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Title/Style of Cause: Hossein Alikhani v. United States
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez Trejo, Florentin Melendez.
Dated: 12 October 2005
Citation: Alikhani v. United States, Petition 4618/02, Inter-Am. C.H.R., Report No. 63/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: the International Human Rights Law Clinic at the Washington College of Law
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I. SUMMARY

1. On May 20, 2002, the Inter-American Commission on Human Rights (hereinafter the “Commission”) received a supplementary petition dated May 15, 2005 from the International Human Rights Law Clinic at the Washington College of Law (hereinafter the “Petitioners”) against the Government of the United States of America (hereinafter the “State” or “United States”) on behalf of Mr. Hossein Alikhani (hereinafter “Mr. Alikhani”), a citizen of Iran and Cyprus. The communication requested that the Commission reactivate a petition that had been filed on July 17, 1995 on behalf of Mr. Alikhani and two other alleged victims, Kenneth Walker and Mr. George Christoforou. Following the filing of their July 17, 1995, the Petitioners had requested that the Commission sever the complaints and process them separately and, with respect to Messrs. Alikhani and Christoforou, to suspend the processing of their complaints pending the completion of further proceedings before the domestic courts. In their May 15, 2002 supplementary petition, the Petitioners indicated that Mr. Alikhani’s domestic proceedings had been completed unsuccessfully and therefore requested that the Commission proceed with the processing of his petition.

2. The Petitioners’ petition and subsequent observations allege that the State is responsible for violations of Mr. Alikhani’s rights under Articles I, VIII, XXIV, XXV, and XXVI of the American Declaration of Human Rights (hereinafter the “American Declaration” or the “Declaration”), based upon the argument that his arrest was unlawful, that his right to freedom of movement was violated as a result of the act of luring and abducting by the United States government agents, and that while in custody he was treated inhumanely while in custody.

3. The State argues that the petition is inadmissible as it does not state facts that tend to establish a violation of the American Declaration, and because the United States did not violate International Law in connection with Mr. Alikhani's circumstances.

4. As set forth in the present report, having examined the information available and the contentions on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to admit the claims in the present petition relating to Articles I, VIII, XXIV, XXV, and XXVI of the American Declaration, to continue with the analysis of the merits of the case, to transmit the report to the parties, and to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On July 17, 1995 Messrs. Walker, Alikhani and Christoforou filed a petition with the Commission alleging that their protected rights under the Charter of the Organization of American States and the American Declaration had been, and continued to be, violated by the United States.

6. Following the receipt of the Petitioners' complaint, the Commission transmitted the pertinent parts of the complaint to the United States by means of a note dated August 27, 1998 with a request for observations within 60 days as established by the Commission's Rules of Procedure. By note of the same date, the Commission informed the Petitioners that the pertinent parts of their petition had been transmitted to the State.

7. In two letters dated September 19, 1998 and January 14, 1999, the Petitioners requested that the Commission hold a hearing concerning their petition. Subsequently, in notes dated February 2, 1999, the Commission informed the Petitioners and the State that a hearing on the admissibility and merits of the petition had been scheduled on March 5, 1999 during the Commission's 102nd session.

8. By a note dated January 25, 1999, the Commission informed the State that it had yet to receive any communication concerning the Petitioners' complaint. The Commission again transmitted the pertinent parts of the Petitioners' complaint and requested that the State submit relevant observations within 30 days.

9. In a communication dated February 16, 1999 and received by the Commission on February 17, 1999, the State requested an extension of time until March 31, 1999 within which to respond to the Petitioners' complaint and a postponement of the hearing that had been scheduled for March 5, 1999. In a note dated February 19, 1999, the Commission granted the State an extension but denied its request for a postponement of the hearing.

10. In a letter dated February 21, 1999 and received by the Commission on February 25, 1999, the Petitioners requested that Mr. Walker's complaint be severed from those of Mr. Hossein Alikhani and Mr. George Christoforou because of additional efforts on the part of the latter individuals to pursue domestic remedies. According to the request, the Petitioners had

originally joined the cases of Mr. Alikhani and Mr. Christoforou to that of Mr. Walker because all three alleged victims claimed that the United States had arrested and detained them, or had threatened to do so, through a practice of irregular extraterritorial rendition. The Commission granted the Petitioners' request to sever the complaints.[FN1]

[FN1] The Commission subsequently found Mr. Walker's petition to be inadmissible on the basis that Mr. Walker had failed to exhaust domestic remedies in the United States. See Case P12.049, Report 62/03, Kenneth Walker v. United States, Annual Report of the IACHR 2003.

