within a reasonable period of time in order to investigate the acts of torture and kidnapping he suffered. He argues that he has, as evidence, a medical certificate issued by the forensic doctor of the Sonora Penitentiary Center, which confirms the injuries suffered, which included ecchymosis on the left shoulder, as well as pectoral, abdominal pain and inflammation in both testicles and dermal abrasions on the knees. – However, Mr. González Pedrotti did not attach such documentation to the petition file –.

<sup>4</sup> Law of the National Human Rights Commission. Article 26.- The complaint may only be filed within a period of one year, as from the time when the execution of the facts that are considered to be in violation has begun, or when the complainant has had knowledge of them. In exceptional cases, and in the case of serious violations of human rights, the National Commission may extend said term by means of a reasoned resolution. There will be no time limit in the case of facts which, due to their severity, may be considered violations against humanity.

<sup>5</sup> A copy of the publications of the newspaper "Expreso" is included in the file of this petition.

9. Additionally, he holds that he requested the review of his legal situation before the Special Prosecutor's Office for the Investigation of the Crime of Torture, for which the President's Private Secretary by means of an official letter of April 4, 2018, informed him that his case was turned to the Attorney General's Office for its respective analysis. However, such request would still be pending review at the time of submitting his additional observations. Finally, he argues that he has been unjustly deprived of his liberty for more than ten years, since the authorities did not take into consideration that he suffered acts of torture. In addition, he argues that the complaint he filed was rejected as untimely, which constitutes a violation of judicial guarantees. In this line, he holds that, subsequently, he also denounced the acts of torture before the National Human Rights Commission, which by official letter of July 11, 2018, confirmed that his complaint had been filed extemporaneously, without considering the previously cited Article 26 of the Law of the National Human Rights Commission. In addition, he holds that he denounced the facts by letter to the former and current President of the Republic, as well as to the Undersecretary of Human Rights of Mexico City.

10. Finally, in response to the State's reply, he argues that the authorities conducted his arrest long before a judge issued an arrest warrant for him. He argues that his arrest was carried out on April 29, 2005, and the arrest warrant was issued on May 13, 2005. Likewise, with respect to the alleged acts of torture, he reiterates that there is a medical certificate, issued by the doctor of the penitentiary center where he was deprived of his liberty, which confirms the injuries he suffered; and that, despite having included such document in his complaint, the judicial authorities did not take it into consideration.

11. On its part, the State replies that the petition is inadmissible for lack of exhaustion of domestic remedies. It argues that when the petition was filed, the amparo proceeding was still ongoing, and that the judgment was only issued on August 19, 2013. In addition, once the decision was issued, the alleged victim could file an appeal for review, which is the appropriate remedy for claiming alleged violations of judicial guarantees.

12. In addition, it argues that the facts reported do not characterize human rights violations attributable to it. It holds that the Commission is being asked to act outside its competencies set forth in the Convention by reviewing a matter that was resolved in the domestic jurisdiction, acting as a higher court upon the alleged victim's disagreement with the decisions issued by the domestic courts.

13. It holds that the alleged victim was detained based on a preliminary investigation for the crimes of aggravated kidnapping, robbery with violence and organized crime. Following that investigation, on May 13, 2005, the agent of the Public Ministry filed it before the competent judge and a criminal action was brought against Mr. González Pedrotti, since there was enough evidence of his probable responsibility in the facts. Consequently, on May 15, 2005, the competent judge issued an arrest warrant against the alleged victim, which was executed the following day by members of the PGJE, in accordance with domestic law.

14. Likewise, it claims that Mr. González Pedrotti had a defense attorney and that, in view of his claim of lack of defense, the competent courts determined that the complaint was unfounded, since the participation and legal advice of his public defender was evidenced from the beginning of the criminal proceeding.