11. By communication to the Commission dated November 9, 2001, the Petitioners informed the Commission that Mr. Alikhani's last petition for a writ of certiorari was dismissed by the United States Supreme Court on October 10, 2000, and that they wished to "revive" and proceed with the complaints of Messrs. Alikhani and Christoforou.

12. In a communication dated May 15, 2002 and received by the Commission on May 20, 2002, the Petitioners provided a supplemental petition on behalf of Messrs. Alikhani and Christoforou in which they, inter alia, request that the Commission find the complaints filed on behalf of these alleged victims to be admissible.

13. By note dated December 11, 2002, the Commission notified the Petitioners that it was unable to process Mr. Christoforou's complaint because the information submitted did not meet the requirements called for in Article 26 of the Commission's Rules of Procedure and other applicable instruments, and in particular because facts that would indicate a violation of the American Declaration attributable to the United States had not been demonstrated, as the petition did not allege that Mr. Christoforou had been the victim of any irregular rendition but only that he feared a possible threat of such action. The Commission further notified the Petitioners that on December 11, 2002, the government of the United States had been provided with the pertinent parts of Mr. Alikhani's petition dated July 17, 1995 and the Petitioners' supplementary petition of May 12, 2002, with a period of two months to provide a response.

14. On January 30, 2003, in a communication to the Commission, the United States requested a thirty day extension, until March 11, 2003, for the preparation of a response. In a correspondence dated February 4, 2003 to the United States, the Commission granted the extension.

15. On March 11, 2003, the United States delivered its response in reply to the Commission's letter dated December 11, 2002, the pertinent parts of which were transmitted to the Petitioners by note dated March 12, 2003 with a response requested within 30 days.

16. In a communication dated April 14, 2003, the Petitioners provided a response to the submissions made by the United States. The Commission acknowledged receipt of the communication on April 24, 2003 and sent the pertinent parts of same to the United States on the same day, with a period of 30 days to respond.

17. On September 30, 2003, the United States wrote to the Commission advising that in response to the April 24, 2003 communication from the Commission, it wished to refer to its earlier filing of March 11, 2003.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

18. According to the Petitioners, Mr. Alikhani is a citizen of Cyprus and Iran and owner of Polygon Company Ltd., a Cypriot commercial trading company with no subsidiaries in the United States. The petition indicates that in September of 1990, Mr. Alikhani contacted Turbo Power and Marine Systems (TPMS), a division of a U.S. company called United Technology, to inquire about the purchase of spare parts for a commercial engine and turbine. The Petitioners state that Mr. Alikhani was notified by TPMS that due to U.S. sanctions the company was unable to sell the parts, which were destined for Libya, and that upon hearing of the embargo, Mr. Alikhani did not pursue the matter any further.

19. The Petitioners allege that in August of 1991, almost a year after the initial contact, TPMS phoned Mr. Alikhani and offered to supply the parts through its international export division, International Trading Resources Inc. (ITR), and that unbeknownst to Mr. Alikhani, ITR was a false entity created by the U.S. Customs Service and the TPMS employee who initiated contact with Mr. Alikhani was a paid informant for the Service. The Petitioners indicate that ITR advised Mr. Alikhani that the company was aware of the sanctions and would undertake to structure the transaction so it would comply with U.S. law, and that Mr. Alikhani relied on the representation that the transaction method complied with U.S. law.

20. According to the Petitioners, Polygon purchased the parts from ITR, and they were shipped by TPMS for delivery to a freight forwarder in Germany, where they were re-exported by Mediterranean Oil Service and Jawaby Oil Services to Libya. The petition states that the U.S. Customs agents procured the equipment, obtained a permit from the Office of Foreign Assets Control to export it, made all the necessary arrangements for shipment, and then actually shipped the equipment from Germany to Libya. In this regard, the Petitioners contend that U.S. Customs Service essentially orchestrated the necessary transactions to attribute criminal liability to Mr. Alikhani while representing to him that the deal was in compliance with U.S. regulations.

21. The petition states that in October of 1992, Mr. Alikhani was encouraged to travel to the Bahamas to attend a business meeting with ITR representatives, and that on October 22, 1992, two undercover U.S. Customs Service agents posing as directors of ITR met Mr. Alikhani at Nassau International Airport. According to the Petitioners, the agents falsely advised Mr. Alikhani that they had arranged for him to travel to another Bahamian island for the purpose of a business meeting and some fishing, and that Mr. Alikhani boarded the plane under the false pretense that he was traveling with two business colleagues to another island within Bahamian territory.

22. The Petitioners contend that minutes after take off, the agents revealed their true identities and arrested Mr. Alikhani for violations of U.S. sanctions against Libya. The

Petitioners also state that the U.S. arrest warrant did not authorize the abduction of Mr. Alikhani in the Bahamas, nor did the Bahamian government authorize U.S. authorities to exercise law enforcement functions in its territory. Further, the Petitioners assert that although the United States had extradition treaties with both the governments of Bahamas and Cyprus in effect at the time of Mr. Alikhani's apprehension, the United States did not try to utilize these pre-existing procedures for the rendition of foreign nationals, but rather that Mr. Alikhani was involuntarily taken from Bahamian territory without the consent of the Bahamian government. The petition states that both the governments of the Bahamas and Cyprus formally protested Mr. Alikhani's abduction.

23. According to the Petitioners, Mr. Alikhani was taken to Florida, where he was assured that he would be released if he participated in sting operations designed to induce U.S. nationals into violating U.S. export laws. Instead, however, they claim that after agreeing to participate in the operations and in fact participating in them in anticipation of his immediate release thereafter, Mr. Alikhani was transported to various motels where he was handcuffed to his bed every night and forbidden from telling his family that he was being held as a detainee. The Petitioners allege that despite his cooperation and the assurances by the agents, he was not released, but rather was indicted and incarcerated without bail on November 19, 1992.

24. In this connection, the Petitioners state that Mr. Alikhani was placed in a correction center where he was refused the use of his eyeglasses, which he needed to properly prepare for the document-intensive case, and that due to emergency weather conditions following Hurricane Andrew, he was not permitted to have visitors and received restricted access to his legal counsel. According to the Petitioners, under the prospect of continued imprisonment under these conditions, and fearing that he would never see his family again, Mr. Alikhani signed a plea agreement under which he was sentenced to time served, but that the United States, knowing that the manner of Mr. Alikhani's apprehension was being severely criticized by foreign governments and members of Congress and the possibility of a legal challenge, inserted a clause into the coercive plea agreement prohibiting Mr. Alikhani from litigating the circumstances of his arrest or detention.

25. With regard to the admissibility of the petition, the Petitioners argue that because of the clause in Mr. Alikhani's plea agreement, he was barred from pursuing domestic remedies unless he could have the plea agreement vacated. Further, they claim that on January 10, 1996, Mr. Alikhani filed a petition for a writ of Error Coram Nobis with the Southern District Criminal Court of Florida to have the plea agreement set aside, but that the petition was denied on September 16, 1998 and the United States Supreme Court ultimately denied his petition for a writ of certiorari on October 10, 2000. As a consequence, the Petitioners state that the plea agreement remains valid and Mr. Alikhani remains unable to seek redress in U.S. courts for his illegal kidnapping.

26. With respect to the merits of the petition, the Petitioners claim that the facts in the case tend to establish violations of the American Declaration as well as other international instruments and for that reason the petition should be admitted. More specifically, the Petitioners claim that the United States has violated Mr. Alikhani's right to free movement as guaranteed by Article VIII of the American Declaration as Mr. Alikhani's luring and abduction to the United

States was carried out with the specific intent that he not know the true destination of the plane and with the purpose that he be deprived of any meaningful choice regarding whether he left the country. The Petitioners also argue that in light of the luring and abduction, the actions of Mr. Alikhani in traveling to the Bahamas and boarding the plane cannot be construed to be “voluntary.”

27. Furthermore, the Petitioners claim that the United States has violated Mr. Alikhani’s rights to life, liberty and personal security and to protection from arbitrary arrest under Articles I and XXV of the American Declaration on the basis that the practice of luring and abducting is neither fair nor predictable, because Mr. Alikhani did not travel into the jurisdiction of the United States voluntarily, and his detention in the Bahamas was not supported by Bahamian, United States or international law. In the latter regard, the Petitioners argue that the U.S. arrest warrant issued against Mr. Alikhani did not validate the arrest or cure the violations of his rights because the arrest warrant had no validity in Bahamian territory, and because the U.S. Federal Rules of Criminal Procedure in effect at the time of Mr. Alikhani’s abduction provided that a warrant issued by a United States court was valid only “within the jurisdiction of the United States.” The Petitioners therefore argue that, as a result of the fact that Mr. Alikhani’s luring and apprehension began before he reached international airspace, the U.S. authorities, which were conducting law enforcement functions in a territory without the consent of the Government, had no legal basis to deprive Mr. Alikhani of his right to liberty and personal security by luring him out of the country against his will.