15. Regarding the alleged illegality of the search conducted in the domicile of the alleged victim, he holds that according to article 16 of the Political Constitution, said order is issued by a judicial authority in writing. The State asserts that said formality was fully met, since in the record of the proceedings it was noted that it was carried out by means of a written order from a competent judicial authority and in compliance with the formalities required by law. In conclusion, the competent authorities determined that the disagreements of the alleged victim were unfounded since the search would have been legal.

16. Regarding the criminal proceedings, the State reports that Mr. González Pedrotti was convicted on July 4, 2008, and that, in response to that decision, the petitioner, as well as the Public Ministry, filed an appeal. It reports that on December 15, 2009, the competent body modified the first instance decision with respect to the punishment imposed - the State does not provide further details in this regard either-. The petitioner then initiated amparo proceeding 21/2011, in which it was determined that the second instance

authority in the criminal proceeding violated the essential formalities of the criminal trial, since it did not have before it all the evidence and steps that were part of the proceedings. As a result, the judicial authority decided to grant Mr. Gonzalez Pedrotti's amparo, ordering the judge of second instance to issue a new sentence, considering all the actions and evidence that were part of the criminal proceedings.

17. Thus, on April 16, 2012, a new conviction was issued against the alleged victim, which was again contested by means of the direct amparo trial 34/2013. However, upon noticing that the authority in the criminal proceeding had not incurred in violations of Mr. González Pedrotti's rights, on August 19, 2013, the judicial authority denied said amparo. Thus, the State emphasizes that, although violations were initially noted in the alleged victim's trial, said irregularities were remedied by the competent body through a new judgment, which complied with the guarantees of due process. Consequently, it argues that the conviction of Mr. González Pedrotti did not imply any violation of his rights.

18. Finally, regarding the alleged acts of torture, the State argues that since May 17, 2005, when Mr. González Pedrotti protested before the judicial authorities that he had been a victim of torture, all the evidence he provided was admitted. In addition, it claims that this situation was considered when analyzing the appeal filed against the first instance judgment, in which it was determined that the alleged acts of torture were not proven.

19. Subsequently, during the processing of the direct amparo proceeding 34/2013, Mr. González Pedrotti reiterated that he had been a victim of physical torture by state agents to make him declare the commission of the crimes of which he was accused. However, he holds that the judicial authorities in said proceedings declared such allegations to be unfounded, since they noted that the petitioner gave all his statements voluntarily, free of any type of coercion and with the corresponding legal assistance. The State holds that the medical report made to Mr. González Pedrotti by two forensic doctors did not show the presence of traumatic bodily injuries of any nature whatsoever.

20. Finally, Mexico argues that from the ministerial statement and its amplification by the alleged victim, when the public defender expressly asked Mr. Silvestre González if he had been beaten or coerced in any way, the petitioner answered in the negative. Based on this, the State argues that, although the petitioner later retracted his confession, claiming to have suffered acts of torture, it did not corroborate the presence of any mistreatment against Mr. González Pedrotti. For this reason, it is not applicable to admit this aspect of the present petition either.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS**

21. In the instant case, the alleged victim argues that even though he informed different authorities that he had suffered acts of torture, his claims were not adequately addressed, causing him to be improperly convicted, and to date, the responsible officials have not been punished. The State, on its part, argues the lack of exhaustion of domestic jurisdiction, since when the petition was filed, the amparo proceeding was still ongoing and the judgment in the case file was only issued on August 19, 2013. It adds that, even once the decision had been issued, the alleged victim could file an appeal for review, which is the appropriate remedy to claim alleged violations of judicial guarantees.