28. Moreover, the Petitioners claim that Mr. Alikhani’s right to due process of law under Article XXVI of the American Declaration and his right to be treated humanely while in custody as guaranteed by Article XXV of the American Declaration have been violated by the State. In particular, the Petitioners argue that Mr. Alikhani was removed from the country of his choosing without being granted a hearing or any chance to challenge his removal and therefore that the entire judicial process was tainted by the illegality of the apprehension, and that he was subsequently denied access to judicial process through a coerced plea agreement, contrary to Articles XXIV and XXVI of the Declaration. The Petitioners also claim that during his detention in the United States between October 22, 1992 until November 19, 1992, Mr. Alikhani was not permitted to reveal his status as a detainee to his family, was tied to his bed each night, had his eyeglasses confiscated, and was coerced into signing a plea agreement in order to secure his release and to be reunited with his family contrary to his right to humane treatment under Article XXV of the Declaration.

29. Finally, referring to various international and other authorities,[FN2] the Petitioners claim that there is a consensus that the practice of irregular extraterritorial rendition violates international law.

[FN2] See, e.g., Petitioners’ observations of May 15, 2002, pp. 14-15, citing V. Morris and M. Vrailas Bourlayannis, *The Work of the Sixth Committee at the Forty-Eighth Session of the UN General Assembly*, 88 A.J.I.L. 343 (1993); *Stocke v. Germany*, Ser. A No. 199 (March 19, 1991); ICTY, *Prosecutor v. Slavo Dockmanovic*, Decision on the Motion for Release of Slavo Dockmanovic, No. IT-95-13a-PT, T, Ch. II, 22 October 1997, para. 7; Alvarez-Machain, 266

F.3d at 1045, 1052 (9th Cir.); Restatement (Third) of Foreign Relations Law of the United States §§ 432-33. See also petition dated July 17, 1995, pp. 50-53.

B. Position of the State

30. With respect to the background to Mr. Alikhani's complaint, the United States claims that between October 1991 and June 1992, subsequent to the establishment of ITR, Mr. Alikhani made contacts with ITR and negotiated with the undercover United States Customs agents and ordered and paid for engine parts, which he shipped to a company in Hamburg, Germany, that was established for the express purpose of hiding his exports to Libya and avoiding detection by American authorities. According to the State, when the commercial parts arrived in Germany, Mr. Alikhani arranged to have them shipped to Libya.

31. The State also indicates that on July 10, 1992, a United States Magistrate Judge in the Southern District of Florida issued a warrant for Mr. Alikhani's arrest, and subsequently, in October, 1992, Mr. Alikhani agreed to meet with the undercover United States Customs agents for a business meeting in the Bahamas. According to the State, on October 22, 1992, when Mr. Alikhani boarded the airplane which he believed was going on a fishing trip to another island, U.S. Customs agents arrested him on board the flight while in international airspace.

32. The State claims that the following day, October 23, 1992, Mr. Alikhani was given an initial hearing before a Magistrate Judge in the Southern District of Florida, where he was represented by counsel, and that the Magistrate Judge released Mr. Alikhani to the custody of the U.S. Customs Service because he agreed to assist U.S. Customs with its investigation of other violations of United States law sanctioning Libya.

33. Further, according to the State, Mr. Alikhani waived his right to a preliminary hearing four days later, on October 27, 1992, that he was indicted on November 19, 1992, that he was arraigned and pleaded not guilty on November 23, 1992, and the Magistrate Judge granted his motion to be released on bond pending trial on November 30, 1992. The State also claims that on December 30, 1992, Mr. Alikhani filed a motion to dismiss his indictment and that a hearing of the motion was set for February 5, 1993, but that instead of arguing his motion, Mr. Alikhani, who was represented by counsel, pleaded guilty. According to the State, Mr. Alikhani was then released on bail and allowed to leave the United States on the condition that he return for the sentencing hearing on April 30, 1993. The State indicates that when Mr. Alikhani appeared at the sentencing hearing and was sentenced to the time he served in custody from his arrest on October 22, 1992, until his released pending sentencing on February 5, 1993.

34. With respect to the admissibility of the petition, the State argues that the petition is inadmissible under the terms of Article 34(a) and (b) of the Commission's Rules of Procedure because it does not state facts that tend to establish a violation of the American Declaration and is manifestly groundless, and because the United States has not violated any international law, including customary international law. The United States argues in this regard that Mr. Alikhani voluntarily agreed to the meeting in the Bahamas and voluntarily agreed to travel on the private plane through international airspace. Moreover, the State argues that the Magistrate Judge who

denied Mr. Alikhani's January 10, 1996 petition for a Writ of Error Coram Nobis did not reach the merits of Mr. Alikhani's claims and stated that "Alikhani failed to demonstrate any compelling circumstance or miscarriage of justice and show that he is suffering from any continuing consequence of his conviction." As such, the United States contends that the State has not violated Mr. Alikhani's right to residence and movement under Article VIII of the American Declaration.

35. Furthermore, the State argues that Mr. Alikhani's right to due process of law under Article XXVI of the American Declaration has not been violated as Mr. Alikhani received a fair hearing of the criminal charges against him. In this connection, the State argues that there is no evidence that Mr. Alikhani did not willfully and freely enter into the plea agreement so as to call into question the fairness of the outcome of his criminal proceedings.

36. Moreover, the State contends that Mr. Alikhani's right to liberty and personal security and his right to protection from arbitrary arrest under Articles I and XXV of the American Declaration were not violated, as the Petitioners provided no facts to support the claim that Mr. Alikhani was unlawfully arrested. According to the State, Mr. Alikhani was arrested with a valid warrant and, moreover, he knowingly and willingly pleaded guilty to legitimate criminal charges against him. Also in this respect, the State contended that the United States did not circumvent any extradition treaties because no such treaties applied in the present case, given that Mr. Alikhani voluntarily traveled to the jurisdiction in which he was arrested.

37. Finally, referring to a number of national court decisions[FN3] in which, according to the State, luring without force was found to have been justified, the United States argues that it cannot be said that there is any customary international law or general principle which has developed against "luring."

[FN3] State's response dated March 11, 2003, p. 7, citing *US v. Yunnis*, 681 F. Supp. 909 (DDC 1988); *Re Harnet and the Queen*; *In re: Hudson and the Queen*, 14 C.C.C. (2d) 69, 1 O.R. (2d) 206; *In re Schmidt* [1995] 1 App. Cas. 339 (Eng. H. 1994).

IV. ADMISSIBILITY

38. The Commission has considered the admissibility of the present complain pursuant to Articles 30 and 34 of its Rules of Procedure and makes the following determinations.

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

39. The Commission is competent to examine the petition in question. Under Article 23 of the Rules of Procedure of the Commission, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration. The alleged victim, Mr. Alikhani, is a person whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the

Commission's Statute and Article 49 of the Commission's Rules of Procedure. The United States of America deposited its instrument of ratification of the OAS Charter on June 19, 1951 and has been subject to the Commission's jurisdiction since 1959, the year in which the Commission was created.[FN4]

[FN4] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; Regulations of the Inter-American Commission on Human Rights, Arts. 26, 51-54; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A No. 10 (1989), paras. 35-35; I/A Comm. H. R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87 paras. 46-49.

40. Inasmuch as the Petitioners have filed complaints alleging violations of Article I, VIII, XXIV, XXV, and XXVI of the American Declaration, the Commission is competent *ratione materiae* to examine the petition.

41. The Commission is competent *ratione temporis* to examine the complaints because the petition alleges facts that occurred on or after the date on which the United States' obligations under the American Declaration took effect.

42. Finally, the Commission is competent *ratione loci*, given that the petition indicates that Mr. Alikhani was under the jurisdiction of the United States at the time of his arrest, detention and subsequent criminal proceedings.

B. Duplication

43. No information appears on the record indicating that Mr. Alikhani's complaint has been previously submitted to the Commission or any other intergovernmental organization of which the United States is a member. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the Petitioners' claims under Article 33 of the Commission's Rules of Procedure.