22. Regarding the criminal conviction to the detriment of the alleged victim, the Commission reiterates its constant position that the situation that must be considered to establish whether the remedies under domestic law have been exhausted is the one that exists when deciding on admissibility<sup>6</sup>. It also recalls that, although in some cases extraordinary remedies may be appropriate to address human rights violations, as a general rule, only ordinary remedies are required to comply with the requirement established in Article 46.1.a) of the Convention<sup>7</sup>. In the instant case, according to the information submitted by both parties, on August 19, 2013, the competent judicial authority rejected the extraordinary remedy of amparo filed by the alleged victim. In the opinion of the IACHR, it was not necessary for the alleged victim, in this case, to use the

<sup>6</sup> IACHR, Report No. 4/15, Petition 582-01. Admissibility. Raúl Rolando Romero Feris. Argentina. January 29, 2015, para. 40

<sup>7</sup> IACHR, Report No. 161/17, Petition 29-07. Admissibility. Andy Williams Garcés Suárez and family. Peru. November 30, 2017, para. 12.

extraordinary remedy of review, since he had previously filed an ordinary appeal and, subsequently, the aforementioned extraordinary amparo remedy.

23. Therefore, the Commission concludes that the requirement set forth in Article 46.1.a) of the American Convention about criminal proceedings is met in the instant case. Furthermore, since the petitioner filed the petition on June 18, 2013, when the petition was still under study, the time limit requirement of Article 46.1.b) of the American Convention is also met.

24. On the other hand, about the alleged acts of torture, the IACHR recalls that according to international standards applicable to cases such as the present one, in which serious human rights violations which can be prosecuted *ex officio* are claimed, the appropriate and effective remedy is a criminal investigation to clarify the facts and, if applicable, to identify those responsible and establish the corresponding punishments<sup>8</sup>.

25. In the present case, it is observed that the alleged victim informed of the alleged acts of torture on several occasions and before different authorities, but to date, these facts have not been duly investigated nor have the alleged perpetrators been punished. Along these lines, the Commission notes that both the Sonora State Human Rights Commission and the National Human Rights Commission rejected the alleged victim's complaint, considering that the appeal was filed out of time, disregarding the exception to the deadline for submission provided for in the Law of the National Human Rights Commission. In addition, although other authorities later became aware of the alleged victim's complaint, the State does not provide evidence or specific information that would allow us to know the reasons for such decisions, to determine if there was a diligent investigation.

26. Due to the aforementioned reasons, the IACHR considers that the exception provided in Article 46.2.b) of the Convention is applicable to this end of the petition, since the authorities and the misinterpretation of the law in force at the time would have hindered the conduct of a diligent investigation into the alleged acts of torture. Also, since the alleged acts of torture occurred in 2005 and that since 2006 the alleged victim has continuously filed various complaints informing of what happened, the last complaint being filed in 2018 before the National Human Rights Commission, the IACHR considers that the present petition was filed within a reasonable time, pursuant to Article 32(2) of its Rules of Procedure.

## VII. COLORABLE CLAIM

27. The Commission notes that the State has replied that the competent authorities determined that the medical examinations conducted on Mr. González Pedrotti showed that he did not suffer acts of torture. However, the IACHR emphasizes that Mexico did not attach such documentation to the file of the instant petition. Likewise, it did not provide specific information that would allow to evidence the actions that were conducted to adequately investigate the facts, since it only stated that the facts denounced were not accredited by the State authorities. In addition, in view of the new complaints made by the alleged victim, the State has not provided information to prove that diligent measures were taken to duly investigate what happened and to review the criminal conviction imposed.

28. In view of these considerations, and after examining the elements of fact and law set forth by the parties, and the close relationship between the alleged acts of torture and the criminal proceedings against the petitioner, the Commission considers that the allegations of the alleged victim are not manifestly unfounded and require a study of the merits since, if corroborated as true, they could constitute violations of the rights recognized in 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 (duty to adopt provisions of domestic law) thereof; and Articles 1, 6 and 8 of the Convention to Prevent and Punish Torture, to the detriment of the alleged victim, in the terms of this report.

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<sup>8</sup> IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 13.

29. Finally, concerning the State's allegation of fourth instance, the Commission observes that in admitting this petition it does not intend to supersede the competence of domestic judicial authorities, but will analyze at the merits stage of this petition whether domestic judicial proceedings complied with the guarantees of due process and judicial protection in accordance with the rights protected by the Convention.

#### **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.

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