C. Exhaustion of Domestic Remedies

44. Article 31(1) of the Commission's Rules of Procedure specifies that, in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law. The jurisprudence of the inter-American system makes clear,

however, that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means. The Inter-American Court has thus deemed the requirement a waivable defense to a complaint against a State.[FN5] Such a waiver can be express or tacit, and once effected, is irrevocable.[FN6] In the face of such a waiver, the Commission is not obliged to consider any potential bars to the admissibility of a petitioner's claims that might have properly been raised by a state relating to the exhaustion of domestic remedies.

[FN5] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C N° 25, para. 40.

[FN6] Id.

45. In the present case, the State has failed to provide any observations or information respecting the exhaustion of domestic remedies, and has thereby implicitly or tacitly waived its right to object to the admissibility of the claims in the petition based upon the exhaustion of domestic remedies requirement. Moreover, the information provided by the Petitioners, and acknowledged by the State, indicates that Mr. Alikhani pursued a petition for a Writ of Error Coram Nobis before the courts in the United States in order to have the plea bargain declared invalid and that the U.S. Supreme Court ultimately denied Mr. Alikhani's petition for a writ of certiorari on October 10, 2000. In these circumstances, the Commission finds that Mr. Alikhani's claims are not barred from consideration under Article 31(1) of its Rules of Procedure.

D. Timeliness of the Petition

46. In the petition under consideration, the Commission has concluded that the United States tacitly renounced its right to assert an objection of failure to exhaust domestic remedies, as a result of which the requirement of Article 32(1) of the Commission's Rules of Procedure is not applicable. However, the provisions of the Rules of Procedure requiring the prior exhaustion of domestic remedies and the lodging of the petition within a period of six months from the date of final judgment of the domestic court are independent. The Inter-American Commission must therefore determine whether the petition under review was presented within a reasonable period. In this connection, the Commission observes that the original petition was received on July 17, 1995, and the U.S. Supreme Court denied Mr. Alikhani's petition for a writ of certiorari on October 10, 2000. As such, the petition was not lodged beyond the time period prescribed under Article 32 of the Commission's Rules of Procedure.

E. Colorable Claim

47. Article 27 of the Commission's Rules of Procedure mandates that petitions state facts "regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments." The petitioners allege that the State has violated Articles I, II, V, VIII, XIV, XVII, XVIII, XXV, and XXVI of the American Declaration.

48. The Commission has outlined in Part III of this Report the substantive allegations of the Petitioners, as well as information submitted by the Petitioners in support of those allegations. After carefully reviewing the information and arguments provided by the Petitioners and the State, and without prejudging the merits of the matter, the Commission considers that the petition states facts that, if proven, tend to establish violations of rights guaranteed under the Declaration. The Commission notes in this regard that, according to the authorities cited by the Petitioners and the State, some domestic courts have concluded that obtaining jurisdiction over wanted criminals through luring is routine and does not preclude criminal prosecutions,[FN7] while other domestic and international authorities have suggested that luring under false pretenses may engage the rights to personal liberty and to freedom from arbitrary arrest and detention.[FN8] Accordingly, it appears to the Commission that the permissibility under international law of abductions, luring and other extraordinary methods of rendering individuals to the jurisdiction of a state is the subject of legitimate debate and therefore considers that the Petitioners claims in this regard are not manifestly groundless or out of order. The Commission therefore concludes that the Petitioners' petition should not be declared inadmissible under Article 34 of the Commission's Rules of Procedure.

[FN7] See, e.g., *US v. Yunis*, 681 F. Supp. 909 (DDC 1988); *Re Harnet and the Queen*; *In re: Hudson and the Queen*, 14 C.C.C. (2d) 69, 1 O.R. (2d) 206.

[FN8] See, e.g., *Conka v. Belgium* [2002] 34 Eur. H.R. Rep. 54 (Eur. Court H.R.); *Stocké v. Germany* [1991] 13 Eur. H.R. Rep. 126, 129, para. 169 (Commission Report); *Alvarez-Machain*, 266 F.3d at 1045, 1052 (9th Cir.).

V. CONCLUSIONS

49. The Commission concludes that it has the competence to examine the Petitioners' allegations, and that the petition is admissible for the alleged violations of Articles I, VIII, XXIV, XXV and XXVI of the American Declaration and in accordance with the Commission's Rules of Procedure.

50. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Declare the claims in the petition to be admissible in respect of Articles I, VIII, XXIV, XXV and XXVI of the American Declaration.
2. Transmit this report to the parties.
3. Continue with the analysis of the merits of the case.
4. Publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 12th day of the month of October, 2005.
(Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez Trejo, and Florentín Meléndez, Commissioners.